

**CLOUDBOLT SOFTWARE, INC.**

**MANAGED SERVICES PROVIDER LICENSE AGREEMENT**

**(Subscription Services)**

This Managed Services Provider License Agreement (“**Agreement**”), effective \_\_\_\_\_, 2022 (“**Effective Date**”), is made by and between CloudBolt Software, Inc. (“**CloudBolt**”), and \_\_\_\_\_, a \_\_\_\_\_ corporation with a principal place of business at \_\_\_\_\_ (“**Company**”). CloudBolt and Company may each be individually referred to as a “**Party**” or collectively as the “**Parties**”.

**RECITALS**

- A. CloudBolt licenses certain proprietary subscription services for deploying and managing virtual machines, applications and other information technology (IT) resources.
- B. Company is an IT managed services provider that provides a variety of services for its customers, including technology resource allocation and management.
- C. Company desires to use CloudBolt’s Subscription Services for its and its Managed Clients’ (as defined below) needs and CloudBolt desires to license the Subscription Services to Company for such purposes on the terms set out in this Agreement.

Now, therefore, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1.0 DEFINITIONS.**

“**Affiliates**” means any corporation, partnership or other entity now existing or hereafter organized that directly or indirectly controls, is controlled by or under common control with a Party. For purposes of this definition “control” means the direct possession of a majority of the outstanding voting securities of an entity.

“**Client Software**” is any desktop client software included in the Subscription Service that is made available to Company by CloudBolt for installation on end user computers.

“**CloudBolt Data**” means all Data made available by CloudBolt to Company in connection with the Company’s use of the Subscription Service.

“**CloudBolt Technology**” means all CloudBolt’s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Company by CloudBolt in providing the Subscription Service.

“**Cumulative Cloud Spend**” or “**CCS**” means the gross monthly cloud spend under management through the Subscription Service. CCS includes any reserved capacity upfront costs and is measured before any credits and/or discounts are applied.

“**Data**” means text, images, documents, materials and all other forms of data or communication.

“**Exclusion**” means (a) any use of the Subscription Service by Company or under Company’s account that is unauthorized, improper, or in violation of this Agreement or an Order Form (b) any customized deliverables created by CloudBolt for Company as part of consulting or professional services; (c) any Sample Code, Open Source Software, third-party software, or any derivatives or other adaptations of the foregoing; (d) use of the Subscription Service after CloudBolt’s notice to Company of such activity’s alleged or actual infringement, misappropriation or other violation of a third party’s rights; (e) the operation of, or access to, Company’s or a third party’s system or network; or (f) a Force Majeure Event or any third-party hardware, software, or system bugs, defects, or malfunctions.

“**HIPAA**” means the Health Insurance Portability and Accountability Act, as amended and supplemented.

**"Intellectual Property Rights"** means all intellectual property rights and protections throughout the world, including patents, copyrights, trademarks and service marks (together with goodwill related to the foregoing), trade secrets, rights in databases and designs (ornamental or otherwise), know-how, inventions, moral rights and all other proprietary rights, whether registered or unregistered, and all similar or equivalent rights or forms of protection.

**"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

**"License"** means the license granted under Section 2.0.

**"License Fees"** are as defined in Section 4.2.

**"Managed Client"** means Company's own Managed Services client or customer who operates the Subscription Service as an end user, or who has designated Company to operate the Subscription Service on its behalf. A Managed Client may not provide Managed Services using the Subscription Service to any third parties.

**"Managed Services"** means the services Company performs for its end user clients, the Managed Clients.

**"Order Form"** means each order form executed by Company that sets forth the: (a) Subscription Services; (b) Subscription Services Term; (c) License Fees; and (d) other applicable terms.

**"Server"** or **"VM"** means any physical computer, hardware device, virtual machine or cloud compute instance, that is capable of running an operating system or serves as a software container that can run a virtualized instance of an operating system.

**"Subscription Service"** means CloudBolt's proprietary subscription-based software-as-a-service offering.

**"Subscription Service Term"** means the term on the Order Form for the Subscription Services.

**"Users"** mean individuals who are authorized by the Company to use the Subscription Service and who have been supplied passwords by the Company (or by CloudBolt at the Company's request). Users consist of any employee of the Company or its Affiliates or a Managed Client and any independent contractor of the Company or its Affiliates or a Managed Client.

