Master Subscription Agreement

Last updated: May 16, 2023

This Master Subscription Agreement (this **"Agreement"**) contains terms and conditions that govern your purchase of subscriptions to, and use of, the Services (as defined below), and is a contract between CloudSaver, Inc., a Delaware corporation (**"CloudSaver"**), and you or the entity or organization that you represent (**"Customer"**).

If you are an individual using the Services for your own purposes: (1) all references to **Customer** are to you and (2) you represent and warrant that you are at least 18 years of age, or have otherwise reached the age of "majority" where you reside, and that you have the right, power and authority to enter into this Agreement.

If you are using the Services on behalf of an entity or organization that you represent: (1) all references to **Customer** are to that entity or organization and (2) you represent and warrant that you are at least 18 years of age, or have otherwise reached the age of "majority" where you reside, and that you have the right, power and authority to enter into this Agreement on behalf of Customer.

This Agreement becomes binding and effective on Customer upon the earliest of: (1) when you access or use the Services, (2) when you click an "I Accept," "Sign up" or similar button or check box referencing this Agreement, or (3) when you enter into an Order (as defined below) with CloudSaver.

Capitalized terms not otherwise defined in this Agreement will have the respective meanings assigned to them immediately below:

- **"Account Data"** means information about Customer that Customer provides to CloudSaver in connection with the creation or administration of its CloudSaver account, such as first and last name, username, and email address of an Authorized User or Customer's billing contact. Customer shall ensure that all Account Data is current and accurate at all times during the applicable Order Term, and shall in no event include Sensitive Information in Account Data.
- **"Affiliate"** means, with respect to a Party, a business entity that directly or indirectly controls, is controlled by or is under common control with, such Party, where "control" means the direct or indirect ownership of more than 50% of the voting securities of a business entity.
- **"API"** means an application programming interface referenced in the Documentation that CloudSaver maintains and makes available to Customer in connection with the Services.

- **"Applicable Laws"** means any and all governmental laws, rules, directives, regulations, or orders that are applicable to a particular Party's performance under this Agreement.
- **"AUP"** means CloudSaver's standard Acceptable Use Policy, currently available at cloudsaver.com/legal/acceptable-use.
- **"Authorized User"** means an individual employee, agent or contractor of Customer or an Affiliate for whom subscriptions to Services have been purchased pursuant to the terms of the applicable Order and this Agreement, and who has been supplied user credentials for the Services by Customer or the Affiliate (or by CloudSaver at Customer's or an Affiliate's request).
- **"Available"** means the Services are available for access and use by end users over the internet; "Availability" has a correlative meaning. Availability is assessed from the point where the Services are made available from CloudSaver's hosting provider and measured in minutes over the course of each calendar month during the Order Term.
- **"Confidential Information"** means the confidential, secret or proprietary information of one party (the **"Disclosing Party"**), including without limitation financial and business information such as, without limitation, financial and business plans, financial statements, marketing plans, business ideas and strategies, information concerning employees, clients, customers, and contracts, and technical information such as, without limitation, information and ideas concerning software, hardware, products and Technology which has been or may hereafter be disclosed, directly or indirectly to the other party hereunder (the **"Recipient"**), either orally, in writing or in any other material form, or delivered to the Recipient.
- **"Connection"** means established integrations or other connections between one or more Customer Components and the CloudSaver Services.
- **"Customer Components"** means Customer's hardware, software, or other computing devices whether owned, leased or licensed by Customer, located on Customer's premises or cloud-based, used by Customer on a software-as-a-service basis or otherwise.
- **"Customer Credentials"** means properly enabled single sign-on for Customer's accounts, and secured access passwords, keys, tokens, or other credentials used by Customer in connection with the Services.
- **"Customer Data"** means data from Customer's Environment that are submitted for Processing by the Services.

- **"Customer's Environment"** means systems, platforms, services, software, devices, sites and/or networks that Customer uses in its own internal business operations to generate data used by the Services.
- **"Documentation"** means CloudSaver's standard user documentation for the Services, currently available at knowledge.cloudsaver.com.
- **"Exceptions"** means any of: (a) Customer's breach of this Agreement, an Order or the AUP; (b) Customer's failure to configure and use the Services in accordance with the Documentation; (c) failures of, or issues with, Customer's Environment; (d) Force Majeure Events; (e) CloudSaver's suspension of Authorized Users' access to the Services pursuant to Section 9.c or 18.b; or (f) maintenance during a window for which CloudSaver provides notice by email or through the Services in advance.
- **"Feedback"** means bug reports, suggestions, or other feedback with respect to the Services or Documentation provided by Customer to CloudSaver, exclusive of any Customer Confidential Information therein.
- **"Fees"** means charges by CloudSaver for Customer's use of Services in accordance with this Agreement and applicable Order(s) and Service Plan(s). Fees will be comprised of annual subscription amounts for CloudSaver Services and transaction charges associated with executing changes within Customer's Environment.
- **"Force Majeure Event"** means an act of God; flood, fire, or explosion; war, terrorism, invasion, riot, or other civil unrest; embargoes or blockades in effect on or after the date of this Agreement; or national or regional emergency, a pandemic, or government mandated business shutdowns.
- **"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- **"Malicious Code"** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs.
- **"Order"** means a separate order for Services pursuant to this Agreement: (a) completed and submitted by Customer online at the CloudSaver site and accepted by CloudSaver or (b) executed by CloudSaver and Customer.
- **"Order Term"** means, with respect to each Order, the initial subscription term for the Services specified in the applicable Order and all Renewal Order Terms, if any. If no term is stated in an Order, then the term is 12 months with the term auto renewing for additional 12-month terms unless terminated by a Party under this Agreement.

