

**COSMIAN
END-USER LICENSE AGREEMENT**

This End-User License Agreement together with its exhibits (the “**Agreement**”) is entered into by and between **COSMIAN TECH**, a French *société par actions simplifiée* with a share capital of 59 040,60 €, whose registered office is located 55 rue la Boétie, 75008 Paris, France, registered with the commercial and companies register of Paris under number 840 903 447, represented by Sandrine Murcia, acting in her capacity as President (“**Cosmian**”) and **Customer** (as defined below).

Customer and Cosmian are referred to hereinafter individually as a “**Party**” and collectively as the “**Parties**”.

The Agreement governs the use of the Product (as defined below) by Customer. The Agreement does not govern the provision of professional services (such as the installation, configuration of the Product, training to use the Product), which may be the subject to a separate agreement independent of this Agreement.

Article 1 **Definitions**

The following terms have the meaning specified below when used in the Agreement:

“**Blocking Defect**” refers to a Defect that totally prevents the use of the Product.

“**Customer**” refers to the natural or legal person who has purchased a subscription from the Reseller on Azure Cloud Marketplace for the use of the Product.

“**Defect**” refers to a malfunction or an error affecting the Product and preventing the use of all or part of the Product.

“**Documentation**” refers to user information, description of functionalities and, generally, any other document relating to the use of the Product.

“**Azure Cloud Marketplace**” refers to the online marketplace operated by the Reseller or any of its affiliate available at the following link: <https://azuremarketplace.microsoft.com/fr-fr/>

“**License Fees**” refers to the fees invoiced by the Reseller to Customer in consideration of the right to use the Product and the provision of the Support and Maintenance Services in accordance with the terms of this Agreement.

“**License Term**” refers to the subscription period specified in the Order Form during which Customer may use the Product pursuant to the terms of this Agreement.

“**Maintenance Services**” refers to the maintenance services as supplied by Cosmian in relation to the Product as described in Appendix 1.

“**Major Defect**” refers to a Defect that substantially downgrades or restricts the Product’s performances and/or functionalities.

“**Medium Defect**” refers to a Defect limiting or restricting the use of the Product without these limitations or restrictions being sufficient to qualify the Defect as a Major Defect.

“**Metric**” refers to the limitations on the use of the Product, including as to the number of authorized CPUs, such as set out in the Order Form.

“**Minor Defect**” refers to any Defect without significant impact on the use of the Product.

“**Open-Source Software**” means software or other material embedded in or made available with the Product where such software or other material is made available under an open-source license.

“**Order Form**” refers to any document of any kind issued by the Reseller detailing the Product purchased by Customer from the Reseller on Azure Cloud Marketplace, including the Metric and the License Term.

“**Product**” refers to any software, application, API, library, tool and/or server component developed by Cosmian and identified on the Order Form, including the associated Documentation, together with, where applicable, any Update and Upgrade which may be provided by Cosmian in accordance with the terms hereof.

“**Reseller**” refers to the Microsoft entity acting as a reseller of the Product on the Azure Cloud Marketplace.

“**Support Services**” refers to the support services as supplied by Cosmian in relation to the Product as described in Appendix 1.

“**Update**” refers to the modifications or corrections made by Cosmian to the Product to remedy a Defect or improve existing minor functionalities. An Update is generally denoted by Cosmian as a change to one or more numbers to the right of the decimal point in the version number of the Product. Updates shall be considered as part of the Product hereunder.

“**Upgrade**” refers to the modifications or corrections made by Cosmian to the Product to provide new features and/or significant enhancements to existing features. An Upgrade is generally denoted by Cosmian as a change to one or more numbers to the left of the decimal point in the version number of the Product. In the event Upgrades are provided to Customer under the Agreement, they shall be considered as part of the Product hereunder.

Article 2 Term

The Agreement will become effective on the date indicated in the Order Form (the “**Effective Date**”) and will remain in force upon expiry of the License Term, unless earlier terminated under the conditions set out in Article 11.

Article 3 License grant

3.1. License to use the Product

Subject to the terms of the Agreement and the payment of the License Fees, Cosmian grants to Customer a worldwide, non-exclusive and non-transferable license to use the Product, without the right to sublicense whether it be free of charge or for payment, for the License Term, solely for Customer’s internal business operations in accordance with the Agreement.

