

END USER LICENSE AGREEMENT FOR ON PREMISE SOFTWARE

This End User License Agreement for On Premise Software, 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. **DEFINITIONS**

- 1.1 "*Affiliates*" means any corporation, partnership or other entity now existing or hereafter organized that directly or indirectly controls, is controlled by or under common control with a Party. For purposes of this definition "control" means the direct possession of a majority of the outstanding voting securities of an entity.
- 1.2 "*Authorized Partner*" means an entity with whom CloudBolt has authorized to resell CloudBolt's products and services.
- 1.3 "*Business Contact Data*" means information that would enable an individual to be contacted at a place of business and includes name, position name or title, business telephone number, business address, business email or business fax number.
- 1.4 "*CloudBolt Software Agent*" is Software that may be licensed solely for use with the Subscription Service and that is made available to Customer by CloudBolt for installation on end user computers.
- 1.5 "*CloudBolt Software Agent License Key*" means a serial number that enables Customer to activate and use the CloudBolt Software Agent to connect to the CloudBolt Platform Subscription Service. A unique CloudBolt Software Agent License Key is required for each separate instance of the CloudBolt Software Agent licensed.
- 1.6 "*Confidential Information*" has the meaning given to it in Section 5.
- 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 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.
- 1.9 "*Employee*" means (i) full-time or part-time employees of a Party, and (ii) individuals of professional service corporations who supplement a Party's workforce.
- 1.10 "*Feedback*" means any Customer provided feedback and reports about any errors, problems, or defects in, or suggestions for changes and improvement to the Software or Pre-Release Products.
- 1.11 "*Intellectual Property Rights*" means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.
- 1.12 "*License Key*" means a serial number that enables Customer to activate and use the Software for a set quantity of VMs licensed.
- 1.13 "*License Term*" means the term of the license for the Software as set forth in the Order Form and any renewal of the License Term.
- 1.14 "*Losses*" means all claims, actions, proceedings, damages, losses, liabilities and expenses, including reasonable attorney fees.
- 1.15 "*Open Source Software*" or "*OSS*" means software components that are licensed under a license approved by the Open Source Initiative or similar open source or freeware license.
- 1.16 "*Order Form*" means each CloudBolt ordering document signed by (i) duly authorized representatives of both Parties, or (ii) by CloudBolt and the Authorized Partner with whom Customer is procuring CloudBolt products and services through, which identifies the specific products and services ordered by Customer, sets forth the pricing for the products and services and which may contain supporting definitions and other applicable terms and conditions. Order Forms are incorporated herein by reference.
- 1.17 "*Pre-Release Product(s)*" means any software or subscription service product offered by CloudBolt to Customer on a trial, demonstration, product extension, proof of concept and/or evaluation basis.
- 1.18 "*Private Cloud FinOps Data*" means usage data such as workload utilization, metadata, events and infrastructure inventory collected through the CloudBolt Software Agent.
- 1.19 "*Server*" or "*VM*" means any physical computer, hardware based device, virtual machine or cloud compute instance, that is capable of running an operating system or serves as a software container that can run a virtualized instance of an operating system.
- 1.20 "*Services*" means Software Maintenance and Support Services.

1.21 “*Software*” means the object or interpreted code of the computer software listed in the Order Form, together with any fixes, updates or other software code relating to the foregoing that may be provided to Customer pursuant to Software Maintenance and Support and that is not subject to a separate license agreement.

1.22 “*Software Maintenance and Support*” means CloudBolt’s maintenance and support services for the Software.

1.23 “*Standard Onboarding*” means the standard services to onboard a customer as set forth in the Documentation.

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

1.25 “*Users*” mean individuals who are authorized by the Customer to use the Software or Pre-Release Products solely on Customer’s behalf and who have been supplied passwords or access by the Customer (or by CloudBolt at the Customer’s request). Users may consist of any Employee of the Customer or its Affiliates, any independent contractor of the Customer or its Affiliates and Third Party Agents.

