This Service Schedule (the “Schedule”), between Sherweb Inc. (“Provider”) and You, the entity purchasing Microsoft Azure Services (“Services”), as identified as part of the subscription process for the Service (“You” or “Your”), is effective immediately and is issued pursuant to and incorporates by reference the terms and conditions of the Master Service Agreement or Partner Master Service Agreement, as applicable (“MSA”) by and between Provider and You.

This Schedule includes the terms and conditions governing the Services purchased by You under the MSA. By accepting this Schedule between You and Provider - by checking the "I have read and accept the Terms and Conditions" box or any similar box when completing the Account creation, by logging in on Provider administrative web Portal, or by placing an order for the Service, You agree to be bound by all of the terms and conditions set out in this Schedule. All capitalized terms in this Schedule shall have the same meaning as set forth in the MSA, unless defined herein. In the event of a conflict or inconsistency between the terms of the MSA and the terms of this Schedule, this Schedule shall supersede and govern.

1. Definitions. For the purposes of this Schedule, the following definitions apply:

“Cloudyn” means Cloudyn Azure Cost Management, a SaaS IT management suite of tools licensed by Cloudyn, a Microsoft subsidiary, to manage and optimize Your use of Microsoft Azure Services.

“Microsoft” means Microsoft Corporation or any of its Affiliates.

“Microsoft Customer Agreement” or “MCA” means the latest version of the Microsoft Customer Agreement applicable to the End Users located at: https://www.microsoft.com/licensing/docs/customeragreement including all policies, terms and agreements referenced therein. Current version of the Microsoft Customer Agreement is attached hereto as Schedule A.

”Microsoft SLA” means the Microsoft Service Level Agreement that applies to the Services and can be found at: https://www.microsoft.com/en-ca/licensing/product-licensing/products.

2. Migration Services. Upon request, Provider will provide You with a fee estimate for migrating Your data from a third-party system to the Services. You acknowledge and agree that: (i) the estimate is based upon the information that You provide and may differ from the exact fees applied by Provider; (ii) after Provider begins the migration process, Provider may discover technical limitations related to the configuration of Your data that prevent Provider from successfully completing the migration; (iii) there is a risk of data loss during the migration process and therefore Provider recommends that You create a reliable backup of all data to be migrated prior to the beginning of the migration process; and (iv) Provider is not liable to You or to any third party for any damages arising from or resulting from the loss or corruption of Your data or third party data as part of the migration services.

3. Microsoft Azure Reserved Instances. If You purchase Microsoft Azure Reserved Instances (“Reservation”), the following terms and conditions apply:

3.1. Description. Azure Reserved Instances is a service plan pursuant to which You commit to purchasing the Reservation for one-year or three-year terms, for virtual machine(s), SQL Database compute capacity, or other Azure resource, in exchange for a discount on the resources you use.

3.2. Software Subscription. The Reservation do not include the Azure software Subscription and You must have an active Azure subscription in order to purchase a Reservation.

3.3. Reservation Term. The Reservation will begin upon the provisioning of the Reservation by Provider and terminate at the end of the term indicated in Your Quote (“Reservation Term”). Reservation do not automatically renew. At the end of the Reservation Term, the VMs, SQL database or other resource included in the Reservation will be invoiced at the pay-as-you-go price.
3.4. **Monthly Payment.** If You select a Reservation paid monthly, the Fees for the Reservation are invoiced and must be paid monthly. Unless the parties have expressly agreed otherwise, You must pay Provider a deposit equivalent to 15% of the total Fees, payable prior to the provisioning of the Reservation by Provider ("Deposit"), which will be refunded at the end of the Reservation Term, subject to the following terms. You may cancel Your purchase within the first one hundred and twenty (120) hours of the provisioning of the Reservation by Provider and obtain a full refund of the Deposit, in the form of a credit for future purchase. If You cancel the Reservation after the first one hundred and twenty (120) hours, Your Deposit is non-refundable. If You cancel the Reservation after the first one hundred and twenty (120) hours and You haven’t paid a Deposit, You must pay Provider a termination fee equivalent to 15% of the total Reservation Fees, payable upon cancellation.

3.5. **Advance Payment.** If You select a Reservation paid in advance, the Fees for the Reservation are invoiced in advance and must be paid in full prior to the provisioning of the Reservation by Provider. You may cancel Your purchase within the first one hundred and twenty (120) hours of the provisioning of the Reservation by Provider and obtain a full refund of the amount paid for the unused portion of the Reservation Term in the form of a credit for future purchase. If You cancel the Reservation after the first one hundred and twenty (120) hours, You will obtain a refund of the amount paid for the unused portion of the Reservation Term, less fifteen (15%) of the amount You initially paid for the Reservation, in the form of a credit for future purchase.

