

CloudCasa Master Service Agreement

This Master Service Agreement (“**Agreement**” or “**MSA**”), entered into as of [_____] (“Effective Date”) is made by and between Catalogic Software, Inc. (“**Catalogic**”), with a place of business at 140 E. Ridgewood Ave., Suite 415, South Tower, Office 416, Paramus, NJ 07652 and [_____] (“**Customer**”), with a place of business (or residence) at [_____] together the “**Parties**” and each a “**Party**”.

1. DEFINITIONS.

- a. “**Abuse of Services**” means Customer participates in any of the prohibited activities described in subparts (ii)-(v) in Paragraph 6b of this Agreement (See also, “**Misappropriation of Service**”).
- b. “**Affiliate**” means any entity of which the relevant Party directly or indirectly owns or controls less than 50% of the stock and/or voting interests. (See also “**Associated Entity**” and “**Subsidiary**”).
- c. “**Aggregate Data**” means anonymized information, learnings, logs, and data Catalogic, its Subsidiaries, Affiliates, Associated Entities, and sub-processors may collect for internal business purposes about a group or category of services or users. Aggregate Data is not connected to an individual person, nor does it incorporate any “personally identifiable information” and, therefore, is not considered personal data. Catalogic, and to the extent applicable, its Subsidiaries, Affiliates, Associated Entities, and sub-processors retain ownership of Aggregate Data.
- d. “**Agreement**” means this Master Service Agreement, together with any attached Annexes, Supplements, Exhibits, or sub-agreements.
- e. “**Associated Entity**” means any entity that directly or indirectly (i) has a partial interest in the relevant Party, (ii) in which the relevant Party has a partial interest, or (iii) is under common partial ownership with the relevant Party. For the purposes of this definition, “Partial interest” and “Partial ownership” refer to any amount of stock and/or voting interest ownership, between 10% and 100%. (See also “**Affiliate**” and “**Subsidiary**”).
- f. “**Authorized Users**” means natural persons, entities, or software agents, as applicable, authorized by Customer to use the Cloud Services in accordance with this Agreement, and who actively use the Cloud Services. The class of entities that may be Authorized Users includes Customer’s Subsidiaries and contractors and sub-contractors working for or on behalf of Customer or Customer’s Subsidiaries. The class of natural persons who may be Authorized Users are employees, independent contractors or other agents working on behalf of Customer or Customer’s Subsidiaries.
- g. “**Catalogic Order Form**” means a Catalogic order form signed by Customer or any electronic form reflecting Customer’s purchase of, and/or registration for, the Cloud Services directly through Catalogic.
- h. “**Cloud Services**” means Catalogic’s CloudCasa software-as-a-service solution for managing data availability, protection and recovery, and application resiliency, any agent, feature or functionality additions, and any modified versions of, and upgrades, updates and additions to such solution, ordered by Customer under a License Contract.
- i. “**Cloud Storage Area**” means the geographic storage area and cloud storage provider, third-party or otherwise, among those offered by Catalogic where Customer Data may be stored per Customer’s instructions.
- j. “**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential, proprietary, or both, or that reasonably should be understood to be confidential or proprietary, or both, given the nature of the information and the circumstances of disclosure. Customer’s Confidential Information excludes Customer Data. For purposes of this Agreement, “Confidential Information” will not include information, regardless of its designation, that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information.
- k. “**Customer**” collectively means (i) the business, entity, institution, organization, etc., contracting for Cloud Services on its behalf and that of its Authorized Users and (ii) the rare individual who might contract for Cloud Services. When it is necessary to distinguish between the two types of customers, those listed in subpart (i) will be referred to as “**Corporate Customers**” and those in subpart (ii) will be

referred to as “**Individual Customers**”. Additionally, Customers may contract for paid or unpaid services. The terms “Customer”, “Corporate Customer”, and “Individual Customer”, without qualifiers will refer to Customers of both paid and unpaid services. When it is necessary to distinguish between Customers of paid and unpaid services, and it is not otherwise clear from the relevant context, the terms will be qualified with either “Paid” or “Unpaid” (e.g., “**Paid Customer**” or “**Unpaid Customer**”).