## **2.0 SUBSCRIPTION SERVICE LICENSE GRANT.**

- A. **Subscription Service License.** Subject to the terms and conditions of this Agreement, CloudBolt will make the Subscription Service available to Company for the Subscription Services Term solely for access and use by Company and its Users solely for Company's and Company's Managed Client's internal operations in accordance with the terms and conditions of this Agreement, the Documentation, and the Order Form. Company shall be responsible for each of its Managed Clients' and User's compliance with this Agreement. To the extent use of a Subscription Service requires Company to install Client Software, CloudBolt grants to Company a limited, non-transferable, non-sublicensable, non-exclusive license during the Subscription Term to use the object code form of the Client Software internally in connection with Company's use of the Subscription Service, subject to the terms and conditions of this Agreement and the Documentation. Any conflict between the terms and conditions set forth in this Agreement and any Order Form shall be resolved in favor of this Agreement except to the extent the terms of this Agreement intend for the terms of the Order Form to control. The Company agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by CloudBolt regarding future functionality or features. CloudBolt may provide all or a portion of the Subscription Services hereunder through any of its Affiliates.
  
- B. **CloudBolt Technology.** In connection with the performance of the Subscription Service, CloudBolt shall operate and support the Subscription Service's environment, including, without limitation, the CloudBolt Technology, all applicable server hardware, disk storage, firewall protection, server operating systems, management programs, Web server programs, Web Applications, Graphical User Interface, documentation and all other information developed or provided by CloudBolt or its suppliers under the Agreement, as well as all other documents, software, products and services

contained or made available to Company or its Managed Clients in the course of using the Subscription Service (collectively, the “Subscription Materials”).

- C. SLA. The Subscription Service will be provided to Company in accordance with the Service Level Agreement attached as Exhibit A hereto. The Service Level Agreement is solely between CloudBolt and Company. Any inquiries, service credit requests or other issues regarding the Service Level Agreement must come to CloudBolt directly from Company.
- D. Restrictions. Company is responsible for procuring and maintaining the network connections that connect the Company to the Subscription Service. The Company agrees: (a) that only authorized Users or Managed Clients are permitted to use the Subscription Service; (b) that it is responsible for authorized Users’ and Managed Clients’ actions or failures to act in connection with activities contemplated under this Agreement; and (c) to otherwise take all commercially reasonable steps to protect the Subscription Service from unauthorized use and/or access. Company is also responsible for all activities conducted under its User and its Managed Client’s logins and for its Users’ and its Managed Clients’ compliance with this Agreement. Neither the Company nor its Users or its Managed Clients shall use the Subscription Service to: (a) send, upload or otherwise transmit any Data that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another’s privacy, hateful, or racially, ethnically or otherwise objectionable; (b) upload or otherwise transmit, display or distribute any Data that infringes any trademark, trade secret, copyright or other proprietary or intellectual property rights of any person; (c) upload or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (d) interfere with or disrupt the Subscription Service or networks connected to the Subscription Service; or (e) violate any applicable law or regulation. Company will also not (and will not permit any third party to): (a) sell, rent, lease, license, distribute, provide access to, sublicense, or otherwise make available any Subscription Service to a third party (except as Affiliates or Managed Clients) or in a service bureau or outsourcing offering; (b) use any Subscription Service to provide, or incorporate any Subscription Service into, any general purpose data warehousing service for the benefit of a third party; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to any Subscription Service, except to the extent expressly permitted by applicable law (and then only upon advance written notice to CloudBolt); or (d) remove or obscure any proprietary or other notices contained in any Subscription Service. Company agrees not to, and not to allow any Users or Managed Clients to, upload to the Subscription Service any patient, medical or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations.
- E. Handling of Company Content Upon Termination. Company agrees that following termination of Company’s account and/or use of the Subscription Service, CloudBolt may immediately deactivate Company’s account and that following a reasonable period of not less than 30 days shall be entitled to delete Company’s account from CloudBolt’s “live” site. Company further agrees that CloudBolt shall not be liable to Company nor to any third party for any termination of Company access to the Subscription Service or deletion of Company Content, provided that CloudBolt is in compliance with the terms of this Section 2.0.
- F. Users: Passwords, Access and Notification. Company shall authorize access to and assign unique passwords to the Users or its Managed Clients. Company will be responsible for the confidentiality and use of the User’s and its Managed Clients’ passwords. Company agrees to immediately notify CloudBolt if Company becomes aware of any loss or theft or unauthorized use of any of Company’s, User’s or Managed Clients’ passwords.
- G. Modifications to Subscription Service. CloudBolt may make modifications to the Subscription Service or particular components of the Subscription Service from time to time provided that such modifications do not materially degrade any functionality or features of the Subscription Service.

