End User Agreement for SQBM+ for Azure Learn & Development Plan

IMPORTANT:   READ THIS AGREEMENT CAREFULLY BEFORE USING THE SOFTWARE IN YOUR MICROSOFT AZURE SUBSCRIPTION. YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT BY USING THE SOFTWARE. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT USE THE SOFTWARE.

This End User Agreement ("Agreement") is a binding legal contract between you (as defined below) and TDSL (as defined below) regarding the Software (as defined below) and Support Services (as defined in Section 5).   The terms "you", "your" and "yours" collectively and individually refer to you as an individual and to any entity for which you are acting.   The term "TDSL" refers to Toshiba Digital Solutions Corporation.   "Software" refers to SQBM+ for Azure Learn & Development Plan software product that you obtain from TDSL's listings in the Azure Marketplace. For clarity, Software includes all documentation and other content, in whole or in part, related to your access and use of Software that TDSL may elect in its sole discretion to provide you, including all content available from Support Services.   For clarity, Software includes any and all error corrections, bug fixes, updates, upgrades, or new versions or releases ("Updates") of the Software that TDSL may elect in its sole discretion to provide you.   "User" refers to any individual or entity that accesses or uses the Software through your Microsoft Azure Subscription ("Azure Subscription").   "Order" refers to the Azure Marketplace ordering documentation (including a registration webpage), pursuant to which you obtain limited access to the Software.   "Azure Services" refers to the cloud computing platform hosting service provided by Microsoft Corporation and/or its affiliates ("Microsoft") to you pursuant to an agreement entered into by and between Microsoft and you.   "Azure Terms and Policies" refers to all the terms, conditions, restrictions, and policies applicable to you resulting from the Order and from your subscription to, and use of, Azure Services, including the Agreement with Microsoft, acceptable use policy, site terms, content terms, and service terms.

1. Access and Use; Restrictions

1.1        Access and Use. Subject to your compliance with all the terms, conditions, and restrictions of this Agreement and all the terms, conditions, and restrictions of the Azure Terms and Policies, TDSL grants you a limited, revocable, non-exclusive, non-sublicensable and non-transferable right to subscription-based access to, and use of, the Software worldwide (subject to applicable export laws)    solely for your learning and evaluation

purposes and/or to develop your application software by combining or linking with the Software ("Your Software") on the Azure Services until terminated in accordance with Section 4.

1.2     Restrictions.  You will not access or use the Software, except via the Azure Services.   You will not use the Software or Azure Services in a way intended to avoid incurring fees or exceeding the limitations agreed to in an Order.   Except as required to access and use the Software on the Azure Services, you will not copy the Software.   You will not modify or translate the Software or create derivative works based on the Software.  You will not license, sublicense, sell, resell, loan, rent, lease, transfer, assign, or distribute the Software, except to the extent expressly permitted in this Agreement. You will not time share or otherwise commercially exploit or make the Software available to any third party, except to the extent expressly permitted in this Agreement.   You will not disassemble, reverse engineer, or decompile all or any portion of the Software, except to the extent expressly permitted by applicable law without the possibility of contractual waiver.   You will not attempt to derive the source code, underlying ideas, algorithm or structure of the Software.   You will not access the Software with an intent to build a competitive product or service, or copy or substantially copy any ideas, features, functions, organization, structure, graphics, or user interface of the Software.   You will not use Your Software for your internal business operations. You will not provide your end customers with the access to Your Software and the Software. You will not make any use of, disclosure of, or perform any acts with respect to, the Software other than as expressly permitted by the terms of this Agreement and the Order.   Notwithstanding anything to the contrary, you do not have any license, right, or authority to subject the Software, in whole or in part or as part of a larger work, to any terms of any other license agreement, including the GNU General Public License.

1.3     Third Party License Obligations. You acknowledge and agree that the Software may include, incorporate, bundle, or otherwise be aggregated with, third party software licensed or supplied by a TDSL licensor or supplier and/or open source software licensed or provided under an open source license (Open Source Software) (collectively, "Third Party Software"). Notwithstanding anything to the contrary herein, Third Party Software is licensed or provided to you subject to the pass-through terms and conditions of the separate license agreements as described in the Attachment hereto and any additional terms or agreements provided by the third party licensor or supplier ("Third Party Terms"). Use of the Third Party Software by you shall be governed by such Third Party Terms, or if no Third Party License Terms apply, then the Third Party Software is provided to you as-is for use in or with the Software subject

to the Agreement with Microsoft and not otherwise used separately. In the event of any conflict between the terms in this Agreement and the Third Party Terms, the Third Party Terms shall govern. Copyright to Third Party Software is held by the copyright holders indicated in the Third Party Terms.