- l. “**Customer Data**” means data, information, and materials of Customer or its Authorized Users that Customer or its Authorized Users uploads to, stores on, or accesses with Catalogic’s Cloud Services. Depending upon Customer selections, it may or may not include personal data.
- m. “**Documentation**” means the published user guides, manuals, websites, FAQs, instructions and/or specifications provided or made available to Customer by Catalogic with respect to the Cloud Services, as amended from time to time.
- n. “**General Data Protection Regulation**” or “**GDPR**” means the Regulation (EU) 2016/679 of The European Parliament And of The Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC
- o. “**Immediate Termination**” means termination with less than a minimum of 30 days’ notice for paid services or 7 days’ notice for unpaid services.
- p. “**Indemnified Liabilities**” means any (i) settlement amounts approved by the indemnifying party; (ii) damages and costs in a final judgment awarded against the indemnified part(ies) by a competent court or adjudicating body; and (iii) all attorney’s fees, and court or tribunal costs incurred by the indemnified part(ies) with respect to the defense and settlement of third-party claims as addressed in Section 11.
- q. “**License Contract**” collectively refers to the Catalogic Order Form or Reseller Order Form.
- r. “**Misappropriation of Services**” means Customer participates in any of the prohibited activities described in Paragraph 6c of this Agreement. (See also “**Abuse of Services**”).
- s. “**Paid Service**” means any level of Cloud Services for which the Customer has paid, and Catalogic has received, a fee. (See also “**Unpaid Service**”).
- t. “**Personal Data**” has the definition set forth in Article 4(1) of the GDPR and specifically excludes all Aggregate Data and/or Usage and Configuration Metrics.
- u. “**Privacy Policy**” means Catalogic’s policies and procedures on the collection, use and disclosure of Customer’s data, information, and materials related to, or in the context of, the use of the Cloud Service, as well as the Customer’s privacy rights in relation thereto. It is available at: <https://cloudcasa.io/privacy/>.
- v. “**Reseller**” means a reseller of Catalogic’s Cloud Services.
- w. “**Reseller Order Form**” means a (i) Catalogic order form signed by Reseller or (ii) purchase order of Reseller (provided that the Reseller has a signed reseller agreement in place with Catalogic) that references the corresponding order form number (and which purchase order shall exclude any pre-printed or linked terms and conditions set forth in such written document that are in addition to, inconsistent or in conflict with, or different than, this Agreement), reflecting Customer’s purchase of the Cloud Services.
- x. “**Service Level Agreement**” means the agreement defining uptime and availability of Cloud Services, attached hereto as Exhibit A.
- y. “**Software Agent**” or “**Agent**”, when used in a computing context, means a software agent Customers may be required to download and/or install to support the Cloud Services.
- z. “**Subsidiary**” means any entity of which the relevant Party, directly or indirectly, owns or controls 50% or more of the stock and/or voting interests. (See also “**Affiliate**” and “**Associated Entity**”).
- aa. “**Third-Party Legal Proceeding**” means any formal legal proceeding filed by an unaffiliated third-party before a court.
- bb. “**Unpaid Service**” means the free level of Cloud Services for which Catalogic does not collect a fee. (See also “**Paid Service**”).

2. **TERM AND TERMINATION.**

“**Term**” shall refer to either the Initial Term or each Renewal Term, as dictated by context.

- a. **Paid Service.**
 - i. **Term of Agreement.** The Term of this Agreement shall commence on the Effective Date and shall continue for the period agreed to in the applicable License Contract. (For example,

Customer may choose either an annual or monthly contract, or other longer specified periods may be negotiated.) An annual contract will continue for 12 months; a monthly contract will continue for a calendar month and contracts for other specified lengths will continue for the specified length of time. In each case, this initial time period is referred to as the (“**Initial Term**”).

- ii. **Automatic Renewal Terms; Notice Periods for Non-Renewal:** The Term shall automatically renew for additional periods, each of equal duration to the Initial Term, (each such additional period a “**Renewal Term**”), unless: **(A)** Customer provides Catalogic with written notice of non-renewal at least sixty (60) days prior to the end of the then-current term, in the case of a 12-month or longer Term, fifteen (15) days in the case of a 1-month Term, or as otherwise designated in the case of a Term of another length; **(B)** Catalogic provides Customer with written notice of non-renewal at least sixty (60) days prior to the end of the then-current term, in the case of a 12-month or longer Term, fifteen (15) days in the case of a 1-month Term, or as otherwise designated in the case of a Term of another length; **(C)** Customer is in breach of, or Catalogic has a reasonable expectation that Customer will breach, one or more terms of this Agreement, including without limitation, payment obligations, Abuse of Services, or Misappropriation of Services; or **(D)** continuation of the agreement becomes illegal, or impossible, including without limitation for reasons set forth in the **force majeure** provision in Section 13b. In the case of subparts (C) and (D), Catalogic reserves the right to immediately terminate the Agreement as provided herein, without the necessity providing a notice of non-renewal; however, if Catalogic, in its sole discretion, chooses to provide a notice of non-renewal based on subpart (C) or (D), or both, written notice may be given at any time prior to the end of the then-current Term. (“**Immediate Non-Renewal Notice**”). Catalogic’s rights to provide a notice of non-renewal pursuant to subparts (A), (C) and (D) and Customer’s rights to provide a notice of non-renewal pursuant to subpart (B) are cumulative and do not affect, limit, or modify the relevant Party’s rights to provide a notice of termination pursuant to Paragraph 2c herein.

