21Vianet Online Services Premium Agreement

This 21Vianet Online Services Premium Agreement (the “Agreement”) is between Customer and 21Vianet, and consists of these General Terms, the applicable Use Rights and SLAs, Order Form, Contact Information Sheet, Signature Form, Government Qualification Addendum (if applicable), and any additional terms 21Vianet presents when an order is placed. This agreement take effects on the date 21Vianet provides Customer with confirmation of the agreement.

The Products offered by 21Vianet to Customer under this Agreement are based on technology that 21Vianet has licensed from Microsoft. While Microsoft develops and maintains the underlying technology, the Products are operated and provided to Customer by 21Vianet in China. Microsoft is not a party to this agreement, and this agreement does not provide Customer with any contractual or other rights or remedies against Microsoft.

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 21Vianet Products.***

1. **License grant.** Products are licensed and not sold. Upon 21Vianet’s acceptance of each order and subject to Customer’s compliance with this Agreement, 21Vianet 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.
2. **Duration of licenses.** Licenses granted on a subscription basis expire at the end of the applicable subscription period unless renewed. Licenses granted on a consumption basis continue as long as Customer continues to pay for its usage of the Product.
3. **Applicable Use Rights.**The Use Rights in effect when Customer orders a Product or at the start of each subscription period will apply to Customer’s use of the version of that Product that is current at the time. 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 Products that are billed periodically based on consumption, the Use Rights in effect at the start of each billing period will apply during that period.
4. **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.
5. **Affiliates.** Customer may order Products for use for its Affiliates, but affiliates may not place order under this Agreement. 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 21Vianet. Customer will remain responsible for all obligations under this Agreement and for its Affiliates’ compliance with this Agreement.
6. **Reservation of Rights.** 21Vianet 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 21Vianet’ or its licensor’s patents or other 21Vianet’s or its licensor’s intellectual property in the device itself or in any other software or devices.
7. **Restrictions.** Except as expressly permitted in this Agreement or Product documentation, Customer must not (and is not licensed to):
8. reverse engineer, decompile, or disassemble any Product, or attempt to do so;
9. install or use non-Microsoft software or technology in any way that would subject 21Vianet’s and/or its licensor’s intellectual property or technology to any other license terms;
10. work around any technical limitations in a Product or restrictions in Product documentation;
11. distribute, sublicense, rent, lease, or lend any Products, in whole or in part, or use them to offer hosting services to a third party.

***Non-21Vianet Products.***

Non-21Vianet 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-21Vianet Product through a 21Vianet online store or Online Service. 21Vianet is not a party to the terms between Customer and the Publisher. 21Vianet may provide Customer’s contact information and transaction details to the Publisher. 21Vianet makes no warranties and assumes no responsibility or liability whatsoever for Non-21Vianet Products. Customer is solely responsible for its use of any Non-21Vianet Product.

Privacy.

1. 21Vianet treats Customer Data in accordance with its Privacy Statement. 21Vianet is a data processor (or sub-processor) acting on Customer behalf, and Customer appoint 21Vianet to do these things with Customer Data in order to provide the Product to Customer. Customer will obtain any necessary consent from End Users or others whose personal information or other data Customer will be hosting in the Product. 21Vianet will abide by the applicable laws regarding the collection, use, transfer, retention, and other processing of personal data for the purpose of providing the Products under this Agreement.

***Confidentiality.***

1. **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) is a comment or suggestion volunteered about the other party’s business, products or services.
2. **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.
3. **Disclosure required by law.** A party may disclose the other’s Confidential Information if required by law, but shall use commercially reasonable efforts to notify the other party of such disclosure in advance unless legally prohibited.
4. **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.
5. **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.

1. **Limited warranties and remedies.**

**Online Services.** 21Vianet 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.

The remedies above are Customer’s sole remedies for breach of the warranties in this section.

1. **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.
2. **Disclaimer. Except for the limited warranties above and subject to applicable law, 21Vianet 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.

1. **By 21Vianet.** 21Vianet will defend Customer against any third-party claim to the extent it alleges that a Product made available by 21Vianet for a fee and used within the scope of the license granted under this Agreement (unmodified from the form provided by 21Vianet 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 21Vianet 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 unused consumption, paid in advance for any usage period after the termination date. 21Vianet 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.
2. **By Customer.** To the extent permitted by applicable law, Customer will defend 21Vianet against any third-party claim to the extent it alleges that: (1) any Customer Data or Non-21Vianet Product hosted in an Online Service by 21Vianet 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 third party.