The right to use the Product is granted within the limit of the Metric. Should the Metric be exceeded, Customer undertakes to inform the Reseller immediately and to subscribe to the additional licenses and/or the additional volume required to remedy the excess.

3.2. Restrictions

Except as specifically permitted in the Agreement or the Documentation, Customer undertakes not to, directly or indirectly:

- (i) copy, make available and/or distribute in whole or in part in any way whatsoever the Product to third parties;
- (ii) assign, sell, rent, lend, sublicense, distribute, outsource or transfer the rights granted to Customer under the Agreement;
- (iii) adapt, modify including for the purpose of correction or translate the Product or create derivative works of the Product;
- (iv) disassemble, decompile, reverse engineer or otherwise attempt to discover or reconstitute the source code of the Product, except to the extent permitted by applicable law;
- (v) unbundle component parts of the Product for separate use, where the Product with multiple components is provided to Customer as a single product;
- (vi) alter, destroy or delete any proprietary notices or other notices of Cosmian appearing on the Product or in the Documentation;

- (vii) distribute all or part of any software created in whole or in part with the Product;
- (viii) publish or disclose to third parties any evaluation or benchmarking of the Product.

Any use of the Product beyond the provisions of this Agreement is strictly prohibited.

Article 4 Support and Maintenance Services

Subject to the payment of the License Fees, Cosmian undertakes to provide Support and Maintenance Services under the conditions set out in Appendix 1.

Article 5 Intellectual Property

Cosmian is the sole owner of the Product and accordingly, Cosmian and its third-party licensors retain all the intellectual property rights in the Product, and all the rights attached thereto.

Customer acknowledges and agrees that this Agreement does not grant Customer any title or rights of ownership in the Product or any right to use, copy, transfer or disclose all or any portion of the Product except as expressly provided in this Agreement.

Article 6 Open-Source Software

Cosmian is not granting any right on the Open-Source Software, which remains governed by the terms of the respective applicable licenses. Customer undertakes to comply with the terms of such licenses. Information about the Open-Source Software may be found in the Documentation.

Cosmian disclaims all warranties, indemnities, obligations and other liabilities in connection with any Open-Source Software embedded in or made available within the Product.

Article 7 Financial terms and conditions

The applicable License Fees and payment terms are as set out in the Order Form and in a separate agreement between Customer and the Reseller.

Cosmian is not responsible for the acts or omissions of the Reseller, or for any other products or services that the Reseller supplies to Customer.

Article 8 Reporting obligation and audit

Customer shall at all times during the Agreement and for a period of five (5) years after the end of the Agreement maintain a record containing any information pertaining to Customer's compliance with the terms of the Agreement, the Documentation and the Order Form, including, where applicable, serial numbers, license keys, logs, the number of different users accessing or authorized to access the Product, as well as Metric, reports, and copies of the Product.

In order to verify that Customer respects the intellectual property rights of Cosmian and, more generally, of the terms of this Agreement, the Documentation and the Order Form, Cosmian may, subject to a ten (10) calendar days' prior written notice and at its expense, conduct an audit by mail, electronic means or through an in-person visit to Customer's place of business. Any such audit shall be conducted during regular business hours at Customer's facilities and shall not unreasonably interfere with Customer's business activities.

Cosmian may have such audit conducted by an independent professional auditor of its choosing. The report drawn up by the auditor at the end of his mission shall be submitted to Cosmian as well as to Customer. If the audit reveals a material breach of the Agreement, the Documentation and/or the Order Form by Customer, Customer shall pay Cosmian's reasonable costs in relation with the performance of such audit. The Customer may also be required to purchase from the Reseller additional subscriptions in the event that the audit reveals non-compliance with the Metric under the conditions defined by the Reseller.

Article 9 Warranty

Customer acknowledges and agrees that the Product is provided “as is”, without warranty of any kind from Cosmian, either expressed or implied, including, but not limited to, any implied warranties as to conformity, hidden defects, compatibility and fitness for Customer’s purposes, title or non-infringement, to the extent allowed by applicable law. Customer acknowledges that Cosmian does not warrant that the Product will operate constantly without interruption or error. Customer has sole responsibility to select the Product that works with other software, applications or systems to achieve intended results.

