

**MANAGED SERVICES PROVIDER LICENSE AGREEMENT  
(Private Cloud and Subscription Service)**

This Managed Services Provider License Agreement, including the Order Form which by this reference is incorporated herein (this "**Agreement**"), is a binding agreement between CloudBolt Software, Inc. ("CloudBolt") and the entity identified on the Order Form as the customer procuring CloudBolt's products and services for use in its managed service/cloud service business environment ("**Company**" or "**You**"). This Agreement is effective as the date of the Order Form or the date of first access to the Software and/or the Subscription Service, whichever is earlier.

CLOUSBOLT PROVIDES THE SOFTWARE AND SUBSCRIPTION SERVICES SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT COMPANY ACCEPTS AND COMPLIES WITH THEM. BY SIGNING THE ORDER FORM OR PROVIDING A PURCHASE ORDER REFERENCING THE ORDER FORM YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT COMPANY IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF COMPANY AND BIND COMPANY TO ITS TERMS. IF COMPANY DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, CLOUSBOLT WILL NOT AND DOES NOT PROVIDE A LICENSE TO THE SOFTWARE OR SUBSCRIPTION SERVICE TO COMPANY AND YOU MUST NOT DOWNLOAD/INSTALL OR ACCESS OR ACCEPT PROVISION OF THE SOFTWARE OR SUBSCRIPTION SERVICE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR YOUR OR COMPANY'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE OR SUBSCRIPTION SERVICE THAT COMPANY DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF CLOUSBOLT'S SOFTWARE OR SUBSCRIPTION SERVICE.

CloudBolt and Company may each be individually referred to as a "**Party**" or collectively as the "**Parties**".

**RECITALS**

- A. CloudBolt licenses certain proprietary software and subscription services for deploying and managing virtual machines, applications and other information technology (IT) resources.
  - B. Customer is an IT managed services provider that provides a variety of services for its customers, including technology resource allocation and management.
  - C. Customer desires to use the CloudBolt Software and/or Subscription Services (each as defined below) for its and its Managed Clients' (as defined below) needs and CloudBolt desires to license the Software and/or Subscription Services to Customer 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.**

- 1.1 "*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.
- 1.2 "*Authorized Partner*" means an entity with whom CloudBolt has authorized to resell CloudBolt's products and services.
- 1.3 "*Business Contact Data*" means information that would enable an individual to be contacted at a place of business and includes name, position name or title, business telephone number, business address, business email or business fax number.
- 1.4 "*CloudBolt Software Agent*" is Software that may be licensed solely for use with the Subscription Service and that is made available to Customer by CloudBolt for installation on end user computers.
- 1.5 "*CloudBolt Software Agent License Key*" means a serial number that enables Customer to activate and use the CloudBolt Software Agent to connect to the CloudBolt Platform Subscription Service. A unique CloudBolt Software Agent License Key is required for each separate instance of the CloudBolt Software Agent licensed.
- 1.6 "*CloudBolt Data*" means all Data made available by CloudBolt to Customer in connection with the Customer's use of the Subscription Service.
- 1.7 "*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 Customer by CloudBolt in providing the Subscription Service.
- 1.8 "*Confidential Information*" has the meaning given to it in Section 10.
- 1.9 "*Customer Data*" means all Data that are uploaded by or on behalf of Customer or a User to the Subscription Service.
- 1.10 "*Data*" means text, images, materials, photos, audio, video, and all other forms of data or communication.