- H. Sufficient Rights in Company Data. Company will ensure that (a) all use of the Subscription Service and any Company's, User's or Managed Clients' Data is at all times compliant with this Agreement, Company's privacy policies, and all applicable laws and regulations and conventions, (b) it has sufficient rights in the Company, User and Managed Client Data to grant the rights granted to CloudBolt hereunder; and (c) the Company, User and Managed Client Data does not infringe or violate the intellectual property, publicity, privacy or other rights of any third party. Company is solely responsible for the accuracy, content and legality of all Company, User and Managed Client Data.
- I. Data Security. CloudBolt will implement and maintain administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of, and prevention of any unauthorized use, access, processing, destruction, loss, alteration, or disclosure of, the Company, User and Managed Client Data, in accordance with applicable industry standards. CloudBolt will notify Company immediately following discovery of any suspected breach or compromise of the security, confidentiality, or integrity of any Company, User or Managed Client Data. Written notification provided pursuant to this paragraph will include a brief summary of the available facts, the status of CloudBolt's investigation, and if known and applicable, the potential number of persons affected by release of data relating to such person.
- J. Aggregate Data. CloudBolt shall have the unrestricted right to collect, process, use, distribute, share, disclose, market, exploit, commercialize and display Aggregate Data for any lawful purpose during and after the Agreement Term. "**Aggregate Data**" means any non-attributable, deidentified, non-regulated analytical information, data, analysis and statistics generated by Company's, its Managed Clients' and Users' use of the Subscription Services, including, but not limited to, a total count of managed resources, total count of users, other pieces of data including compilation of aggregated statistics about the Subscription Services and use thereof, and any anonymous data and learnings regarding use of the Subscription Service. As between the parties, CloudBolt owns all right, title and interest in and to the Aggregate Data. CloudBolt will not distribute Aggregate Data in a manner that personally identifies Company, its Managed Clients or its Users.
- K. Feedback. Company may provide suggestions, enhancement requests, recommendations or other feedback ("**Feedback**") through the CloudBolt knowledge base, community forum(s) or Company's use of the Subscription Service. Company hereby grants to CloudBolt a non-exclusive, transferable, sublicensable, worldwide, perpetual, royalty-free, fully paid-up, irrevocable license to reproduce, create derivative works from, distribute, perform, display and otherwise use Feedback (including incorporating it into the Subscription Service or other CloudBolt products or services) and without any confidentiality obligation in any manner whatsoever.

### 3.0 ORDERS.

Orders. No Order Form is binding on CloudBolt until accepted by CloudBolt, which CloudBolt may do in writing or by providing access to the Subscription Service listed on such Order Form. If Company requires a purchase order to be issued prior to its payment of any License Fees, Company will provide a purchase order concurrently with Company's execution of the initial Order Form and Company's execution of any subsequent Order Form.

### 4.0 PRICING AND PAYMENT.

4.1 Pricing. Pricing terms shall be as set forth on an Order Form.

4.2 Payment. Company shall pay the then-current license and support fees, as applicable, for the Subscription Services as described on the Order Form and as set forth on monthly invoices (the "**License Fees**"). Unless otherwise set forth in the Order Form, the License Fees shall be paid in U.S. dollars and are due within 30 days of the invoice date. License Fees are non-cancelable and non-refundable, except as set forth in Section 7.2. Company may not withhold or offset License Fees against other amounts for any reason.

4.3 Taxes. All License Fees are exclusive of any taxes, duties, or similar charges imposed by any government. Company shall pay or reimburse all federal, state, provincial, or local sales, use, personal property, excise, value added, withholding or other taxes, fees, or duties relating to the transactions contemplated by this Agreement, except for any taxes based on CloudBolt's income, property or general business operations.

## 5.0 WARRANTIES.

5.1 Mutual Warranties. Each party represents, warrants and covenants to the other party that: (a) it is an entity duly incorporated or organized, validly existing, and in good standing; (b) it has all requisite power and authority to enter, deliver, and perform its obligations under this Agreement; (c) the performance of this Agreement will not violate or constitute a breach of any agreement binding upon such party; and (d) it has not made, and does not intend to make, any assignments, grants, licenses, encumbrances, obligations, or agreements, whether written, oral, or implied, inconsistent with this Agreement.

5.2 Subscription Services Warranty. CloudBolt warrants that during the Subscription Services Term, the Subscription Service will conform, in all material respects, with the Documentation. CloudBolt does not warrant that it will be able to correct all reported defects or that use of the Subscription Service will be uninterrupted or error free. CloudBolt makes no warranty regarding features or services provided by third parties. For any breach of the above warranty, CloudBolt will, at no additional cost to Company, provide remedial services necessary to enable the Subscription Service to conform to the warranty. The Company will provide CloudBolt with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. Such warranty shall only apply if the Subscription Service has been utilized by the Company in accordance with the Order Form and this Agreement.