1.4    Reservation of Rights.   The Software, including all full and partial copies thereof, is and remains the exclusive property of TDSL and its licensors.   Except for the access and use rights expressly set forth in this Agreement, no license or other rights in or to the Software or TDSL's and its licensor's intellectual property rights therein, are granted to you, and all such licenses and rights are expressly reserved. You will ensure that all copies of the Software contain TDSL's and its licensors' copyright notices and all other proprietary legends.

2. Responsibilities

2.1    You will comply with the Azure Terms and Policies and are responsible for such compliance by you and your Users.   You are responsible for installation, configuration, and secure operation of, as well as secure connectivity to, the Software and Azure Services.   You are responsible for population, maintenance, security, protection, loss prevention, and backup of your data and other content.   You will ensure that your data and other content is free of all viruses and comparable elements which could harm the systems or software used on the Azure Services, including the Software.   You will ensure that you collect, maintain and handle all data in compliance with all applicable data privacy and protection laws, rules and regulations.   Notwithstanding any assistance or consulting that TDSL may provide you with respect to the Azure Services, TDSL is not responsible for any aspect of the Azure Services, including its availability, reliability, security, and privacy.

2.2    You are responsible for monitoring your access to, and use of, the Software on Azure Services, including payment of all fees and/or taxes related to such access and use.   If you access the Software on a trial basis, you are still responsible to pay for the Azure Services during the trial period.   If you access or use the Software after the trial period, you are responsible to pay for the Software thereafter.   You agree that TDSL is permitted to request and receive information from Microsoft related to your access and use of the Software for auditing purposes.

2.3    To the full extent permitted by applicable law, you shall defend, indemnify and hold harmless TDSL, TDSL's affiliates and its licensors, and each of their respective employees,

officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning: (a) you or any Users' access and use of the Software and Support Services; (b) breach of this Agreement or violation of applicable law by you or any User; (c) any content in your Azure Subscription or the combination of such content with other applications, content or processes (including combination with the Software), including any claim involving alleged infringement or misappropriation of third-party rights by such content or combination; or (d) breach of any obligation or duty you owe to a third party.

3. Price and Payment

3.1    Fees.    You will pay to Microsoft the fees plus any applicable Taxes (as described in Section 3.2) for access to the Software and Azure Services in accordance with the Order and Azure Terms and Policies. Invoicing and collection of the fees and any applicable Taxes by Microsoft is done on behalf of TDSL. The fees you pay for access to the Software are nonrefundable. In no event, will TDSL provide, or be liable for, any refund of the fees you pay for access to the Azure Services. Refunds, if any, regarding the fees you pay for access to Azure Services are solely at Microsoft's discretion. You will provide, and authorize Microsoft to provide, to TDSL any and all the information required to process an Order, including all information required for calculation of the applicable Taxes such as the correct name, location and identification number for tax purposes.

3.2    Taxes.    Except to the extent expressly stated on TDSL's listing page, the fees and other charges described on TDSL's listing page and in the Order do not include federal, state or local sales, VAT, GST, use, property, excise, service, or similar taxes ("Taxes") now or hereafter levied. You will be invoiced for, and pay, all Taxes as required by applicable law. You will cooperate with TDSL and Microsoft by providing all information required for the calculation and invoicing of all applicable taxes. You will provide a valid tax-exemption certificate, for any tax from which you claim exemption.

4. Term and Termination

4.1    Term.    This Agreement and your access to the Software and Support Services will become effective as of the date of the applicable Order and shall continue in effect thereafter in accordance with the applicable Order, unless terminated earlier under this Section 4.

4.2     Suspension and Termination by TDSL.   TDSL may suspend or terminate your right to use the Software (in whole or in part) at any time upon written notice if TDSL determines that (a) your or a User's use of the Software (i) poses a security risk to the Software, the Azure Services, or any third party, (ii) may adversely impact the Software, the Azure Services, or any third party, (iii) may subject TDSL, TDSL's affiliates, TDSL's licensors, or any third party to liability, or (iv) may be fraudulent; (b) you are, or any User is, in breach of this Agreement; or (c) you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.   In addition to the foregoing right, TDSL may terminate this Agreement, including the licenses herein, at any time upon written notice.   You will cease use of the Software identified in such notice(s) during any period of suspension, or upon termination of this Agreement or other termination of your right to use such Software.   In no event will TDSL provide, or be liable for, any refund of fees paid by you for access to the Azure Services.

4.3     Suspension and Termination by Microsoft.   You acknowledge that the Azure Terms and Policies include rights in Microsoft to suspend and terminate your Azure Subscription, which will suspend or terminate your access to, and use of, the Software. In such event, TDSL will not provide, or be liable for, any refund, including fees pre-paid by you for access to the Software.

