

## END USER LICENSE AGREEMENT TERM LICENSE FOR ON-PREMISE SOFTWARE

This End User 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 person or entity identified on the Order Form as the customer licensing the Software ("Licensee", "you" or "Customer"). This Agreement is effective as the date of the Order Form or the date of first access to the Software, whichever is earlier.

CLOUDBOLT PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT LICENSEE ACCEPTS AND COMPLIES WITH THEM. BY SIGNING THE ORDER FORM, PROVIDING A PURCHASE ORDER REFERENCING THE ORDER FORM, OR ACCESSING OR USING THE SOFTWARE, YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT LICENSEE IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF LICENSEE IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF LICENSEE AND BIND LICENSEE TO ITS TERMS. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, CLOUDBOLT WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO LICENSEE AND YOU MUST NOT DOWNLOAD/INSTALL THE SOFTWARE OR DOCUMENTATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR YOUR OR LICENSEE'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 THAT LICENSEE DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF CLOUDBOLT'S SOFTWARE.

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

### 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.

**"Connector"** means a component of the Software that connects the Software to technologies and resources the Software manages.

**"Documentation"** means the documentation for the Software generally supplied by CloudBolt to assist its customers in the use of the Software, including user and system administrator guides and manuals and other written materials, including the software functional specifications which may be updated from time to time.

**"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.

**"License Key"** means a serial number that enables Licensee to activate and use the Software during the License Term and up to the quantity of Connectors and VMs licensed.

**"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.

**"Maintenance and Support"** or **"M&S"** means CloudBolt's maintenance and support services as set forth on Exhibit A hereto.

**"Open Source Software"** or **"OSS"** means software components that are licensed under a license approved by the Open Source Initiative ("OSI") or similar open source or freeware license.

**"Order Form"** means each CloudBolt ordering document signed by duly authorized representatives of both Parties which references this Agreement, identifies the specific Software ordered by Licensee from CloudBolt, sets forth the prices for the Software license, and contains other applicable terms and conditions. The initial Order Form and any additional Order Forms entered into by the Parties are incorporated herein by reference.

**"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.

“**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 is provided to Licensee pursuant to Maintenance and Support and that is not subject to a separate license agreement.

“**Third Party Agent**” means a third-party outsourcer providing information technology services for Licensee’s internal use, pursuant to a written contract.

## **2.0 LICENSE GRANT.**

**2.1 Scope of License.** Subject to the terms and conditions of this Agreement, CloudBolt grants Licensee a limited, non-exclusive, non-transferable term license to use the Software during the License Term solely for Licensee’s internal operations and in accordance with (a) the Documentation; (b) the number of VMs and /or Connectors listed on the Order Form and for which have the applicable fees have been paid; and (c) other applicable limitations, if any, set forth in the Order Form. Except for the express licenses granted in this Section 2, no other licenses are granted by implication, estoppel or otherwise.

**2.2 Third Party Agent Use.** Subject to the terms and conditions of this Agreement, CloudBolt grants Licensee a non-exclusive, non-transferable term license to permit Licensee’s Third Party Agents to access, use and/or operate the Software on Licensee’s behalf for the sole purpose of delivering outsourcing services to Licensee for Licensee’s internal operations. Licensee acknowledges and agrees that it is fully responsible for its Third Party Agents’ compliance with terms and conditions of this Agreement and that any breach of the terms and conditions of this Agreement by a Third Party Agent shall be deemed to be a breach of the Agreement by Licensee.

**2.3 Permitted Copies.** Licensee may make one copy of the Software for archival purposes only. The copy shall: (a) be kept within Licensee’s possession or control; (b) include all titles, trademarks, and copyright and restricted rights notices in the original; and (c) be subject to this Agreement. Licensee may not otherwise copy the Software without CloudBolt’s prior written consent.