5.3 Disclaimer of Warranties. Notwithstanding the foregoing, if CloudBolt provides any software or Subscription Services to Company or its Managed Clients on a trial, demonstration, product extensions, proof of concept or evaluation basis ("**Sample Code**"), such Sample Code, and any related maintenance or support services, are provided on an "AS IS" basis, without warranty of any kind, including any warranties that the Sample Code is free of defects, merchantable, fit for a particular purpose or non-infringing. Company bears the entire risk as to the quality and performance of Sample Code. Company has selected the software and/or Subscription Services and agrees such software and/or Subscription Services has not been developed to meet the specific requirements of any person or entity. OTHER THAN THE EXPRESS WARRANTIES IN THIS SECTION 5 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CLOUDBOLT AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE REGARDING OR RELATING TO THE SUBSCRIPTION SERVICES OR ANY OTHER MATERIALS OR SERVICES FURNISHED, PROVIDED OR OTHERWISE MADE AVAILABLE UNDER THIS AGREEMENT. CLOUDBOLT AND ITS LICENSORS DO NOT WARRANT THAT THE SUBSCRIPTION SERVICES WILL OPERATE UNINTERRUPTED, WILL BE FREE FROM DEFECTS, ALL ERRORS WILL BE CORRECTED OR THAT THE SUBSCRIPTION SERVICES WILL MEET (OR ARE DESIGNED TO MEET) COMPANY'S OR ITS MANAGED CLIENTS' BUSINESS REQUIREMENTS.

5.4 High-Risk Activities. The Subscription Services are not fault-tolerant and are not designed, manufactured or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Subscription Services could lead directly to death, personal injury, or severe physical or environmental damage ("**High-Risk Activities**"). Accordingly, CloudBolt and its suppliers specifically disclaim any liability with respect to High-Risk Activities. Company assumes all risk of loss or damage for use of the Subscription Services in High-Risk Activities.

## 6.0 OWNERSHIP.

6.1 Ownership of Subscription Services. Company acknowledges and agrees that (i) as between CloudBolt and Company, all right, title and interest in and to the Subscription Service, the Subscription Materials, including the CloudBolt Technology and all derivatives thereof (including any and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights embodied therein or associated therewith) are and shall remain CloudBolt's or its licensors', and CloudBolt in no way conveys any right or interest in the Subscription Materials, the CloudBolt Technology or the Subscription Service other than a limited license to use them in accordance herewith, and (ii) the Subscription Materials, the CloudBolt Technology and the Subscription Service are works protected by copyright, trade secret, and other proprietary rights and laws. As between the parties, Company or its licensors retain all right, title and interest (including any and all intellectual property rights) in and to the Company Data and any modifications made thereto in the course of the operation of the Subscription Service. Subject to the terms of this Agreement, Company hereby grants to CloudBolt a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of, and display the Company Data to the extent necessary to provide the Subscription Service to Company, to prevent or address service or technical problems under this Agreement, as a part of Aggregated Data or as may be required by law.

6.2 Reservation of Rights. Company's and its Managed Clients' rights to use the Subscription Services shall be limited to those expressly granted in this Agreement. No other rights with respect to the Subscription Services or any related Intellectual Property Rights are implied. Company is not authorized to use (and shall not permit any Managed Client, User or other third party to use) the Subscription Services or any portion thereof except as expressly authorized by this Agreement.

## 7.0 INDEMNIFICATION.

7.1 Indemnification by CloudBolt. CloudBolt shall defend, indemnify and hold harmless Company, Managed Clients, and their respective affiliates and the officers, directors, employees and shareholders thereof from and against any and all loss, damage, settlement, costs or expense (including legal expenses and expenses of other professionals) from any third-party claim, suit, action or proceeding arising out of: (a) an allegation that the Subscription Services provided by CloudBolt infringes any copyright or trade secret under the Laws of the US or EU (an "**Infringement Claim**"); or (b) CloudBolt's gross negligence or willful misconduct, except, in each case, to the extent Company is responsible under Section 7.3 or to the extent caused by an Exclusion.

7.2 Corrective Actions. If a third party brings or threatens any Infringement Claim against Company or a Managed Client with respect to which CloudBolt has obligations under Section 7.1(a), or in CloudBolt's opinion, the Subscription Services is likely to be the subject of an Infringement Claim, then at CloudBolt's sole option and expense, CloudBolt may: (a) procure for Company or its Managed Clients the right to continue to use the Subscription Services or infringing part thereof; (b) modify or amend the Subscription Services or infringing part thereof; or (c) replace the Subscription Services or infringing part thereof with other software or services having substantially the same or better capabilities. If none of the foregoing are commercially practicable in CloudBolt's reasonable judgment, CloudBolt may terminate this Agreement or applicable Order Form with respect to the infringing part of the Subscription Services upon notice to Company and CloudBolt shall refund to Company any prepaid unused fees attributable to the infringing part of the Subscription Services for the remainder of the Subscription Services Term (as determined by CloudBolt). Section 7.1 and this Section 7.2 state CloudBolt's entire liability and Company's sole and exclusive remedy for any violation or infringement of Intellectual Property Rights.