- **"Ordinary Course Providers"** means third-party hosting providers to support the provision of the Services and Support in the ordinary course of its business, i.e., not specifically for Customer.
- **"Participating Third-Party"** means any individual or organization who pays for access to Shared Data made available through CloudSaver, including but not limited to those who provide promotional pricing, discounts, freemium pricing, or other fee subsidies in exchange for such access.
- **"Party"** means each of CloudSaver and Customer.
- **"Personal Information"** means information relating to an identified or identifiable natural person that is protected by Applicable Laws with respect to privacy where the individual resides.
- **"Pricing Page"** means the publicly available web page(s) where CloudSaver publishes its list prices for Services, currently available at cloudsaver.com/pricing.
- **"Privacy Policy"** means CloudSaver's standard Privacy Policy, currently available at cloudsaver.com/legal/privacy.
- **"Process"** means to perform an operation or set of operations on data, content, or information, including to submit, transmit, post, transfer, disclose, collect, record, organize, structure, store, adapt or alter; "Processing" has a correlative meaning.
- **"Pro-Rated Refund"** means a refund to Customer of a pro rata share of any unused amounts prepaid by Customer under the applicable Order for the Services on the basis of the remaining portion of the current Order Term or Renewal Order Term.
- **"Renewal Order Term"** means renewal of an Order for the same duration as the expiring Order Term.
- **"Sensitive Information"** means the following categories of Personal Information: (a) government-issued identification numbers, including Social Security numbers; (b) financial account data; (c) biometric, genetic, health or insurance data; (d) financial information; (e) data revealing race, ethnicity, political opinions, religion, philosophical beliefs, or trade union membership; (f) data concerning sex life or sexual orientation; and (g) data relating to criminal convictions and offenses. Without limiting the foregoing, the term **"Sensitive Information"** includes Personal Information that is subject to specific or heightened requirements under Applicable Law or industry standards, such as Social Security numbers in the United States, protected health information under the U.S. Health Insurance Portability and Accountability Act, nonpublic personal information under the U.S. Gramm-Leach-Bliley Act, and cardholder data under the PCI Data Security Standard.

- **"Service Plan"** means the packaged plan and associated features, as detailed at the Pricing Page, for the hosted CloudSaver service to which Customer subscribes.
- **"Services"** means the hosted services to which Customer subscribes through, or otherwise uses, following an Order that are made available by CloudSaver online via the applicable login page (currently app.cloudsaver.com) and other web pages designated by CloudSaver, and all data collection, analysis and other consulting services performed by CloudSaver to identify potential cost saving opportunities for Customer Environment. CloudSaver may make such changes to the Services as CloudSaver deems appropriate from time to time, provided such changes do not materially decrease the features or functionality of the Services as they existed at the effective date of this Agreement. For purposes of this Agreement, the term Services does not include alpha, beta or other pre-commercial releases of a CloudSaver product or service (or feature or functionality of a Service), which are subject to the Subscription Agreement available at cloudsaver.com/legal/master-subscription-agreement.
- **"Supplemental Terms"** means any additional terms that apply to certain Customer Data, Services, Service Plans and/or customers, including any applicable Service-Specific Terms, available at cloudsaver.com/legal.
- **"Support"** means CloudSaver's standard customer support for the Services, currently described at cloudsaver.com/support.
- **"Support Request"** means a request for Support from an Authorized User.
- **"Suspension Notice"** means a notice from CloudSaver to Customer delivered in advance of a suspension of Customer's service.
- **"Taxes"** means all taxes, levies, duties, or charges imposed by government authorities.
- **"Third-Party Terms"** means all applicable third-party terms, policies and licenses governing Customer's access and use of Customer Components and associated data.
- **"Usage Data"** means information about Customer's configuration and use of the Services.

CloudSaver may modify this Agreement from time to time, subject to the terms in Section 30 below.

1. Orders This Agreement sets forth the terms pursuant to which Customer may access

and use CloudSaver's hosted Services in connection with one or more Orders. Subject to

the terms of an Order, the Services will support Customer's collection, monitoring, management, and analysis of data generated by Customer's Environment.