- iii. **Cessation of Catalogic’s Obligation to Store Customer Data After Non-Renewal:** In the case of subparts (ii)(A) and (ii)(B) above regarding notice of non-renewal, any such notice shall serve as notice that the Agreement will terminate at the end of such notice period and that after such date Catalogic will have no continuing obligation to store Customer’s Data. In the case of subparts (ii)(C) and (ii)(D) above regarding Immediate Non-Renewal Notice, although Customer may be denied access to Cloud Services, Customer’s Data will be stored for provision to Customer, with both storage and provision of the data at Customer’s cost and expense for the shorter time period of either 30 days or until Customer notifies Catalogic, in writing, that it is no longer necessary to store Customer’s Data because Customer and Customer’s Authorized Users otherwise have access to a copy or copies of such data, information and materials. **After the expiration of such shorter time period, Catalogic shall have no continuing obligation to store Customer’s Data.** It is Customer’s obligation and responsibility to pay for storage and seek provision of Customer’s Data and to confirm that Customer’s Authorized Users have access to their data, information, and materials in another form prior to notifying Catalogic that it no longer needs to store Customer’s Data. Both storage and provision fees must be paid before or at the time of: (A) the provision of Customer’s Data or (B) the expiration of the shorter of the two periods outlined above in this subparagraph 2(a) (iii), without the provision of Customer’s Data. Storage and provision fees will reflect Catalogic’s full and actual costs in storing and providing Customer with Customer’s Data and Customer hereby agrees to the reasonableness of the same.

- iv. **Fee For Renewal Term(s):** The fee for each Renewal Term shall continue and be the same as that for the immediately preceding Term, unless Catalogic provides Customer with written notice of any change in pricing at least sixty (60) days prior to the end of the then-current

term, in the case of a 12-month or longer Term, or fifteen (15) days in the case of a 1-month Term, in which case the fee for the Renewal Term will be the amount established in said written notice.

b. **Unpaid Service.**

- i. **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and shall continue **(A)** through the end of the then-current calendar month, if ten (10) or more days remain in said month, or **(B)** through the end of the next calendar month if less than ten (10) days remain in the calendar month of the Effective Date (“**Initial Term**”).
- ii. The Term shall automatically renew for additional periods of one (1) calendar month (each a “**Renewal Term**”), unless: **(A)** Customer provides Catalogic with written notice of non-renewal at least seven (7) days prior to the end of the then-current term; **(B)** Catalogic provides Customer with written notice at least seven (7) days prior to the end of the then-current term; **(C)** Customer is in breach of, or Catalogic has a reasonable expectation that Customer will breach, one or more terms of this Agreement, including without limitation, Abuse of Services, or Misappropriation of Services; **(D)** continuation of the agreement becomes illegal, or impossible, including without limitation for reasons set forth in the **force majeure** provision in Section 13b. In the case of subparts (C) and (D), written notice of non-renewal may be given at any time prior to the end of the then-current Term. (“**Immediate Non-Renewal Notice**”). Catalogic’s rights to provide a notice of non-renewal pursuant to subparts (A), (C) and (D) and Customer’s rights to provide a notice of non-renewal pursuant to subpart (B) are cumulative and do not affect, limit, or modify the relevant Party’s rights to provide a notice of termination pursuant to Paragraph 2c herein.
- iii. **Cessation of Catalogic’s Obligation to Store Customer Data After Non-Renewal:** In the case of subparts (ii)(A) and (ii)(B) above regarding notice of non-renewal, any such notice shall serve as notice that the Agreement will terminate at the end of such notice period and that after such date Catalogic will have no continuing obligation to store Customer’s Data. In the case of subparts (ii)(C) and (ii)(D) above regarding Immediate Non-Renewal Notice, although Customer may be denied access to Cloud Services to mitigate any further damages and threats to Catalogic, the Cloud Services, or others, Customer’s Data will be stored for provision to Customer, with both storage and provision of such at Customer’s cost and expense, for the shorter time period of either seven (7) days or until Customer notifies Catalogic, in writing, that it is no longer necessary to store Customer’s Data because Customer and Customer’s Authorized Users otherwise have access to a copy or copies of such data, information and materials. **After the expiration of such shorter time period, Catalogic shall have no continuing obligation to store Customer’s Data.** It is Customer’s obligation and responsibility to pay for storage and seek provision of Customer’s Data and to confirm that Customer’s Authorized Users have access to their data, information and materials in another form prior to notifying Catalogic that it no longer needs to store Customer’s Data. Both storage and provision fees must be paid before or at the time of: (c) the provision of Customer’s Data or (d) the expiration of the shorter of the two periods outlined in (a) or (b) above. Storage and provision fees will reflect Catalogic’s full and actual costs in storing and providing Customer with Customer’s Data and Customer hereby agrees to the reasonableness of the same.