7.3 Indemnification by Company. Company shall defend, indemnify and hold harmless CloudBolt and its affiliates and its and their officers, directors, employees and shareholders from and against any and all loss, damage, settlement, costs or expense (including legal expenses and expenses of other professionals) from any third-party claim, suit, action or proceeding arising out of: (a) Company's or its Managed Clients' use of the Subscription Services in violation of the terms of this Agreement or an Order Form; (b) Company's or its Managed Clients' breach of this Agreement; (c) an Exclusion; or (d) Company's or its Managed Clients' gross

negligence or willful misconduct, except, in each case, to the extent CloudBolt is responsible under Section 7.1.

7.4 Indemnification Procedure. Each party's obligations under this Section 7.0 are conditioned on the party seeking indemnification: (a) promptly notifying the indemnifying party of the claim; (b) giving the indemnifying party sole control over the defense of the claim and any settlement negotiations (provided that the indemnifying party shall not agree to any settlement or compromise that results in any admission on the part of the indemnified party, or imposes any obligation or liability on the indemnified party, without the indemnified party's prior consent, not to be unreasonably withheld, conditioned or delayed); and (c) reasonably cooperating in response to the indemnifying party's requests for assistance. The indemnified party may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

## **8.0 LIMITATION OF LIABILITY.**

8.1 Limitation of Liability. EXCEPT FOR (A) AMOUNTS OWED BY A PARTY PURSUANT TO ITS INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT; (B) DAMAGES RESULTING FROM A PARTY'S BREACH OF SECTION 10.0 (CONFIDENTIAL INFORMATION); (C) DAMAGES RESULTING FROM A VIOLATION BY COMPANY, ITS MANAGED CLIENTS OR ITS USERS OF ANY OF CLOUDBOLT'S INTELLECTUAL PROPERTY RIGHTS; AND (D) DAMAGES RESULTING FROM EITHER CLOUDBOLT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE ONE HAND, AND DAMAGES RESULTING FROM COMPANY'S OR ITS MANAGED CLIENTS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE OTHER HAND:

(I) IN NO EVENT SHALL A PARTY BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, INCREASED COSTS, LOSS OF GOODWILL, WORK STOPPAGE, LOSS OF USE, LOSS OF DATA, COMPUTER FAILURE OR MALFUNCTION, HOWEVER CAUSED, AND WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES, AND

(II) IN NO EVENT SHALL CLOUDBOLT'S CUMULATIVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR COMPANY'S, ITS MANAGED CLIENTS' OR USERS' USE OF THE SUBSCRIPTION SERVICE OR ANY OTHER SERVICE OR PRODUCT PROVIDED UNDER THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE AMOUNT OF LICENSE FEES RECEIVED BY CLOUDBOLT FROM COMPANY PURSUANT TO THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.

THE CONSIDERATION EXCHANGED HEREUNDER IS BASED IN PART UPON THE ABOVE LIMITATIONS. SUCH LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

8.2 Further Limitations. CloudBolt's licensors shall have no liability of any kind under this Agreement and CloudBolt's liability with respect to any third party software embedded in the Subscription Service shall be subject to Section 8.1.

## **9.0 TERM; TERMINATION.**

9.1 Agreement Term. This Agreement shall commence as of the Effective Date and shall continue in effect until terminated pursuant to this Section 9 ("**Agreement Term**").

9.2 Subscription Services Term. The Subscription Services Term shall (a) be set forth on the Order Form, (b) commence on the effective date of the Order Form, and (c) continue for the duration of the initial Subscription Services Term or any Renewal Term (as defined herein) unless terminated earlier as set forth in this Section 9.0. The Subscription Services Term shall automatically renew for subsequent periods of the same length as the initial Subscription Services Term (each a "Renewal Term") unless either party gives the

other written notice of termination at least thirty (30) days prior to expiration of the then-current Subscription Services Term. CloudBolt reserves the right to change the License Fees and to introduce new charges, upon at least 60 days' notice prior to the end of the initial Subscription Services Term or any Renewal Term which will be applicable for the upcoming Renewal Term.

9.3 **Termination.** Either party may terminate this Agreement in its entirety effective immediately upon notice to the other party if the other party breaches any provision of this Agreement and (a) to the extent such breach is capable of cure, does not cure the breach within 30 days after receiving notice thereof from the non-breaching party (or ten days in the event of either party's breach of Sections 2.0 or 11.0), or (b) such breach is not capable of cure. Either party may also terminate this Agreement upon no less than thirty (30) days' prior written notice to the other party for any reason, if at such time there are no outstanding Order Forms then currently in effect.