Article 10 **Liability**

Cosmian shall not in any event be liable for any indirect damages such as inaccuracy, loss or alteration of data, loss of income, loss of profit or operating losses, or damage to image arising from the use of the Product.

To the fullest extent permitted by applicable law, Cosmian’s aggregate liability for any damages arising out or relating to this Agreement is strictly limited to ninety-seven percent (97%) of the total amount of the License Fees paid and due by Customer to the Reseller during the twelve (12) calendar months preceding the event giving rise to the damage.

Customer can only make a claim or engage an action against Cosmian in relation with the performance of this Agreement for one (1) year from the event giving rise to the damage.

Article 11 **Termination**

Each Party reserves the right to terminate the Agreement in the event of a breach by the other Party to one or more of the provisions of the Agreement (including, without limitation, Article 3, Article 5, Article 7, Article 8, Article 13 and Article 14). Termination will take place as of right after prior notice of thirty (30) calendar days sent by registered mail with return receipt and remained without effect.

In the event of termination, Customer shall cease to use the Product at the date indicated by the Reseller and destroy and erase all copies of such Product in its possession or control and provide written certification to Cosmian that it has complied with this provision.

The termination or expiration of the Agreement shall not affect the rights and obligations of the Parties arising prior to the termination or expiration of the Agreement. It will not affect the provisions of the Agreement which are intended to continue beyond this date such as Article 5, Article 8, Article 9, Article 10, Article 14, Article 18, this Article 11 and any other provision intended to survive the termination of all or part of the Agreement for any reason.

Article 12 **Withdrawal of the Product**

Where the Product is withdrawn from the Azure Cloud Marketplace during the License Term by Cosmian or the Reseller or any other Microsoft entity, the consequences of such withdrawal shall be governed by the agreement entered into by and between Customer and the Reseller.

Article 13 **Personal Data**

Each Party acts as a data controller in relation to its own processing of personal data (“**Personal Data**”), in relation to professional information belonging to a representative, personnel or agent of a Party, as required for the execution, daily management and supervision of the performance of the Agreement and undertakes to comply with all obligations arising from applicable domestic law and Regulation (EU) 2016/679 from the European Parliament and Council of April 27 2016 (the “**Regulation**”).

The processing of Personal Data by the Parties are performed for the purposes of performing the Agreement. The legal basis for processing is, depending on the case, the performance of the Agreement, the legitimate interests of the Parties, or compliance with a legal or regulatory provision. The processing of Personal Data is compulsory, failing to provide such data, the Agreement may no longer be performed by the Parties.

The Personal Data collected by the Parties can be communicated (a) in order to allow the proper management of contractual relationship, to all departments in the group to which the Parties belong and third-party companies associated to the performance of contractual relationship and (b) in order to comply with, where applicable, legal and regulatory obligations or at the request of an administration or a judicial authority.

Personal Data will be kept for the entire term of the Agreement and may be archived for longer periods for documentary or evidentiary purposes, or in accordance with legal or regulatory retention periods.

In accordance with the Regulation, data subjects of the Personal Data processing have a right to access, rectification, deletion, limitation, opposition to, and portability of their Personal Data, and the right to define guidelines concerning their Personal Data in case of death, as well as the right to lodge a complaint before the competent supervisory authority.

Any data subject can exercise his/her rights to Cosmian by writing to the following address dpo@cosmian.com.

Customer undertakes to inform as soon as practicable Cosmian of any request from a data subject seeking to exercise of his or her rights over his/her Personal Data in order to enable Cosmian to respond in accordance with the Regulation.

Article 14 Confidentiality

Each Party undertakes, with reference to information of a technical (including notably the Product, source code, and the Documentation), financial, business or otherwise sensitive nature (“**Confidential Information**”) from the other Party of which it may have had knowledge prior to or during the course of performance of the Agreement, to (i) keep it strictly confidential by implementing reasonable measures for protection similar to those that it would take to protect its own confidential information, (ii) not to copy it, communicate it or make it available to third parties, with the exception of its legal representatives, agents and counsel to the extent required for the performance of their duties and provided that they have signed a confidentiality agreement or are subject to an obligation of confidentiality guaranteeing a level of protection at least equivalent to the provisions in this Article, and (iii) not to use it, directly or indirectly, for a purpose other than the performance of the Agreement. Confidential Information is supplied by each Party in good faith “as is”.

