CloudBolt Kubernetes Advanced Optimization - Addendum to Agreement

This Addendum (the "**Addendum**") governs Customer's use of the CloudBolt Kubernetes Advanced Optimization product ("K8s Optimization"), as defined herein. K8s Optimization is provided pursuant to the applicable agreement between Customer and CloudBolt regarding Customer's use of CloudBolt's products and services (the "**Agreement**"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement.

By accessing or otherwise using the K8s Optimization, Customer shall comply with the terms of this Addendum.

1.   **Definitions**. As used in this Addendum, the following capitalized terms shall have the following meanings:

1.1. "**CloudBolt Data**" means, for purposes of K8s Optimization, in addition to CloudBolt Data as defined the underlying agreement, any and all data, databases, information, content and materials, that are either (i) provided to Customer by CloudBolt for use in connection with K8s Optimization, and all results from processing the same in the course of using K8s Optimization; or (ii) derived by or through K8s Optimization from processing Customer Data and are sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from inspection, analysis or further processing.

1.2   "**Customer Configuration**" means the Customer specific configurations recommended by K8s Optimization for Customer's Kubernetes Deployment based upon K8s Optimization's review of Customer Data.

1.3. "**Customer Data**", for purposes of K8s Optimization only, in addition to Data as defined the underlying agreement, includes (a) any and all data, databases, information, content and materials, which are submitted by Customer or gathered in connection with K8s Optimizations regarding the Customer's Kubernetes Deployment which is specific and identifiable to Customer; and (b) the Customer Configurations.

1.4. "**Customer Kubernetes Deployment**" means a deployment managing a set of Kubernetes pods which are executing containerized applications for Customer's internal business purposes only, as applicable.

1.5. "**K8s Optimization**" means CloudBolt's K8s Software Agent and hosted software service (and related applications, libraries, containers, user interfaces, analytics tools, on-line help, and associated Documentation) intended (i) to assess and gather data regarding a Customer Kubernetes Deployment, (ii) to provide that data to CloudBolt's artificial intelligence algorithms to allow the algorithms to generate Customer Configuration recommendations, (iii) to deploy those Customer Configuration recommendations on CloudBolt's managed servers to control Customer Kubernetes Deployment in real time to implement such recommendations and gather data regarding the impact thereof, and (iv) to continue this process on an ongoing basis to continually tweak and improve Customer's Kubernetes Deployment as environmental circumstances change. The K8s Optimization shall be considered a "Subscription Service" under the Agreement.

1.6   "**K8s Software Agent**" means the software distributed to Customer for its installation to allow for monitoring and collection of Customer Data and delivery of Customer Configurations, each through interaction with K8s Optimization. The K8s Software Agent shall be considered "Software" under the Agreement, and if such term is not defined under the Agreement, "Software" shall include the K8s Software Agent, together with any fixes, updates or other software code related to the foregoing that is provided to Customer pursuant to Software Maintenance and Support and that is not subject to a separate license agreement.

1.7   "**User ID**" means the access credentials in the form of a user name, identification number, password, license or security key, token, PIN, or other security code, method, or device used, alone or in combination to verify an individual's identity and authorization to access and use the K8s Optimization.

2.   **Usage**.

2.1. *Permitted Usage*. Subject to Customer's compliance with the Agreement and this Addendum, Customer may access and use K8s Optimization by (a) installing a reasonable number of copies of the K8s Software Agent on Customer's systems; (b) accessing the K8s Optimization through the K8s Software Agent using valid User IDs; (c) using K8s Optimization to gather Customer Data regarding the Customer Kubernetes Deployment, and to generate and apply Customer Configuration recommendations for its management; in each case, solely for Customer's internal business purposes.

2.2. *Customer Responsibility and Customer Configurations*. Customer will ensure that: (i) it maintains the Customer Kubernetes Deployment in proper format as specified by the Documentation and provides K8s Optimization with licensed access to it; (ii) its Users are familiar with the use and operation of K8s Optimization; and (iii) it does not introduce other software, data, or equipment having an adverse impact on K8s Optimization. Customer shall be responsible for configuring its internal processes, as needed, to utilize K8s Optimization in connection with Customer's computing environment. Customer, not CloudBolt, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and right to use of all Customer Data and Customer Configurations, and CloudBolt shall not be responsible or liable for any deletion, correction, destruction, damage, loss, or failure to store any Customer Data that is caused by Customer or a User, or the use or misuse of User credentials by a third party.