2. SOFTWARE LICENSE TERMS

2.1 *License*. Subject to the terms and conditions of this Agreement, upon the execution of an Order Form, CloudBolt grants to Customer a limited, non-exclusive, non-transferable term license to use the Software, solely for Customer’s internal operations and during the License Term, in accordance with (a) the Documentation; (b) the terms and applicable limitations on the Order Form. Except for the express licenses granted in this Exhibit B, 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 Customer a non-exclusive, non-transferable license to permit Customer’s Third Party Agents to access, use and/or operate the Software on Customer’s behalf for the sole purpose of delivering outsourcing services to Customer. Customer 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 of this Agreement by a Third Party Agent shall be deemed to be a breach by Customer.

2.3 *Cron Based Heartbeat*. Customer shall ensure that the cron-based heartbeat command is always enabled.

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 Customer 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 list of all applicable OSS included in the Software is 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 with the Software. CloudBolt attests that Customer’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 Customer 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.

2.5 *Standard Software Maintenance and Support*. CloudBolt’s Standard Software Maintenance and Support is provided to Customer during the License Term at no additional fee. Standard Software Maintenance and Support terms can be found at www.cloudbolt.io/legal.

2.6 *Standard Onboarding*. Standard Onboarding as set forth in the Documentation is provided at no additional fee to the Customer. Additional support beyond the Standard Onboarding can be provided via CloudBolt’s professional services organization at CloudBolt’s standard professional services rates.

3. Ownership; Protection Of Software.

3.1 *Ownership*. The Software and Documentation, all copies and portions thereof, and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of CloudBolt and its licensors. Customer’s rights to use the Software and Documentation shall be limited to those expressly granted in this Agreement and any applicable Order Form. No other rights with respect to the Software or any related Intellectual Property Rights are implied. Customer is not authorized to use (and shall not permit any third party to use) the Software, Documentation or any portion thereof except as expressly authorized by this Agreement or the applicable Order Form.

3.2 *Restrictions*. Customer 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, Customer will not and will not permit any third party to: (a) sell, lease, license, distribute, sublicense or otherwise transfer in whole or in part the 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 herein; (d) circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Software as described in this Agreement; (e) 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 herein; (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. Customer acknowledges and agrees that Customer 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 Customer by someone other than CloudBolt or one of its authorized distributors.

3.3 *Decompilation*. Customer 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 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, Customer must first issue a written request to CloudBolt for information or assistance and Customer 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.

- 3.4 **Compliance.** During the Agreement Term and for one (1) year thereafter, CloudBolt, may request verification and certification by Customer that Customer has: (a) used the Software solely in the manner authorized herein; (b) paid all applicable fees; and (c) otherwise complied with the terms of this Agreement and all Order Forms. Customer agrees to promptly pay CloudBolt any underpayments revealed by such verification and certification.
- 3.5 **Export: Government Restricted Rights.** Customer acknowledges that the export of any Software is subject to export or import control and Customer agrees that any Software or the direct or indirect product thereof will not be exported (or re-exported from a country of installation) directly or indirectly, unless Customer obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law. The Software and the Documentation have been developed at private expense and are sold commercially. They are provided under any U.S. government contracts or subcontracts with the most restricted and the most limited rights permitted by law and regulation. Whenever so permitted, the government and any intermediate buyers will obtain only those rights specified in CloudBolt's standard commercial license. Thus, the Software referenced herein, and the Documentation provided by CloudBolt hereunder, which are provided to any agency of the U.S. Government or U.S. Government contractor or subcontractor at any tier shall be subject to the maximum restrictions on use as permitted by FAR 52.227-19 (June 1987) or DFARS 227.7202-3(a) (Jan. 1, 2000) or successor regulations.