**2.4 Open Source Software.** The Software may include certain OSS for use in combination with the Software. Such OSS is free and distributed to Licensee under the terms set forth in the respective license agreements (the “Open Source Agreements”). This Agreement in no way supplements or detracts from any term or condition of such Open Source Agreements. A complete listing of all applicable OSS included in the Software is available in the Documentation. Each Party shall comply in all material respects with all terms of the applicable Open Source Agreements with respect to all OSS provided to Licensee by CloudBolt. Licensee’s use of such OSS as permitted or contemplated by this Agreement and in accordance with the applicable Open Source Agreements shall not subject any software owned by Licensee to the terms of any restricted open source license. A “restricted open source license” means any license that contains any “copy left” or other similar obligation or condition that requires (a) that the software covered by the license or any software incorporated into, based on, derived from or distributed with such software be disclosed, distributed or made available in source code form or be licensed under the terms of any Open Source Agreement or (b) the grant of any rights, immunities or covenants under any other software or intellectual property.

## **3.0 RESTRICTIONS; OWNERSHIP.**

**3.1 Restrictions.** Licensee acknowledges that the Software and the structure, sequence, organization, user interface and source code of the Software constitute valuable trade secrets of CloudBolt. Accordingly, except as expressly authorized by CloudBolt in writing, Licensee 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 Software or Documentation to any third party; (b) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part; (c) copy the Software, except for archival purposes, as set out in Section 2.3; (d) circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Software as described in this Agreement; (e) use any Connectors that are not described, or exceed the number of VMs listed, in the Order Form; (f) translate, modify or create derivative works based upon the Software; (g) permit any use of or access to the Software by any third party other than Third Party Agents as set forth in Section 2.2; (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; including the operation of any service that is accessed by a third party; or (j) benchmark the operation of the Software without CloudBolt’s prior written consent. Licensee acknowledges and agrees that Licensee may not use the Software 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 Licensee by someone other than CloudBolt or one of its authorized distributors.

**3.2 Decompilation.** Licensee hereby waives any right it may have under any jurisdiction to reverse engineer the Software provided, however, if European Community law is applicable, the restrictions in this Section 3.2 are limited so that they prohibit such activity only to the maximum extent such activity may be prohibited without violating the EC Directive on the Legal Protection of Computer Programs. Notwithstanding the foregoing, prior to any such legally excused decompiling, disassembly or reverse engineering of the Software, Licensee must first issue a written request

to CloudBolt for information or assistance and Licensee shall refrain from decompiling, disassembling, or otherwise reverse engineering any of the Software unless CloudBolt cannot, or fails, to comply with such request within a commercially reasonable period of time.

**3.3 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. Licensee'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. Licensee 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.

#### **4.0 ORDERS, PAYMENT, TAXES.**

**4.1 Purchase Order.** If Licensee requires a purchase order to be issued prior to its payment of any invoiced fees, Licensee will provide a purchase order upon Licensee's execution of the initial Order Form and upon Licensee's execution of any subsequent Order Form. Notwithstanding any language to the contrary therein, no terms or conditions stated in Licensee's purchase order or any other ordering document will be incorporated into, form any part of, add to or amend or modify the Agreement and all such terms or conditions will be null and void.

**4.2 Fees, Payment Terms.** Unless payment is being made through a CloudBolt partner, Licensee agrees to pay CloudBolt for the Software provided as specified in each Order Form. 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. Licensee agrees to pay a late charge of one and half percent (1 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.

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

#### **5.0 AUDIT AND REPORTING.**

**5.1 Audit.** During the term of this Agreement and for one (1) year thereafter, CloudBolt, or its third party auditor, may, upon reasonable notice to Licensee and on not more than one occasion in any 12-month period (provided that if an audit reveals that if Licensee has breached any provision of this Agreement then such audit shall not count toward the limitation of the number of audits that may be conducted in a given period), audit such records to verify that Licensee 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. Audits will be conducted during normal business hours and CloudBolt will use commercially reasonable efforts to minimize the disruption of Licensee's normal business activities. Licensee agrees to cooperate with CloudBolt and/or its third-party auditor and will promptly pay directly to CloudBolt any underpayments revealed by such audit. Licensee will promptly reimburse CloudBolt for all reasonable costs and expenses incurred by CloudBolt for such audit if: (i) such audit reveals an underpayment by Licensee of more than five percent (5%) of the fees payable by Licensee to CloudBolt for the period audited; or (ii) such audit reveals Licensee has materially failed to maintain accurate records of Licensee's use of the Software.