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:

1. **Limitation.** To the extent permitted under applicable law, the aggregate liability of each party (and/or its Affiliates, suppliers and contractors) under this agreement is limited to direct damages up to the amount paid under this agreement for the Product giving rise to that liability during the twelve (12) months before the liability arose.
2. **Free Products and distributable code.** For Products provided free of charge or at a nominal charge and code that Customer is authorized to redistribute to third parties without separate payment to 21Vianet, 21Vianet’s liability is limited to direct damages finally awarded up to 50 RMB.
3. **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.
4. **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.

1. 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 21Vianet. Partners and other third parties are not agents of 21Vianet and are not authorized to enter into any agreement with Customer on behalf of 21Vianet.
2. Partner Administrator privileges and access to Customer Data. If Customer purchases Online Services from a Partner and 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 21Vianet 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 21Vianet’s. Customer appoints Partner as its agent for purposes of providing and receiving notices and other communications to and from 21Vianet. Customer may terminate the Partner’s administrative privileges at any time.

***Pricing and payment.***

1. **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. Otherwise, Customer’s pricing and payment terms for a given order are set by 21Vianet, and Customer will pay the amount due to 21Vianet.
2. **Invoices.** 21Vianet may invoice eligible Customers for orders placed directly with 21Vianet. Customer’s ability to elect payment by invoice is subject to 21Vianet’s approval of Customer’s financial condition. Customer authorizes 21Vianet to obtain information about Customer’s financial condition, which may include credit reports, to assess Customer’s eligibility for invoicing. Customer may be required to provide security in a form acceptable to 21Vianet to be eligible for invoicing. 21Vianet may withdraw Customer’s eligibility at any time and for any reason. Customer must promptly notify 21Vianet of any changes in its company name or location and of any significant changes in the ownership, structure, or operational activities of the organization.
3. **Invoice Payment terms.** If 21Vianet invoices Customer, each invoice will identify the amounts payable by Customer to 21Vianet for the period corresponding to the invoice. Customer will pay all amounts due within thirty (30) calendar days following the invoice date.
4. **Late Payment.** 21Vianet may, at its option, assess a late fee on any payments to 21Vianet 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.
5. **Taxes.** 21Vianet prices exclude applicable taxes unless identified as tax inclusive. If any amounts are to be paid to 21Vianet, 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 21Vianet 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. 21Vianet 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 21Vianet, Customer may deduct such taxes from the amount owed and pay them to the appropriate taxing authority, but only if Customer promptly provides 21Vianet an official receipt for those withholdings and other documents reasonably requested to allow 21Vianet 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.

1. **Term and expiration.** This agreement will expire the last day of the month, thirty-six (36) full calendar months from the Effective Date. We will remind you in advance of the expiration date and provide you with information about how you may renew your Subscription.
2. **Extended Service Term.** If you have not renewed a new agreement prior to the Expiration Date. You may request to extend your access to Services before the Expiration Date. Upon acceptance, your access to Services will continue month-to-month in accordance with the terms of this agreement for up to three (3) months  (“Extended Term”). During the Extended Term, Services will be invoiced monthly at the then-current Service rates.
3. **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:
4. All licenses granted under this Agreement will terminate immediately.
5. All amounts due under any unpaid invoices shall become due and payable immediately. For Products billed periodically based on consumption, Customer must immediately pay for unpaid consumption as of the termination date.
6. If 21Vianet is found to be in breach, the Customer will receive its choice of either a refund of the outstanding balance of any unused portion of any amount paid in advance or a credit of such amount that would apply after the date of termination
7. **Suspension.** 21Viant may suspend use of an Online Service without terminating this Agreement during Customer’s violation of the Acceptable Use Policy (as described in the Use Rights), failure to respond to a claim of alleged infringement or failure to pay amounts due.
8. **Termination for regulatory reasons.** 21Vianet may modify, discontinue, or terminate a Product in the mainland of People’s Republic of China where there is any current or future law, government regulation, obligation, or other requirement, that (1) is not generally applicable to businesses operating there; (2) presents a hardship for 21Vianet to continue offering the Product without modification; or (3) causes 21Vianet to believe these terms or the Product may conflict with any such law, regulation, obligation, or requirement. If 21Vianet terminates a subscription for regulatory reasons, Customer will receive, as its sole remedy, a choice of a credit for or a refund of, any subscription fees, including unused consumption, paid in advance for any usage period after the termination date.

Miscellaneous.