2. Access and Use2.a. Subject to the applicable Order and this Agreement, CloudSaver hereby grants to Customer the right to access and use the Services in accordance with the Documentation during the Order Term for Customer's Environment.**2.b.** To the extent necessary to provide Services, Customer grants CloudSaver:
2.b.I Programmatic access to Customer Environment;

2.b.II Permission to programmatically collect environmental, operational, and billing data from Customer Environment;

2.b.II Permission to analyze the Customer Data to identify potential cost saving opportunities and product recommendations.

2.c. CloudSaver will not access any of Customer's internal or customer data.

2.d. As between the Parties, Customer controls Customer's Environment and its individual Customer Components. Customer will be able to use the Services by establishing a Connection. By implementing a Connection to a Customer Component, Customer hereby grants to CloudSaver the right, and is expressly instructing CloudSaver, to access and interoperate with that Customer Component during the Order Term in order to provide and support the Services. Customer is responsible for complying with all applicable Third-Party Terms.

2.e. e. Customer has control over Customer Data. By submitting Customer Data to the Services, Customer hereby grants to CloudSaver the right, and is expressly instructing CloudSaver, to Process Customer Data during the Order Term in order to provide and support the Services and as otherwise provided in this Agreement.

2.f. f. All rights granted by each Party to the other under this Section 2 are limited, nonexclusive and, except as otherwise provided in this Agreement, non-transferable.

3. Availability CloudSaver commits to make the Services Available at least 99.8% of the time, exclusive of any time the Services are not Available as a result of one or more Exceptions (the **"Availability Standard"**). Customer may request Availability information by submitting a Support Request. If the actual Availability of the Services is less than the Availability Standard in any three consecutive months, Customer shall provide written notification to CloudSaver that the Services failed to meet the Availability Standard.

CloudSaver shall have 30 days from receipt of such notification to investigate and respond. If CloudSaver determines the Availability Standard was not met, CloudSaver shall have 30 additional days to meet the Availability Standard. After such time, if CloudSaver is unable to meet the Availability Standard, Customer may, upon written notification, terminate the Order and request a Pro-Rated Refund, as its sole and exclusive remedy for any failure by CloudSaver to meet this Availability Standard.

4. Support Subject to this Agreement and the pricing set forth in an Order, CloudSaver will

provide Support to Authorized Users through the Services and by email. Although resolution times are not guaranteed, CloudSaver commits to respond to each Support Request within two business days. Customer's sole and exclusive remedy for any alleged failure by CloudSaver to provide Support with reasonable skill, care and diligence following a Support Request shall be re-performance of the applicable Support.

5. APIs One or more APIs may be made available to Customer to assist with Customer's

access to certain data collected and processed by CloudSaver in connection with the Services. Customer determines and controls what APIs (if any) to use in connection with the Services. By using an API in connection with the Services, Customer hereby agrees to do so in accordance with the Documentation.

6. Hosting and Other Providers CloudSaver may use Ordinary Course Providers and

CloudSaver Affiliates to support the provision of the Services and Support. CloudSaver reserves the right to engage and substitute Ordinary Course Providers as it deems appropriate, but shall: (a) remain responsible to Customer for the provision of the Services and Support and (b) be liable for the actions and omissions of its Ordinary Course Providers undertaken in connection with CloudSaver's performance of this Agreement to the same extent CloudSaver would be liable if performing the Services or Support directly. In no event shall providers of Customer Components be deemed Ordinary Course Providers for any purpose under this Agreement.

7. Security and Privacy7.a. As discussed in the Documentation, including

at knowledge.cloudsaver.com, each Party has obligations with respect to the security of the Services and Customer Data. Taking into account the nature and types of Customer Data, CloudSaver will employ administrative, physical, and technical measures in accordance with applicable industry practice to protect the Services and prevent the accidental loss or unauthorized access, use, alteration, or disclosure of Customer Data under its control

during each Order Term.**7.b.** Customer is responsible for properly configuring the Customer Credentials and the Services in accordance with the Documentation. Customer agrees to use reasonable efforts to prevent unauthorized access or use of the Services and to promptly notify CloudSaver if Customer believes (a) any Customer Credentials have been lost, stolen, or made available to an unauthorized third party or (b) an unauthorized third party has accessed the Services or Customer Data.

7.c. Except for limited Personal Information in Account Data, CloudSaver does not require Personal Information for Customer's access and use of the Services. Customer shall limit Personal Information in Account Data to only that necessary for the creation and administration of its CloudSaver account. With regard to Customer Data, except as may otherwise be expressly provided in applicable Supplemental Terms, Customer shall not use the Services to Process any Sensitive Information and shall use reasonable efforts to restrict the inclusion of other Personal Information in Customer Data.

7.d. d. CloudSaver may Process Usage Data, Customer Data, and Account Data: (a) to manage Customer's account, including to calculate Fees (as defined in Section 11); (b) to provide and improve the Services and Support, including to address Support Requests and troubleshoot other issues; and (c) to provide Customer and Authorized Users insights, feature announcements and promote additional Services. CloudSaver may also Process Usage Data that has been collected and aggregated: (i) to develop new services and features and (ii) to promote CloudSaver's services, including, for example, through analyses of patterns and trends. CloudSaver's Processing of Usage Data, Customer Data and Account Data shall at all times be subject to CloudSaver's obligations under this Agreement, including those of security under Section 7.a and confidentiality under Section 15; the Supplemental Terms, if applicable; and, with respect to Account Data, the Privacy Policy.