4. FEES, PAYMENT TERMS, AND ORDERING

- 4.1 **Fees.** Unless payment is being made through an Authorized Partner, Customer agrees to pay CloudBolt for the Software and Services provided and expenses incurred on the basis and at the rates specified in each Order Form, as the case may be. Unless otherwise set forth on the Order Form, payment shall be due within thirty (30) days after the date of CloudBolt's invoice and shall be made in US Dollars. Customer agrees to pay a late charge of one and half percent (1/2%) per month (or part of a month), or the maximum lawful rate permitted by applicable law, whichever is less, for all amounts, not subject to a good faith dispute, and not paid when due. In addition to paying the applicable fees, Customer shall also pay all pre-approved reasonable travel and out-of-pocket expenses incurred by CloudBolt in connection with any Services rendered.
- 4.2 **Taxes.** Customer shall be solely and exclusively responsible for the payment of required federal, state and local taxes arising from or relating to the Software and Services rendered hereunder, except for taxes related to the net income of CloudBolt and any taxes or obligations imposed upon CloudBolt under federal, state and local wage laws.
- 4.3 **Orders.** Orders for Software and/or Services shall be made via Order Forms. Customer agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by CloudBolt regarding future functionality or features. CloudBolt may provide all or a portion of the Services hereunder through any of its Employees or Affiliates. If Customer elects to upgrade to a new version of the Software or elects to license additional functionality and features offered by CloudBolt, the parties will enter into a new or amended Order Form specifying such new version and/or such additional functionality and the additional fees to be paid by Customer.
- 4.4 **Delivery.** CloudBolt will deliver all Software to Customer by issuing License Keys via electronic transfer and will not use or deliver any tangible media (e.g., computer discs) in connection with the delivery, installation, updating or problem resolution of any Software.

5. CONFIDENTIALITY

5.1 **Confidential Information.** During the Agreement Term (as defined herein), each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature. The receiving party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity *except* to a director, officer, Employee, outside consultant, or advisor of the receiving party or its Affiliates (collectively "Representatives") who have a need to know such Confidential Information in the course of the performance of their duties for the receiving party and who are bound by a duty of confidentiality no less protective of the disclosing party's Confidential Information than this Agreement. The receiving party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the disclosing party. Each party accepts responsibility for the actions of its Representatives and shall protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The parties expressly agree that the terms and pricing of this Agreement are Confidential Information, and that the Software 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. Upon request, a party shall promptly return or destroy all Confidential Information of the other party in its possession provided, however, that the receiving party may retain copies of Confidential Information that are stored on Receiving party's IT backup and disaster recovery systems until the ordinary course deletion thereof. Receiving party shall continue to be bound by the terms and conditions of this Agreement with respect to such retained Confidential Information. The rights and obligations of the parties under this Section 5 shall expire three (3) years after the Effective Date; provided that with respect to Confidential Information that constitutes a trade secret under applicable law, such rights and obligations will survive such expiration until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of the receiving party or its Representatives.

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, 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.

5.3 **Injunctive Relief.** Notwithstanding any other provision of this Agreement, both parties acknowledge that any use of the disclosing party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both parties agree that, in addition to any other remedy to which

the disclosing party may be entitled hereunder, at law or equity, the disclosing party shall be entitled to seek injunctive relief to restrain such use in addition to other appropriate remedies available under applicable law.

6. LIMITED WARRANTY

6.1 *Software Warranty.* CloudBolt warrants that the Software will substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and always used in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than CloudBolt or its authorized representative. CloudBolt will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of the foregoing warranty, either replace the applicable Software or correct any reproducible error in the Software reported to CloudBolt by Customer in writing. If CloudBolt determines that it is unable to correct the error or replace the Software, CloudBolt will refund to Customer a prorated amount of the license fees actually paid by for the applicable Software and Customer's right to use such Software will terminate. The remedies set out in this subsection are Customer's sole remedies for breach of the above warranty.

6.2 *Software Maintenance and Support Warranty.* CloudBolt warrants that the Standard Software Maintenance and Support shall be performed in a professional and workmanlike manner by skilled and proficient personnel.