3.6. **Discount and Usage.** The Reservation grants You a discount ("Discount") which is applied automatically to virtual machines matching the attributes and quantity of the Reservation ("VMs") on an hourly basis. For VMs that may not run the full hour, the Reservation is filled from other VMs of the same type not using a Reservation, including concurrently VMs. At the end of the hour, the reservation application for VMs in the hour is locked. In the event a VM does not run for an hour or concurrent VMs within the hour do not fill the hour of the reservation, the reservation is underutilized for that hour but You will not be reimbursed. Any usage above the Reservation line is invoiced at the regular pay-as-you-go rates. You will not be invoiced for any usage below the Reservation line since it has already been paid as part of Your purchase.

4. **Pricing.** If the Fees for the Services change during a subscription term, the updated Fees will become applicable upon renewal of current subscriptions or immediately for any new subscriptions.

5. **Logging Services.** Microsoft will keep logging data from the unified logging service (ULS) for fourteen (14) days. However, in the event the ULS log data reaches five gigabytes (5GB) within fourteen (14) days, ULS log data will be overwritten on a first-in-first-out basis and data will only be preserved for the amount of time corresponding to this 5 gigabytes limit. The unified logging service is solely provided by Microsoft. Provider shall not be liable for any failure of said service. Provider shall however provide basic support for the unified logging service in accordance with this Schedule.

6. **Service Availability Warranty.** Provider does not make any service level commitments in connection with the Services and the terms “Service Availability Warranty” or “Service Level Agreement” as such terms are used in the MSA or any other agreement between You and Provider, refer to the Microsoft SLA and You shall refer to the Microsoft SLA for any details relating to the service level commitments made by Microsoft in connection with the Services.

7. **Service Unavailability Credits.** Any Microsoft SLA claims for service unavailability should be directed to Provider through an Incident Report, who will then review the claim and direct it to Microsoft as necessary. All service credits will be applied as per the terms set forth in the Microsoft SLA and You will be credited in accordance with the service credit Provider receives from Microsoft.

8. **Limitation of Liability.** You acknowledge and agree that: (i) the obligations and liabilities of Provider are limited at all times by the terms of the Agreement and the scope of the Services provided by Provider under the Agreement; (ii) Provider is not responsible for the Services provided to You under the Microsoft Cloud Agreement and for Microsoft’s compliance with the terms and conditions of the Microsoft Cloud Agreement; (iii) Microsoft has the right to disable or terminate the Services for legal or regulatory reasons, or as per the terms and conditions outlined in the Microsoft Cloud Agreement. In the event of such a disablement or termination by Microsoft, You will not have any claim against Provider for damages or lost profits resulting from any such disablement or termination and Provider will be entitled to invoice You for the Services that the You ordered prior to any such disablement or termination.

9. **Cloudyn.** If your Services includes access and use of Cloudyn, this Section 11 applies. Provider does not make any service level commitment and does not provide Technical Support in connection with Cloudyn. Cloudyn is licensed hereunder "as is" and Provider expressly excludes all warranties, conditions, or other terms, whether express or implied, including without limitation any implied warranty of merchantability, fitness, suitability or adequacy for a particular purpose or use, quality, accuracy of the data derived from or provided by Cloudyn, or warranties arising from a course of dealing, usage or trade practice. Under no circumstances shall Provider be liable to You or any other person for any direct, indirect, special, incidental, or consequential damages, however characterized, arising out of the performance or the use of Cloudyn, whether or not Provider has been informed of the possibility of the likelihood.

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of such damages. By subscribing to Cloudyn, You (i) acknowledge and agree that Cloudyn is licensed to You by Cloudyn and your access and use of Cloudyn are governed by the Cloudyn terms of use available on Cloudyn’s website at: https://www.cloudyn.com/terms/ (“Cloudyn Terms of Use”); and (ii) You agree to the Cloudyn Terms of Use and all other policies, terms and agreements referenced therein, and which Provider does not have authority to vary, alter or amend. If Cloudyn updates the Cloudyn Terms of Use, You must accept the updated version of the Cloudyn Terms of Use upon Your subscription renewal to Cloudyn, or upon the purchase of any new subscription to Cloudyn. If You do not accept the terms of Cloudyn Terms of Use, You may not subscribe to, access or use Cloudyn.

10. Terms and Conditions applicable to Direct Customers only. If You purchase the Services directly from Provider as a Customer under the Master Service Agreement, the terms and conditions of this Section 10 apply.