- 1.11 “Documentation” means the documentation for the Software or Subscription Service generally supplied by CloudBolt to assist its customers in the use of the Software or Subscription Service, including user and system administrator guides and manuals and other written materials, including the software functional specifications.
- 1.12 “Employee” means (i) full-time or part-time employees of a Party, and (ii) individuals of professional service corporations who supplement a Party’s workforce.
- 1.13 “Feedback” means any Customer provided feedback and reports about any errors, problems, or defects in, or suggestions for changes and improvement to the Software, Subscription Service or Pre-Release Products.
- 1.14 “Intellectual Property Rights” means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.
- 1.15 “License Key” means a serial number that enables Customer to activate and use the Software for a set quantity of VMs licensed.
- 1.16 “License Term” means the term of the license for the Software as set forth in the Order Form and any renewal of the License Term.
- 1.17 “Losses” means all claims, actions, proceedings, damages, losses, liabilities and expenses, including reasonable attorney fees.
- 1.18 “Open Source Software” or “OSS” means software components that are licensed under a license approved by the Open Source Initiative or similar open source or freeware license.
- 1.19 “Order Form” means each CloudBolt ordering document signed by (i) duly authorized representatives of both Parties, which identifies the specific Software and/or Service ordered by Customer, sets forth the prices for the Software and/or Service which may contain supporting definitions and other applicable terms and conditions. Order Forms are incorporated herein by reference.
- 1.20 “Pre-Release Product(s)” means any software or subscription service product offered by CloudBolt to Customer on a trial, demonstration, product extension, proof of concept and/or evaluation basis.
- 1.21 “Private Cloud FinOps Data” means usage data such as workload utilization, metadata, events and infrastructure inventory collected through the CloudBolt Software Agent.
- 1.22 “Server” or “VM” means any physical computer, hardware based 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.
- 1.23 “Services” means the Subscription Service, Software Maintenance and Support and Subscription Service Support.
- 1.24 “Software” means the object or interpreted code of the computer software listed in the Order Form, together with any fixes, updates or other software code relating to the foregoing that may be provided to Customer pursuant to Software Maintenance and Support and that is not subject to a separate license agreement.
- 1.25 “Software Maintenance and Support” means CloudBolt’s maintenance and support services for the Software.
- 1.26 “Standard Onboarding” means the standard services to onboard a customer as set forth in the Documentation.
- 1.27 “Subscription Service” means CloudBolt’s proprietary subscription-based software-as-a-service offering set forth on an Order Form.
- 1.28 “Subscription Service Support” means CloudBolt’s support services for the Subscription Service.
- 1.29 “Subscription Service Term” means the set term for the Subscription Service designated on an Order Form and any renewal of the Subscription Service Term.
- 1.30 “Third Party Agent” means a third party outsourcer providing information technology services for Customer’s internal use, pursuant to a written contract.
- 1.31 “Users” mean individuals who are authorized by the Customer to use the Software, Subscription Service or Pre-Release Products solely on Customer’s behalf and who have been supplied passwords or access by the Customer (or by CloudBolt at the Customer’s request). Users may consist of any Employee of the Customer or its Affiliates, any independent contractor of the Customer or its Affiliates and Third Party Agents.

## 2.0 LICENSE GRANT

### 2.1 Software

- A. Scope of License. Subject to the terms and conditions of this Agreement and the applicable Order Form, and subject to Customer’s payment of all License Fees, CloudBolt hereby grants to Customer during the License Term, a limited, non-exclusive, non-sublicensable, non-transferable license to: (a) access, use and operate the Software on the number of VMs listed on the Order Form for which the applicable License Fees have been paid; and (b) use and make a reasonable number of copies of the Documentation, in each case solely for Customer’s and Customer’s Managed Client’s internal operations and solely in accordance with the Documentation, this Agreement and other applicable limitations, if any, set forth in the Order Form.
- B. User’s Use. Customer is solely responsible for the use of the Software by its and its Managed Clients’ Users and shall properly train its and its Managed Clients’ Users in the use and application of the Software. Subject to the terms and conditions of this Agreement, Customer may permit (i) Users of Customer to access, use and operate the Software on Customer’s or its Managed Clients’ behalf, as applicable, solely to deliver services to Customer or its Managed Clients, as applicable, and (ii)

Managed Clients to access the outputs of the Software solely to utilize the managed services provided by Customer. Any breach of the terms of this Agreement by a Managed Client or a User shall be deemed to be a breach by Customer.