**5.3 Electronic Reporting.** The Software may periodically transmit analytical information and data about how the Software is being used in Licensee's environment. This information consists of only non-attributable, non PCI-regulated data and information, such as the license serial number, the Software's unique identifier, a total count of managed resources, Connectors or total count of users, and other pieces of data intended to help CloudBolt improve the Software. Licensee acknowledge and agree that CloudBolt shall have the unrestricted right to use, distribute, market, exploit and display any information, analysis, statistics and other data generated by Licensee's use of the Software, including compilation of aggregated statistics about the Software; provided, however, that CloudBolt shall not publicly disclose or distribute any such data unless such data is in an aggregated form that would not permit a third party to identify the data as associated with Licensee.

#### **6.0 MAINTENANCE AND SUPPORT.**

**6.1 M&S.** CloudBolt shall provide Standard Maintenance and Support to Licensee during the License Term at no additional fee.

**6.2 Community Support.** As part of the Standard Maintenance and Support, Licensee is entitled to community support and to access CloudBolt's community support portal and knowledge base at no additional charge. Community support is access to CloudBolt's public forum on its support portal where CloudBolt customers can review existing discussions, and registered licensees are able to participate in community discussions related to various aspects of the

Software. CloudBolt reserves the right to moderate all support forums. Violation of CloudBolt terms of use may result in a user being denied access to CloudBolt community support. The knowledge base is designed to provide 24x7x365 access to comprehensive information on known issues, workarounds, tips and tricks via the community support portal. CloudBolt's technical team regularly creates timely knowledge base articles to assist customers in the self- investigation and resolution of issues and queries.

## **7.0 WARRANTIES.**

7.1 **Software Warranty.** CloudBolt warrants that during the License Term the Software will substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times and in accordance with the applicable Documentation; and (b) has not been modified by persons other than CloudBolt or its authorized representative. CloudBolt will, at its own expense and as its sole obligation and Licensee'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 Licensee in writing during the License Term. If CloudBolt determines that it is unable to correct the error or replace the Software, CloudBolt will refund to Licensee the license fees actually paid by for the applicable Software (as depreciated over the License Term) and Licensee's right to use such Software will terminate.

7.2 **Maintenance and Support.** CloudBolt warrants that Maintenance and Support shall be performed in a professional and workmanlike manner by skilled and proficient personnel.

7.3 **Disclaimer of Warranties.** Software that is provided to Licensee on a trial, demonstration, product extensions, proof of concept and/or evaluation basis ("**Sample Code**"), and information and Software Maintenance (as defined in Exhibit A) provided by CloudBolt as part of M&S, is provided on an "AS IS", "WHERE IS" basis, without warranty of any kind, including without limitation any warranties that the Sample Code is free of defects, merchantable, fit for a particular purpose or non-infringing. Licensee bears the entire risk as to the quality and performance of Sample Code. THE EXPRESS WARRANTIES IN SECTIONS 7.1 AND 7.2 ABOVE IS IN LIEU OF 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 SOFTWARE, THE DOCUMENTATION, M&S OR ANY OTHER MATERIALS OR SERVICES FURNISHED, PROVIDED OR OTHERWISE MADE AVAILABLE. CLOUDBOLT AND ITS LICENSORS AND PARTNERS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED. THAT IT WILL BE FREE FROM DEFECTS, THAT ALL ERRORS WILL BE CORRECTED OR THAT THE SOFTWARE WILL MEET (OR IS DESIGNED TO MEET) LICENSEE'S BUSINESS REQUIREMENTS.