4.4     Termination by You.   You may terminate this Agreement or your use of the Software at any time without notice. Only if you terminate this Agreement for a material breach by TDSL (after giving TDSL at least thirty (30) days prior written notice and an opportunity to cure such breach during such notice period), will you be entitled to receive a refund from TDSL of the applicable unused fees pre-paid by you for access to the Software (but not fees paid for access to the Azure Services).   You accept such refund as your sole and exclusive remedy for any breach by TDSL or TDSL's Affiliates of this Agreement.

4.5     Your Termination Duties.   Upon any expiration or termination of this Agreement, you will (a) remove the affected Software from your Azure Subscription and (b) irretrievably destroy all copies in your possession or control of all documentation and other content related to the affected Software. Upon request, you will certify in writing that the foregoing has occurred. In the event of termination of this Agreement, the "affected Software" refers to all of the Software, documentation and other content related to this Agreement. Termination does not relieve you from your obligation to pay fees that remain unpaid.

4.6	Survival.  All provisions which by their nature are intended to survive termination shall survive termination of this Agreement.

5. Support

5.1	TDSL will make reasonable efforts to provide you with the support services expressly described at (https://prodazurevmimpdocsst.z13.web.core.windows.net/Support_Policy-SQBM%2B_for_Azure.pdf) ("Support Services"), as modified from time to time, subject to the conditions stated in such support service description. Except for the Support Services, this Agreement does not require TDSL to provide you with any other services of any kind.

5.2	At its sole discretion, TDSL may provide updates to the Software. If available, such updates may include bug fixes, new features and/or enhancements. You are solely responsible for deploying such updates at your own risk and liability.

6. Unintended Use

THE SOFTWARE AND SUPPORT SERVICES ARE NEITHER INTENDED NOR WARRANTED FOR USE IN EQUIPMENTS, SYSTEMS OR APPLICATIONS THAT REQUIRE EXTRAORDINARILY HIGH LEVELS OF QUALITY AND/OR RELIABILITY, AND/OR A MALFUNCTION OR FAILURE OF WHICH MAY CAUSE LOSS OF HUMAN LIFE, BODILY INJURY AND/OR SERIOUS PROPERTY DAMAGE ("UNINTENDED USE").  Unintended Use includes, without limitation, use in connection with any nuclear, military or other life critical application.

7. DISCLAIMER OF WARRANTY

THE SOFTWARE AND SUPPORT SERVICES ARE PROVIDED "AS IS." YOU AND YOUR USERS ACCEPT AND ASSUME THE ENTIRE RISK AS TO THE QUALITY, PERFORMANCE AND RESULTS OF ACCESS OR USE OF THE SOFTWARE AND SUPPORT SERVICES. TDSL AND TDSL'S AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SOFTWARE AND SUPPORT SERVICES, INCLUDING ANY WARRANTY THAT THE SOFTWARE AND SUPPORT SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT IN YOUR AZURE SUBSCRIPTION, INCLUDING YOUR CONTENT AND DATA, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.  EXCEPT TO THE EXTENT

PROHIBITED BY LAW, TDSL AND TDSL'S AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF PERFORMANCE, MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

8. LIMITATIONS OF LIABILITY

TDSL AND TDSL'S AFFILIATES AND LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY LIABILITY OR DAMAGES INCLUDING DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.   TDSL AND TDSL'S AFFILIATES AND LICENSORS WILL NOT BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SOFTWARE OR SUPPORT SERVICES, INCLUDING AS A RESULT OF ANY (1) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF, OR ACCESS TO, YOUR AZURE SERVICES, THE SOFTWARE, OR THE SUPPORT SERVICES, (2) DISCONTINUATION OF, OR MODIFICATION TO, ANY OR ALL OF YOUR AZURE SERVICES, THE SOFTWARE, OR THE SUPPORT SERVICES, OR, (3) ANY DOWNTIME OF ALL OR A PORTION OF YOUR AZURE SERVICES, THE SOFTWARE, OR THE SUPPORT SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES, SOFTWARE FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF, OR ACCESS TO, THE AZURE SERVICES, THE SOFTWARE, OR THE SUPPORT SERVICES; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA.   IN ANY CASE, TDSL'S AND TDSL'S AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT YOU ACTUALLY PAY DURING THE THREE (3) MONTHS PRECEDING THE CLAIM FOR THE SOFTWARE OR SUPPORT SERVICES THAT GAVE RISE TO THE CLAIM.   THIS DISCLAIMER OF LIABILITY SHALL APPLY TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW REGARDLESS OF THE FORM OF ACTION THAT MAY BE BROUGHT AGAINST TDSL OR TDSL'S AFFILIATES OR LICENSORS, WHETHER IN AN ACTION IN CONTRACT, TORT, PRODUCT LIABILITY, STRICT LIABILITY, STATUTE, LAW, EQUITY OR OTHERWISE.