c. **Termination Rights.**

- i. **Catalogic’s Immediate Termination Rights.** Catalogic, without limitation or prejudice to its other rights or remedies, and in its sole discretion, shall have the right to immediately terminate this Agreement if Customer or one or more of its Authorized Users knowingly

engage in Abuse of Services or Misappropriation of Services. Such Right of termination shall not require a Cure Period nor notice of any specified length of time. If Catalogic immediately terminates this Agreement based upon Abuse of Services or Misappropriation of Services by Customer or one or more of its Authorized Users, Catalogic will store Customer's Data for provision to Customer in accordance with all terms and conditions set forth in subparagraphs 2(a)(iii) for Paid Services Customers and subparagraph 2(b)(iii) for Unpaid Services Customers.

- ii. **Termination Rights Other Than Catalogic's Immediate Termination Rights.** Except in instances in which Catalogic exercises its Immediate Termination Rights, if either Party is in material breach of any provision of this Agreement and fails to cure such breach within the applicable Cure Period (as defined herein), without limitation or prejudice to its other rights or remedies, including without limitation to suspend services or payments pending cure of the breach, the non-breaching party, in its sole discretion, may terminate this Agreement upon written notice to the breaching party. The applicable Cure Period shall be **(A)** in the case of Paid Service Customers, thirty (30) days following the date the breaching party has received notice of such breach and demand for cure, or **(B)** In the case of Unpaid Service Customers seven (7) days following the date the breaching party has received notice of such breach and demand for cure. Notice of breach and demand for cure to either Party may be made verbally, provided it is confirmed in writing within 24 hours by one of the means identified in Paragraph No. 14 herein regarding Notices. If Customer's notice of breach and demand for cure states that Customer will terminate the Agreement if the breach is not cured within the applicable Cure Period, Customer will not be required to provide a separate notice prior to terminating the Agreement. **If Customer is the breaching party, and without the requirement of a specific statement to this effect, Catalogic's notice and demand for cure shall serve as notice that if the breach is not cured within the applicable Cure Period and to Catalogic's sole satisfaction, Catalogic will terminate the Agreement at the end of such applicable Cure Period and have no continuing obligation to store or provide Customer's Data.**

Moreover, each Party shall have, without limitation or prejudice to its other rights and remedies, including without limitation to suspend services or payments pending receipt of assurance, the right, in its sole determination, to terminate this Agreement at any time by written notice to the other Party if such other Party becomes the subject of a petition in bankruptcy, insolvency, receivership, liquidation, or assignment for the benefit of creditors (collectively "official indicia of insolvency"), which is not dismissed within the applicable Cure Period. The applicable Cure Period shall be **(A)** in the case of Paid Service Customers, thirty (30) days following the date the Party subject to the official indicia of insolvency has received notice of such and demand for assurance that the official indicia of insolvency has been dismissed ("demand for assurance"), or **(B)** In the case of Unpaid Service Customers seven (7) days following the date the Party subject to the official indicia of insolvency has received notice of such and demand for assurance that the official indicia of insolvency has been dismissed. Notice and demand for assurance may be made verbally to either Party, provided it is confirmed in writing within 24 hours by one of the means identified in Paragraph No. 14 herein regarding Notices. If Customer's notice and demand for assurance states that Customer will terminate the Agreement if the official indicia of insolvency is not dismissed within the applicable Cure Period, Customer will not be required to provide a separate notice prior to terminating the Agreement. **If Customer is the party subject to such official indicia of insolvency, Catalogic's notice and demand for assurance shall serve as notice that if such assurance cannot be given within the applicable Cure Period, Catalogic will terminate the Agreement at the end of such applicable Cure Period and have no continuing obligation to store or provide Customer's Data.**

- d. **Fees.** Upon expiration or termination of this Agreement, Customer will pay Catalogic, directly or through the Reseller with which Customer contracted, any unpaid and undisputed amounts that are owed to Catalogic for the Term.

Upon termination of this Agreement based on Customer's breach (following any applicable cure period), and without limiting or prejudicing Catalogic's other rights and remedies, Customer will pay Catalogic, directly or through the Reseller with which Customer contracted, any unpaid and undisputed amounts that would have been owed to Catalogic for the remainder of the then-current Term if such early termination had not occurred as well as any other amounts owed to Catalogic under this Agreement,.

Upon termination of this Agreement based on Catalogic's breach (following any applicable cure period), Catalogic will refund Paid Customer, directly or through the Reseller with which Customer contracted, any amounts pre-paid under this Agreement for the remaining full calendar months in the then-current Term.

In the event of an invoice dispute, Customer shall notify Catalogic in writing no later than ten (10) days after the date of the disputed invoice, and any invoices not so disputed shall be deemed accepted. For clarity, an invoice dispute does not authorize Customer to withhold any amounts not in dispute.

- e. **Data Retrieval.** Upon expiration or termination of this Agreement preceded by the applicable notice period, the rights granted by Catalogic to Customer under this Agreement will lapse and Customer will immediately cease all use of the Cloud Services and delete (or, at Catalogic's request, return) any **Catalogic Confidential Information in its possession or control. Catalogic will have no obligation to store or provide access to the Customer Data after the termination of this Agreement and may delete Customer Data unless legally prohibited or otherwise agreed to by the Parties in writing.**

If this Agreement is terminated without a minimum of the applicable notice (30 days for Paid Services Users and 7 days for Unpaid Services Users), collectively referred to as "**Immediate Termination**", the rights granted by Catalogic to Customer under this Agreement will lapse and Customer will immediately cease all use of the Cloud Services and delete (or, at Catalogic's request, return) any Catalogic Confidential Information in its possession or control. To the extent possible, permissible under law, and consistent with Catalogic's legal and contractual obligations, Customer's Data will be stored for provision to Customer, with both storage and provision of such at Customer's cost and expense, for the shorter time period of: (a) thirty (30) days for Paid Services Customers and seven (7) days for Unpaid Services Customers or (b) until Customer notifies Catalogic, in writing, that it is no longer necessary to store Customer's Data because Customer and Customer's Authorized Users otherwise have access to a copy or copies of such data, information and materials. **After the expiration of such shorter time period, Catalogic shall have no continuing obligation to store or provide Customer's Data and may delete such data unless legally prohibited.**

3. **CLOUD SERVICES LICENSE.**

- a. **Conditions of License Granted.** For Paid Services Customers, Catalogic shall use commercially reasonable efforts to make the Cloud Services available throughout the Term, in accordance with the service levels attached hereto as Exhibit A, unless this Agreement is terminated earlier. For Unpaid Services Customers, Catalogic shall use commercially reasonable efforts to make the Cloud Services available to Customer throughout the Term unless this Agreement is terminated earlier, but Catalogic does not guarantee any specific service level. Customer may use the Cloud Services on any of Customer's compatible hardware devices up to the maximum number of permitted devices or capacity limit set forth in the applicable License Contract. Customer may make copies of the Documentation for its own internal use in connection with its use of the Cloud Services in accordance with this Agreement, but no more than the amount reasonably necessary.

- b. **Customer Subsidiaries.** Customer may extend the right to use Cloud Services to its Subsidiaries and to contractors acting on its or its Subsidiaries' behalf, so long as Customer remains responsible for their compliance hereunder and there is no Abuse of Services or Misappropriation of Services.

4. **CUSTOMER OWNERSHIP, RESPONSIBILITY.**

- a. **Customer Ownership.** Customer retains title to and ownership of all right(s), title(s), and interest(s) in the Customer Data, to the extent that the same is not reserved, retained, or possessed by Customer's Authorized Users. Customer is solely responsible for determining whether and to what extent Customer or Customer's Authorized Users reserve, retain or possess title to and ownership of all right(s), title(s), and interest(s) in Customer Data. For the purposes of removing any doubt, to the extent Catalogic collects minimal Personal Data in order to fulfill its contractual obligations, including without limitation providing technical support or processing Individual Customer's payments, the relevant Data Subjects retain title and ownership of all right(s), title(s), and interest(s) in such personal data. Personal Data has the definition set forth in Article 4(1) of the GDPR and specifically excludes all Aggregate Data and/or Usage and Configuration Metrics.
- b. **Customer Responsibility.** Customer is solely responsible for (i) maintaining the confidentiality of its Authorized Users' credentials, passwords, API keys, tokens, and self-managed encryption keys associated with its accounts, (ii) properly configuring the settings of the Cloud Services and taking its own steps to maintain appropriate security and protection of passwords and encryption keys and settings for any backup of Customer Data, (iii) determining whether the Cloud Services meet Customer's technical, business, or legal and regulatory requirements and selecting the appropriate cloud storage area; (iv) all activities that occur with respect to Customer's accounts, other than activities of an unauthorized third party, (v) its and its Authorized Users' access and use of the Cloud Services and compliance with this Agreement and the applicable Documentation, (vi) all content of Customer Data, and (vii) all product settings, which may override individual end point settings of Authorized Users, if applicable. Catalogic is not responsible for any alteration, compromise, corruption, or loss of Customer Data that arises from any access to, sharing, or use of Customer's accounts, credentials, passwords, or encryption keys by Customer.

5. **CATALOGIC OWNERSHIP, RESPONSIBILITY.**

- a. **Catalogic Ownership.** The (i) Cloud Services, (ii) agents, excluding any opensource components (iii) Documentation, (iv) any authorized copies thereof made and/or deployed by Customer, and (v) any Usage and Configuration and Aggregate Data collected by Catalogic, or on its behalf, are the intellectual property of and are owned by Catalogic. Catalogic retains title to and ownership of all right(s), title(s) and interest(s) in the Cloud Services, agents/associated software, and the Documentation, including without limitation all intellectual property and other proprietary rights therein, subject only to the applicable limited licenses expressly granted by Catalogic to Customer in Section 3 (Cloud Services License). Catalogic retains title to and ownership of all right(s), title(s) and interest(s) in any Usage and Configuration and Aggregate Data collected by Catalogic, or on its behalf, including without limitation all intellectual property and other proprietary rights therein, subject only to any agreements Catalogic may have with its Subsidiaries, Affiliates, Associated Entities, or sub-processors. Customer does not have any right(s), title(s), or interest(s) in the Cloud Services, agents/associated software, the Documentation, or Usage and Configuration and Aggregate Data. All rights not expressly granted in this Agreement are reserved by Catalogic and/or its Subsidiaries.
- b. **Catalogic Responsibility.** Catalogic shall not have any responsibility other than those responsibilities expressly assumed in this Agreement, which includes any attached Annexes, Supplements, Exhibits, or sub-agreements.

6. **RESTRICTIONS AND REQUIREMENTS.**

- a. **Intellectual Property Rights Protections; Proprietary Notices.** Catalogic retains ownership and control of any and all intellectual property rights to which it has any right, title, ownership, or claimable

interest of any sort. For purposes of this Agreement, “**Intellectual Property Rights**” includes, without limitation, inventions, trade secrets, trademarks, copyrights, patent rights (including, without limitation, fully issued patents, patent applications, and disclosures), moral rights, know-how, data and database rights, and any other intellectual property rights recognized or claimable in any country or jurisdiction in the world. Customer and its Authorized Users will not remove or modify any trademarks, trade names, service marks, service names, logos, brands, patent markings, copyright, or other proprietary notices on or related to the Cloud Services or the Documentation or add any other markings or notices on or related to the Cloud Services or the Documentation.

- b. **Use Obligations.** Customer and its Authorized Users (i) will access and use the Cloud Services in accordance with this Agreement and the applicable Documentation, (ii) will not use or permit the Cloud Services to be used for purposes other than the functions described in relevant Documentation, (iii) will not knowingly use or permit the Cloud Services to upload or backup any Customer Data (A) that infringes the intellectual property rights or other proprietary rights of any third party, (B) that is unlawful material, or (C) that contains any known software viruses or other harmful or deleterious computer code, files, or programs, such, but without limitation, as trojan horses, worms, time bombs, or cancelbots, (iv) will not knowingly use or permit the use of any software, hardware, application, or process that (A) interferes with the Cloud Services, (B) interferes with or disrupts servers, systems, or networks connected to the Cloud Services, (C) accesses or attempts to access another customer’s accounts, servers, systems, or networks without authorization, or (D) harasses or interferes with another customer’s use and enjoyment of the Cloud Services, and (v) will not tamper with or breach the security of the Cloud Services. (Collectively, sub parts (ii) - (v) of this subparagraph 6b are herein referred to as “**Abuse of Services**” and are non-exclusive, non-exhaustive, examples of a material breach of this Agreement.)
- c. **Prohibited Activities.** Customer and its Authorized Users will not (i) modify, port, adapt, translate or create any derivative work based upon the Cloud Services or the Documentation, (ii) reverse engineer, decompile, disassemble, or otherwise derive or attempt to derive the source code of the Cloud Services, except for any nonwaivable right to decompile the Cloud Services expressly permitted by applicable mandatory law, (iii) copy, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare, use or offer the Cloud Services on a service bureau basis, deliver or otherwise transfer the Cloud Services, in whole or in part, or (iv) access Cloud Services to create competitive products to Catalogic or engage in the competitive analysis of the Cloud Services. (Collectively, subparts (i)-(iv) of this subparagraph 6c are herein referred to as “**Misappropriation of Services**” and are non-exclusive, non-exhaustive, examples of a material breach of this Agreement.)

7. **PRIVACY AND CONFIDENTIALITY.**

- a. **Privacy – Customer Data.** Catalogic agrees to comply with its data processor obligations under privacy laws applicable to Catalogic. Customer authorizes Catalogic to process Customer Data to provide the Cloud Services to Customer and its Authorized Users. For additional information on Catalogic’s privacy practices, please review our **Privacy Policy**: <https://cloudcasa.io/privacy/>.
- b. **Confidentiality – Confidential Information (Non-Customer Data).** “**Confidential Information**” “**Disclosing Party**” and “**Receiving Party**” shall have the meanings set forth in Section 1 of this Agreement.

The Receiving Party agrees to use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind, but not less than reasonable care. Each party shall not (i) disclose the other party’s Confidential Information to any third parties other than as provided in this Agreement, (ii) use the other party’s Confidential Information for purposes outside the scope of this Agreement, or (iii) disclose the other party’s Confidential Information, unless to directors, employees, or consultants who have a need to know such information and are subject to confidentiality obligations that are at least as restrictive as those contained in this Agreement.

In the event that a party or any of its Representatives become legally compelled or requested (by deposition, interrogatory, request for documents, subpoena, civil investigative demand, request of regulatory agency or self-regulatory agency, or similar process) to disclose any of the Confidential Information, such party will provide the other party with immediate written notice. Such party may disclose such Confidential Information; provided, however, that such party shall as soon as practicable notify the other party of such legal process, unless such notice is prohibited by statute, rule, or court

order, so that the other party may seek an appropriate protective order. In the absence of a protective order relating to such disclosure, such party may disclose the Confidential Information but will use best efforts to obtain assurances that confidential treatment will be accorded the Confidential Information and that such disclosure will be as limited as is reasonably responsive to the request. In making any disclosure under such legal process, such party agrees to use all reasonable efforts to preserve the confidential nature of such information.

Inasmuch as any breach of this Agreement may result in immediate and irreparable injury, it is recognized and agreed that each party shall be entitled to seek injunctive relief, but any other relief would be limited to the costs associated with affecting compliance with the terms of the obligations regarding Confidential Information under this Agreement. It shall be an affirmative defense that the breaching party made a good faith effort to comply with its obligations regarding Confidential Information under this Agreement and that any disclosure in violation thereof was not willful or wonton.

8. **DATA COLLECTION AND STORAGE.**

- a. **Data Storage.** The Cloud Services will store Customer Data in the Cloud Storage Area selected by Customer, except as necessary to comply with applicable laws, regulations, or a valid binding order of a law enforcement agency. Backup metadata and Usage and Configuration data related to the Cloud Services may be processed and stored outside the Cloud Storage Area. This type of data is not Customer Data, nor is it identifiable to any natural person and does not include personal data of any sort. Aggregate Data, as defined herein, is processed and stored outside the Cloud Storage Area. This type of data is not Customer Data, nor is it identifiable to any natural person and does not include personal data of any sort.
- b. **Usage and Configuration Metrics.** In connection with Catalogic's performance of this Agreement, Catalogic, its Subsidiaries, Affiliates, Associated Entities, and sub-processors may collect information regarding usage and configuration data of the Customer and may use such information for internal business purposes, including without limitation, to perform their obligations under this Agreement, to improve the service, and to ensure compliance with this Agreement. Any information collected pursuant to this Section shall not include any Customer Data, or any "personally identifiable information" or "protected health information" therein, as such terms are defined in applicable privacy laws.