10.1. Microsoft Customer Agreement. By subscribing to the Services, You (i) acknowledge and agree that the Services are licensed to You by Microsoft and that Provider’s ability to provide Services to You is contingent upon Your acceptance and continued compliance with certain Microsoft terms and conditions, including the Microsoft Customer Agreement and (ii) agree to the Microsoft Customer Agreement and all other policies, terms and agreements referenced therein, which are generally available on Microsoft’s website at: http://www.microsoftvolumelicensing.com/, and which Provider does not have authority to vary, alter or amend. If Microsoft updates the Microsoft Customer Agreement, You must accept the updated version of the Microsoft Customer Agreement upon Your subscription renewal to the Services, or upon the purchase of any new subscription to the Services. If You do not accept the terms of the Microsoft Customer Agreement, You may not subscribe to, access or use the Services.

11. Terms applicable to Resellers and Distributors. If You purchase the Services for Your Customers as a Reseller or Distributor under the Partner Master Service Agreement (“PMSA”), the terms and conditions of this Section 11 apply.

11.1. Microsoft Partner Agreement. You acknowledge and agree that (i) to be entitled to resell or distribute Microsoft Online Services under this Agreement, You must accept the Microsoft Partner Agreement for Indirect Resellers (“MPA”) on the Microsoft Partner Portal; and that (ii) Your acceptance and continued compliance with the MPA and with the terms of this Agreement are conditions of Your resale of Microsoft Online Services under this Agreement. Microsoft may update the MPA at any time. If Microsoft updates the MPA and You want to complete new purchases of Microsoft Online Services, renew existing subscriptions or update seat counts on existing subscriptions, You will have to first accept the updated MPA. “Microsoft Partner Portal” means the Partner Center, the Partner Administration Center or an alternate site identified by Microsoft.

11.2. MCA Acceptance Confirmation. Each of Your Customers must accept the MCA prior to ordering Services from You. If a Customer has not already accepted the MCA, You must secure Customer’s acceptance of such, and such acceptance must be in a manner that creates a legally enforceable contract between Microsoft and the Customer. You must provide the applicable regional version of the MCA to Your Customer based on the Customer location; some locations may have the Customer Agreement available in multiple languages. Microsoft may revise the MCA and acceptance requirements for future Customers on not less than thirty (30) days’ prior notice. If Microsoft updates the MCA, then Customer must accept the new MCA prior to or at the submission of a subsequent order (which is not a subsequent adjustment to an existing Subscription) or the renewal of their Subscription. When You purchase the Services from Provider for a Customer, You must provide the MCA Acceptance Confirmation to Provider. Failure to provide such MCA Acceptance Confirmation may result in disablement of Your Customer’s account. The initial MCA Acceptance Confirmation must be done when You want to make the following transactions: (i) a new Customer subscribes to the Services; and (ii) an existing Customer completes new purchases of the Services, renews its subscription or updates seat count to its existing subscriptions to the Services. Microsoft reserves the right to independently obtain the Customer’s acceptance of the MCA and to accept or reject any proposed Customer, at its discretion. You hereby represent and warrant that any MCA Acceptance Confirmation provided to Provider is true, complete and accurate. Failure to provide such MCA Acceptance Confirmation may result in disablement of Your Account and Your Customer’s account. You are prohibited from making any additions or revisions to the MCA, or entering into any side-agreements, letters or other agreements the effect of which is to amend or add to the MCA. You shall be liable to Provider for any costs and damages incurred by Provider and Microsoft due to any failure of a Customer to accept the terms of the MCA.

11.3. Sub-Resellers and Sub-Distributors. You acknowledge and agree that Sub-Resellers and Sub-Distributors are not entitled to resell or distribute Microsoft Online Services under the MSA and that any failure to comply with this restriction shall constitute a material breach of the Agreement.

11.4. Microsoft Reservation of Rights. You acknowledge and agree that Microsoft may terminate any Customer’s status as a Customer at any time. Microsoft will promptly notify Provider of the termination of any Customer. Following such notice, You will no longer be entitled to collect orders for the Services from the terminated Customers. If Microsoft terminates a
Customer, You will not have any claim against Provider or Microsoft for damages or lost profits resulting from the termination. Nothing herein prevents Microsoft from providing any products directly to Your Customers; Microsoft may also authorize other entities to do so. Microsoft may send direct communications to Customers related to the terms of the MCA or the operation or delivery of a Service. Upon a commercially reasonable notice, Microsoft may temporarily disable Your Customer’s Services for legal or regulatory reasons or as otherwise permitted under the MCA.