6.3 *No Other Warranty.* THE PRE-RELEASE PRODUCTS ARE PROVIDED AS-IS, WITH NO WARRANTIES OF ANY KIND. CLOUDBOLT DOES NOT REPRESENT THAT THE SERVICES, SOFTWARE OR PRE-RELEASE PRODUCTS WILL BE ERROR-FREE OR THAT THE SERVICES, SOFTWARE OR PRE-RELEASE PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICES, SOFTWARE OR PRE-RELEASE PRODUCTS WILL BE CORRECTED OR THAT SOFTWARE WILL BE FREE OF VIRUSES OR OTHER HARMFUL CODE. THE WARRANTIES STATED IN THIS SECTION ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY CLOUDBOLT. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES, SOFTWARE OR PRE-RELEASE PRODUCTS ARE ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

7. LIMITATION OF LIABILITY.

7.1 *Consequential Damage Waiver.* Except for (a) damages caused by a violation by Customer or Customer's Users of any of CloudBolt's Intellectual Property Rights, (b) damages caused by a Party's breach of Section 5 (Confidentiality); (c) liabilities incurred from obligations in Section 9 (Indemnification), or damages resulting from a Party's gross negligence or willful misconduct, neither Party will be liable to the other or any third party for loss of profits, or special, indirect, incidental, consequential or exemplary damages, including lost profits and costs, in connection with the provision of Software or Pre-Release Products or performance of the 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) damages caused by a violation by Customer or Customer's Users of any of CloudBolt's Intellectual Property Rights, (b) damages caused by a Party's breach of Section 5 (Confidentiality); (c) liabilities incurred from obligations in Section 9 (Indemnification), or damages resulting from a Party's gross negligence or willful misconduct, the total cumulative liability of each Party for any and all claims and damages under this Agreement, whether arising by statute, contract, tort or otherwise, will not exceed the Services or Software fees paid or payable by Customer for the Services or Software which form the subject of the claim for the applicable then-current License. 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. Notwithstanding the foregoing, CloudBolt's total liability for any and all claims associated with Customer's use of Pre-Release Products shall be limited to the greater of \$1,000 or fees paid for the Pre-Release Product, if any.

8. TERM

8.1 *Term.* This Agreement will commence on the Effective Date and will continue until otherwise terminated in accordance with this Section ("Agreement Term"). The License Term shall be the term 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 License Term or any renewal term of such Order Form, the Order Form will automatically renew for a term equal in duration to the then-current 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 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 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.

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 Software and Services to Customer and Customer shall cease, and cause its Users to cease, using the Services and the Software. Upon termination of this Agreement or any applicable Order Form by CloudBolt due to Customer's uncured breach, in addition to any other remedies CloudBolt may have for such breach at law or in equity, Customer shall pay CloudBolt for all fees that had accrued prior to the termination date and, as liquidated damages and not as a penalty, Customer shall continue to pay CloudBolt for all license fees that would have continued to accrue through the end of the then current term of the Order Form had it not been so terminated. Upon termination of this Agreement or any applicable Order Form by Customer due to CloudBolt's uncured breach, in addition to any other remedies Customer may have for such breach at law or in equity, CloudBolt shall refund to Customer any prepaid unused fees for the Services and/or a prorated amount of any license fees paid for the Software. 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.

9. INDEMNIFICATION

9.1 **CloudBolt Indemnification.** Subject to Section 9.3 below, CloudBolt will indemnify, defend and hold Customer harmless from and against any and all Losses incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Customer alleging that the use of the Services or Software as permitted hereunder infringes any patent, copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Services or Software in violation of this Agreement or applicable law, (b) use of the Services or Software after CloudBolt notifies Customer to discontinue use because of an infringement claim, (c) any claim relating to any third party Data, Customer Data or Private Cloud FinOps Data, (d) modifications to the Services or Software made other than by CloudBolt (where the claim would not have arisen but for such modification), (e) the combination, operation, or use of the Services or Software with materials which were not provided by CloudBolt, to the extent that Customer's liability for such claim would have been avoided in the absence of such combination, operation, or use; (f) compliance by CloudBolt with Customer's custom requirements or specifications if and to the extent such compliance with Customer's custom requirements or specifications resulted in the infringement or (g) Pre-Release Products. If the Services or Software are held to infringe, CloudBolt will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Customer against such claim without cost to Customer; (b) to replace the Services or Software with non-infringing Services or Software; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement or the applicable Order Form and refund to the Customer any prepaid unused fees for the infringing Services and/or a prorated amount of any license fees paid for the infringing Software. The rights and remedies granted Customer under this Section 9.1 state CloudBolt's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the Intellectual Property Rights of a third party, whether arising under statutory or common law or otherwise.