## **8.0 INDEMNIFICATION.**

8.1 **Indemnification by CloudBolt.** CloudBolt will, at its expense, defend or settle and will hold Licensee harmless from any claim, action or allegation brought against Licensee that the Software and Documentation provided by CloudBolt infringes any US or EU copyright or trade secret ("**Claim**") and will pay any final judgments awarded or settlements entered into, provided that Licensee notifies CloudBolt in writing within thirty (30) days of the discovery of any such Claim, and gives CloudBolt the authority to proceed as contemplated herein. CloudBolt will have the exclusive right to control and defend any such Claim and make settlements thereof at its own discretion, and Licensee may not settle or compromise such Claim, except with prior written consent of CloudBolt. Licensee will give such assistance and information as CloudBolt may reasonably require to settle or defend all Claims. In the event any such Claim is brought or threatened, or if in the opinion of CloudBolt is likely to become, the subject of a Claim, CloudBolt may, at its sole option and expense: (a) procure for Licensee the right to continue to use the Software or infringing part thereof; (b) modify or amend the Software or infringing part thereof, or replace the Software or infringing part thereof with other software having substantially the same or better capabilities; or (c) if neither of the foregoing is commercially practicable, CloudBolt may terminate the license and this Agreement with respect to the infringing part of the Software and CloudBolt shall refund to Licensee the portion of the pre-paid License Fees attributable to the infringing part of the Software for the remainder of the License Term.

8.2 **Exclusions.** CloudBolt will have no obligation or liability under Section 8.1 for any Claim based on: (a) any unauthorized use or reproduction of the Software or Documentation by the Licensee; (b) use of other than the most recent update of the Software if infringement could have been avoided by use of the most current release to the extent that the most recent release has been provided to the Licensee; (c) use of the Software in combination with products, equipment, software or data not provided by CloudBolt, if such infringement would have been avoided in the absence of such combination; (d) compliance by CloudBolt with specifications or instructions supplied by Licensee; (e) use or incorporation in the Software of any design, technique or specification supplied by Licensee if the infringement would not have occurred but for such use or incorporation; (f) modification of the Software by the Licensee or a third party;

and (g) Sample Code or Open Source Software. The provisions of Section 8.1 and 8.2 state CloudBolt's entire liability and Licensee's sole and exclusive remedy for any violation or infringement of Intellectual Property Rights.

**8.3 Indemnification by Licensee.** Licensee shall defend, indemnify and hold harmless CloudBolt and its 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), as incurred, resulting from, or arising out of: (a) Licensee's use of the Software, Documentation or any material furnished or provided by CloudBolt except to the extent CloudBolt is responsible under Section 8.1; and (b) breach by Licensee of Section 2.0 or 3.0.

#### **9.0 LIMITATION OF LIABILITY.**

**9.1 Limitation of Liability.** EXCEPT FOR A BREACH OF SECTION 11.0, A VIOLATION BY LICENSEE OF ANY OF CLOUDBOLT'S INTELLECTUAL PROPERTY RIGHTS, OR DAMAGES RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL A PARTY BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, 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. IN NO EVENT SHALL CLOUDBOLT'S CUMULATIVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR LICENSEE'S USE OF THE SOFTWARE EXCEED THE AMOUNT OF LICENSE FEES RECEIVED BY CLOUDBOLT FROM LICENSEE PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE CONSIDERATION EXCHANGED HEREUNDER IS BASED IN PART UPON THE ABOVE LIMITATIONS, AND FURTHER AGREE THAT SUCH LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**9.2 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 shall be subject to Section 9.1.

#### **10.0 TERM; TERMINATION.**

**10.1 Term.** This Agreement will commence on the Effective Date and will continue until otherwise terminated in accordance with this Section 10 ("Agreement Term"). Unless either Party provides thirty (30) days prior written notice to the other Party of its intent not to renew an Order Form, upon the expiration of the initial License Term or any renewal term of such Order Form, the Order Form will automatically renew for a term equal in duration to the initial License Term of such Order Form. For any renewal term, CloudBolt reserves the right to change or reasonably increase the rates, applicable charges and usage policies and to introduce new charges for the renewing Order Form by providing Licensee written notice thereof (which notice may be provided by e-mail) at least thirty (30) days prior to the renewal term for which the changes or increases will take effect.

**10.2 Termination.** Notwithstanding the foregoing, either party may terminate this Agreement or any Order Form (i) immediately in the event of a material breach of this Agreement or any such Order Form by the other party that is not cured within thirty (30) days of written notice thereof from the other party, or (ii) immediately if the other party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing. Termination of an Order Form shall not be deemed a termination of this Agreement. Termination of this Agreement shall, however, terminate all outstanding Order Forms. 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. All rights and obligations of the parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement and each Order Form.