11.5. **Service Level Agreement.** Microsoft makes certain service level commitments to Your Customers in the “Service Level Agreement”. If Your Customer makes a claim on the Service Level Agreement, You must promptly escalate the claim to Provider for review, and Provider will escalate the claim to Microsoft. Microsoft will review the claim according to its standard Service Level Agreement review process. Microsoft will then apply any credit due on Provider’s next billing reconciliation report, and Provider will then credit You the amount Microsoft has paid Provider for the SLA credit. Customer is eligible for credits not to exceed the total monthly Subscription Fee for the affected Service.

11.6. **Additional Software Offer Terms.** You must ensure that Your Customers acquire from You or Provider sufficient number of licenses for software, client access licences, terminal service licenses, or subscription agreements for Microsoft Online Services or any other appropriate services to match: (i) the quantities of the quantities of the software or professional services provided to the Customer; and (ii) the maximum number of users and/ or devices that may access or use the software or professional services under the MCA. You must promptly notify Provider of any known or suspected failure by any of Your Customers to possess sufficient numbers of Microsoft licenses. You must use all reasonable measures to ensure that Your Customers (i) use only original Software and (ii) install certain software in accordance with the qualifying base license requirements set forth in the product specific terms incorporated into the Customer Agreement. In the case of installing software on Your Customer’s behalf, You must take commercially reasonable efforts to confirm that Your Customer has properly obtained the prerequisite software. You must retain all records related to the installation of software, and, upon request, will provide such records to Provider or Microsoft for verification. Any falsification of such Customer information will constitute grounds for immediate termination of Your participation in the distribution of Microsoft Online Services.

11.7. **Changes and Termination.** You acknowledge that Microsoft reserves the right to (i) decrease or increase fees on its price list at any time; (ii) change the terms and conditions of the “Product Specific Terms”, “Online Services Terms”, “Service Level Agreement”, and the MCA at any time; or (iv) to change a Microsoft guide or guidelines at any time upon thirty (30) days’ prior notice. If the agreement between Provider and Microsoft for the resale of the Services is terminated for any reason other than a breach by Provider; (i) You may continue to provide Microsoft products to Your Customers with a binding Customer Agreement for the shorter of twelve (12) months or the minimum period of required performance by Provider, and (ii) Microsoft reserves the right to communicate with your Customers and provide Customers with the option to purchase products directly from Microsoft or other Microsoft resellers in order to maintain continuity of service for Customers.

11.8. **Partner Earned Credit Adjustments.** Partner earned credit for managed services (“PEC”) recognizes and rewards partners that own the 24x7 IT operational control and management of parts of, or the entire, Azure environment of their customers. PEC is earned down to the Azure resource level and calculated on a daily basis. If Provider does not receive PEC from Microsoft with respect to any of Your Azure resources, Provider will, based on a daily calculation, remove the Partner Azure Tier Discount on Your next monthly invoice in connection with such Azure resource, and charge You 5% of the applicable daily fee for such Azure resource.
Schedule A
Microsoft Customer Agreement

This Microsoft Customer Agreement (the “Agreement”) is between Customer and Microsoft and consists of these General Terms, the applicable Use Rights and SLAs, and any additional terms Microsoft presents when an order is placed. This Agreement takes effect when the Customer accepts these General Terms. The individual who accepts these General Terms represents that he or she is authorized to enter into this Agreement on behalf of the Customer.

General Terms

These General Terms apply to all of Customer’s orders under this Agreement. Capitalized terms have the meanings given under “Definitions.”

License to use Microsoft Products

a. License grant. Products are licensed and not sold. Upon Microsoft’s acceptance of each order and subject to Customer’s compliance with this Agreement, Microsoft grants Customer a nonexclusive and limited license to use the Products ordered as provided in the applicable Use Rights and this Agreement. These licenses are solely for Customer’s own use and business purposes and are nontransferable except as expressly permitted under this Agreement or applicable law.

b. Duration of licenses. Licenses granted on a subscription basis expire at the end of the applicable subscription period unless renewed. Licenses granted for metered Products billed periodically based on usage continue as long as Customer continues to pay for its usage of the Product. All other licenses become perpetual upon payment in full.

c. Applicable Use Rights. For perpetual licenses, the Use Rights in effect when Customer orders a Product will apply. For subscriptions, the Use Rights in effect at the start of each subscription period will apply. Customers with subscriptions for Software may use new versions released during the subscription period subject to the Use Rights in effect when those versions are released. For metered Products billed periodically based on usage, the Use Rights in effect at the start of each billing period will apply during that period. Microsoft may update the Use Rights periodically, but material adverse changes for a particular version will not apply during the applicable license, subscription, or billing period.