2.3. *Suspension*. CloudBolt may suspend the provision of K8s Optimization to Customer or an applicable User in the event of an actual or reasonably suspected (a) breach of usage restrictions set forth in this Addendum and the Agreement; (b) attack on or vulnerability of the security of CloudBolt's or its other customers' systems, data, hardware or software; (c) extreme excess usage of K8s Optimization that is not reasonably addressed following notice; or (d) other misuse of K8s Optimization.

3. **Intellectual Property**.

3.1. *K8s Materials.* This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to K8s Optimization or CloudBolt Data, or to the Intellectual Property Rights therein owned by CloudBolt. CloudBolt's name and logo are trademarks of CloudBolt or third parties, and no right or license is granted to use them. CloudBolt and its licensors, as applicable, shall exclusively own all right, title, and interest in and to K8s Optimization and CloudBolt Data, copies, modifications, and derivative works thereof, excepting only the copyright in the Customer Configurations. CloudBolt shall own any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Customer or any other party relating to K8s Optimization or CloudBolt Data, including all related Intellectual Property Rights thereto, specifically excluding Customer Data. All rights not expressly granted to Customer herein are reserved to CloudBolt and its licensors. For purposes of the Agreement, K8s Materials are included as Subscription Materials.

3.2. *Customer Data.* As between CloudBolt and Customer, Customer owns and shall retain all right, title, and interest, including, without limitation, all Intellectual Property Rights, in and to the Customer Data other than the Customer Configurations (which are discussed in Section 3.3 below). Notwithstanding anything to the contrary contained herein, Customer hereby grants to CloudBolt an irrevocable, fully paid up, worldwide, royalty free, non-exclusive, transferable, sublicensable license to use the Customer Data: (i) to make available K8s Optimization to Customer; (ii) to analyze the Customer Data in anonymized or aggregate form in order to operate, maintain, manage, and improve K8s Optimization, create new products and services, and share or license such anonymized or aggregate data to Affiliates, agents, business partners, and other third parties; and (iii) for CloudBolt's internal purposes to improve K8s Optimization and related services, and any other uses disclosed in or related to performance under this Agreement. Customer represents and warrants that Customer owns or all has necessary rights to use the Customer Data and has all necessary rights to use K8s Optimization in conjunction with the Customer Kubernetes Deployment to generate Customer Data and to manage the Customer Kubernetes Deployment.

3.3. *Customer Configurations.* As between CloudBolt and Customer, Customer owns the copyright in any specific Customer Configuration generated hereunder. In addition, each specific Customer Configuration shall be Customer's Confidential Information. However, for clarity, the Customer acknowledges that many Kubernetes deployments are similar, and that K8s Optimization's artificial intelligence may make similar recommendations for other CloudBolt clients. As such, Customer acknowledges and agrees that Customer's ownership of the copyright in each Customer Configuration (i) does not include ownership of any concepts or inventions embodied in the Customer Configuration which are not specific and unique to Customer-supplied Customer Data; (ii) will not require CloudBolt to obtain Customer's consent or any form of license from Customer for CloudBolt to prepare similar configurations for other Customers, even if such configurations may contain the same or substantially similar copyrighted materials; and (iii) does not transfer to Customer ownership of any CloudBolt Data or of any portion of the Intellectual Property Rights in K8s Optimization.

4. **Data Protection and Information Security**.

4.1. *Personal Information.* As used in this Addendum, "Personal Information" means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information, which is linked or linkable to a specific individual. The intended purpose of K8s Optimization is not to accept or use Personal Information, and any access to Personal Information related thereto will likely be incidental. Customer acknowledges that the use of K8s Optimization does not require, and that CloudBolt does not desire to receive from Customer, the "onward transfer" of Personal Information of any third party; and Customer shall not transfer to CloudBolt or K8s Optimization any personal data of a third party that is governed by the European Union General Data Protection Regulation or the UK GDPR.

4.2. *Information Security.* CloudBolt and Customer shall each maintain and enforce reasonable technical and organizational safeguards against accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access of CloudBolt Data and Customer Data that are at least equal to industry standards for applications similar to K8s Optimization. Because the success of this process depends on equipment, software, and services over which CloudBolt has limited control, Customer agrees that CloudBolt does not have any responsibility or liability for the deletion or failure to store any Customer Data or Customer Configurations stored or generated by K8s Optimization. Customer shall be responsible for backing up its own Customer Data and maintaining the operation of the Customer Kubernetes Configurations.

5. **Warranty Disclaimers**.

