

ONLINE SERVICES SUBSCRIPTION AGREEMENT

IMPORTANT – READ THIS ONLINE SERVICES SUBSCRIPTION AGREEMENT (THIS “**AGREEMENT**”) CAREFULLY. THIS AGREEMENT IS INCORPORATED BY REFERENCE INTO EVERY ORDERING DOCUMENT (THE “**PURCHASE AGREEMENT**”) BETWEEN EASTBAY CLOUD SERVICES INC. (“**EASTBAY**”, “**WE**”, “**US**” or “**OUR**”) AND THE CUSTOMER SPECIFIED IN THE PURCHASE AGREEMENT (“**CUSTOMER**”, “**YOU**”, or “**YOUR**”). YOU ACKNOWLEDGE THAT YOUR EXECUTION OF A PURCHASE AGREEMENT REFERENCING THIS AGREEMENT CONFIRMS YOUR AGREEMENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, AS MAY BE AMENED FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS PROVIDED HEREIN.

THIS AGREEMENT is for the subscription of Microsoft Corporation (“**Microsoft**”) online services (“**Online Services**”) between Eastbay and the Customer.

1. MICROSOFT AGREEMENT

The Customer acknowledges and agrees that the Microsoft Customer Agreement, which can be found at <https://www.microsoft.com/licensing/docs/customeragreement> (the “**Microsoft Agreement**”), and the agreements referenced therein, each as may be amended from time to time, are hereby incorporated by reference into, and form an integral part of, this Agreement, and Customer agrees to be bound by same at all times this Agreement is in effect. Except as otherwise provided in this Agreement, if any provision in this Agreement conflicts with any provision in the Microsoft Agreement, the provision contained in this Agreement shall govern to the extent of any conflict.

2. SUBSCRIPTION

- (1) **Subscription.** The Customer agrees and commits to the subscription for Online Services, as may be amended from time to time (the “**Subscription**”), as set out in the Purchase Agreement and the Online Services’ website that can be found at <https://portal.azure.com> or an alternate website we may identify from time to time (the “**Portal**”). You may purchase multiple Subscriptions, which may be administered separately, and each such Subscription will be independently governed by the terms of this Agreement.
- (2) **Term.** The Subscription shall be effective on the date your Subscription is activated (as provided in your first invoice) or the date on which your Subscription is renewed, as applicable. If you are in the initial term of your Subscription, your Subscription shall continue in effect for the initial subscription term set out in the Purchase Agreement (the “**Initial Term**”). At the end of the Initial Term, this Agreement shall terminate and the Subscription shall automatically renew on the terms set forth in the Portal and using the version of this Online Services Subscription Agreement in effect at such time (each such renewal is a “**Renewal Term**”).

3. ORDERING, FEES AND PAYMENT

- (1) **Ordering Procedure.** The following procedures shall be followed by the parties to this Agreement in order to initiate or change the Subscription:
 - (i) The Subscription for the Initial Term shall be set out in the Purchase Agreement.

- (ii) At any time prior to the end of the Initial Term or any Renewal Term, the Customer may submit a request in writing to Eastbay containing a full description of any requested changes to the Subscription, including a request for termination of the Online Services (the “**Subscription Change Request**”).
 - (iii) Provided such Subscription Change Request is in compliance with the terms of the Microsoft Agreement, upon receipt of a Subscription Change Request from the Customer and Eastbay’s agreement thereto, Eastbay will make such amendments to Customer’s Subscription as are necessary. Such amendments may not take effect until the next billing cycle and will not be retroactive.
- (2) **Subscription Fee.** Customer shall pay a “**Subscription Fee**” on a monthly basis during the Initial Term and any Renewal Term as described in the Portal, as may be amended from time to time. You acknowledge that the Subscription Fee may be based on the quantity of Online Services you ordered (including a commitment to a term). All prices are subject to change at the beginning of any Subscription renewal.
- (3) **Payment.** The Subscription Fee is due and payable when invoiced and shall be deemed overdue if it remains unpaid for thirty (30) days. Prices are exclusive of any taxes unless otherwise specified on the invoice as tax inclusive. Customer is responsible for goods and services tax, harmonized sales tax, value added tax, sales tax, and all other taxes associated with the Subscription Fee, however designated. Interest on any late payments shall accrue at the rate of (2%) per month or the highest rate permitted by applicable law, whichever is less, from the date such amount is deemed overdue until finally paid. Customer shall reimburse Eastbay for all reasonable costs incurred (including solicitor’s fees) in collecting past due amounts.

4. SUPPORT

Customer may have the option of purchasing support services from Eastbay, wherein Eastbay will provide online, telephone, email and onsite support to Customer during the Initial Term and/or any Renewal Term.