**10.3 Effect of Termination.** Upon any termination or expiration of this Agreement or any applicable Order Form, CloudBolt shall no longer provide the applicable Software to Licensee and Licensee shall cease and cause its Users to cease using the Software. Upon termination of this Agreement or any applicable Order Form by CloudBolt due to Licensee's uncured breach, in addition to any other remedies CloudBolt may have for such breach at law or in equity, Licensee shall pay CloudBolt for all fees that had accrued prior to the termination date and, as liquidated damages and not as a penalty, Licensee shall continue to pay CloudBolt for all monthly license fees that would have continued to accrue through the end of the then current term of the Order Form had it not been so terminated, if applicable. Except as expressly provided herein, termination of this Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party.

#### **11.0 CONFIDENTIAL INFORMATION.**

**11.1 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 Affiliate (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 the Software is 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.

**11.2 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.

## **12.0 MISCELLANEOUS.**

**12.1 Force Majeure.** Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

**12.2 Waiver.** Any waiver of the provisions of this Agreement or any agreement related to 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 agreement related to this Agreement, or its rights or remedies 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.

**12.3 Applicable Law and Jurisdiction.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflict of laws. The parties acknowledge and agree that this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

**12.4 Severability.** If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the Parties will endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the Parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

**12.5 Independent Parties.** The Parties will at all times be independent parties and will present themselves to all other parties as such. 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.

**12.6 Compliance with Laws; Export Control; Government Regulations.** Each party shall comply with all laws applicable to the actions contemplated by this Agreement. Licensee acknowledges that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. Licensee 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. The Software and accompanying Documentation are deemed to be

“commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and Documentation by the U.S. Government shall be governed solely by the terms and conditions of this Agreement.

**12.7 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 Licensee, to the email indicated 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).

**12.8 Equitable Relief.** Each party acknowledges that a breach of Section 2.0, 3.0 or 11.0 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 prompt injunctive relief to enjoin such breaching party from any and all acts in violation of those provisions without the necessity of posting a bond or other security. Such injunctive relief remedy shall be cumulative and not exclusive and the non-breaching party may seek any other relief available at law or in equity.

**12.9 High Risk Activities.** The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line 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 could lead directly to death, personal injury, or severe physical or environmental damage (“High Risk Activities”). Accordingly, CloudBolt and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities. Licensee assumes all risk of loss or damage for use of the Software in High Risk Activities.

**12.10 Feedback.** In connection with M&S, the CloudBolt knowledge base, community forum(s) or Licensee’s use of the Software, Licensee may provide suggestions, enhancement requests, recommendations or other feedback (“**Feedback**”). Licensee hereby grants to CloudBolt a non-exclusive, transferable, sublicensable, world-wide, perpetual, royalty-free, irrevocable license to reproduce, create derivative works from, distribute, perform, display and otherwise use Feedback (including, but not limited to, incorporating it into the Software) and without any confidentiality obligation in any manner whatsoever.

**12.11 Assignment.** This Agreement may not be assigned, subcontracted or transferred by Licensee, in whole or in part, whether voluntary, by operation of contract, law or otherwise, without the prior written consent of CloudBolt. Any attempted assignment or transfer in violation of the foregoing will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

**12.12 Third Party Rights.** Other than as expressly set out in this Agreement, this Agreement does not create any rights for any person 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.

**12.13 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 terms or conditions of any purchase order, acknowledgement or other business form that Licensee may use in connection with the acquisition or licensing of the Software will have any effect on the rights, duties or obligations of the Parties, or otherwise modify, this Agreement, regardless of any failure of CloudBolt to object to such terms, provisions or conditions. Any conflict between the terms and conditions set forth in this Agreement and any Order Form shall be resolved in favor of this Agreement unless such Order Form is intended to control pursuant to the terms of this Agreement.

**Exhibit A**  
**Maintenance and Support Terms**

**1. Definitions**

**“Business Hours”** or **“Business Days”**: means Monday Through Friday 8:00AM to 8:00PM Eastern time, exclusive of Federal US Holidays.