d. End Users. Customer will control access to and use of the Products by End Users and is responsible for any use of the Products that does not comply with this Agreement.

e. Affiliates. Customer may order Products for use by its Affiliates. If it does, the licenses granted to Customer under this Agreement will apply to such Affiliates, but Customer will have the sole right to enforce this Agreement against Microsoft. Customer will remain responsible for all obligations under this Agreement and for its Affiliates’ compliance with this Agreement.

f. Reservation of Rights. Microsoft reserves all rights not expressly granted in this Agreement. Products are protected by copyright and other intellectual property laws and international treaties. No rights will be granted or implied by waiver or estoppel. Rights to access or use a Product on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

g. Restrictions. Except as expressly permitted in this Agreement or Product documentation, Customer must not (and is not licensed to):

(1) reverse engineer, decompile, or disassemble any Product, or attempt to do so;

(2) install or use non-Microsoft software or technology in any way that would subject Microsoft’s intellectual property or technology to any other license terms;

(3) work around any technical limitations in a Product or restrictions in Product documentation;

(4) separate and run parts of a Product on more than one device;

(5) upgrade or downgrade parts of a Product at different times;

(6) transfer parts of a Product separately; or

(7) distribute, sublicense, rent, lease, or lend any Products, in whole or in part, or use them to offer hosting services to a third party.
h. **License transfers.** Customer may only transfer fully-paid, perpetual licenses to (1) an Affiliate or (2) a third party solely in connection with the transfer of hardware to which, or employees to whom, the licenses have been assigned as part of (a) a divestiture of all or part of an Affiliate or (b) a merger involving Customer or an Affiliate. Upon such transfer, Customer must uninstall and discontinue using the licensed Product and render any copies unusable. Customer must notify Microsoft of a License transfer and provide the transferee a copy of these General Terms, the applicable Use Rights and any other documents necessary to show the scope, purpose and limitations of the licenses transferred. Attempted license transfers that do not comply with this section are void.

i. **Customer Eligibility.** Customer agrees that if it is purchasing academic, government or nonprofit offers, Customer meets the respective eligibility requirements ([https://aka.ms/eligiblitydefinition](https://aka.ms/eligiblitydefinition)). Microsoft reserves the right to verify eligibility and suspend product use if requirements are not met.

**Non-Microsoft Products.**

Non-Microsoft Products are provided under separate terms by the Publishers of such products. Customer will have an opportunity to review those terms prior to placing an order for a Non-Microsoft Product through a Microsoft online store or Online Service. Microsoft is not a party to the terms between Customer and the Publisher. Microsoft may provide Customer’s contact information and transaction details to the Publisher. Microsoft makes no warranties and assumes no responsibility or liability whatsoever for Non-Microsoft Products. Customer is solely responsible for its use of any Non-Microsoft Product.

**Verifying compliance.**

Customer must keep records relating to Products it and its Affiliates use or distribute. At Microsoft’s expense, Microsoft may verify Customer’s and its Affiliates’ compliance with this Agreement at any time upon 30 days’ notice. To do so, Microsoft may engage an independent auditor (under nondisclosure obligations) or ask Customer to complete a self-audit process.

Customer must promptly provide any information and documents that Microsoft or the auditor reasonably requests related to the verification and access to systems running the Products. If verification or self-audit reveals any unlicensed use, Customer must, within 30 days, order sufficient licenses to cover the period of its unlicensed use. Without limiting Microsoft’s other remedies, if unlicensed use is 5% or more of Customer’s total use of all Products, Customer must reimburse Microsoft for its costs incurred in verification and acquire sufficient licenses to cover its unlicensed use at 125% of the then-current Customer price or the maximum allowed under applicable law, if less. All information and reports related to the verification process will be Confidential Information and used solely to verify compliance.

**Privacy.**

a. **Personal Data.** Customer consents to the processing of Personal Data by Microsoft and its Affiliates, and their respective agents and subcontractors, as provided in this Agreement. Before providing Personal Data to Microsoft, Customer will obtain all required consents from third parties (including Customer’s contacts, Partners, distributors, administrators, and employees) under applicable privacy and data protection laws.

b. **Location of Personal Data.** To the extent permitted by applicable law, Personal Data collected under this Agreement may be transferred, stored and processed in the United States or any other country in which Microsoft or its Affiliates, or their respective agents and subcontractors, maintain facilities. Microsoft will abide by the requirements of European Economic Area and Swiss data protection law regarding the collection, use, transfer, retention, and other processing of Personal Data from the European Economic Area and Switzerland.