5. CUSTOMER PRIMARY CONTACT

Customer shall identify and name an appropriate individual, with corresponding contact information, including electronic mail address, as the “**Primary Contact**” with whom Eastbay should communicate matters regarding the Subscription and the Online Services. The Primary Contact shall have the authority to submit Subscription Change Requests and other configuration changes on behalf of Customer. By default, the individual who signs the Purchase Agreement on behalf of the Customer shall be the Primary Contact.

6. CUSTOMER’S OBLIGATIONS

You are responsible for maintaining your hardware and network, as well as providing your users with network access to the Online Services. You are also responsible for ensuring that your users comply with this Agreement. You shall provide connectivity and security to the Internet for your location(s) for purposes of providing adequate access to the Online Services. You shall provide accurate input information in the manner reasonably prescribed by Eastbay in connection with the Online Services.

You shall advise Eastbay in writing of any changes to your operations, Primary Contact, or other information that would require a change in the support, operation or configuration of the Online Services. You shall configure necessary user accounts via the administrator account provided by Eastbay. You shall be responsible for ensuring that any of your content is accurate, not corrupt in any way, and does not contain any viruses or other security threats.

7. RESTRICTIONS

Use of the Online Services is restricted to the Customer only, and only for Customer's internal business purposes. Customer may not use the Online Services for the benefit of any third parties or provide other access or use of the Online Services to third parties. Customer may not, directly or indirectly, sublicense, assign, transfer, sell, rent, lend, lease or otherwise provide the Online Services (or any portion thereof, including, without limitation, any capacity) to any third party, and any attempt to do so is null and void and Customer shall be considered in default under this Agreement. Customer may not reverse engineer, disassemble, decompile or make any attempt to ascertain, derive or obtain the source code for the Online Services. Customer will not use the Online Services to take any actions that: (a) infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) violate any applicable law, statute, ordinance or regulation (including those regarding export control); (c) are defamatory, trade libelous, threatening, harassing or obscene; or (d) constitute unauthorized entry to any machine accessible via the network.

8. AUDIT RIGHTS

Eastbay shall have the right to audit Customer's use of the Online Services and compliance with this Agreement, including at Customer's premises, from time to time in Eastbay's sole discretion. Customer agrees to permit Eastbay to have access to its facilities and personnel during normal business hours for the purpose of conducting such audits. In the event such audit reveals Customer is exceeding the scope of use permitted by this Agreement, then Customer shall pay Eastbay's additional fees for such use (at the then-current list price) and reimburse Eastbay for the costs of the audit.

9. CONFIDENTIAL INFORMATION

(1) **Definition.** The term “**Confidential Information**” shall mean: (a) any and all information which is disclosed by either party (“**Owner**”) to the other (“**Recipient**”) verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary; and (b) the terms, including without limitation, the pricing of the Online Services including the Subscription Fee and any proposals or other documents that preceded this Agreement. Confidential Information may include, but not be limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, client lists, employee information, financial information, confidential information concerning any of Owner's past, current or possible future programs, and confidential information concerning Owner's business or organization, as Owner has conducted it or as Owner may conduct it in the future. In addition, Confidential Information may include information concerning any of Owner's past, current, or possible future products or methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing and/or software (including third party software).

(2) **Treatment of Confidential Information.** Owner's Confidential Information shall be treated as strictly

confidential by Recipient and shall not be disclosed by Recipient to any third party, except as authorized by the Owner. This Agreement imposes no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by court order or applicable law, provided notice is promptly given to the Owner and provided further that diligent efforts are undertaken to limit disclosure.

- (3) **Rights.** The Recipient shall not obtain, by virtue of this Agreement, any rights, title or interest in any Confidential Information of the Owner.
- (4) **Survival.** The terms of this Section 9 shall survive termination of this Agreement. If the parties have executed a separate agreement that contains confidentiality terms prior to or contemporaneously with entering into the Purchase Agreement (and thereby, this Agreement), those separate confidentiality terms shall remain in full force to the extent they do not conflict with this Agreement.

10. EVENTS OF DEFAULT

- (1) For the purposes of this Agreement, any one of the following shall be considered to be an event of default (an “**Event of Default**”) by the Customer:
- (i) a breach of any term or condition of this Agreement or any Purchase Agreement;
 - (ii) an assignment of this Agreement without the prior written consent of Eastbay, which consent may be unreasonably or arbitrarily withheld;
 - (iii) a change of corporate control, whether by transfer, issue, sale, assignment, bequest or other disposition of shares in, or merger or amalgamation of, the Customer or any parent or subsidiary of the Customer, or the entering into of any agreement, or by any other means, without the prior written consent of Eastbay in each instance, which consent may be unreasonably or arbitrarily withheld; or
 - (iv) if Customer becomes insolvent or bankrupt or subject to the provisions of the Winding-up Act (Canada) or the Bankruptcy and Insolvency Act (Canada), or goes into liquidation, either voluntarily or under an order of a court of competent jurisdiction, or makes a general assignment for the benefit of its creditors, or otherwise acknowledges its insolvency.

11. RIGHTS ON EVENTS OF DEFAULT / TERMINATION

- (1) In the event that Customer commits an Event of Default which is not cured within a period of ten (10) days of receipt of notice thereof, Eastbay may:
- (i) terminate this Agreement upon written notice to the Customer;

- (ii) suspend Customer's Online Services until such Event of Default is cured; and/or
 - (iii) require Customer to provide Eastbay with a security deposit ("**Security Deposit**") in an amount equal to two months of Customer's Subscription Fee, which amount, if not a fixed monthly amount, shall be calculated using Customer's average monthly usage for the last two full months prior to the Event of Default, or such other security deposit amount as Eastbay may determine in its sole discretion acting reasonably. The Security Deposit shall be applied to Customer's account upon Customer remaining in good standing and not committing an Event of Default for a consecutive period of 6 months, or at the termination of this Agreement.
- (2) In the event that Eastbay materially breaches any term or condition of this Agreement or any Purchase Agreement, and such breach continues for a period of thirty (30) days after written notice from Customer, Customer may terminate this Agreement.
- (3) In the event of termination of this Agreement pursuant to Section 11(1)(i), the Subscription shall be immediately cancelled and the following amounts shall become immediately due and payable to Eastbay:
- (i) any amounts owed to Eastbay under this Agreement or any Purchase Agreement before such termination; and
 - (ii) as liquidated damages, the monthly Subscription Fee multiplied by the remaining months in the Initial Term or Renewal Term, as applicable, which Subscription Fee, if not a fixed monthly amount, shall be calculated using Customer's average monthly usage for the lesser of the previous twelve (12) months or the number of completed months since the start of the Initial Term.
- (4) In the event of termination of this Agreement pursuant to Section 11(2), the Subscription shall be immediately cancelled and any amounts owed to Eastbay under this Agreement or any Purchase Agreement before such termination will be immediately due and payable.
- (5) Termination of this Agreement shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall such termination relieve Customer's obligation to pay all fees that accrued prior to such termination. Sections 2, 3(2), 3(3), 6, 7, 9, 11, 12, 14, 15 and 16 shall survive termination of the Agreement.
- (6) In addition to your termination rights under Section 11(2), you may terminate a Subscription at any time during its term by providing a Subscription Change Request; however, you must pay all amounts due and owing before the termination is effective, including paying for the remainder of the Initial Term or Renewal Term, as applicable, and no refunds will be provided. Your payment obligations for the remainder of your term will be calculated using the monthly Subscription Fee multiplied by the remaining months in the Initial Term or Renewal Term, as applicable, which Subscription Fee, if not a fixed monthly amount, shall be calculated using your average monthly usage for the lesser of the previous twelve (12) months or the number of completed months since the start of the Initial Term.

12. TRANSITION OF SERVICES

- (1) On termination or expiry of this Agreement, Customer may request Eastbay provide transition assistance services to allow for the orderly transition of services to Customer or its designee(s). Eastbay will provide an hourly rate and disbursements estimate for the cost of reasonable transition assistance to the Customer and, if accepted, Customer shall be responsible for payment of same on the terms outlined by Eastbay at such time. Customer shall be responsible for the coordination and execution of all onboarding activities to the new provider and any costs associated therewith, if applicable.

13. NO WARRANTY

- (1) **Disclaimer.** THE SUBSCRIPTION AND THE ONLINE SERVICES ARE PROVIDED “AS IS” WITHOUT ANY WARRANTY WHATSOEVER. CUSTOMER RECOGNIZES THAT THE “AS IS” CLAUSE OF THIS AGREEMENT IS AN IMPORTANT PART OF THE BASIS OF THIS AGREEMENT, WITHOUT WHICH EASTBAY WOULD NOT HAVE AGREED TO ENTER INTO THIS AGREEMENT. EASTBAY DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS OBTAINED BY CUSTOMER IN USING THE SUBSCRIPTION AND THE ONLINE SERVICES, OR THAT THE SUBSCRIPTION AND THE ONLINE SERVICES WILL MEET CUSTOMER’S REQUIREMENTS OR THAT THE DELIVERY OF THE SUBSCRIPTION AND THE ONLINE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. EASTBAY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SUBSCRIPTION AND THE ONLINE SERVICES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND INFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, REGARDING THE SUBSCRIPTION AND THE ONLINE SERVICES SHALL BE DEEMED A WARRANTY FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF EASTBAY WHATSOEVER. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES.