- C. Permitted Software Copies. Customer may make one copy of the Software for testing, disaster recovery, and archival purposes only. The copy shall: (a) be kept within Customer's possession or control; (b) include all titles and proprietary and restricted rights notices in the original; and (c) be subject to the terms of this Agreement.
- D. Open Source Software. CloudBolt may provide OSS or make OSS accessible with the Software. CloudBolt shall provide information and, if required, license terms regarding such OSS in Customer README or text files, in the Documentation, on a webpage, or upon request. Customer's and/or its Managed Clients' use of the Software is deemed acceptance by Customer or its Managed Client of such OSS license terms. Such use of such OSS shall be governed by and subject to the license terms provided by the third-party licensor of such OSS, and not by this Agreement.
- E. Restrictions. Except as expressly authorized by CloudBolt in advance, Customer will not and will not permit any Managed Client, User or any other third party to, in whole or part: (a) sell, lease, license, distribute, sublicense or otherwise transfer the Software or Documentation to any third party; (b) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, except to the extent permitted by Section 2.1(F); (c) copy the Software or Documentation, except to the extent permitted by Section 2.1(C); (d) circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Software described in this Agreement or the Documentation; (e) exceed the number of VMs listed in the Order Form; (f) translate, modify or create derivative works based upon the Software or Documentation; (g) permit any use of or access to the Software by any third party other than Customer's Users that require access to use the Software on behalf of Customer (or the applicable Managed Client), and then only in a matter permitted by this Agreement; (h) remove any product identification, proprietary, copyright or other notices contained in the Software; (i) operate the Software on behalf of or for the benefit of any third party (other than its Managed Clients), including the operation of any service that is accessed by a third party; (j) use the Software for purposes of: (i) benchmarking or competitive analysis of the Software; (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to CloudBolt's detriment or commercial disadvantage; (k) use the Software in conjunction with, or with the assistance of, any codes, keys, mechanisms, or hardware or software components intended to circumvent protective measures in the Software; (l) bypass or breach (or attempt to bypass or breach) any security device or protection used for or contained in the Software or Documentation; or (m) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, or that violates applicable law.
- F. Decompilation. Customer hereby waives any right it may have in any jurisdiction, and shall not permit any Managed Client, User, or other third party, to decompile, disassemble or reverse engineer the Software, provided, however, if European Community Law is applicable, the restrictions in this Section 2.1 (F) are limited so that they prohibit such activity only to the maximum extent possible without violating the EC Directive on the Legal Protection of Computer Programs, and, in any event, Customer or its Managed Clients may only engage in decompiling, disassembly or reverse engineering of the Software if it first issues a written request to CloudBolt for information or assistance and CloudBolt cannot, or fails, to comply with such request within a commercially reasonable period of time.
- G. Standard Software Maintenance and Support. CloudBolt's Standard Software Maintenance and Support is provided to Customer during the License Term at no additional fee. Standard Software Maintenance and Support terms can be found at [www.cloudbolt.io/legal](http://www.cloudbolt.io/legal). Customer shall be responsible for escalating support tickets from their Managed Clients to CloudBolt by using CloudBolt's support portal or emailing CloudBolt with the detailed information.
- H. Standard Onboarding. Standard Onboarding as set forth in the Documentation is provided at no additional fee to the Customer. Additional support beyond the Standard Onboarding can be provided via CloudBolt's professional services organization at CloudBolt's standard professional services rates.
- I. Ownership. The Software and Documentation, all copies and portions thereof, and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of CloudBolt and its licensors. Customer's rights to use the Software and Documentation shall be limited to those expressly granted in this Agreement and any applicable Order Form. No other rights with respect to the Software or any related Intellectual Property Rights are implied. Customer is not authorized to use (and shall not permit any third party to use) the Software, Documentation or any portion thereof except as expressly authorized by this Agreement or the applicable Order Form.