8. General Protection Regulation Compliance8.a. CloudSaver acknowledges that it may

process Personal Information on behalf of the Customer, and therefore, both parties shall comply with the provisions of the European Union General Data Protection Regulation (EU) 2016/679 ("GDPR") concerning the processing of Personal Information, as well as the applicable provisions of the UK Data Protection Act 2018 ("DPA 2018").**8.b.** CloudSaver agrees to act as a data controller on behalf of the Customer in relation to any Personal Information processed pursuant to this Agreement, and shall process such Personal Information only in accordance with the documented instructions provided by the Customer, unless otherwise required by applicable law.

8.c. CloudSaver shall implement and maintain appropriate technical and organizational measures to protect the Personal Information processed under this Agreement against unauthorized or unlawful processing, accidental loss, destruction, or damage. Such measures shall be proportionate to the potential risks associated with the processing and the nature of the Personal Information

8.d. CloudSaver shall promptly notify the Customer if it receives a request from a data subject regarding the exercise of their rights under the GDPR or DPA 2018, and shall provide the necessary assistance to the Customer, as reasonably required, in responding to such requests.

8.e. CloudSaver shall assist the Customer in ensuring compliance with the obligations set out in Articles 32 to 36 of the GDPR and relevant provisions of the DPA 2018 (security of processing, notification of personal data breaches, data protection impact assessments, and prior consultations), taking into account the nature of the processing and the information available to CloudSaver.

8.f. CloudSaver shall ensure that its personnel authorized to process the Personal Information under this Agreement are subject to appropriate confidentiality obligations.

8.g. CloudSaver shall not transfer any Personal Information processed under this Agreement to any third country or international organization unless it has provided appropriate safeguards in accordance with the GDPR and DPA 2018, or unless the transfer is otherwise permitted under applicable data protection law.

8.h. Upon termination or expiration of this Agreement, CloudSaver shall return or securely destroy all Personal Information processed under this Agreement, unless retention of such data is required by applicable law, within 14 days.

9. Customer Responsibilities and Restrictions9.a. Customer will be solely responsible

for: (a) Customer's Environment, including as necessary to enable Authorized Users' access and use of the Services; (b) Account Data, Customer Data and Customer Credentials (including activities conducted with Customer Credentials), subject to CloudSaver's Processing obligations under this Agreement; (c) providing any required notices to, and receiving any required consents and authorizations from, Customer Component providers, Authorized Users and persons whose Personal Information may be included in Account Data, Customer Data or Customer Credentials; and (d) ensuring use of the Services is only for Customer's Environment and in accordance with the AUP, Documentation and applicable Third-Party Terms.**9.b.** No provision of this Agreement includes the right to, and

Customer shall not, directly or indirectly: (a) enable any person or entity other than Authorized Users to access and use the Services; (b) attempt to gain unauthorized access to any Service or its related systems or networks; (c) use any Service to access CloudSaver Intellectual Property Rights except as permitted under this Agreement; (d) modify, copy or create any derivative work based upon a Service or any portion, feature or function of a Service; (e) resell, distribute or otherwise make available any Service to any third party, including as part of a managed services offering; (f) except to the extent limited by Applicable Law, reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, the Services or access or use the Services or Documentation in order to (1) copy ideas, features, functions or graphics, (2) develop competing products or services, or (3) perform competitive analyses; (g) remove, obscure or alter any proprietary notice related to the Services; (h) send or store Malicious Code; (i) use or permit others to use the Services in violation of Applicable Law; or (j) use or permit others to use the Services other than as described in the applicable Order, Documentation and this Agreement.

9.c. CloudSaver reserves the right to investigate potential violations of the above provisions of this Section 9. In the event CloudSaver reasonably believes a violation has occurred, in addition to any other remedies available at law or in equity (including termination pursuant to Section 18.b), CloudSaver will have the right to suspend Authorized Users suspected of the violation from accessing the Services for so long as is reasonably necessary to address the potential violation. Except where CloudSaver reasonably believes the violations are willful, or in urgent or emergency situations, CloudSaver will provide a Suspension Notice and work with Customer in good faith to resolve the potential violation. For clarity, CloudSaver reserves the right, but does not assume any obligation to Customer (except with respect to the Suspension Notice), to take any of the actions described in this Section 9.c.

10. Compliance with Applicable Laws Each Party agrees to comply with all Applicable

Laws with respect to its performance of its obligations and exercise of its rights under this Agreement. Without limiting the foregoing:**10.a.** Each Party shall comply with Applicable Laws concerning the privacy and protection of Personal Information. Without limiting Section 9.a, Customer will be solely responsible for providing any notices required by Applicable Law to, and receiving any consents and authorizations required by Applicable Law from, persons whose Personal Information may be included in Account Data, Customer Data or Customer Credentials.

10.b. Each Party shall comply with Applicable Laws concerning anti-bribery and anti-corruption, which may include the U.S. Foreign Corrupt Practices Act of 1977. As of the

date of this Agreement and the date of each Order, Customer represents that it has neither received nor been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any employee, agent, or representative of CloudSaver or its Affiliates in connection with this Agreement. Customer agrees to promptly notify CloudSaver if it learns of any violation of the foregoing. This representation is not intended to include customary and reasonable gifts and entertainment provided in the ordinary course of business, to the extent such gifts and entertainment are permitted by Applicable Law.

10.c. Each Party shall (a) comply with Applicable Laws administered by the U.S. Commerce Bureau of Industry and Security, U.S. Treasury Office of Foreign Assets Control or other governmental entity imposing export controls and trade sanctions (**"Export Laws"**), including designating countries, entities and persons (**"Sanctions Targets"**) and (b) not directly or indirectly export, re-export or otherwise deliver Services to a Sanctions Target, or broker, finance or otherwise facilitate any transaction in violation of any Export Laws. Customer represents that it is not a Sanctions Target or prohibited from receiving Services pursuant to this Agreement under Applicable Laws, including Export Laws.

11. Pricing and Fees11.a. Customer agrees to pay all Fees as provided in an Order. Fees

must be paid in U.S. dollars and, subject to Section 11.b, in accordance with the payment terms in the Order. Fees for Services include Support at no additional charge.

11.b. Customer must assert any dispute with regard to Fees in writing within 10 days of the payment transaction giving rise to the dispute. CloudSaver will not exercise its suspension or termination rights if Customer disputes the applicable charges reasonably and in good faith and provides reasonable cooperation to resolve the dispute.

11.c. If Customer is paying Fees using a credit card or any digital payment method supported by CloudSaver, Customer authorizes CloudSaver to charge Customer's account for the Services using that payment method. Customer must keep all information in its billing account current to ensure that all Fees are charged to the appropriate account and are timely paid. If Customer notifies CloudSaver to stop using a previously designated payment method and fails to designate an alternative, CloudSaver may immediately suspend use and access to the Services. Any notice from Customer changing its billing account will not affect charges CloudSaver submits to Customer's billing account before CloudSaver reasonably can act on Customer's request. CloudSaver uses a third-party intermediary to manage credit card processing, and this intermediary is not permitted to use Customer's credit card information except in connection with Customer's authorized purchases. Notice (including email) from CloudSaver or its third-party credit card processor

declining Customer's credit card or otherwise relating to Customer's account will be deemed valid notice from CloudSaver.

12. Order Renewal Unless either Party gives the other Party notice of its intention not to

renew an Order prior to the Order's then current expiration date, the Order will automatically have a Renewal Order Term at the then current market rate.

13. Taxes All Fees are exclusive of Taxes. Customer shall be solely responsible for all sales,

service, value-added, use, excise, consumption, and any other Taxes on amounts payable by Customer under the Orders and this Agreement (other than any Taxes on CloudSaver's income, revenues, gross receipts, personnel, or assets).

14. Ownership As between the Parties: (a) Customer owns all right, title, and interest in

and to Customer's Environment and Customer Data, including in each case all associated Intellectual Property Rights, and (b) CloudSaver owns all right, title, and interest in and to the Services, Documentation and Feedback, including in each case all associated Intellectual Property Rights. Except for the rights expressly granted by one Party to the other in this Agreement, all rights are reserved by the granting Party.

15. Confidentiality15.a. Disclosure of Information. Each of the parties shall disclose or

deliver to the other such Confidential Information as the Disclosing Party, in its sole discretion, deems necessary or desirable for the Purpose. The Recipient may in its sole discretion refuse to receive any information or materials offered to be disclosed or delivered by the Disclosing Party.**15.b.** Permission to use Information. Each party hereby grants to the other a non-exclusive, non- transferable, personal license to use Confidential Information disclosed to it hereunder by the other solely for the Purpose. No license is granted to the Recipient to use Confidential Information received hereunder for any purpose other than the Purpose.
15.c. Non-Disclosure. Each party agrees that it (i) shall not copy or reproduce any of the Confidential Information of the other without the express written consent of the other; (ii) will use reasonable care and not less than the same care and discretion to avoid disclosure, publication, or dissemination of Confidential Information of the Disclosing Party, as the Recipient employs with similar information of its own which it does not desire to publish, disclose, or disseminate; and (iii) will disclose Confidential Information only to

its employees, officers, directors and advisors on a need to know only basis for the Purpose.

15.d. Limitations. Notwithstanding the foregoing, the Recipient of Confidential Information shall be under no duty hereunder with respect to any Confidential Information of the Disclosing Party which (i) was known or developed by the Recipient prior to the disclosure thereof by the other party; (ii) properly comes into its possession from a third person which is not under any obligation to maintain the confidentiality of such Confidential Information; (iii) is or becomes part of the public domain other than through the Recipient's fault; (iv) is independently developed by the Recipient without use of the Confidential Information of the Disclosing Party; or (v) is required to be disclosed by law or pursuant to an order of a court or tribunal, provided that the Recipient uses its best efforts to give the Disclosing Party prior written notice of such a disclosure and takes reasonable actions to avoid such disclosure or minimize its extent.

15.e. No Impairment. The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently use, develop, or market products without use of the other party's Confidential Information (so long as such use, development, or marketing does not infringe or violate any of the Intellectual Property Rights of the other).

15.f. Third Party Information. Each party agrees not to disclose to the other any proprietary, confidential, secret or private information of any third person which it is under a duty not to disclose, or any intellectual property which the Recipient cannot use without violating or infringing an Intellectual Property Right of a third person, without the prior written consent of the other party.

15.g. No Representations. Although each party will use reasonable efforts to ensure the accuracy of Confidential Information disclosed to the other, neither party makes any representation or warranty as to the accuracy or completeness of such Confidential Information. Neither party will have any liability to the other under this Agreement for the accuracy or completeness of Confidential Information.

15.h. No License. The Recipient agrees that no license or conveyance of any rights to Confidential Information is granted to the Recipient or implied under this Agreement.

15.i. Return. Upon termination of this Agreement or at the request of the Disclosing Party, the Recipient shall promptly deliver to the Disclosing Party all Confidential Information of

the Disclosing Party and all copies and reproductions thereof in its possession or under its control.

15.j. Enforcement of Confidentiality Obligations. The Recipient agrees that its obligations hereunder are necessary and reasonable to protect the Disclosing Party, and expressly agrees that monetary damages would be inadequate to compensate the Disclosing Party for any breach of any covenant or agreement set forth herein. The Recipient agrees and acknowledges that any such violation or threatened violation would cause irreparable injury to the Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Disclosing Party shall be entitled to obtain injunctive relief against any threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

16. Shared Data In the event Customer accepts promotional pricing, discounts, freemium

pricing, or other fee subsidies from Participating Third-Party, Customer agrees that CloudSaver may provide Participating Third-Party with electronic access to Customer's Usage Data, Customer Data, and Account Data, including configuration, usage, and pricing data for Customer's Environment ("Shared Data"). Shared Data shall specifically exclude Sensitive Information. Customer acknowledges and agrees that CloudSaver shall have no obligation to compensate Customer for any sale of Shared Data. If Customer wishes to restrict the sharing of Shared Data with any Participating Third-Party, they must purchase Services at the full price, without any promotional pricing, discounts, freemium pricing or other fee subsidies.

17. Disclaimers17.a. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER

PARTY MAKES ANY WARRANTY OR GUARANTEE OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER IMPLIED, EXPRESS, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.**17.b.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL SERVICES, SUPPORT AND ANY OTHER MATERIAL ARE PROVIDED BY CLOUDSAVER ON AN "AS IS" AND "AS AVAILABLE" BASIS. CLOUDSAVER MAKES NO REPRESENTATION OR WARRANTY, AND HAS NO SUPPORT OBLIGATIONS OR LIABILITY, WITH RESPECT TO ANY CUSTOMER COMPONENT. WITHOUT LIMITING THE OTHER PROVISIONS OF THIS SECTION 17, CLOUDSAVER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, DOCUMENTATION, ANCILLARY TOOLS OR

ANY OTHER MATERIAL, OR RESULTS OF THE USE THEREOF, WILL: (a) MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS; (b) OPERATE WITHOUT INTERRUPTION; (c) ACHIEVE ANY INTENDED RESULT; (d) BE ERROR FREE OR (e) BE COMPATIBLE, WORK WITH OR CONTINUE TO WORK WITH CUSTOMER COMPONENTS. ANY CHANGES TO CUSTOMER COMPONENTS (INCLUDING THEIR UNAVAILABILITY) OR THIRD-PARTY TERMS DURING AN ORDER TERM DO NOT AFFECT CUSTOMER'S OBLIGATIONS UNDER THE APPLICABLE ORDER OR THIS AGREEMENT.

18. Term and Termination18.a. The term of this Agreement will continue through the

expiration or earlier termination of the last Order to be in effect.**18.b.** Subject to Section 11.b, CloudSaver may terminate any Order upon written notice to Customer if Customer fails to pay any amount due under the Order, and such failure continues more than 15 days after CloudSaver's delivery of written notice. In addition, either Party may terminate all Orders and this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach (if capable of cure) remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach. CloudSaver may immediately without notice terminate this Agreement if Customer materially breaches any term of this Agreement.

18.c. Upon expiration or earlier termination of an Order: (a) subject to Section 18.e, all rights granted to Customer with respect to Services under such Order will terminate effective as of the effective date of termination; (b) subject to Section 18.e, CloudSaver will have no obligation to provide Services to Customer or Authorized Users after the effective date of the termination; and (c) Customer will, subject to Section 18.d, pay to CloudSaver any Fees payable for Customer's and any Authorized User's use of Services through the effective date of the termination, together with all other amounts in accordance with the Order and this Agreement.