1. **Independent contractors.** The parties are independent contractors. Customer and 21Vianet each may develop products independently without using the other’s Confidential Information.
2. **Agreement not exclusive.** Customer is free to enter into agreements to license, use, and promote the products and services of others.
3. **Amendments.**  21Vianet 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. 21Vianet 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.
4. **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 21Vianet 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. In the event that 21Vianet’s right to continue providing Products under this Agreement ends, 21Vianet may assign this agreement to another unaffiliated entity with forty-five (45) days’ notice to Customer. If Customer objects to assignment to the new entity, Customer may terminate this Agreement and all Online Services subscriptions (without accruing any early cancellation payments) by providing 21Vianet with notice before the end of the forty-five (45) day period. Customer agrees that this will be the sole remedy of Customer in such scenario and hereby waives any and all claims that it may otherwise have against 21 Vianet. 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.
5. Compliance with Export Control Laws**.** Customer acknowledges that Products based on technology licensed from Microsoft are subject to export control laws and regulations. Customer must comply with all applicable international and national laws, including but not limited to the International Traffic in Arms Regulations, the U.S. Export Administration Regulations, and end-user, end use and destination restrictions by U.S. and other governments related to 21Vianet and its licensor’s products, services, and technologies.
6. **Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect.
7. **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
8. **No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights.
9. **Survival.** All provisions survive termination of this Agreement except those requiring performance only during the term of the Agreement.
10. Notices. Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or fax confirmation of delivery. Notices to 21Vianet must be sent to the following address:

Shanghai Blue Cloud Technology Co., Ltd, a wholly owned subsidiary of Beijing 21Vianet Broadband Data Center Co., Ltd.

MS Cloud | Sales Support Team

M5, 1 Jiuxianqiao East Road, Chaoyang District, Beijing

Post code: 100015

Notices to Customer will be sent to the individual at the address Customer identifies on its account as its contact for notices. 21Vianet may send notices and other information to Customer by email or other electronic form.

1. Applicable law. This Agreement will be governed by and construed in accordance with the laws of the People’s Republic of China.
2. Dispute resolution. Any dispute or claim arising out of or in connection with or relating to this Agreement, or the breach termination or invalidity hereof (including the validity, scope and enforceability of this Section) will be submitted to China International Economic and Trade Arbitration Commission (“CIETAC”) for arbitration, which arbitration shall be conducted in Beijing in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award will be final and binding upon both parties. This Section, however, will not prevent either party from seeking injunctive relief in the appropriate jurisdiction for any (i) violation of that party’s intellectual property rights, (ii) breach of confidentiality obligations owed to that party under this Agreement, or (iii) enforcement or recognition of any award or order in any appropriate jurisdiction.
3. Order of precedence. These General Terms will take precedence over any conflicting terms in other documents that are part of this Agreement that are not expressly resolved in those documents, except that conflicting terms in the Use Rights take precedence over these General Terms as to the applicable Products. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.

Definitions.

“21Vianet” or “We” means Shanghai Blue Cloud Technology Co., Ltd., a wholly owned subsidiary of Beijing 21Vianet Broadband Data Center Co., Ltd.

“Administrator Data” means the information provided to 21Vianet 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.

“China” means, solely for the purpose of this Agreement, the mainland of the People’s Republic of China, excluding Hong Kong and Macau SAR and Taiwan.

“Confidential Information” is defined in the “Confidentiality” section.

“Customer” or “You” 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 21Vianet by, or on behalf of, Customer and its Affiliates through use of Online Services.

“Effective Date” means the date 21Vianet provides Customer with confirmation of Customer’s first order

“End User” means any person Customer permits to use a Product or access Customer Data.

“Licensing Site” means <http://www.21vbluecloud.com/ostpt> or a successor site.

“Microsoft” means Microsoft (China) Co., Ltd.and its Affiliates, as appropriate.

“Non-21Vianet Product” means any third-party-branded software, data, service, website or product, unless incorporated by 21Vianet in a Product.

“Online Services” means 21Vianet-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 21Vianet has authorized to distribute Products to Customer

“Privacy Statement” means the Privacy Statement published at the Licensing Site, or at alternate sites that we identify.

“Product” means all Software and Online Services identified in the 21Vianet Online Services Terms that 21Vianet offers under this Agreement, including previews, prerelease versions, updates, patches and bug fixes from 21Vianet. Product availability may vary by region. “Product” does not include Non-21Vianet Products.

“Publisher” means a provider of a Non-21Vianet 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 software identified in the 21Vianet Product Availability section of 21Vianet Online Services Terms that 21Vianet offers under this Agreement. 21Vianet provides Software to Customer as part of the Online Services for use with or within the Online Services.

“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. Terms of service for Online Services are published in the 21Vianet Online Services Terms.