**Confidentiality.**

a. **Confidential Information.** “Confidential Information” is non-public information that is designated “confidential” or that a reasonable person should understand is confidential, including, but not limited to, Customer Data, the terms of this Agreement, and Customer’s account authentication credentials. Confidential Information does not include information that (1) becomes publicly available without a breach of a confidentiality obligation; (2) the receiving party received lawfully from another source without a confidentiality obligation; (3) is independently developed; or (4) a comment or suggestion volunteered about the other party’s business, products or services.

b. **Protection of Confidential Information.** Each party will take reasonable steps to protect the other’s Confidential Information and will use the other party’s Confidential Information only for purposes of the parties’ business relationship. Neither party will disclose Confidential Information to third parties, except to its Representatives, and then only on a need-to-know basis under nondisclosure obligations at least as protective as this Agreement. Each party remains responsible for the use of Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party. The Online Services Terms may provide additional terms regarding the disclosure and use of Customer Data.
c. **Disclosure required by law.** A party may disclose the other’s Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

d. **Residual information.** Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives’ unaided memories in the development or deployment of the parties’ respective products or services does not create liability under this Agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

e. **Duration of Confidentiality obligation.** These obligations apply (1) for Customer Data, until it is deleted from the Online Services; and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

**Product warranties.**

a. **Limited warranties and remedies.**

(1) **Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer’s use. Customer’s remedies for breach of this warranty are described in the SLA.

(2) **Software.** Microsoft warrants that the Software version that is current at the time will perform substantially as described in the applicable Product documentation for one year from the date Customer acquires a license for that version. If it does not, and Customer notifies Microsoft within the warranty term, Microsoft will, at its option, (a) return the price Customer paid for the Software license or (b) repair or replace the Software.

The remedies above are Customer’s sole remedies for breach of the warranties in this section. Customer waives any warranty claims not made during the warranty period.

b. **Exclusions.** The warranties in this Agreement do not apply to problems caused by accident, abuse, or use inconsistent with this Agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, preview, or prerelease products, or to components of Products that Customer is permitted to redistribute.

c. **Disclaimer.** Except for the limited warranties above and subject to applicable law, Microsoft provides no other warranties or conditions for Products and disclaims any other express, implied or statutory warranties for Products, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

**Defense of third-party claims.**

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it. The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties’ sole remedies and entire liability for such claims.

a. **By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product made available by Microsoft for a fee and used within the scope of the license granted under this Agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party. If Microsoft is unable to resolve a claim of misappropriation or infringement, it may, at its option, either (1) modify or replace the Product with a functional equivalent or (2) terminate Customer’s license and refund any license fees (less depreciation for perpetual licenses), including amounts paid in advance for unused consumption for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer’s continued use of a Product after being notified to stop due to a third-party claim.

b. **By Customer.** To the extent permitted by applicable law, Customer will defend Microsoft and its Affiliates against any third-party claim to the extent it alleges that: (1) any Customer Data or Non-Microsoft Product hosted in an Online Service by Microsoft on Customer’s behalf misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Customer’s use of any Product, alone or in combination with anything else, violates the law or harms a thirdparty.

**Limitation of liability.**

For each Product, each party’s maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the Products during the term of the applicable licenses, subject to the following:

a. **Subscriptions.** For Products ordered on a subscription basis, Microsoft’s maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Product during the 12 months before the incident.
b. **Free Products and distributable code.** For Products provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft’s liability is limited to direct damages finally awarded up to US$5,000.

c. **Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, or loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.

d. **Exceptions.** No limitation or exclusions will apply to liability arising out of either party’s (1) confidentiality obligations (except for liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party’s intellectual property rights.

**Partners.**

a. **Selecting a Partner.** Customer may authorize a Partner to place orders on Customer’s behalf and manage Customer’s purchases by associating the Partner with its account. If the Partner’s distribution right is terminated, Customer must select an authorized replacement Partner or purchase directly from Microsoft. Partners and other third parties are not agents of Microsoft and are not authorized to enter into any agreement with Customer on behalf of Microsoft.

b. **Partner Administrator privileges and access to Customer Data.** If Customer purchases Online Services from a Partner or chooses to provide a Partner with administrator privileges, that Partner will be the primary administrator of the Online Services and will have administrative privileges and access to Customer Data and Administrator Data. Customer consents to Microsoft and its Affiliates providing the Partner with Customer Data and Administrator Data for purposes of provisioning, administering and supporting (as applicable) the Online Services. Partner may process such data according to the terms of Partner’s agreement with Customer, and its privacy commitments may differ from Microsoft’s. Customer appoints Partner as its agent for purposes of providing and receiving notices and other communications to and from Microsoft. Customer may terminate the Partner’s administrative privileges at any time.

c. **Support and Professional Services.** Customer’s Partner will provide details on support services available for Products purchased under this agreement. Support services may be performed by Partner or its designee, which in some cases may be Microsoft. If Customer purchases Professional Services under this agreement, the performance of those Professional Services will be subject to the terms and conditions in the Use Rights.

**Pricing and payment.**

If Customer orders from a Partner, the Partner will set Customer’s pricing and payment terms for that order, and Customer will pay the amount due to the Partner. Pricing and payment terms related to orders placed by Customer directly with Microsoft are set by Microsoft, and Customer will pay the amount due as described in this section.

a. **Payment method.** Customer must provide a payment method or, if eligible, choose to be invoiced for purchases made on its account. By providing Microsoft with a payment method, Customer (1) consents to Microsoft’s use of account information regarding the selected payment method provided by the issuing bank or applicable payment network; (2) represents that it is authorized to use that payment method and that any payment information it provides is true and accurate; (3) represents that the payment method was established and is used primarily for commercial purposes and not for personal, family or household use; and (4) authorizes Microsoft to charge Customer using that payment method and that any payment information it provides is true and accurate; (3) represents that it is authorized to use that payment method and that any payment information it provides is true and accurate; (3) represents that the payment method was established and is used primarily for commercial purposes and not for personal, family or household use; and (4) authorizes Microsoft to charge Customer using that payment method for orders under this Agreement.

b. **Invoices.** Microsoft may invoice eligible Customers. Customer’s ability to elect payment by invoice is subject to Microsoft’s approval of Customer’s financial condition. Customer authorizes Microsoft to obtain information about Customer’s financial condition, which may include credit reports, to assess Customer’s eligibility for invoicing. Unless the Customer’s financial statements are publicly available, Customer may be required to provide their balance sheet, profit and loss and cash flow statements to Microsoft. Customer may be required to provide security in a form acceptable to Microsoft to be eligible for invoicing. Microsoft may withdraw Customer’s eligibility at any time and for any reason. Customer must promptly notify Microsoft of any changes in its company name or location and of any significant changes in the ownership, structure, or operational activities of the organization.

c. **Invoice Payment terms.** Each invoice will identify the amounts payable by Customer to Microsoft for the period corresponding to the invoice. Customer will pay all amounts due within thirty (30) calendar days following the invoice date.

d. **Late Payment.** Microsoft may, at its option, assess a late fee on any payments to Microsoft that are more than fifteen (15) calendar days past due at a rate of two percent (2%) of the total amount payable, calculated and payable monthly, or the highest amount allowed by law, if less.

e. **Cancellation fee.** If a subscription permits early termination and Customer cancels the subscription before the end of the subscription or billing period, Customer may be charged a cancellation fee.

f. **Recurring Payments.** For subscriptions that renew automatically, Customer authorizes Microsoft to charge Customer’s payment method periodically for each subscription or billing period until the subscription is terminated. By authorizing
recurring payments, Customer authorizes Microsoft to process such payments as either electronic debits or fund transfers, or as electronic drafts from the designated bank account (in the case of Automated Clearing House or similar debits), as charges to the designated card account (in the case of credit card or similar payments) (collectively, “Electronic Payments”). If any payment is returned unpaid or if any credit card or similar transaction is rejected or denied, Microsoft or its service providers reserve the right to collect any applicable return item, rejection or insufficient funds fee to the maximum extent permitted by applicable law and to process any such fees as an Electronic Payment or to invoice Customer for the amount due.

g. Taxes. Microsoft prices exclude applicable taxes unless identified as tax inclusive. If any amounts are to be paid to Microsoft, Customer shall also pay any applicable value added, goods and services, sales, gross receipts, or other transaction taxes, fees, charges, or surcharges, or any regulatory cost recovery surcharges or similar amounts that are owed under this Agreement and that Microsoft is permitted to collect from Customer. Customer shall be responsible for any applicable stamp taxes and for all other taxes that it is legally obligated to pay including any taxes that arise on the distribution or provision of Products by Customer to its Affiliates. Microsoft shall be responsible for all taxes based upon its net income, gross receipts taxes imposed in lieu of taxes on income or profits, and taxes on its property ownership. If any taxes are required to be withheld on payments invoiced by Microsoft, Customer may deduct such taxes from the amount owed and pay them to the appropriate taxing authority, but only if Customer promptly provides Microsoft an official receipt for those withholdings and other documents reasonably requested to allow Microsoft to claim a foreign tax credit or refund. Customer will ensure that any taxes withheld are minimized to the extent possible under applicable law.