9.4 **Effect of Termination.** Upon termination of this Agreement by either party pursuant to the terms hereof: (a) all license rights to all Subscription Services granted to Company and its Users and Managed Clients under this Agreement will immediately cease; (b) CloudBolt may suspend or terminate Company's and its User's and Managed Clients' use of the Subscription Services, including remotely or by other means, without liability to Company or its Users or its Managed Clients on account of such termination; (c) Company shall promptly discontinue, and cause its Users and Managed Clients' to discontinue, as applicable, all use of all Subscription Services and certify in writing to CloudBolt that it has complied with this Section; (d) all amounts payable by Company to CloudBolt of any kind are immediately due and payable, or, if Company is entitled to a refund pursuant to Section 7.2, then CloudBolt shall refund the applicable amount to Company; and (e) Sections 1.0 (Definitions), 4.3 (Taxes), 5.3 (Disclaimer of Warranties), 5.4 (High-Risk Activities), 6.0 (Ownership), 7.0 (Indemnification), 8.0 (Limitation of Liability), 9.4 (Effect of Termination), 10.0 (Confidential Information) and 11.0 (Miscellaneous) will survive any termination or expiration of this Agreement.

## 10.0 CONFIDENTIAL INFORMATION.

10.1 **Definition.** "**Confidential Information**" means non-public information or materials provided by one party ("**Discloser**") to the other party ("**Recipient**") (a) in tangible form and labeled "confidential" or the like, or (b) which Recipient knew, or a reasonable person should know, is confidential. The following information shall be considered Confidential Information of CloudBolt whether or not marked or identified as such: (i) information regarding CloudBolt's pricing, product roadmaps or strategic marketing plans; (ii) the Subscription Services; (iii) and the terms of this Agreement.

10.2 **Protection.** Recipient shall not use Discloser's Confidential Information except to exercise rights granted herein or to perform obligations hereunder and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, Recipient shall (a) protect Discloser's Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care, (b) make Discloser's Confidential Information available only on a "need to know" basis and only to its employees, contractors, representatives and advisors who are bound in writing or subject to fiduciary or legal obligations to protect the confidentiality of such Confidential Information on terms no less restrictive than those set forth in this Agreement; (c) promptly notify Discloser of any actual or suspected misuse or unauthorized disclosure of Discloser's Confidential Information; and (d) upon Discloser's request, promptly return, or if requested by Discloser, destroy all copies of Discloser's Confidential Information within its possession or control, provided that Confidential Information contained in system-backup media need not be returned or destroyed so long as the backup media are maintained in confidence and are not readily accessible to users, and, upon Discloser's request, Recipient shall certify to Discloser that it has fully complied with these requirements.

10.3 **Exceptions.** Recipient's obligations under Section 10.2 with respect to any Confidential Information will terminate if Recipient can demonstrate with written records that such information: (a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Recipient; (b) was known to Recipient without restriction, at the time of disclosure; (c) was disclosed with Discloser's



prior approval; or (d) was independently developed by Recipient without any use of the Confidential Information.

10.4 Disclosure Required by Law. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential Information if required by Law or pursuant to the order or requirement of a court, administrative agency or other governmental body; provided that, to the extent legally permissible, Recipient provides prompt notice thereof to Discloser to enable it to seek a protective order or otherwise prevent or restrict such disclosure, and any subsequent disclosure discloses the minimum amount of Confidential Information required in order to comply with such Law or order.

## 11.0 MISCELLANEOUS.

11.1 Public Announcements. Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or otherwise use or display the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association or sponsorship, in each case, without the prior consent of the other party, which shall not be unreasonably withheld, conditioned or delayed.

11.2 Further Assurances. The parties shall cooperate fully with each other and execute such further instruments, documents, and agreements, and shall give such further written assurances, as may be reasonably requested by another party to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intent and purposes of this Agreement.

11.3 Force Majeure. Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties, including acts of God, strikes, lockouts, riots, public health emergencies, pandemics, epidemics, acts of war, earthquakes, fire and explosions (collectively, "**Force Majeure Events**"), but the inability to meet financial obligations is expressly excluded.

11.4 Waiver. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement, or its rights or remedies hereunder, at any time will not be construed nor deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action.

11.5 Dispute Resolution. This Section 11.5 only applies if Company is an entity organized or incorporated or otherwise legally formed under the Laws of any country other than the United States of America:

- (a) If any dispute, controversy or claim arises between the parties with respect to any matter relating to this Agreement, the formation or validity thereof, performance hereunder or the breach hereof, including arbitrability of the dispute, which the parties do not promptly resolve after using good faith efforts, said controversy will be decided first through professionally assisted mediation, and if there remains no resolution within 30 days from commencement of mediation, then the matter will be submitted to binding arbitration administered by the International Chambers of Commerce ("**ICC**") in accordance with the Arbitration Rules for Professional Accounting and Related Services Disputes of the ICC ("**ICC Rules**") before a single arbitrator. The dispute resolution procedures stated herein will be held at a mutually agreeable venue in Washington D.C., or, if agreed to by the parties and the arbitrator, by virtual means. The arbitrator will have no power to award (i) damages inconsistent with the Agreement or (ii) punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or in any other forum.
- (b) Limited discovery will be permitted in connection with the arbitration upon agreement of the parties or upon a showing of need by the party seeking discovery. All aspects of the arbitration will be

confidential. Neither the parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements.