9. Confidentiality and Publicity

9.1     "Confidential Information" means all nonpublic information disclosed by TDSL and TDSL's affiliates that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential.   Confidential Information includes: (a) nonpublic information relating to ideas, features, functions, organization, structure, graphics, or user interfaces of the Software; (b) documentation and other content available from TDSL; and (c) benchmark and other test results.   Confidential Information does not include any information that you can document: (1) is or becomes publicly available without breach of this Agreement; (2) was known to you at the time of your receipt from TDSL; (3) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (4) is independently developed by you without reference to the Confidential Information.

9.2     You may use Confidential Information only in connection with your use of the Software and Support Services as permitted under this Agreement.   You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature.

9.3     You will not issue any press release or make any other public communication with respect to this Agreement or your use of the Software or Support Services without prior written consent of TDSL.

10. Feedback

Notwithstanding anything to the contrary: (a) TDSL will have no obligation of any kind with respect to any Software-related and Services-related comments, suggestions, design changes or improvements that you elect to provide to TDSL in either verbal or written form (collectively, "Software Feedback"); and (b) TDSL and TDSL's affiliates and licensors are hereby free to use any ideas, concepts, know-how or techniques, in whole or in part, contained in Software Feedback: (i) for any purpose whatsoever, including developing, manufacturing, and/or marketing products and/or services incorporating Software Feedback in whole or in part, and (ii) without any restrictions or limitations, including requiring the payment of any license fees, royalties, or other consideration.

11. General Provisions

11.1     Assignment.   You will not assign this Agreement, or delegate or sublicense any of your rights under this Agreement, without TDSL's prior written consent. Any assignment or transfer in violation of this Section 11.1 will be void. In its sole discretion and without notice to you, TDSL may assign this Agreement, including to any TDSL's affiliate. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

11.2     Interpretation.   If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect the intent of the parties to the maximum extent permissible. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect. In this Agreement, unless the context otherwise requires or is specified: (a) the headings are for convenience only and will not affect the interpretation of this Agreement; (b) "include", "includes", and "including" shall be interpreted as introducing a list of examples which do not limit the generality of any preceding words or any words in the list of examples; and (c) words importing the singular number only meaning shall include the plural meaning and vice versa. This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.

11.3     No Waivers.   The failure by TDSL to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit TDSL's right to enforce such provision at a later time. All waivers by TDSL must be in writing to be effective.

11.4     Export Control.   You are allowed to use the Software and Support Services only if you are not restricted on the Foreign Exchange and Foreign Trade Act and other laws and regulations on technology export in Japan, the Export Administration Regulations and related laws and regulations in the U.S., and any and all the laws and regulations on import and export of technologies in all the countries concerned. Notwithstanding the foregoing, you shall (a) not use the Software and Support Services for any application prohibited under international controlling agreements for the international non-proliferation of weapons of mass destruction, including nuclear, biological or chemical weapons, or for missiles or the means of delivery of such weapons; and (b) in the case of exporting the Software and Support Services (including disclosing the Software and Support Services to any non-resident), without fail, obtain prior written approval of TDSL (including any third party where any

intellectual property right to all or part of the Software and Support Services is owned or possessed by such a third party and the Software and Support Services contains any license to such intellectual property right sublicensed to you by TDSL based on a license granted by such a third party) and comply with the Foreign Exchange and Foreign Trade Act and other laws and regulations on technology export in Japan, the Export Administration Regulations and related laws and regulations in the U.S., and any and all the laws and regulations on import and export of technologies in all the countries concerned.  In order to verify your compliance with the provisions of the preceding paragraph, TDSL may request you to submit the necessary documents and provide information as necessary and you shall respond to such request without objection.

11.5     Governing Law; Disputes.  The Agreement shall be governed by and construed in accordance with the laws of Japan, and in the case of a dispute concerning the Agreement which the parties are unable to resolve between themselves shall be settled by binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce. The place of arbitration shall be Tokyo, Japan. Any award made pursuant to such arbitration shall be final and binding upon the parties and judgment thereon may be entered in any court having jurisdiction. Notwithstanding the foregoing, either party may seek injunctive relief in any court having jurisdiction.

11.6     Force Majeure.  Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control, including acts of God, labor disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, earthquake, storms or other elements of nature, infectious disease or other epidemics or pandemics, blockages, embargoes, governmental acts or orders or restrictions, riots, acts of terrorism, or war, of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

11.7     Independent Contractors. TDSL and you are independent contractors, and neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other.

11.8     Mutual Consultation. Any subjects not covered in the Agreement shall be solved through mutual consultation between you and TDSL.

Attachment

- [Third Party Software for SQBM+ for Azure](Third Party Software for SQBM+ for Azure)