18.d. If an Order is terminated early by Customer pursuant to Section 3 or 18.b, or by CloudSaver pursuant to Section 19.a: (a) Customer shall not be obligated to pay any additional amounts specified in the Order following the effective date of termination and (b) CloudSaver will issue a Pro-Rated Refund. In all other cases, and regardless of whether Customer uses the Services at the levels reflected in the Orders or otherwise, Customer will not be entitled to a refund of Fees paid and any unpaid Fees outstanding will become immediately due and payable.

18.e. The provisions set forth in the following Sections, and any other right or obligation of the Parties in this Agreement that, by its nature, should survive termination or expiration

of this Agreement, will survive any expiration or termination of this Agreement: 7.d, 9.b, 10, 13 through 20, and 22 through 29.

19. Indemnification19.a. Subject to Sections 19.b and 19.d, CloudSaver agrees to defend,

indemnify and hold harmless Customer, its Affiliates and their employees, contractors, agents, officers and directors (collectively, **"Customer Indemnitees"**), from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including without limitation attorneys' fees) (collectively, **"Losses"**) arising out of or related to any legal claim, suit, action or proceeding (each, an **"Action"**) by a third party alleging use of the Services as permitted under this Agreement infringes such third party's United States patent or copyright, or misappropriates such third party's trade secrets (each, a **"Customer Infringement Claim"**).**19.b.** If the Services become, or in CloudSaver's opinion are likely to become, the subject of a Customer Infringement Claim, CloudSaver may in its discretion and at its own expense: (a) obtain for Customer the right to continue using the Services; (b) modify the Services so that they no longer infringe or misappropriate; or (c) terminate this Agreement and all Orders and issue a Pro-Rated Refund. CloudSaver will have no obligation to indemnify Customer for a Customer Infringement Claim to the extent it arises from any of the following (collectively, "Customer-Controlled Matters"): (i) Customer's Environment, including Connections to Customer Components, whether enabled through APIs, ancillary tools or otherwise; (ii) Account Data, Customer Data or Customer Credentials (including activities conducted with Customer Credentials), subject to CloudSaver's Processing obligations under this Agreement; or (iii) use of the Services by Customer or an Authorized User in a manner that breaches an Order, Service Plan or this Agreement. SECTIONS 19.a AND 19.b STATE CLOUDSAVER'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY CLAIM OF INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT OR MISAPPROPRIATION.

19.c. Subject to Section 19.d, Customer agrees to defend, indemnify, and hold harmless CloudSaver, its Affiliates and their employees, contractors, agents, officers, and directors (collectively, **"CloudSaver Indemnitees"**), from and against any and all Losses arising out of or related to any Action by a third party arising out of or relating to Customer-Controlled Matters.

19.d. A Customer Indemnitee or CloudSaver Indemnitee (each, an **"Indemnitee"**) seeking indemnification shall promptly notify the other Party (each, an **"Indemnifying Party"**), in writing of any Action for which it seeks indemnification pursuant to Section 19.a or 19.c (as applicable) and cooperate with the Indemnifying Party at the Indemnifying Party's expense. The Indemnifying Party shall promptly take control of the defense and investigation of

such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnifying Party's expense. An Indemnitee may participate in and observe the proceedings at its own expense with counsel of its own choice. A Party's failure to perform any obligations under this Section 19.d will not relieve the Indemnifying Party of its obligations under Section 19.a or 19.c (as applicable) except to the extent that the Indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnifying Party shall not settle an Action without the Indemnitee's written consent if such settlement shall require action or payment by the Indemnitee.

20. Limitations of Liability TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW,

EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 20: (a) IN NO EVENT SHALL CLOUDSAVER'S, ITS AFFILIATES OR THEIR EMPLOYEES, AGENTS, CONTRACTORS, OFFICERS OR DIRECTORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT; AND (b) IN NO EVENT SHALL CLOUDSAVER'S CUMULATIVE AND AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES PAID TO CLOUDSAVER BY CUSTOMER UNDER THE APPLICABLE ORDER(S), INCLUDING PRIOR ORDERS FOR THE SAME SERVICES, IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION (COLLECTIVELY, THE "EXCLUSIONS") APPLY WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF THE NON-BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PROVISIONS OF THIS SECTION 20 ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THE EXCLUSIONS IN DETERMINING TO ENTER INTO THIS AGREEMENT AND THE PRICING FOR THE SERVICES.

21. Publicity Neither Party shall, except as otherwise required by Applicable Law or stock exchange requirements, issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other Party's marks or logos without the prior written consent of the other Party; provided, however, that CloudSaver may (subject to its obligations of non-attribution under Section 7.d) include Customer's name and logo in its lists of CloudSaver customers, its public website, and other promotional material, and to create a case study spotlighting Customer

success for marketing purposes. CloudSaver agrees to promptly cease such uses of Customer's name and logo following Customer's request sent to legal@cloudsaver.com.