- (c) Attorneys' fees will be borne by the respective parties thereto. The costs of mediation and arbitration will be borne equally by the parties.
- (d) The foregoing notwithstanding, the parties will be free to pursue injunctive relief and restraining orders relating to the parties' proprietary rights and confidentiality obligations as stated above in any court of competent jurisdiction. Judgment on any arbitration award may be entered in any court having proper jurisdiction.

11.6 Applicable Law and Jurisdiction. This Agreement will be governed by and interpreted in accordance with the Laws of the State of Delaware, other than such Laws (including case law) that would result in the application of the laws of a jurisdiction other than the State of Delaware. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. This Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

11.7 Severability. If any provision of this Agreement is held to be unenforceable, then that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable (if permitted by law) or disregarding it (if not). If an unenforceable provision is modified or disregarded in accordance with this Section, the rest of the Agreement is to remain in effect as written, and the unenforceable provision is to remain as written in any circumstances other than those in which the provision is held to be unenforceable.

11.8 Independent Parties. Nothing in this Agreement will be construed to make either party, and each party agrees that it is not, an agent, employee, franchisee, joint venture or legal representative of the other party. Each party hereto is an independent contractor. A party does not have, and shall not represent itself to have, any authority to bind the other party or act on its behalf.

11.9 Compliance with Laws; Export Control; Government Regulations. Each party shall comply with all Laws applicable to the actions contemplated by this Agreement including but not limited to, any applicable export laws, other applicable statutes, and any export control laws of other applicable territories. Any diversion contrary to applicable export control laws is prohibited. Company represents that: (a) it is not, and is not acting on behalf of: (i) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (ii) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (b) it will not permit the Subscription Services to be used for, any purposes prohibited by law, including any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons.

11.10 U.S. Government Users. If Company or any of its Managed Clients is the U.S. Government (or the Subscription Services will be used on behalf of the U.S. Government), the terms and conditions set forth in this Section shall apply.

- (a) *Definition.* For the purposes of this Agreement, the term "**U.S. Government**" means a United States federal executive agency organized under Article II of the United States Constitution, including any sub-agencies, departments, and bureaus thereof.
- (b) *U.S. Government as a Company.* The Subscription Services and accompanying documentation are each a "commercial item," and constitute "commercial computer software" and "commercial computer software documentation," as such terms are defined in 48 C.F.R. § 2.101. Accordingly, if Company is the U.S. Government, the Subscription Services are provided for use with only those rights which may be granted to all other licensees pursuant to the terms and conditions of this Agreement, and in accordance with (i) 48 C.F.R. §§ 227.7201 through 227.7204, with respect to the Department of

Defense and its contractors, or (ii) 48 C.F.R. § 12.211 and 48 C.F.R. § 12.212, with respect to all other U.S. Government agencies and their contractors.

- (c) *Conflict with Federal Law.* If Company is the U.S. Government, and the terms of this Agreement fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Company shall immediately discontinue use of the Subscription Services.

11.11 Subcontractors. CloudBolt may subcontract all or any portion of services performed under this Agreement without Company's prior consent. If CloudBolt uses any subcontractors, CloudBolt shall be responsible for ensuring that the subcontractor has complied with all of CloudBolt's obligations hereunder.

11.12 Notices. Any notices or other communications required or permitted hereunder or required by law will be in writing and will be delivered in person or sent by registered mail or email to the respective contact persons indicated in the Order Form, as may be updated from time to time upon notification by one party to the other party in accordance with this Section. Any such notice will be considered to have been given at the time of actual delivery in person or, if sent by email, at the time stamped by recipient's email application (or, if not available, the time stamp of transmission by the sender's email application), or within five days after it was mailed in the manner specified above.

11.13 Remedies. Each party acknowledges that a breach of Section 2.0 or 10.0 will cause the non-breaching party irreparable damage, for which the award of damages would not be adequate compensation and therefore each party agrees that the non-breaching party is entitled to seek injunctive relief to enjoin such breaching party from acts in violation of those provisions, without the necessity of posting a bond or other security. Except as expressly provided otherwise in this Agreement, (a) in addition to any remedies provided in this Agreement, the parties shall have all remedies provided at law or in equity, (b) the rights and remedies provided in this Agreement or otherwise under Law shall be cumulative, and (c) the exercise of any particular right or remedy shall not preclude the exercise of any other rights or remedies in addition to, or as an alternative of, such right or remedy.