## 2.2 Subscription Services.

- A. Subscription Service. Subject to the terms and conditions of this Agreement and the applicable Order Form, CloudBolt will make the Subscription Service available to Customer for the Subscription Service Term solely for access and use by Customer and its Users solely for Customer's and Customer's Managed Client's internal operations in accordance with the terms and conditions of this Agreement, the Documentation, and the Order Form. Customer shall be responsible for each of its Managed Clients' and User's compliance with the terms of this Agreement. To the extent Customer licenses the CloudBolt Software Agent for use with the Subscription Service, CloudBolt grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive license during the Subscription Service Term to use the object code form of the CloudBolt

Software Agent internally solely in connection with Customer's use of the Subscription Service, subject to the terms and conditions of this Agreement and the Documentation.

- 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 Customer, its Users or its Managed Clients in the course of using the Subscription Service (collectively, the "Subscription Materials").
- C. **Standard Subscription Service Support.** CloudBolt's Standard Subscription Service Support is provided to Customer during the Subscription Service Term at no additional fee. Standard Subscription Service Support terms can be found at [www.cloudbolt.io/legal](http://www.cloudbolt.io/legal). Customer shall be responsible for escalating support tickets from their Managed Clients to CloudBolt by using CloudBolt's support portal or emailing CloudBolt with the detailed information.
- D. **Standard Onboarding.** Standard Onboarding as set forth in the Documentation is provided at no additional fee to the Customer. Additional support beyond the Standard Onboarding can be provided via CloudBolt's professional services organization at CloudBolt's standard professional services rates.
- E. **Acceptable Use.** Customer is responsible for procuring and maintaining the network connections that connect the Customer to the Subscription Service. The Customer agrees: (a) that only authorized Users and 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 and the Documentation from unauthorized use and/or access. Customer is also responsible for all activities conducted under its User logins and for its Users' and Managed Clients compliance with this Agreement. Neither the Customer nor its Users or Managed Clients shall use the Subscription Service to: (a) send, upload or otherwise transmit any Customer 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 Customer 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. Customer will also not (and will not permit any third party to): (i) sell, rent, lease, license, distribute, provide access to, sublicense, or otherwise make available any Subscription Service to a third party or in a service bureau or outsourcing offering; (ii) 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; (iii) 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 (iv) remove or obscure any proprietary or other notices contained in any Subscription Service. Other than Business Contact Data, Customer agrees not to upload and not to permit its Users and Managed Clients to upload to the Subscription Service or provide CloudBolt access to any type of Personally Identifiable Information as defined by applicable data protection laws.
- F. **Ownership.** Customer acknowledges and agrees that (a) as between CloudBolt and Customer, 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 (b) 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, Customer or its licensors retain all right, title and interest (including any and all Intellectual Property Rights) in and to the Customer Data and Private Cloud FinOps Data and any modifications made thereto in the course of the operation of the Subscription Service. Subject to the terms of this Agreement, Customer hereby grants to CloudBolt a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of, and display the Customer Data and Private Cloud FinOps Data solely to the extent necessary to provide the Subscription Service to Customer, or to prevent or address service or technical problems under this Agreement, or as may be required by law.
- G. **Handling of Customer Data and Private Cloud FinOps Data Upon Termination.** Customer agrees that following termination of Customer's account and/or use of the Subscription Service, CloudBolt may immediately deactivate Customer's account and that following a reasonable period of not less than 30 days shall be entitled to delete Customer's account from CloudBolt's "live" site. Customer further agrees that CloudBolt shall not be liable to Customer nor to any third party for any termination of Customer's access to the Subscription Service or deletion of Customer Data and Private Cloud FinOps Data.
- H. **Users: Passwords, Access and Notification.** Customer shall authorize access to and assign unique passwords to the Users or its Managed Clients. Customer will be responsible for the confidentiality and use of the User's and its Managed Clients'

passwords. Customer agrees to immediately notify CloudBolt if Customer becomes aware of any loss or theft or unauthorized use of any of Customer's, User's or Managed Clients' passwords.