Each Party warrants that the persons referred to in (ii) above comply with the confidentiality obligations of this Article.

Nothing in the Agreement shall prohibit or restrict the use by either Party of Confidential Information which it can prove has (i) fallen into the public domain at the time of disclosure, or (ii) been legitimately obtained from a third party not bound by an obligation of confidentiality, or (iii) been disclosed by virtue of a legislative or regulatory provision, a judicial decision or a request from any administrative or supervisory authority, it being understood that the Party making the disclosure shall inform the Party to which the information belongs in advance of such disclosure, so as to enable it to object to it, or (iv) disclosed by the receiving Party with the prior written consent of the Party to which the information belongs.

Upon termination of the Agreement, each Party undertakes to return or destroy the Confidential Information of the other Party in its possession or under its control.

The confidentiality obligations set hereunder shall remain in force for the duration of the Agreement and for five (5) years following termination of the Agreement, regardless of the cause.

Article 15 Sub-contracting

Customer expressly authorizes Cosmian to sub-contract all or part of its obligations under the Agreement, and notably to any entity owned, controlled by or controlling Cosmian and/or any of Cosmian’s partners.

Article 16 Force majeure

Except for payment obligations, none of the Parties can be held liable for breach of its obligations under the Agreement, if such breach results from a force majeure event as defined in article 1218 of the French Civil Code and interpreted by French case law, including without limitation in case of a government decision such as the withdrawal or suspension of authorizations whatever they may be, a total or partial strike, internal or external to the Party, fire, natural disaster, act of terrorism, war, an epidemic, a pandemic, a total or partial shortage of the telecommunications or electricity networks, computer piracy (“**Force Majeure**”).

The Party reporting a Force Majeure event shall, without delay and by any means, inform the other Party of its impossibility to perform its obligations. The Force Majeure event will suspend performance of obligations. In case of a Force Majeure event lasting more than thirty (30) calendar days, each Party will be free to terminate as of right (ipso jure) the Agreement. Termination will be effective from the day following the notice of termination.

Article 17 Miscellaneous

17.1. Relationship between the Parties

The Parties are and shall remain independent contracting Parties. It is expressly agreed that neither of the Parties may infer from the provisions of this Agreement the right to claim, in any way whatsoever, the status of agent, partner, representative or employee of the other Party, nor bind the other Party with respect to third parties.

17.2. Agreement autonomy, severability and amendment.

This Agreement constitutes the entire Agreement between the Parties. It supersedes and cancels any previous oral or written communication, discussion, understanding and agreement relating to the subject matter of this Agreement.

If any provision of the Agreement or any part of any provision is determined to be partially void or unenforceable by any court or body of competent jurisdiction or by virtue of any legislation to which it is subject or by virtue of any other reason whatsoever, it shall be void or unenforceable to that extent only and the validity and enforceability of any of the other provisions or the remainder of any such provision shall not be affected.

If any clause is rendered void or unenforceable, whether wholly or in part, the Parties shall endeavor, without delay, to attain the economic and/or other intended result in another legally permissible manner.

The provisions of the Agreement may be amended only by an instrument in writing signed by the authorized representatives of each Party, except as otherwise expressly provided in the Agreement. No amendment to the Agreement shall be effective unless and until it is made in writing, signed by or on behalf of the Parties and expressed to be such an amendment.

17.3. Notice

Any notice required under the Agreement must be made in writing and can be delivered by hand or sent by registered letter with acknowledgement of receipt in France or by express mail outside of France, correctly labelled to the address of the other Party as stated on the first page of the Agreement. Notices (i) delivered by hand will be deemed to have been made at the time of their delivery, (ii) sent by recorded delivery with acknowledgement of receipt will be deemed to have been made upon their first presentation, and (iii) sent by express mail will be deemed to have been made upon their first presentation against signature. Either Party can change its address by sending notice to the other Party. General day-to-day communication may be made by all written means including e-mail.

17.4. Non waiver

No delay or forbearance on the part of either Party in enforcing against the other Party any term or condition of the Agreement shall be deemed to be a waiver or in any way prejudice any right of that Party under the Agreement. Any waiver must be in writing signed by an authorized representative of the Party in question.

17.5. Assignment

Customer is not authorized to assign or transfer, on any grounds and in any form whatsoever (including without limitation internal reorganization, merger, transfer of assets or by operation of law) the Agreement to a third party without the prior written consent of Cosmian.