9.2 **Customer Indemnification.** Subject to Section 9.3 below, Customer shall indemnify, defend, and hold CloudBolt harmless from and against any and all Losses resulting from a claim, suit, action, or proceeding brought by any third party against CloudBolt (i) alleging that the Private Cloud FinOps Data or Customer Data, or any use thereof, infringes the Intellectual Property Rights or proprietary rights of others, or has caused harm to a third party, or (ii) arising out of Customer's misuse or misappropriation of CloudBolt's Intellectual Property Rights.

9.3 **Indemnification Procedure.** The indemnified party shall (i) promptly notify 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, and (ii) allow 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 without the indemnified party's prior written consent (such consent not to be unreasonably withheld or delayed). The indemnified party shall also provide the indemnifying party with reasonable cooperation and assistance in defending such claim (at the indemnifying party's cost).

10. DATA SECURITY

10.1 CloudBolt will implement and maintain administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of, and prevention of any unauthorized use, access, processing, destruction, loss, alteration, or disclosure of, Customer Data, Customer's Business Contact Data and Customer's FinOps Data, in accordance with applicable laws and CloudBolt's Privacy Policy located at <https://www.cloudbolt.io/privacy-policy/>. Customer will implement and maintain administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of, and prevention of any unauthorized use, access, processing, destruction, loss, alteration, or disclosure of, CloudBolt Data and CloudBolt's Business Contact Data, in accordance with applicable laws and Customer's privacy policy.

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

11. GENERAL PROVISIONS

11.1 **Entire Agreement and Controlling Documents.** This Agreement, including all Exhibits hereto and all Order Forms, contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all 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 Forms and that are duly signed by the authorized representatives of both parties may amend this Agreement or such Order Forms. Any additional, inconsistent or conflicting terms and conditions contained in any purchase order issued by 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. 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. This Agreement supersedes any "click-through" license terms.

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

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. The Parties hereby agree to waive or opt-out of any application of the United Nations Convention on Contracts for the International Sale of Goods.

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 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 Publicity. Neither Party will use, publicize, or issue any press release which includes the name, trademarks, or other proprietary identifying symbol of the other Party without the prior written consent of the other party; provided, that CloudBolt may include Customer's name and logo on lists of selected Customers.

11.7 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, pandemics, epidemics, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing Party.

11.8 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 and for Customer, to the email indicated in the signature block herein or on the Order Form, as may be updated from time to time upon notification by one Party to the other Party in accordance with this Section. Any such notice will be considered to have been given at the time stamped by recipient's email application (or, if not available, the time stamp of transmission by the sender's email application).

11.9 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.

11.10 Counterpart and Facsimile Execution. 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.

11.11 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.

11.12 Aggregate Data. CloudBolt shall have the unrestricted right to collect, process, use, distribute, share, disclose, market, exploit, commercialize and display Aggregate Data for any lawful purpose during and after the Agreement Term. "Aggregate Data" means any non-attributable, deidentified, non-regulated analytical information, data, analysis and statistics generated by Customer's use of the Software, including, but not limited to, the license serial number, the Software's unique identifier, a total count of managed resources, or total count of users, other pieces of data including compilation of aggregated statistics about the Software and use thereof, and any anonymous data and learnings regarding use of the Software. As between the Parties, CloudBolt owns all right, title and interest in and to the Aggregate Data. CloudBolt will not distribute Aggregate Data in a manner that personally identifies Customer.

11.13 Feedback. Customer hereby grants to CloudBolt a non-exclusive, transferable, sublicensable, worldwide, perpetual, royalty-free, fully paid-up, irrevocable license to reproduce, create derivative works from, distribute, perform, display and otherwise use Feedback (including incorporating it into CloudBolt products or services) without any confidentiality or royalty obligation in any manner whatsoever. All Feedback shall be deemed Confidential Information of CloudBolt.

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