- I. **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.
- J. **Sufficient Rights in Customer Data.** Customer will ensure that (a) all use of the Subscription Service and any Customer's, User's or Managed Clients' Data and Private Cloud FinOps Data is at all times compliant with the terms of this Agreement, Customer's privacy policies, and all applicable laws and regulations and conventions, (b) it has sufficient rights in the Customer, User and Managed Client Data and Private Cloud FinOps Data to grant the rights granted to CloudBolt hereunder; and (c) the Customer, User and Managed Client Data and Private Cloud FinOps Data does not infringe or violate the intellectual property, publicity, privacy or other rights of any third party. Customer is solely responsible for the accuracy, content and legality of all Customer, User and Managed Client Data and Private Cloud FinOps Data.

### **3.0 FEES; ORDERS; DELIVERY.**

3.1 **License Fees.** Customer agrees to pay CloudBolt for the Software and Services provided and expenses incurred on the basis and at the rates specified in each Order Form, as the case may be ("License Fee(s)"). Unless otherwise set forth on the Order Form, payment shall be due within thirty (30) days after the date of CloudBolt's invoice and shall be made in US Dollars. Customer agrees to pay a late charge of one and half percent (1/2%) per month (or part of a month), or the maximum lawful rate permitted by applicable law, whichever is less, for all amounts, not subject to a good faith dispute, and not paid when due.

3.2 **Taxes.** Customer shall be solely and exclusively responsible for the payment of required federal, state and local taxes arising from or relating to the Software and Services rendered hereunder, except for taxes related to the net income of CloudBolt and any taxes or obligations imposed upon CloudBolt under federal, state and local laws.

3.3 **Orders.** Orders for Software and/or Services shall be made via Order Forms. Customer 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 Services hereunder through any of its Employees or Affiliates.

3.4 **Delivery.** CloudBolt will deliver all Software to Customer by issuing License Keys via electronic transfer and will not use or deliver any tangible media (e.g., computer discs) in connection with the delivery, installation, updating or problem resolution of any Software.

### **4.0 RECORDS AND LICENSE VERIFICATION.**

4.1 **Records.** Customer agrees to maintain complete, current and accurate records of its use of the Software sufficient to demonstrate Customer's compliance with the terms of this Agreement and all Order Forms.

4.2 **License Verification.** Upon reasonable notice to Customer and not more than once in any 12-month period (except as set forth below), CloudBolt, may request verification and certification by Customer that Customer has: (a) used the Software solely in the manner authorized herein; (b) paid all applicable fees; and (c) otherwise complied with the terms of this Agreement and all Order Forms. Customer agrees to promptly pay CloudBolt any underpayments revealed by such verification and certification.

### **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 Service Warranty.** CloudBolt warrants that during the Subscription Service 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 Customer, provide remedial services necessary to enable the Subscription Service to conform to the warranty. The Customer 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 Customer in accordance with the Order Form and this Agreement. If CloudBolt determines that it is unable to fix the Subscription Service to make it conform, in all material respects, with the Documentation, CloudBolt will refund to Customer any unused prepaid fees for the Subscription Service and Customer's right to use such Subscription Service will terminate. The remedies set out in this subsection are Customer's sole remedies for breach of the above warranty.

5.3 **Software Warranty.** CloudBolt warrants that the Software will substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and always used in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than CloudBolt or its authorized

representative. CloudBolt will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of the foregoing warranty, either replace the applicable Software or correct any reproducible error in the Software reported to CloudBolt by Customer in writing. If CloudBolt determines that it is unable to correct the error or replace the Software, CloudBolt will refund to Customer a prorated amount of the License Fees actually paid by for the applicable Software and Customer's right to use such Software will terminate. The remedies set out in this subsection are Customer's sole remedies for breach of the above warranty.

5.4 Software Maintenance and Support and Subscription Services Support Warranty. CloudBolt warrants that it will provide Software Maintenance and Support and/or the Subscription Service Support to Customer in a professional and workmanlike manner by skilled and proficient personnel.