5.1. *Warranty Disclaimers.* CLOUDBOLT DOES NOT MAKE AND EXPRESSLY DISCLAIMS, AND CUSTOMER EXPRESSLY WAIVES, ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, OR ARISING BY CUSTOM, COURSE OF DEALING, TRADE USAGE, OR ANY OTHER DOCUMENTATION OR MATERIALS NOT EXPLICITY INCORPORATED INTO THE TERMS OF THIS AGREEMENT, AND WHETHER RELATING TO COMPATIBILITY, SECURITY, AND/OR FREEDOM FROM VIRUSES, OR ANY OTHER WARRANTY, AND SPECIFICALLY, CLOUDBOLT MAKES NO WARRANTY OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. K8s OPTIMIZATION MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. CLOUDBOLT IS NOT RESPONSIBLE FOR ANY SUCH DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS BEYOND ITS CONTROL.

5.2. *Use of Customer Configurations.* CUSTOMER ACKNOWLEDGES AND AGREES THAT (1) THE CUSTOMER CONFIGURATION RECOMMENDATIONS GENERATED BY THE K8S OPTIMIZATION ARE ONLY RECOMMENDATIONS; (2) CUSTOMER AT ALL TIMES REMAINS SOLELY RESPONSIBLE FOR THE DECISIONS AS TO CUSTOMER CONFIGURATIONS (FOR CUSTOMER) AND THE PARTICULAR REQUIREMENTS OF CUSTOMER'S OWN ENVIRONMENT; (3) CLOUDBOLT MAKES NO WARRANTIES AS TO THE APPROPRIATENESS OF THE RECOMMENDATIONS FOR THE PARTICULAR REQUIREMENTS OF THE CUSTOMER KUBERNETES DEPLOYMENT; AND (4) CUSTOMER IS RESPONSIBLE FOR MAKING APPROPRIATE USE OF THE CONFIGURATION SETTINGS MADE AVAILABLE BY CLOUDBOLT TO SET LIMITS ON THE CUSTOMER CONFIGURATION RECOMMENDATIONS AS APPROPRIATE FOR CUSTOMER'S OWN NEEDS.

6.   **K8s Software Agent**. To the extent that the Agreement does not contain equivalent provisions governing the use of "Software," the following terms shall apply to Customer's use of the K8s Software Agent. Customer acknowledges that the K8s Software Agent and the structure, sequence, organization, user interface and source code of the K8s Software Agent constitute valuable trade secrets of CloudBolt. Accordingly, except as expressly authorized by CloudBolt in writing, Customer will not and will not permit any third party to: (a) sell, lease, license, distribute, sublicense or otherwise transfer in whole or in part the K8s Software Agent or its Documentation to any third party; (b) except as otherwise permitted under applicable law, decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the K8s Software Agent, in whole or in part; (c) copy the K8s Software Agent, except for installations of the K8s Software Agent permitted hereunder and one copy for archival purposes; (d) circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the K8s Software Agent as described herein; (e) translate, modify or create derivative works based upon the K8s Software Agent; (f) permit any use of or access to the K8s Software Agent by any third party except for Customer's contractors and service providers solely for purposes of providing services to Customer in connection with its use of K8s Optimization hereunder; (g) remove any product identification, proprietary, copyright or other notices contained in the K8s Software Agent; (h) operate the K8s Software Agent on behalf of or for the benefit of any third party; including the operation of any service that is accessed by a third party; or (i) benchmark the operation of the K8s Software Agent without CloudBolt's prior written consent. Customer acknowledges and agrees that Customer may not use the K8s Software Agent in conjunction with, or with the assistance of, any codes, keys, mechanisms, or hardware or software components that are meant to circumvent the protection and that are supplied to Customer by someone other than CloudBolt or one of its authorized distributors. The K8s Software Agent may include or be distributed together with certain components licensed by third parties that are subject to "free software," "open source," or similar license terms. Those components are subject to the applicable terms of the corresponding open source licenses, which shall prevail in the event of any conflict with the provisions of this Section 6, but solely to the limited extent of such conflict. For the avoidance of doubt, any terms of the Agreement applicable to confidentiality, use restrictions, indemnities, warranty disclaimers, limitations of liability, export restrictions and U.S. Government restricted rights regarding the Subscription Service shall also apply to the K8s Software Agent.

CloudBolt and Customer have caused this Addendum to be executed by their duly authorized representatives as of the Effective Date.

CloudBolt Software, Inc.   _____ (Customer)

Name: Name:

Signature: Signature:

Title: Title:

Date: Date: