

## END USER LICENSE AGREEMENT FOR SUBSCRIPTION SERVICES

This End User License Agreement for Subscription Services, 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 procuring a subscription to use the Subscription Service ("Customer"). This Agreement is effective as the date of the Order Form or the date of first access to the Subscription Service, whichever is earlier.

CLOUDBOLT PROVIDES THE SUBSCRIPTION SERVICE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT CUSTOMER 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 CUSTOMER 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 CUSTOMER IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER AND BIND CUSTOMER TO ITS TERMS. IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, CLOUDBOLT WILL NOT AND DOES NOT PROVIDE A SUBSCRIPTION TO USE THE SUBSCRIPTION SERVICE TO CUSTOMER AND YOU MUST NOT ACCESS THE SUBSCRIPTION SERVICE OR DOCUMENTATION.

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

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

### 1. 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 "Client Software" is any desktop client software included in the Subscription Service that is made available to Customer by CloudBolt for installation on end user computers.
- 1.3 "CloudBolt Data" means all Data made available by CloudBolt to Customer in connection with the Customer's use of the Subscription Service.
- 1.4 "CloudBolt Technology" means all of 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.
- 1.5 "Confidential Information" has the meaning given to it in Section 5.1.
- 1.6 "Customer Data" means all Data that are uploaded by or on behalf of Customer or a User to the Subscription Service.
- 1.7 "Data" means text, images, materials, photos, audio, video, and all other forms of data or communication.
- 1.8 "Documentation" means the documentation for the Subscription Service generally supplied by CloudBolt to assist its customers in the use of the Subscription Service, including user manuals and other written materials.
- 1.9 "Feedback" means any Customer provided feedback and reports about any errors, problems, or defects in, or suggestions for changes and improvement to the Subscription Service.
- 1.10 "HIPAA" means the Health Insurance Portability and Accountability Act, as amended and supplemented.
- 1.11 "Order Form" means each CloudBolt quotation, order form and/or statement of work or similar ordering document signed by duly authorized representatives of both Parties which references this Agreement, identifies the specific Subscription Service ordered by Customer from CloudBolt, sets forth the prices for the Subscription Service and contains other applicable terms and conditions.
- 1.12 "Subscription Service" means CloudBolt's proprietary subscription-based software-as-a-service offering set forth and described on the applicable Order Form.
- 1.13 "Subscription Term" means the set term designated on an Order Form.
- 1.14 "Third Party Applications" means online, Web-based applications or services and offline software products that are provided by third parties, and interoperate with the Subscription Service.
- 1.15 "Users" mean individuals who are authorized by the Customer to use the Subscription Service and who have been supplied passwords by the Customer (or by CloudBolt at the Customer's request). Users consist of any employee of the Customer or its Affiliates and any independent contractor of the Customer or its Affiliates.

### 2. SUBSCRIPTION SERVICES

2.1 Subscription Services. CloudBolt will make the Subscription Service available to Customer for the Subscription Term solely for access and use by Customer and its Users in accordance with the terms and conditions of this Agreement, the Documentation, and the Order Form. Customer shall be responsible for each User's compliance with this Agreement. To the extent use of a Subscription Service requires Customer to install Client Software, CloudBolt grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive license during the Subscription Term to use the object code form of the Client Software internally in connection with Customer's use of the Subscription Service, subject to the terms and conditions of this Agreement and the Documentation. Any conflict between the terms and conditions set forth in this Agreement and any Order Form shall be resolved in favor of this Agreement. The 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 Subscription Services hereunder through any of its Affiliates, independent contractors or subcontractors; provided, however, that CloudBolt shall remain liable for the actions or omissions of such Affiliates, independent contractors or subcontractors and for the payment of their compensation.

2.2 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 in the course of using the Subscription Service (collectively, the "Subscription Materials").

2.3 SLA. The Subscription Service will also be provided in accordance with the Service Level Agreement attached as Exhibit A hereto.

2.4 Affiliate Use. Subject to the terms of the Order Form and this Agreement, the Customer may make the Subscription Service available to its Affiliates provided that (a) all licensing restrictions are complied with in each instance by each such Affiliate, and (b) such Affiliates are bound by obligations as protective of CloudBolt as this Agreement for the benefit of CloudBolt. Customer shall be liable for any breach of the terms and conditions of this Agreement by any of its Affiliates.

2.5 General Restrictions. Customer will not (and will not permit any third party to): (a) sell, rent, lease, license, distribute, provide access to, sublicense, or otherwise make available any Subscription Service to a third party (except as expressly set forth in Section 2.4 with respect to Affiliates) or in a service bureau or outsourcing offering; (b) use any Subscription Service to provide, or incorporate any Subscription Service into, any general purpose data warehousing service for the benefit of a third party; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to any Subscription Service, except to the extent expressly permitted by applicable law (and then only upon advance written notice to CloudBolt); or (d) remove or obscure any proprietary or other notices contained in any Subscription Service. Customer agrees not to upload to the Subscription Service any any patient, medical or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations.

2.6 Third Party Applications. The Subscription Services may permit access to Third Party Applications. For purposes of this Agreement, such Third Party Applications are subject to their own terms and conditions presented to you for acceptance within the Subscription Services by website link or otherwise. If you do not agree to abide by the applicable terms for any such Third Party Applications, then you should not install, access, or use such Third Party Applications.

### **3. CUSTOMER DATA**

3.1 Ownership Rights. 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 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 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.

3.2 Sufficient Rights in Customer Data. Customer will ensure that its use of the Subscription Service and all Customer Data is at all times compliant with this Agreement, Customer's privacy policies, and all applicable laws and regulations and conventions. Customer is solely responsible for the accuracy, content and legality of all Customer Data. Customer represents and warrants that Customer has sufficient rights in the Customer Data to grant the rights granted to CloudBolt hereunder and that the Customer Data does not infringe or violate the intellectual property, publicity, privacy or other rights of any third party.

3.3 Data Security. CloudBolt will implement and maintain administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of, and prevention of any unauthorized use, access, processing, destruction, loss, alteration, or disclosure of, the Customer Data, in accordance with applicable industry standards. CloudBolt will notify Customer immediately following discovery of any suspected breach or compromise of the security, confidentiality, or integrity of any Customer Data. Written notification provided pursuant to this paragraph will include a brief summary of the available facts, the status of CloudBolt's investigation, and if known and applicable, the potential number of persons affected by release of data relating to such person.

### **4. FEES; PAYMENT TERMS**

4.1 Fees. The Customer agrees to pay CloudBolt for Subscription Services provided and expenses incurred in accordance with and at the rates specified in each Order Form. Unless otherwise set forth on the Order Form, payment shall be due within thirty (30) days after receipt of CloudBolt's invoice and shall be made in US Dollars. Customer agrees to pay a late charge of one and one-half percent (1.5%) 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.

4.2 Taxes. Fees are exclusive of taxes. The Customer shall be responsible for the payment of all sales, use and similar taxes arising from or relating to the Subscription 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 wage laws.

### **5. CONFIDENTIALITY**

5.1 Confidential Information. During the term of this Agreement, 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 Customer further agrees that it shall not use the Subscription Services for the purposes of conducting comparative analysis, evaluations or product benchmarks with respect to the Subscription Services and will not publicly post any analysis or reviews of the Subscription Services without CloudBolt's prior written approval. 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.

5.2 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 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.

5.3 Injunctive Relief. Notwithstanding any other provision of this Agreement, the 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, 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 without the posting of any bond and without proof of actual damages to restrain such use in addition to other appropriate remedies available under applicable law.

## 6. WARRANTIES

6.1 Subscription Service Warranty. CloudBolt warrants that during the Subscription Term, the Subscription Service 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. THE FOREGOING WARRANTY DOES NOT APPLY, AND CLOUDBOLT STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY APPLICATIONS.

6.2 No Other Warranty. CLOUDBOLT DOES NOT REPRESENT THAT THE SUBSCRIPTION SERVICES WILL BE ERROR-FREE OR THAT THE SUBSCRIPTION SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SUBSCRIPTION SERVICES WILL BE CORRECTED. THE WARRANTIES STATED IN THIS SECTION 6 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 OR FITNESS FOR A PARTICULAR PURPOSE.

## 7. LIMITATION OF LIABILITY

7.1 Consequential Damage Exclusion. Except for a violation by Customer of any of CloudBolt's intellectual property rights, a breach by a Party of its obligations in Section 5, a Party's indemnification obligations in Section 10 and a Party's willful misconduct or gross negligence, neither Party will be liable to the other or any third party for loss of profits or for any special, indirect, incidental, consequential or exemplary damages (including without limitation, damages for loss of business profits, loss of goodwill, business interruption, loss of business information and/or data) in connection with the performance of the Subscription Services, or the performance of any other obligations under this Agreement, even if it is aware of the possibility of the occurrence of such damages.

7.2 Limitation of Liability. Except for a violation by Customer of any of CloudBolt's intellectual property rights, a breach by a Party of its obligations in Section 5, a Party's indemnification obligations in Section 10 and a Party's willful misconduct or gross negligence, the total cumulative liability of a Party to the other Party for any and all claims and damages under this Agreement, whether arising by statute, contract, tort or otherwise, will not exceed the fees paid or payable by Customer to CloudBolt under the Order Form for the Subscription Services which form the subject of the claim during the twelve (12) month period immediately preceding the event giving rise to the claim. The provisions of this Agreement allocate risks between the Parties. The pricing set forth in each Order Form reflects this allocation of risk and the limitation of liability specified herein.

## 8. TERM, TERMINATION, SUSPENSION

8.1 Term. This Agreement will commence on the Effective Date and will continue in effect until otherwise terminated in accordance with this Section 8. The Subscription Term shall be set forth on the Order Form. 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 Subscription Term or any renewal term of such Order Form, the Order Form will automatically renew for a term equal in duration to the initial Subscription 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 Customer 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.

8.2 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 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.

**8.3 Effect of Termination.** Upon any termination or expiration of this Agreement or any applicable Order Form, CloudBolt shall no longer provide the applicable Subscription Service to the Customer and the Customer shall promptly cease and cause its Users to promptly cease using the Subscription Service. 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. If the Order Form is terminated for any reason other than a termination as a result of CloudBolt's material breach, then CloudBolt shall be entitled to all of the fees due under the applicable Order Form for the entire unexpired terminated portion of the term of such Order Form. If the Order Form is terminated as a result of CloudBolt's material breach, then Customer shall be entitled to a refund of the pro rata portion of any prepaid unused fees paid by Customer to CloudBolt under this Agreement. Upon termination of this Agreement, each Party shall promptly return or destroy all Confidential Information of the other Party in its possession. After termination, CloudBolt will have no obligation to store and/or make available the Customer Data and may delete the same.

**8.4 Suspension.** Notwithstanding anything to the contrary in this Agreement, CloudBolt may temporarily suspend Customer's and any other User's access to any portion or all of the Subscription Services if: (i) CloudBolt reasonably determines that (A) there is a threat or attack on any of the CloudBolt Technology; (B) Customer's or any other User's use of the CloudBolt Technology disrupts or poses a security risk to the Subscription Service or to any other customer or vendor of CloudBolt; (C) Customer or any other User is using the CloudBolt Technology or the for fraudulent or illegal activities; or (D) CloudBolt's provision of the Subscription Services to Customer or any other User is prohibited by applicable law; or (ii) any vendor of CloudBolt has suspended or terminated CloudBolt's access to or use of any third-party services or products required to enable Customer to access the Subscription Services. CloudBolt shall use commercially reasonable efforts to provide written notice of any suspension of the Subscription Service to Customer and to provide updates regarding resumption of access to the Subscription Services following any suspension. CloudBolt shall use commercially reasonable efforts to resume providing access to the Subscription Services as soon as reasonably possible after the event giving rise to the Subscription Services suspension is cured. CloudBolt will have no liability for any damage, liabilities, losses (including any loss of or profits), or any other consequences that Customer or any other User may incur as a result of a suspension of the Subscription Service.

## **9. OWNERSHIP; USE OF DATA; OBLIGATIONS**

**9.1 Subscription Service.** The Customer acknowledges and agrees that as between CloudBolt and the Customer, all right, title and interest in and to the Subscription Materials, the CloudBolt Technology and Subscription Service (excluding any Customer Data) and including all modifications and configurations, all CloudBolt Data and all of CloudBolt's proprietary technology, including, without limitation, all software, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information made available to the Customer by CloudBolt in providing the Subscription Service and all derivatives thereof are and shall remain CloudBolt's or its licensors'. The CloudBolt name, all CloudBolt logos, and the product names associated with the Subscription Service are trademarks of CloudBolt or third parties, and no right or license is granted to use them. The Customer shall not remove any CloudBolt trademark or logo from the Subscription Service. During the term of this Agreement, CloudBolt grants to the Customer a limited, worldwide, non-exclusive, non-transferable (except as set forth in Section 11.2), royalty-free right to use, display, transmit, and distribute the CloudBolt Data solely in connection with the Customer's permitted use of the Subscription Service. CloudBolt will have the right to generate Aggregate Data, and the Parties agree that CloudBolt may use Aggregate Data for any business purpose during or after the term of this Agreement. CloudBolt will not distribute Aggregate Data in a manner that personally identifies Customer, customers of Customer or its Users. For purposes of the foregoing, "Aggregate Data" means (a) data generated by aggregating Customer Data with other data so that the results are not personally identifiable with respect to Customer, customers of Customer or Authorized Users, and (b) any anonymous data and learnings regarding use of the Subscription Service. In the event Customer provides CloudBolt with Feedback, Customer hereby grants to CloudBolt an irrevocable, fully-paid up, non-exclusive, royalty-free, perpetual and worldwide license to use, reproduce, distribute, create derivative works of, publicly perform, and publicly display such Feedback in any medium or format, whether now known or later developed.

**9.2 Customer Obligations.** 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 are permitted to use the Subscription Service; (b) that it is responsible for authorized Users' 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' compliance with this Agreement. Neither the Customer nor its Users shall use the Subscription Service: (a) to 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) to 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) to 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) to interfere with or disrupt the Subscription Service or networks connected to the Subscription Service; or (e) in violation of any applicable law or regulation.

## **10. INDEMNIFICATION**

**10.1 CloudBolt Indemnification.** Subject to Section 10.3 below, CloudBolt will defend Customer, its Affiliates and their respective officers, directors, employees and agents (collectively, the "Customer Indemnitees"), against any claim, demand, suit or proceeding made or brought against any of the Customer Indemnitees by a third party alleging that the Subscription Service infringes or misappropriates such third party's intellectual property rights (a "Claim Against Customer"), and will indemnify the Customer Indemnitees from any damages (including reasonable attorney fees and costs) finally awarded against any of the Customer Indemnitees as a result of, or for amounts paid by under a court-approved settlement of, a Claim Against Customer. If a Claim Against Customer is brought or is likely, in CloudBolt's sole opinion, to be brought, CloudBolt will, at its option and expense (A) obtain the right for Customer to continue using the Subscription Service; (B) replace or modify the affected Subscription Service so

that they becomes non-infringing; or (C) upon notice to Customer, terminate this Agreement or Customer's use of the affected Subscription Services, provided that in the case of (C) CloudBolt promptly refunds to Customer the prorated portion of any unearned pre-paid annual fees paid hereunder for the affected Subscription Services. CloudBolt's obligations in this Section do not cover third party claims to the extent such claims arise from: (1) any products, services, technology, materials or data not created or provided by CloudBolt (including without limitation any Customer Data), (ii) any part of the Subscription Service made in whole or in part in accordance to Customer specifications, (iii) any modifications made after delivery by CloudBolt, (iv) any combination with other products, processes or materials not provided by CloudBolt (where the alleged damages, costs or expenses arise from or relate to such combination), (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) Customer's use of the Subscription Service is not strictly in accordance with this Agreement or any Documentation.

10.2 Customer Indemnification. Subject to Section 10.3 below, Customer will defend CloudBolt, its Affiliates and their respective officers, directors, employees and agents (collectively, the "CloudBolt Indemnitees") against any claim, demand, suit or proceeding made or brought against any or all of the CloudBolt Indemnitees by a third party (i) alleging that the Customer Data, or any use thereof, infringes the intellectual property rights or proprietary rights of others, or has caused harm to a third party, (ii) arising out of or attributable to the Customer's breach of Sections 2.5 or 9.2 above, or (iii) arising out of or attributable to Customer's misuse of the Subscription Service (each, a "Claim Against CloudBolt"), and will indemnify the CloudBolt Indemnitees from any damages, reasonable attorney fees and costs finally awarded against the CloudBolt Indemnitees as a result of, or for any amounts paid under a court-approved settlement of a Claim Against CloudBolt.

10.3 Indemnification Procedure. Each Party's obligation to indemnify the other Party is conditioned on the Party seeking indemnification: (i) promptly notifying the indemnifying Party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying Party's obligation except to the extent it is prejudiced thereby, (ii) allowing the indemnifying Party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement; provided that the indemnifying Party shall not settle any claim that requires the indemnified Party to admit fault without the indemnified Party's prior written consent (such consent not to be unreasonably withheld or delayed), and (ii) giving the indemnifying Party reasonable assistance in the defense and settlement of any claim, suit or proceeding for which indemnity is claimed.