5.5 DISCLAIMER OF WARRANTIES. THE PRE-RELEASE PRODUCTS ARE PROVIDED AS-IS, WITH NO WARRANTIES OF ANY KIND. CLOUDBOLT DOES NOT REPRESENT THAT THE SERVICES, SOFTWARE OR PRE-RELEASE PRODUCTS WILL BE ERROR-FREE OR THAT THE SERVICES, SOFTWARE OR PRE-RELEASE PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICES, SOFTWARE OR PRE-RELEASE PRODUCTS WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SUBSCRIPTION SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 5 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY CLOUDBOLT. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES, SOFTWARE OR PRE-RELEASE PRODUCTS ARE ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

5.6 High-Risk Activities. The Software and 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 Software and/or 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. Customer assumes all risk of loss or damage for use of the Software and/or Subscription Services in High-Risk Activities.

## 6.0 RESERVATION OF RIGHTS.

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

6.2 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 Customer's, its Managed Clients' and Users' use of the Software or Subscription Services, including, but not limited to, the license serial number, the Software's unique identifier, a total count of managed resources, Connectors or total count of users, other pieces of data including compilation of aggregated statistics about the Software, Subscription Services and use thereof, and any anonymous data and learnings regarding use of the Software and/or 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 Customer, its Managed Clients or its Users.

6.3 Feedback. Customer may provide suggestions, enhancement requests, recommendations or other feedback ("**Feedback**") through the CloudBolt knowledge base, community forum(s) or Customer's use of the Software, Subscription Services or Documentation. Customer 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 Software, Subscription Services, Documentation or other CloudBolt products or services) and without any confidentiality obligation in any manner whatsoever.

## 7.0 INDEMNIFICATION.

7.1 Indemnification by CloudBolt. CloudBolt shall defend, indemnify and hold harmless Customer, 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 Software, Subscription Services or Documentation 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 Customer 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 Customer or a Managed Client with respect to which CloudBolt has obligations under Section 7.1(a), or in CloudBolt's opinion, the Software, Subscription Services or Documentation is likely to be the subject of an Infringement Claim, then at CloudBolt's sole option and expense, CloudBolt may: (a) procure for Customer or its Managed Clients the right to continue to use the Software, Subscription Services or infringing part thereof; (b) modify or amend the Software, Subscription Services or infringing part thereof; or (c) replace the Software, 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 the applicable Order Form(s) with respect to the infringing Software or Subscription Services (as reasonably determined by CloudBolt) upon notice to Customer and CloudBolt shall refund to Customer any prepaid unused License Fees attributable to the infringing Subscription Services and/or a prorated amount of any prepaid License Fees paid for the infringing Software. Section 7.1 and this Section 7.2 state CloudBolt's entire liability and Customer's sole and exclusive remedy for any violation or infringement of Intellectual Property Rights.