**“Error”** means any verifiable and reproducible failure of the Software to materially conform to the Documentation. Notwithstanding the foregoing, the term “Error” shall not include any failure of the Software to materially conform to the Documentation that: (a) results from Licensee’s misuse or improper use of the Software; (b) does not materially affect the operation and use of the Software; (c) results from the modification or addition to the Software that is not part of the Software that CloudBolt makes generally available; or (d) results from Licensee’s failure to implement in a timely manner any Maintenance and Support.

**“Named Contacts”** means the individual(s) identified by Licensee as having authority to receive Maintenance and Support on behalf of Licensee.

**“Response Times”** shall mean the time between the Licensee completes and logs a support ticket with CloudBolt to request interactive technical support and the time CloudBolt responds to such request.

**“Severity”** means the relative impact an Error has on the production use of the Software, as determined by CloudBolt. The following Severity levels are applicable to all Software.

**“Severity One”** means Licensee’s use of the Software is completely down, with no immediately available workaround. The Software will not start or is non-functional in all respects and is negatively affecting or impairing the remote 3rd-party provisioning of virtual instances. Severity One support requires Licensee to have dedicated resources available to work on the issue on an ongoing basis during Licensee’s contractual hours.

**“Severity Two”** means when major functionality is severely impaired. Although operations may continue in a restricted fashion, a Licensee’s ability to use the Software has been significantly impaired, with no functional workaround possible. For example, the Software will start, but new instances cannot be provisioned.

**“Severity Three”** describes a partial Software outage, affecting a non-critical aspect of the functionality. In these cases, either a workaround exists, or the functionality impacted is not required for typical production use. For example, users are not able to provision new instances, but administrators will be able to.

**“Severity Four”** involves any general usage questions, or issues related to user interface anomalies, artifacts, or rendering issues. An example of this can include a Software user interface page looking different between two different browsers.

**“Software Maintenance”** means the provision of Major Releases, Minor Releases and Maintenance Releases, if any, to the Software, as well as any corresponding Documentation. Licensee’s use of such Major Releases, Minor Releases and Maintenance Releases shall be subject to the terms of the Agreement.

**“Maintenance Release”** means a generally available release of the Software that typically provides maintenance corrections or fixes only, designated by CloudBolt by a change in the digit to the right of the second decimal point (e.g. Software 2.0 >> Software 2.0.1).

**“Major Release”** means a generally available release of the Software that contains functional enhancements or extensions, designated by CloudBolt as a change in the digit to the left of the first decimal point (e.g. Software 2.0 >> Software 3.0).

**“Minor Release”** means a generally available release of the Software that introduces a limited number of new features and functionality, designated by CloudBolt as a change in the digit to the right of the decimal point (e.g. Software 2.0>>Software 2.1).

**2. Service Terms**

2.1 Provision of M&S. CloudBolt’s Maintenance and Support plans, access methods and response times are



described herein. CloudBolt shall provide Software Maintenance and Support for Error Severity at the Maintenance and Support plan level purchased during the applicable term, subject to the terms of this Exhibit. CloudBolt will use reasonable efforts to respond to a request for interactive technical support within the Response Times stated in the applicable Maintenance and Support Plan. M&S shall be delivered solely to the Named Contact(s) identified by Licensee. CloudBolt is not responsible for lost data or information in the event of Errors or other malfunction of the Software or computers on which the Software is used.

2.2 Supported Releases. Software will be supported according to the following schedule: (a) a Major Release will be supported for a period of twelve (12) months after the commercial release of the next Major Release, but no longer than 2 years and provided always that Licensee makes use of the last Minor Release and Maintenance Release of the first mentioned Major Release; (b) a Minor Release will be supported for a period of six (6) months after the commercial release of the next Minor Release, provided always that Licensee makes use of the last Maintenance Release of the related Minor release. Non-current Software as per the terms above will not be supported.

2.3 Proper use of Software. CloudBolt's obligation to provide Maintenance and Support is contingent upon the Licensee's proper use and application of the Software. Problems caused by any of the following situations are not included in the Maintenance and Support but may be addressed separately upon request at CloudBolt's then-current hourly rates for consulting subject to then-current standard consulting services terms and conditions:

- (a) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media not furnished by CloudBolt; operation of the Software with other media not in accordance with CloudBolt specifications; or causes other than ordinary use;
- (b) improper installation by Licensee or use of the Software that deviates from any operating procedures as specified in the Documentation;
- (c) actual or attempted modification, alteration or addition to the Software undertaken by Licensee or any third party;
- (d) the use of third-party software or hardware not specified in the Documentation;
- (e) the failure of Licensee to install and implement Software Maintenance;
- (f) any customized deliverables created by CloudBolt for Licensee as part of consulting services;
- (g) installing and/or operating the Software in non-supported environments or versions of operating systems, utilities and databases; or
- (h) any technical issue unrelated to an Error.

2.4 Change in Services. CloudBolt may change or discontinue the scope of Maintenance and Support at any time without notice. CloudBolt will provide notification of discontinuance either directly to Licensee or through an announcement posted on the CloudBolt website, at least 180 days in advance. CloudBolt will continue to provide Maintenance and Support during the 180 days or for the remainder of the then current term for which Maintenance and Support has been purchased, whichever is longer.

2.5 Open Source Software. Maintenance and Support is not provided for Open Source Software.

**3. Licensee Responsibilities.** CloudBolt's obligations regarding Maintenance and Support are subject to the following:

- (i) Licensee agrees to receive from CloudBolt communications via e--mail, telephone, and other formats, regarding renewals, quotes, and other topics relating to Maintenance and Support (such as communications concerning an Error or other technical issues and the availability of new releases). Licensee's Named Contacts shall cooperate to enable CloudBolt to deliver the Maintenance and Support;
- (ii) Licensee will ensure that all Named Contact(s) have a reasonable understanding of the

Software and the system that it is operating on and shall be fully aware of Licensee's obligations regarding Confidential Information. Licensee is solely responsible for the use of the Software by its personnel and shall properly train its personnel in the use and application of the Software;

(iii) Licensee shall promptly report to CloudBolt all Errors with the Software, and shall implement any corrective procedures provided by CloudBolt reasonably promptly after receipt; and

(iv) Licensee is solely responsible for protecting and backing up the data and information stored on the computers on which the Software is used and should confirm that such data and information is protected and backed up before contacting CloudBolt. Licensee shall be solely responsible for any and all restoration and reconstruction of lost or altered files, data, or programs. Licensee will maintain and implement a complete data backup and disaster recovery plan. Licensee shall be solely responsible for any and all security of its confidential, proprietary and/or classified information.

**4. Termination.** CloudBolt may suspend performance of Maintenance and Support if Licensee fails to fulfill its responsibilities in Section 3 of this Exhibit B. CloudBolt may terminate M&S if such failure continues for thirty (30) days after CloudBolt's written notice of such failure. CloudBolt may terminate Maintenance and Support at any time if it is discovered that Licensee is currently in breach of the Agreement.

**5. Knowledge Base.** As part of the Maintenance and Support, Licensee is entitled to CloudBolt's support portal and knowledge base at no additional charge. The knowledge base is designed to provide 24x7x365 access to comprehensive information on known issues, workarounds, tips and tricks. CloudBolt's technical team regularly creates timely knowledge base articles to assist customers in the self-investigation and resolution of issues and queries.

**6. Maintenance and Support Plans and Response Times.**

**Maintenance and Support Plans.** CloudBolt's Maintenance and Support plans are defined as follows:

	<b>Standard</b>	<b>Gold</b>	<b>Premier</b>
Support Hours	8 AM – 8 PM ET*	24x7	24x7
Unlimited Online Knowledge Base Access	Included	Included	Included
Unlimited Online Community Support Access	Included	Included	Included
Customer Support Manager	Included	Included	Included
Access to CloudBolt's Customer Acceleration Team – Professional Services**	N/A	N/A	Included
Technical Account Manager – Professional Services	Up to 50 hours	Up to 50 hours	Unlimited hours
Customer CloudBolt Development - Professional Services	N/A	Up to 15 hours***	Up to 40 hours per year****
Number of Named Contacts*****	Four (4)	Six (6)	Eight (8)

\* Excludes Weekends and Federal US Holidays

\*\*All Professional Services are provided pursuant to CloudBolt's standard Professional Services Agreement located at [www.cloudbolt.io/legal/](http://www.cloudbolt.io/legal/) unless the parties have a signed Professional Services Agreement in place.