Cosmian reserves the right to assign or transfer the Agreement to any third party, whether in return for payment or free of charge, for any reason whatsoever such as in the event of a merger or a total or partial transfer of its assets or its business, which Customer expressly acknowledges and accepts. The transfer or assignment shall release Cosmian from its obligations and liabilities under the Agreement towards Customer for the future.

Article 18 Applicable law - Jurisdiction

This Agreement shall be governed by and construed in accordance with French law.

All disputes relating to this Agreement (including but not limited to the existence, validity, enforcement, termination and interpretation of this Agreement) which could not be settled amicably by the Parties shall be subject to the exclusive jurisdiction of the competent courts of Paris, France notwithstanding plurality of defendants or warranty claims, including urgent or interim proceedings, whether they are summary proceedings or application proceedings.

Appendix 1: Support and Maintenance Services

Article 1. Support Services

Cosmian provides Customer with Support Services regarding Defects affecting the Product.

Support shall be provided via email or phone. This service is only available during Cosmian's office working hours and days in France, from Monday to Friday between 9 a.m and 6 p.m (Paris time, France) ("**Business Hours**").

Customer shall benefit from a maximum of one hundred and twenty (120) hour credit per year included in the License Fees as part of the Support Services.

Customer can report any Defect to Cosmian by sending an email to the following email address support@cosmian.com, together with any relevant information to properly understand the problem and any information that would be useful for Cosmian to be able to perform its obligations under the Agreement.

Requests will be processed during Business Hours.

Cosmian shall implement reasonable efforts to acknowledge the Defects in accordance with the target response times set forth below:

Severity of the Defect	Target Response Time
Blocking Defect	24 Business Hours
Major Defect	48 Business Hours
Medium Defect	2 weeks
Minor Defect	4 weeks

The aforementioned times are counted only during Business Hours, as from the request issued by electronic means.

Cosmian may request from Customer additional information or request that License take specific actions, in order to facilitate the diagnosis and the reproduction of the Defect. Consequently, Cosmian shall be allowed to suspend or defer the countdown of any of the aforementioned time periods until Cosmian has received from Customer sufficient information to diagnose and reproduce the affected Defect.

Cosmian shall provide Support Services under the terms of this Appendix for each major version of the Product (identified by the number to the left of the decimal point [X.y.z], the corresponding number being increased for each new major version) during a period of one (1) year following the release of the corresponding version. If the current version was released longer than one (1) year ago, Support Services will be continued until further notice.

Customer agrees to back up all data, files and information prior to the commencement of any Support Services and is responsible for any data, files and information lost or altered during the performance of such Support Services.

Article 2. Maintenance Services

Cosmian reserves at any time the right to carry out any Update and/or Upgrade to the Product. These maintenance operations will be carried out at Cosmian's discretion. Cosmian will ensure that maintenance operations will not lead to functional regression in the Product.

Cosmian shall make the Updates and Upgrades and the corresponding Documentation available to Customer on the Azure Cloud Marketplace.

Customer agrees to incorporate any and all Updates and Upgrades as soon as practicable and acknowledges that the installation of an Update and/or Upgrade may require the migration of the data, files, information and applications to the new environment.

Article 3. Exclusions and limitations

Limitations. Support and Maintenance Services do not cover situations where the Defect results from:

- Customer's equipment, network connections or other infrastructure not supplied by Cosmian;
- a modification of the Product by Customer or any unauthorized third party;
- a use of the Product that does not comply with the Agreement, the Order Form, and the Documentation or by an unauthorized third party and/or a breach by Customer of its obligations under the Agreement;
- a Force Majeure event;
- installation of new versions or updates of the Product, not provided by Cosmian;
- problems or dysfunctions caused by the negligence of Customer.

Exclusions. The following services shall not be considered as part of the Support and Maintenance Services provided by Cosmian under the Agreement:

- integration, installation and configuration of the Product or Updates or Upgrades;
- assistance and maintenance of any software or software package developed by or belonging to a third party other than Cosmian;
- backup and restoration of data lost, destroyed or corrupted;
- assistance on the Product after modifications made to Customer's Product and/or environment rendering it incompatible with the system environment for which Cosmian licensed the Product initially.