7.3 **Indemnification by Customer.** Customer 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) Customer's, its Managed Clients' or its Users' use of the Software or Subscription Services in violation of the terms of this Agreement, the Documentation, or a Order Form; (b) Customer's breach of this Agreement or Customer's Managed Clients' or Users' breach of the terms of this Agreement; (c) an Exclusion; or (d) Customer's, its Managed Clients' or its Users' 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 CUSTOMER, 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 CUSTOMER'S, ITS MANAGED CLIENTS' OR ITS USERS' 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 CUSTOMER'S, ITS MANAGED CLIENTS' OR ITS USERS' USE OF THE SOFTWARE, 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 CUSTOMER 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 Software and/or Subscription Services 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 **License Term and/ or Subscription Service Term.** The License Term and/or Subscription Service Term shall be as set forth on the Order Form. The License Term and/or Subscription Service Term shall commence on the Effective Date and shall continue for the duration of the initial License Term and/or Subscription Service Term or Renewal Term (as defined herein) unless terminated earlier as set forth in this Section 9.0. Each License Term and Subscription Service Term shall automatically renew for subsequent periods of the same length as the initial License Term or Subscription Service 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 License Term or Subscription Service 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 License Term or Subscription Service 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 10.0), 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 Software, Subscription Services and Documentation granted to Customer and its Users and Managed Clients under this Agreement will immediately cease; (b) CloudBolt may suspend or terminate Customer's and its User's and Managed Clients' use of the Software, Subscription Services, including remotely through the use of License Keys or by other means, without liability to Customer or its Users or its Managed Clients on account of such termination; (c) Customer shall promptly discontinue, and cause its Users and Managed Clients' to discontinue, as applicable, all use of all Software, Subscription Services and Documentation, destroy any and all copies of the Software, Documentation and all License Key(s), and all access to the Subscription Services and certify in writing to CloudBolt that it has complied with this Section; (d) all amounts payable by Customer to CloudBolt of any kind are immediately due and payable, or, if Customer is entitled to a refund pursuant to Sections 5.2, 5.3 or 7.2, then CloudBolt shall refund the applicable amount to Customer; and (e) Sections 1.0 (Definitions), 2.1 (D)(Open Source Software), 3.2 (Taxes), 4.0 (Records and License Verification), 5.5 (Disclaimer of Warranties), 5.6 (High-Risk Activities), 2.1(F) and 2.2(I) (Ownership), 6.0 (Reservation of Rights), 7.0 (Indemnification), 8.0 (Limitation of Liability), 9.4 (Effect of Termination), 10.0 (Confidential Information) and 13.0 (Miscellaneous) will survive any termination or expiration of this Agreement. Upon termination of this Agreement by CloudBolt due to Customer's uncured breach, in addition to any other remedies CloudBolt may have for such breach at law or in equity, Customer shall pay CloudBolt for all fees that had accrued prior to the termination date and, as liquidated damages and not as a penalty, Customer shall continue to pay CloudBolt for all License Fees that would have continued to accrue through the end of the then current term of any active Order Forms had it not been so terminated. Upon termination of this Agreement by Customer due to CloudBolt's uncured breach, in addition to any other remedies Customer may have for such breach at law or in equity, CloudBolt shall refund to Customer any prepaid unused License Fees for the Services and/or a prorated amount of any License Fees paid for the Software for any active Order Forms.

## **10.0 CONFIDENTIAL INFORMATION.**

10.1 **Confidential Information.** During the Agreement Term, each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature. The receiving party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity *except* to a director, officer, Employee, outside consultant, or advisor of the receiving party or its Affiliates (collectively "Representatives") who have a need to know such Confidential Information in the course of the performance of their duties for the receiving party and who are bound by a duty of confidentiality no less protective of the disclosing party's Confidential Information than this Agreement. The receiving party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the disclosing party. Each party accepts responsibility for the actions of its Representatives and shall protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The parties expressly agree that the terms and pricing of this Agreement are Confidential Information, and that the Software and Subscription Service are CloudBolt's Confidential Information. A receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder and shall cooperate with any reasonable request of the disclosing party in enforcing its rights. Upon request, a party shall promptly return or destroy all Confidential Information of the other party in its possession provided, however, that the receiving party may retain copies of Confidential Information that are stored on receiving party's IT backup and disaster recovery systems until the ordinary course deletion thereof. Receiving party shall continue to be bound by the terms and conditions of this Agreement with respect to such retained Confidential Information. The rights and obligations of the parties under this Section 10 shall expire three (3) years after the Effective Date; provided that with respect to Confidential Information that constitutes a trade secret under applicable law, such rights and obligations will survive such expiration until, if ever,



such Confidential Information loses its trade secret protection other than due to an act or omission of the receiving party or its Representatives.

10.2 **Exclusions.** Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party without use of the disclosing party's Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that, to the extent legally permissible, it gives the disclosing party reasonable prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

10.3 **Injunctive Relief.** Notwithstanding any other provision of this Agreement, both parties acknowledge that any use of the disclosing party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both parties agree that, in addition to any other remedy to which the disclosing party may be entitled hereunder, at law or equity, the disclosing party shall be entitled to seek injunctive relief to restrain such use in addition to other appropriate remedies available under applicable law.