22. Notices Subject to change pursuant to this Section: (a) CloudSaver's physical address

for notices is that of its USA headquarters provided at cloudsaver.com/contact Attn: Legal Notice, and its email address for notices is legal@cloudsaver.com and (b) Customer's physical and email addresses for notices are those associated with its Order(s). Notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to be sufficiently given: (i) one business day after being sent by overnight courier to the Party's physical address; (ii) three business days after being sent by registered mail, return receipt requested, to the Party's physical address; or (iii) one business day after being sent by email to the Party's email address (provided that (1) the sender does not receive a response that the message could not be delivered or an out-of-office reply and (2) any notice for an indemnifiable Action must be sent by courier or mail pursuant to clause (i) or (ii)). Either Party may change its address(es) for notice by providing notice to the other in accordance with this Section.

23. Customer Affiliates Where an Affiliate of Customer has not entered into an Order or

other separate agreement directly with CloudSaver, Customer may authorize that Affiliate to access and use the Services under an existing Order between CloudSaver and Customer. In such cases, references to **"Customer"** in the applicable Order and this Agreement will be deemed references to both Customer and the Participating Affiliate. Customer and its Participating Affiliates will be jointly and severally liable for compliance with this Agreement and all Orders hereunder. As between CloudSaver and Customer, Customer accepts full liability for the acts and omissions of its Participating Affiliates.

24. Assignment So long as Customer remains current in the payment of all amounts when

due, Customer may assign this Agreement in connection with any merger, consolidation or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity), or a sale of all or substantially all of Customer's business or assets relating to this Agreement to an unaffiliated third party. Subject to the foregoing, Customer may not assign any of its rights or obligation under this Agreement, whether by operation of law or otherwise, without CloudSaver's prior written consent, and any purported assignment in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

25. Independent Parties; No Third-Party Beneficiaries The Parties expressly understand and agree that their relationship is that of independent contractors. Nothing in this Agreement shall constitute one Party as an employee, agent, joint venture partner or servant of another. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

26. Force Majeure Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments), when and to the extent such failure or delay is caused by a Force Majeure Event. in each case, provided the event is outside the reasonable control of the affected Party, the affected Party provides prompt notice to the other Party, stating the period of time the occurrence is expected to continue, and the affected Party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

27. Governing Law; Venue; Attorney Fee Shifting Provision Except to the extent the issue arising under this Agreement is governed by United States federal law, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Kansas, without giving effect to the choice of law rules of that State. Any legal action or proceeding arising under or relating to this Agreement shall be brought exclusively in the state or federal courts located in Johnson County, Kansas, USA, and the Parties expressly consent to personal jurisdiction and venue in those courts.If CloudSaver files suit to enforce its rights under this Agreement, in addition to other remedies it may have under this Agreement, CloudSaver is entitled to an additional award for its reasonable attorney fees and costs incurred enforcing its rights under this Agreement.

28. Miscellaneous This Agreement, together with all Orders, the AUP and, as and if applicable, Supplemental Terms is the complete and exclusive statement of the agreement between the Parties and supersedes all proposals, questionnaires and other communications and agreements between the Parties (oral or written) relating to the subject matter of this Agreement. Any terms and conditions of any other instrument issued by Customer in connection with this Agreement which are in addition to, inconsistent with or different from the terms and conditions of this Agreement shall be of no force or effect. Additionally, this Agreement supersedes any confidentiality, non-

disclosure, evaluation, or trial agreement previously entered into by the Parties with respect Customer's or an Affiliate's evaluation of the Services or otherwise with respect to the Services. Except as otherwise provided in Section 30, this Agreement may be modified only by a written instrument duly executed by authorized representatives of the Parties. The failure of a Party to exercise or enforce any condition, term or provision of this Agreement will not operate as a waiver of such condition, term, or provision. Any waiver by either Party of any condition, term or provision of this Agreement shall not be construed as a waiver of any other condition, term, or provision. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement. For purposes of this Agreement, the words "include," "includes" and "including" are deemed to be followed by the words "without limitation;" the word "or" is not exclusive; and the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole.

29. Conflicts Due to Language Translation This Agreement may be translated into

multiple languages for the convenience of the Parties. In the event of any conflict between the English version and any translated version of this Agreement, the English version of the terms will control.

30. Changes to this Agreement CloudSaver may modify this Agreement at any time by

posting a revised version at cloudsaver.com/legal/master-subscription-agreement, which modifications will become effective as of the first day of the calendar month following the month in which they were first posted; provided, however, that if an Order specifies a fixed term of 12 months or longer, the modifications will instead be effective immediately upon the start of the next Renewal Order Term. In either case, if Customer objects to the updated Agreement, as its sole and exclusive remedy, Customer may choose not to renew, including canceling any terms set to auto-renew. For the avoidance of doubt, any Order is subject to the version of the Agreement in effect at the time of the Order.

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