11.14 Assignment. Neither party may assign this Agreement or delegate its performance under this Agreement to any third party without obtaining the other party's prior consent, except that either party may assign this Agreement in its entirety to (a) its affiliate, or (b) by operation of law or to any successor entity in the event of Company's transfer of all or substantially all of its assets or stock, merger, spin-off, consolidation, reorganization or other business combination or change of control, so long as the assigning party provides notice thereof to the other party. Any attempted assignment or transfer in violation of the foregoing is void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective permitted successors and permitted assigns.

11.15 Third-Party Rights. Other than as expressly set out in this Agreement, this Agreement does not create any rights for any person or entity who is not a party to it, and no person who is not a party to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.

11.16 Entire Agreement, Order of Precedence. This Agreement (including all Order Forms, which are incorporated herein by reference), constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral or written communications between the parties relating in any way to the subject matter hereof. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No terms or conditions of any purchase order, acknowledgement or other business form that Company may use in connection with the acquisition or licensing of the Subscription Service and related services will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of CloudBolt to object to such terms, provisions or conditions. In the event of a conflict between the terms of this Agreement and an Order Form, this Agreement shall prevail except where the Order Form is intended to prevail per the terms of this Agreement.

11.17 Interpretation. Unless a clear contrary intention appears, (a) the singular includes the plural and vice versa; (b) reference to any document, Law, or standard means such document, Law, or standard as amended

from time to time; (c) “include” or “including” means including without limiting the generality of any description preceding such term; (d) the term “or” is not exclusive; (e) the phrase “this Agreement” and the terms “hereof,” “herein,” “hereby,” “hereunder” and derivatives or similar words refer to this entire Agreement; (f) headings are for convenience only and do not constitute a part of this Agreement; and (g) all references to money shall be in United States dollars. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

CloudBolt and Company have caused this Agreement to be executed as a document under seal by their duly authorized representatives as of the Effective Date.

Company:

[\_\_\_\_\_]

By: \_\_\_\_\_

Name:

Title:

Date:

CloudBolt:

**CloudBolt Software, Inc.**

By: \_\_\_\_\_

Name:

Title:

Date:

## Exhibit A

### **Service Level Agreement for Subscription Services**

#### **1. Service Level**

**1.1 Availability.** The Subscription Service will be available 99.9% of the time per quarter, except for any downtime due to Subscription Services Maintenance or a Force Majeure Event ("***Uptime Availability***"). For any partial calendar quarter during which Company subscribes to the Subscription Service, Uptime Availability will be calculated based on the entire calendar quarter, not just the portion for which Company subscribed. In addition, unavailability for some specific features or functions within the Subscription Service, while others remain available, will not constitute unavailability of the Subscription Service, so long as the unavailable features or functions are not, in the aggregate, material to the Subscription Service as a whole.

**1.2 Subscription Services Maintenance.** "Subscription Services Maintenance" shall mean any scheduled maintenance on the Subscription Service or any unplanned maintenance lasting less than 15 minutes.

**2. Service Credits.** If the Subscription Service does not meet the Uptime Availability in any given calendar quarter (excluding any Subscription Services Maintenance or Force Majeure Event) and this downtime significantly affected Company's ability to use the Subscription Service, then CloudBolt will credit Company with an amount equal to five percent (5%) of the Subscription Service monthly fee for each two hours of general Subscription Service unavailability below 99.9%, up to a maximum of thirty percent (30%) of the Subscription Service monthly fee. Any such credit shall be applied to Company's next invoice (or refunded if there are no forthcoming invoices). This credit is Company's sole and exclusive remedy. Any obligations of CloudBolt under this Exhibit shall become null and void upon any breach by Company of the Agreement, including any failure by Company to meet payment obligations to CloudBolt.

**3. Reporting.** To file a claim under this Exhibit, Company must send an email to support@cloudboltsoftware.com with the following details:

- Billing information, including company name, billing address, billing contact and billing contact phone number;
- Downtime information with dates and time periods for each instance of downtime during the relevant period; and
- An explanation of the claim made under this Exhibit, including any relevant calculations.

Claims may only be made on a calendar quarter basis and must be submitted within 10 business days after the end of the relevant quarter, except for periods at the end of a subscription period that do not coincide with a calendar quarter, in which case Company must make any claim within 10 business days after the end of the subscription period.

All claims will be verified against CloudBolt's applicable system records. Should any periods of downtime submitted by Company be disputed, CloudBolt will provide to Company a record of the Subscription Service availability for the period in question. CloudBolt will only provide records of system availability in response to good faith Company claims.