## 11.0 CUSTOMER OBLIGATIONS.

11.1 Customer shall purchase and maintain Premier Software Maintenance and Support for the Software for the duration of every License Term and Subscription Term. The terms for Premier Software Maintenance and Support can be found at [www.cloudbolt.io/legal](http://www.cloudbolt.io/legal).

11.2 Customer shall be responsible for informing CloudBolt which VMs will be used in production and which VMs will be used for development or test purposes. Customer shall provide such information before use of any such VMs.

11.3 Customer shall ensure that the cron-based heartbeat command is enabled for all VMs at all times.

## 12. DATA SECURITY

12.1 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, Customer Data, Customer's Business Contact Data and Customer's Private Cloud FinOps Data, in accordance with applicable laws and CloudBolt's Privacy Policy located at <https://www.cloudbolt.io/privacy-policy/>.

12.2 Customer 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, CloudBolt Data and CloudBolt's Business Contact Data, in accordance with applicable laws and Customer's privacy policy.

12.3 Each Party will notify the other Party immediately following discovery of any suspected breach or compromise of the security, confidentiality, or integrity of any Customer or CloudBolt Data, Business Contact Data or Private Cloud FinOps Data. Written notification provided pursuant to this paragraph will include a brief summary of the available facts, the status of such Party's investigation, and if known and applicable, the potential number of persons affected by release of data relating to such person.

## 13. MISCELLANEOUS.

13.1 **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.

13.2 **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.

13.3 **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.

13.4 **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.

13.5 Dispute Resolution. This Section 13.5 only applies if Customer 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 seek 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.

13.6 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.

13.7 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.

13.8 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.

13.9 Compliance with Laws; Export Control; Government Regulations. Each Party shall comply with all Laws applicable to its actions contemplated by this Agreement. The Software is of United States origin, is provided subject to the U.S. Export Control Reform Act and other applicable statutes, may be subject to the export control laws of other applicable territories, and that diversion contrary to applicable export control laws is prohibited. Customer 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 Software 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.

13.10 U.S. Government Users. If Customer or any of its Managed Clients or Users is the U.S. Government (or the Software or 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 Customer*. The Software, 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 Customer is the U.S. Government, the Software, Subscription Services and Documentation 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 Customer 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, Customer shall immediately discontinue use of the Software or Subscription Services.

13.11 *Subcontractors.* CloudBolt may subcontract all or any portion of services performed under this Agreement without Customer'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.

13.12 *Notices.* Any notices or other communications required or permitted hereunder or required by law will be in writing and will be sent by email to CloudBolt at [legal@cloudbolt.io](mailto:legal@cloudbolt.io) and for Customer, to the email indicated in the signature block herein or on 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 stamped by recipient's email application (or, if not available, the time stamp of transmission by the sender's email application).

13.13 *Remedies.* Each Party acknowledges that a breach of Section 2.0 (License Grant) or 10.0 (Confidentiality) 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 prompt 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.

13.14 *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 a Party'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.

13.15 *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.

13.16 *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 Customer may use in connection with the acquisition or licensing of the Software or Services 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 to the extent the Order Form is intended to prevail per the terms of this Agreement.

13.17 *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.

13.18 *Pre-Release Products.* If CloudBolt provides Customer access to a Pre-Release Product, Customer is authorized to use the Pre-Release Products solely for the purpose of evaluating their functionality and technology and may not be used in production or with live data. Customer may use Pre-Release Products until CloudBolt withdraws or terminates access to them. CloudBolt may at any time suspend, revoke, limit or refuse participation in or use of the Pre-Release Products. At any time and at CloudBolt's sole discretion, CloudBolt may change the terms applicable to the Pre-Release Products, modify the computing environment, or withdraw its features, in whole or in part. Customer is responsible for the use of the Pre-Release Products by any of Customer's Users. CloudBolt makes no warranties or representations that a generally available product based on the Pre-Release Products will ever become available. Software Maintenance and Support, Subscription Services Support and Service Levels do not apply to the Pre-Release Products.