\*\*\* Only applicable in the first year of the Agreement and not for any additional years or any renewal terms.

\*\*\*\* Applicable for each year of the term and any renewal term in which Premier Maintenance and Support is purchased.

\*\*\*\*\*Online and Email support access for Named Contacts. Unlimited number of support cases opened by Named Contacts.

**Initial Response**

After the Licensee creates a case, CloudBolt will use commercially reasonable efforts to respond to Licensee within the target response time indicated below for the corresponding severity level and Maintenance and Support plan.

<b>Severity</b>	<b>Standard</b>	<b>Gold</b>	<b>Premier</b>
1	1 Business Hour	1 hour	30 minutes
2	2 Business Hours	2 hours	1 hour

3	4 Business Hours	4 hours	2 hours
4	1 Business Day	8 hours	8 hours

### Resolution Process

CloudBolt will address and resolve issues that are within the control of CloudBolt based on the resolution process indicated below for the corresponding severity level and Maintenance and Support plans.

Severity	Standard & Gold	Premier			
		Notification of Resolution Target	Updates	Escalation to CloudBolt Management	Final Resolution
1	Investigate the issue & work continuously until the error is fixed or a temporary workaround is implemented.	Within 4 hours after confirmation the issue is within CloudBolt control	Every hour	If the issue is not resolved within 8 hours after confirmation the issue is within CloudBolt control	If temporary workaround works and permanent code change is required, a dedicated sustaining engineer will be assigned to work on a software fix. A software fix in a form of a patch will be delivered based on level of effort for the fix.
2	Investigate the issue & work during standard business hours until the error is fixed or a temporary workaround is implemented.	Within 48 hours after confirmation the issue is within CloudBolt control	Every 4 hours	If the issue is not resolved within 3 business days after confirmation the issue is within CloudBolt control	If temporary workaround works and permanent code change is required, a dedicated sustaining engineer will be assigned to work on a software fix. A software fix in a form of a patch will be delivered based on level of effort for the fix.
3	Investigate the issue & work during standard business hours. Typically fixed in next release.	Within 4 days after confirmation the issue is within CloudBolt control	Every day	If the issue is not resolved within 5 business days after confirmation the issue is within CloudBolt control	If temporary workaround works and permanent code change is required, a dedicated sustaining engineer will be assigned to work on a software fix. A software fix in a form of a patch will be delivered with the next product/version release.
4	Does not require immediate response and is typically a documentation or configuration question.	Within 7 days after confirmation the issue is within CloudBolt control	Every day	As agreed by the parties	N/A

Temporary resolution and workaround will be measured from the time our support engineers have access to Licensee's relevant third party engineers and the CloudBolt platform. Our response times will be extended by the time in excess of fifteen minutes while the Licensee provides the following: (a) access to Licensee's CloudBolt environment to our Premier Maintenance and Support engineers within fifteen minutes (15 mins) of our initial receipt of the support request; and (b) availability and access to the relevant third party engineers within fifteen minutes (15 mins) of our initial receipt of the support request.

**Support Access Methods****Email**

Support requests may be sent to [support@cloudbolt.io](mailto:support@cloudbolt.io). If submitting an issue via this method, Licensee must include the observed Severity Level in the email subject (e.g. “Subject: Severity 1 Application will not start”)

**Web**

The CloudBolt self-service support portal is accessible under the “Support” section on CloudBolt’s Support Home page <https://support.cloudbolt.io/>. In the self-service portal, Licensee can self-select the observed Severity Levels. Although any user of Licensee can submit a ticket via the Self-Service portal, only Named Contacts will receive a response. To enter the Self-Service Portal, Licensee will need a user ID and password.