10.4 Sole Remedy. This Section 10 states the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other party for any type of claim described in this Section 10.

## 11. GENERAL

11.1 Entire Agreement. This Agreement, including all Order Forms, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the Parties relating thereto and is binding upon the Parties and their permitted successors and assigns. Only a written instrument that refers to this Agreement or the applicable Order Form and that are duly signed by the authorized representatives of both Parties may amend this Agreement or such Order Form. Any inconsistent or conflicting terms and conditions contained in any purchase order or other ordering document issued by the Customer shall be of no force or effect, even if the order is accepted by CloudBolt. This Agreement shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference against the Party drafting this Agreement in construing or interpreting the provisions hereof.

11.2 Assignment. This Agreement shall be binding upon and for the benefit of CloudBolt, the Customer and their permitted successors and assigns. Either Party may assign this Agreement as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets. Except as expressly stated in this Agreement, neither Party may otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other Party, and any attempted assignment or delegation without such consent will be void.

11.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, USA without regard to its conflict of law provisions.

11.4 Headings. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

11.5 Relationship of the Parties. CloudBolt and the Customer are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

11.6 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 (each a "Force Majeure Event").

11.7 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 Customer, 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).

11.8 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.

11.9 Publicity. Unless otherwise set forth in an Order Form, Customer hereby grants CloudBolt a non-exclusive license solely during the term of the Order Form to list Customer's name and display the Customer's logo in the customer section of CloudBolt's website and to use Customer's name and logo in CloudBolt's customer lists but only to the extent that other customers of CloudBolt are also listed on such list. Any other use by CloudBolt of the Customer's name, logo or trademark requires the Customer's prior written consent (such consent not to be unreasonably withheld).

11.10 No Third Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a Party to any such person.

11.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

11.12 Waiver and Severability. Performance of any obligation required by a Party hereunder may be waived only by a written waiver signed by an authorized representative of the other Party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either Party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

11.13 Export Regulation. The Subscription Services utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Subscription Services or the software or technology included in the Subscription Services to, or make the Subscription Services or the software or technology included in the Subscription Services accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, regulation, or rule. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Subscription Services or the software or technology included in the Subscription Services available outside the US.

11.14 US Government Rights. Each of the software components that constitute the Subscription Services and the Documentation is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if you are an agency of the US Government or any contractor therefor, you receive only those rights with respect to the Subscription Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government customers and their contractors.

## Exhibit A

### Service Level Agreement

#### Service Level

**1.1 Availability.** The Subscription Service will be available 99.9% of the time per calendar quarter, except for any downtime due to Maintenance or a Force Majeure Event ("**Uptime Availability**"). For any partial calendar quarter during which Customer subscribes to the Subscription Service, Uptime Availability will be calculated based on the entire calendar quarter, not just the portion for which Customer subscribed.

Uptime Availability Calculation: (total minutes in a calendar quarter – Downtime) / total minutes in a calendar quarter.

Downtime Calculation: "Downtime" is a period of time where the service was unavailable as determined by a combination of CloudBolt's internal and external monitoring systems.

Exclusions from the Uptime Availability Calculation are service feature failures resulting from (i) Customer's acts, omissions or misuse of the Subscription Service including violations of this Agreement, (ii) failures of Customer's internet connectivity, (iii) factors outside CloudBolt's reasonable control, including Force Majeure events, or (iv) Customer's equipment, services or other technology.

**1.2 Maintenance.** "Maintenance" shall mean any scheduled maintenance on the Subscription Service.

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

**3. Reporting.** To file a claim under this Exhibit, Customer must send an email to [support@cloudbolt.io](mailto:support@cloudbolt.io) with the following details:

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

Claims may only be made on a calendar quarter basis and must be submitted within 20 business days after the end of the relevant quarter, except for periods at the end of a subscription period that do not coincide with a calendar quarter, in which case Customer must make any claim within 20 business days after the end of the subscription period. All claims will be verified against CloudBolt's applicable system records. Should any periods of downtime submitted by Customer be disputed, CloudBolt will provide to Customer a record of the Subscription Service availability for the period in question. CloudBolt will only provide records of system availability in response to good faith Customer claims.