

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**" or "**You**"). 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 "**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 Data**" means all Data made available by CloudBolt to Customer in connection with the Customer's use of the Subscription Service.
- 1.5 "**CloudBolt Technology**" means all CloudBolt's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Customer by CloudBolt in providing the Subscription Service.
- 1.6 "**Confidential Information**" has the meaning given to it in Section 4.
- 1.7 "**Customer Data**" means all Data that are uploaded by or on behalf of Customer or a User to the Subscription Service.
- 1.8 "**Data**" means text, images, materials, photos, audio, video, and all other forms of data or communication.
- 1.9 "**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 and system administrator guides and manuals and other written materials, including the software functional specifications.
- 1.10 "**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.
- 1.11 "**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 or Pre-Release Products.
- 1.12 "**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.
- 1.13 "**Losses**" means all claims, actions, proceedings, damages, losses, liabilities and expenses, including reasonable attorney fees.
- 1.14 "**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 Subscription Service ordered by Customer, sets forth the prices for the Subscription Service and which may contain supporting definitions and other applicable terms and conditions. Order Forms are incorporated herein by reference.
- 1.15 "**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.
- 1.16 "**Private Cloud FinOps Data**" means usage data such as workload utilization, metadata, events and infrastructure inventory collected through the CloudBolt Software Agent.
- 1.17 "**Services**" means the Subscription Service and Subscription Service Support.
- 1.18 "**Standard Onboarding**" means the standard services to onboard a customer as set forth in the Documentation.
- 1.19 "**Subscription Service**" means CloudBolt's proprietary subscription-based software-as-a-service offering set forth on an Order Form.
- 1.20 "**Subscription Service Support**" means CloudBolt's support services for the Subscription Service.
- 1.21 "**Subscription Service Term**" means the set term for the Subscription Service designated on an Order Form and any renewal of the Subscription Service Term.
- 1.22 "**Third Party Agent**" means a third party outsourcer providing information technology services for Customer's internal use, pursuant to a written contract.

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

2. SUBSCRIPTION SERVICES

- 2.1 Subscription Service. Subject to the terms and conditions of this Agreement, CloudBolt will make the Subscription Service available to Customer for the Subscription Service 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 Customer licenses the CloudBolt Software Agent for use with the Subscription Service, CloudBolt grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive license during the Subscription Service Term to use the object code form of the CloudBolt Software Agent internally solely in connection with Customer’s use of the Subscription Service, subject to the terms and conditions of this Agreement and the Documentation.
- 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 Standard Subscription Service Support. CloudBolt’s Standard Subscription Service Support is provided to Customer during the Subscription Service Term at no additional fee. Standard Subscription Service Support terms can be found at www.cloudbolt.io/legal.
- 2.4 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.
- 2.5 Acceptable Use. Customer is responsible for procuring and maintaining the network connections that connect the Customer to the Subscription Service. The Customer agrees: (a) that only authorized Users 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 to: (a) send, upload or otherwise transmit any Customer Data that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another’s privacy, hateful, or racially, ethnically or otherwise objectionable; (b) upload or otherwise transmit, display or distribute any Customer Data that infringes any trademark, trade secret, copyright or other proprietary or Intellectual Property Rights of any person; (c) upload or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (d) interfere with or disrupt the Subscription Service or networks connected to the Subscription Service; or (e) violate any applicable law or regulation. Customer will also not (and will not permit any third party to): (a) sell, rent, lease, license, distribute, provide access to, sublicense, or otherwise make available any Subscription Service to a third party or in a service bureau or outsourcing offering; (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. Other than Business Contact Data, Customer agrees not to upload to the Subscription Service or provide CloudBolt access to any type of Personally Identifiable Information as defined by applicable data protection laws.
- 2.6 Ownership. Customer acknowledges and agrees that (i) as between CloudBolt and Customer, all right, title and interest in and to the Subscription Service, the Subscription Materials, including the CloudBolt Technology and all derivatives thereof (including any and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights embodied therein or associated therewith) are and shall remain CloudBolt’s or its licensors’, and CloudBolt in no way conveys any right or interest in the Subscription Materials, the CloudBolt Technology or the Subscription Service other than a limited license to use them in accordance herewith, and (ii) the Subscription Materials, the CloudBolt Technology and the Subscription Service are works protected by copyright, trade secret, and other proprietary rights and laws. As between the parties, Customer or its licensors retain all right, title and interest (including any and all Intellectual Property Rights) in and to the Customer Data and Private Cloud FinOps Data and any modifications made thereto in the course of the operation of the Subscription Service. Subject to the terms of this Agreement, Customer hereby grants to CloudBolt a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of, and display the Customer Data and Private Cloud FinOps Data solely to the extent necessary to provide the Subscription Service to Customer, or to prevent or address service or technical problems under this Agreement, or as may be required by law.
- 2.7 Handling of Customer Data and Private Cloud FinOps Data Upon Termination. Customer agrees that following termination of Customer’s account and/or use of the Subscription Service, CloudBolt may immediately deactivate Customer’s account and that following a reasonable period of not less than 30 days shall be entitled to delete Customer’s account from CloudBolt’s “live” site. Customer further agrees that CloudBolt shall not be liable to Customer nor to any third party for any termination of Customer access to the Subscription Service or deletion of Customer Data and Private Cloud FinOps Data.
- 2.8 Users: Passwords, Access and Notification. Customer shall authorize access to and assign unique passwords to the Users. Customer will be responsible for the confidentiality and use of User’s passwords. Customer agrees to immediately notify CloudBolt if Customer becomes aware of any loss or theft or unauthorized use of any of Customer’s passwords.
- 2.9 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 and CloudBolt will use commercially reasonable efforts to notify Customer of any material modifications.
- 2.10 Sufficient Rights in Customer Data. Customer will ensure that its use of the Subscription Service and all Customer Data and Private Cloud FinOps Data is always compliant with the terms of 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 and Private Cloud FinOps Data. Customer represents and