**Term and termination.**

a. Term. This Agreement is effective until terminated by a party, as described below.

b. Termination without cause. Either party may terminate this Agreement without cause on 60 days’ notice. Termination without cause will not affect Customer’s perpetual licenses, and licenses granted on a subscription basis will continue for the duration of the subscription period(s), subject to the terms of this Agreement.

c. Termination for cause. Without limiting other remedies it may have, either party may terminate this Agreement on 30 days’ notice for material breach if the other party fails to cure the breach within the 30-day notice period. Upon such termination, the following will apply:

1. All licenses granted under this Agreement will terminate immediately except for fully-paid, perpetual licenses.
2. All amounts due under any unpaid invoices shall become due and payable immediately. For metered Products billed periodically based on usage, Customer must immediately pay for unpaid usage as of the termination date.
3. If Microsoft is in breach, Customer will receive a credit for any subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.

d. Suspension. Microsoft may suspend use of an Online Service without terminating this Agreement during any period of material breach. Microsoft will give Customer notice before suspending an Online Service when reasonable.

e. Termination for regulatory reasons. Microsoft may modify, discontinue, or terminate a Product in any country or jurisdiction where there is any current or future government regulation, obligation, or other requirement, that (1) is not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue offering the Product without modification; or (3) causes Microsoft to believe these terms or the Product may conflict with any such regulation, obligation, or requirement. If Microsoft terminates a subscription for regulatory reasons, Customer will receive, as its sole remedy, a credit for any subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.

**Miscellaneous.**

a. Independent contractors. The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other’s Confidential Information.

b. Agreement not exclusive. Customer is free to enter into agreements to license, use, and promote the products and services of others.

c. Amendments. Microsoft may modify this Agreement from time to time. Changes to the Use Rights will apply as provided in this Agreement. Changes to other terms will not apply until Customer accepts them. Microsoft may require Customer to accept revised or additional terms before processing a new order. Any additional or conflicting terms and conditions contained in a purchase order or otherwise presented by Customer are expressly rejected and will not apply.

d. Assignment. Either party may assign this Agreement to an Affiliate, but it must notify the other party in writing of the assignment. Customer consents to the assignment to an Affiliate or third party, without prior notice, of any rights Microsoft may have under this Agreement to receive payment and enforce Customer’s payment obligations, and all assignees may further assign such rights without further consent. Any other proposed assignment of this Agreement must
be approved by the non-assigning party in writing. Assignment will not relieve the assigning party of its obligations under the assigned Agreement. Any attempted assignment without required approval will be void.

e. **U.S. export.** Products are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments related to Microsoft products, services, and technologies.

f. **Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect.

h. **Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force.

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**Definitions.**

“Administrator Data” means the information provided to Microsoft or its Affiliates during sign-up, purchase, or administration of Products.

“Affiliate” means any legal entity that controls, is controlled by, or is under common control with a party. “Control” means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.
“Confidential Information” is defined in the “Confidentiality” section.

“Customer” means the entity identified as such on the account associated with this Agreement.

“Customer Data” means all data, including all text, sound, software, image or video files that are provided to Microsoft or its Affiliates by, or on behalf of, Customer and its Affiliates through use of Online Services.


“Non-Microsoft Product” means any third-party-branded software, data, service, website or product, unless incorporated by Microsoft in a Product.

“Online Services” means Microsoft-hosted services to which Customer subscribes under this Agreement. It does not include software and services provided under separate license terms.

“Online Services Terms” means the additional terms that apply to Customer’s use of Online Services published on the Licensing Site and updated from time to time.

“Partner” means a company Microsoft has authorized to distribute Products to Customer.

“Personal Data” means any information relating to an identified or identifiable natural person.

“Product” means all Software and Online Services identified in the Product Terms that Microsoft offers under this Agreement, including previews, prerelease versions, updates, patches and bug fixes from Microsoft. Product availability may vary by region. “Product” does not include Non-Microsoft Products.

“Product Terms” means the document that provides information about Products available under this Agreement. The Product Terms document is published on the Licensing Site and is updated from time to time.

“Publisher” means a provider of a Non-Microsoft Product.

“Representatives” means a party’s employees, Affiliates, contractors, advisors and consultants.

“SLA” means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site.

“Software” means licensed copies of Microsoft software identified in the Product Terms. Software does not include Online Services, but Software may be part of an Online Service.

“use” means to copy, download, install, run, access, display, use or otherwise interact with.

“Use Rights” means the license terms and terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. License terms for all Products are published in the Product Terms. Terms of service for Online Services are published in the Online Services Terms.