14. INDEMNITY

- (1) **By Customer.** Customer shall indemnify and defend Eastbay against any third party claims: (a) resulting from Customer’s use of the Online Services; (b) that any Customer content infringes or violates any rights of third parties, including without limitation, rights of publicity, rights of privacy, intellectual property, trade secrets or licences; or (c) arising from or relating to Customer's or its users' failure to comply with this Agreement.
- (2) **Mutual Indemnity.** Each party (“**Indemnifying Party**”) shall indemnify and hold the other party (“**Indemnified Party**”) harmless against any third party claim, including costs and reasonable lawyer’s fees, in which the Indemnified Party is named as a result of the negligent or the intentional acts or omissions by the Indemnifying Party, its employees or agents, while performing its obligations under this Agreement. This indemnification obligation is contingent upon the Indemnified Party providing the Indemnifying Party with prompt written notice of such claim, information, all reasonable assistance in the defence of such action, and sole authority to defend or settle such claim.

15. LIMITATION OF LIABILITY

EXCEPT FOR THE INDEMNIFICATION FOR THIRD PARTY CLAIMS PROVIDED IN SECTION 14, EASTBAY’S MAXIMUM LIABILITY FOR ANY ACTION ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND WHETHER IN TORT, CONTRACT OR OTHER FORM OF LIABILITY, SHALL IN NO EVENT

EXCEED THE FEES PAID BY CUSTOMER DURING THE ONE-YEAR PERIOD PRECEDING NOTICE TO EASTBAY OF CUSTOMER'S LOSS. IN NO EVENT SHALL EASTBAY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST DATA, LOST PROFITS, OPPORTUNITIES OR CONTRIBUTIONS, LOSS OF USE, GOODWILL, BUSINESS INTERRUPTION, OR OTHER PECUNIARY OR NON-PECUNIARY LOSS, HOWEVER ARISING, EVEN IF EASTBAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN. CUSTOMER ACKNOWLEDGES THAT THE FEES PAID BY IT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT EASTBAY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

16. GENERAL

- (1) **Notices.** Any notice or other communication required or permitted to be given in this Agreement shall be in writing and shall be delivered in person, transmitted by electronic mail or sent by registered mail, charges prepaid, to the addresses contained in the Purchase Agreement. Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted or, if mailed, on the third business Day following the date of mailing; provided, however, that if at the time of mailing or within three business days thereafter there is or occurs a labour dispute or other event that might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of electronic mail as described. Any party may at any time change its address for service from time to time by giving notice to the other parties in accordance with this Section 16(1).
- (2) **Assignment.** Neither party shall assign this Agreement without the prior written consent of the other party, which consent may be unreasonably withheld. Any purported assignment in contravention of this Section 16(2) is null and void. Subject to the foregoing, this Agreement will bind and enure to the benefit of any permitted successors or assigns.
- (3) **Entire Agreement.** This Agreement together with the Purchase Agreement (including any reference to such other agreements, documents, and/or policies incorporated herein or therein) constitutes the entire agreement between the parties with respect to all of the matters herein and that this Agreement supersedes all prior agreement or contemporaneous agreements or representations, written or oral, regarding such matters.
- (4) **Our Right to Change this Agreement.** We have the right to revise and amend this Agreement from time to time for any reason. You will be subject to the policies and terms and conditions of this Agreement in force at the time your Subscription is activated or renewed, or if we notify you in writing of the change to this Agreement (in which case we have the right to assume that you have accepted the change to this Agreement, unless you notify us to the contrary in writing within fourteen days).
- (5) **Waiver.** No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the parties to this Agreement entitled to grant the waiver. No failure to exercise and no delay in exercising, any right or remedy, under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision.

- (6) **Severability.** If any Section or any portion of any Section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid Section or portion thereof shall be severed from the remainder of this Agreement.
- (7) **Governing Law.** All questions concerning the validity, interpretation and performance of this Agreement or the Purchase Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement shall be governed by and decided in accordance with the laws of the Province of Ontario, as such laws are applied to contracts between Ontario residents that are entered into and performed entirely within the Province of Ontario.
- (8) **Jurisdiction and Venue.** The parties hereby submit and consent to the exclusive jurisdiction of any court located within the Province of Ontario and irrevocably agree that all actions or proceedings relating to this Agreement or the Purchase Agreement, shall be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of any such action or proceeding in such court.
- (9) **Headings for Convenience Only.** The division of this Agreement into sections, subsections, paragraphs, subparagraphs and clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (10) **Number and Gender.** Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.