warrants that Customer has sufficient rights in the Customer Data and Private Cloud FinOps Data to grant the rights granted to CloudBolt hereunder and that the Customer Data does not infringe or violate the Intellectual Property Rights, publicity, privacy or other rights of any third party.

2.11 Changes to Order Form. If Customer elects to upgrade to a new version of the Subscription Service 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.

3. FEES, PAYMENT TERMS, AND ORDERING

3.1 Fees. Unless payment is being made through an Authorized Partner, Customer agrees to pay CloudBolt for the 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.

3.2 Taxes. Customer shall be solely and exclusively responsible for the payment of required federal, state and local taxes arising from or relating to the 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.

3.3 Orders. Orders for 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.

4. CONFIDENTIALITY

4.1 Confidential Information. During the Agreement Term (as defined in Section 7), 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 Subscription Service are CloudBolt's Confidential Information. A receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder and shall cooperate with any reasonable request of the disclosing party in enforcing its rights. Upon request, a party shall promptly return or destroy all Confidential Information of the other party in its possession provided, however, that the receiving party may retain copies of Confidential Information that are stored on Receiving party's IT backup and disaster recovery systems until the ordinary course deletion thereof. Receiving party shall continue to be bound by the terms and conditions of this Agreement with respect to such retained Confidential Information. The rights and obligations of the parties under this Section 4 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.

4.2 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.

4.3 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.

5. LIMITED WARRANTY

5.1 Subscription Service Warranty. CloudBolt warrants that during the Subscription Service Term, the Subscription Service will conform, in all material respects, with the Documentation. CloudBolt does not warrant that it will be able to correct all reported defects or that use of the Subscription Service will be uninterrupted or error free. CloudBolt makes no warranty regarding features or services provided by third parties. For any breach of the above warranty, CloudBolt will, at no additional cost to Customer, provide remedial services necessary to enable the Subscription Service to conform to the warranty. The Customer will provide CloudBolt with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. Such warranty shall only apply if the Subscription Service has been utilized by the Customer in accordance with the Order Form and this Agreement. If CloudBolt determines that it is unable to fix the Subscription Service to make it conform, in all material respects, with the Documentation, CloudBolt will refund to Customer any unused prepaid fees for the Subscription Service and Customer's right to use such Subscription Service will terminate. The remedies set out in this subsection are Customer's sole remedies for breach of the above warranty.

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

6. LIMITATION OF LIABILITY.

6.1 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 4 (Confidentiality); (c) liabilities incurred from obligations in Section 8 (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 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.

6.2 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 4 (Confidentiality); (c) liabilities incurred from obligations in Section 8 (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 fees paid or payable by Customer for the Services which form the subject of the claim for the applicable then-current Subscription Service. 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.

7. TERM

7.1 Term. This Agreement will commence on the Effective Date and will continue until otherwise terminated in accordance with this Section 7 ("Agreement Term"). The Subscription 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 Subscription 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 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.

7.2 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.

7.3 Effect of Termination. Upon any termination or expiration of this Agreement or any applicable Order Form, CloudBolt shall no longer provide the applicable Services to Customer and Customer shall cease, and cause its Users to cease, using the Services. 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. 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.

8. INDEMNIFICATION

8.1 CloudBolt Indemnification. Subject to Section 8.3 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 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 in violation of this Agreement or applicable law, (b) use of the Services 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 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 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 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 with non-infringing Services; 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. The rights and remedies granted Customer under this Section 8.1 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.

8.2 **Customer Indemnification.** Subject to Section 8.3 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.

8.3 **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).

9. DATA SECURITY

9.1 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.

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

10. GENERAL PROVISIONS

10.1 **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.

10.2 **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.

10.3 **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.

10.4 **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.

10.5 **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.

10.6 **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.

10.7 **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, endemics, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing Party.

10.8 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 in 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).

10.9 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.

10.10 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.

10.11 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.

10.12 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 Subscription Service, including, but not limited to, the license serial number, a total count of managed resources, or total count of users, other pieces of data including compilation of aggregated statistics about the Subscription Service and use thereof, and any anonymous data and learnings regarding use of the Subscription Service. As between the Parties, CloudBolt owns all right, title and interest in and to the Aggregate Data. CloudBolt will not distribute Aggregate Data in a manner that personally identifies Customer.

10.13 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.

10.14 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. Subscription Services Support and Service Levels Agreements do not apply to the Pre-Release Products.