9. **REPRESENTATIONS AND WARRANTIES.**

- a. **Mutual Warranties.** Each Party represents, warrants and covenants that: **(i)** this is a valid and binding Agreement, duly entered into and enforceable against each Party in accordance with its terms; **(ii)** it has the full power and authority to enter into, and perform its obligations under, this Agreement, without the need for authorization or approval of a third party; and **(iii)** neither execution of this Agreement nor its performance hereunder will violate the terms or conditions of any other agreement to which it is a party or by which it is bound.
- b. **Limited Warranty of Performance.** During the Term of this Agreement, Catalogic warrants that the Cloud Services will perform substantially in accordance with the applicable published specifications, including Paragraph No. 3 herein, when used in conformity with this Agreement and the Documentation. Non-substantial variations of performance from the published specifications or other Documentation do not establish a breach of this limited warranty or otherwise a warranty right. This limited warranty is void if failure of the Cloud Services has resulted from **(i)** installation, deployment, use, maintenance or support not in accordance with this Agreement or the Documentation, **(ii)** modification by Customer, its Authorized Users, or a third party not authorized by Catalogic, **(iii)** Force Majeure, or **(iv)** any material breach of this Agreement by Customer or its Authorized Users (other than non-payment of Fees). In the event of a Cloud Services warranty claim under Section 9c, Customer's sole and exclusive remedy and Catalogic's entire obligation and liability, without prejudice to rights and obligations under the applicable Service Level Agreement shall be, at Catalogic's sole option, to either **(v)** provide a correction, update or upgrade of the Cloud Services, **(vi)** correct or replace the Cloud Services, or **(vii)**

terminate this Agreement and refund Customer, directly or through the Reseller with which Customer contracted, a pro-rated amount of the applicable fees pre-paid by Customer covering the whole months that would have remained, absent such early termination, in the Term following the effective date of such early termination. Any corrected, upgraded or updated version of the Cloud Services will be warranted for the remainder of the Term. **All warranty claims must be made to Catalogic in writing within the applicable notice period, but in no case after the expiration of the relevant term.**

- c. **General Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 9(b) (LIMITED WARRANTY), THE CLOUD SERVICES ARE PROVIDED “AS IS” AND, TO THE FULLEST EXTENT PERMITTED BY LAW, (i) CATALOGIC SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (ii) CATALOGIC DOES NOT WARRANT THAT THE CLOUD SERVICES OR ANY PART THEREOF, OR USE THEREOF, WILL BE UNINTERRUPTED, ERROR-FREE, UNBREACHABLE OR VIRUS FREE, OR WILL MEET CUSTOMER’S QUALITY AND PERFORMANCE REQUIREMENTS. CUSTOMER ASSUMES THE ENTIRE RISK OF AND SHALL NOT HOLD CATALOGIC RESPONSIBLE FOR ANY ALTERATION, COMPROMISE, CORRUPTION OR LOSS OF CUSTOMER DATA NOT ATTRIBUTABLE TO (1) THE GROSS NEGLIGENCE OF CATALOGIC AND ITS SUBSIDIARIES AND (2) AS TO WHICH CATALOGIC HAS EXPRESSLY ASSUMED A WARRANTY HEREIN.

10. **LIMITATION OF LIABILITY.**

Except with respect to Catalogic’s indemnification obligation (Section 11) or damages resulting from Catalogic’s gross negligence, willful misconduct, fraud or bad faith, in no event shall Catalogic, its Subsidiaries, Affiliates, Associated Entities, or its respective officers, directors, agents or employees have any liability to Customer, its Authorized Users, Affiliates, Associated Entities, or any other third party (“Customer or Other Parties”) for damages, be they punitive, special, incidental, indirect, or consequential (including, without limitation, lost profits or revenues or other economic loss of Customer or Other Parties, loss of data, loss of use or claims of Customer or Other Parties) arising out of or in any manner in connection with this Agreement. Catalogic’s total liability for any claim or damage arising from licensing or use of the Cloud Services or accompanying Documentation shall not exceed the fees paid by Customer as outlined in Section 3 and the relevant License Contract.

11. **INDEMNIFICATION.**

- a. **Customer Indemnification Obligations.** If notified promptly in writing and given authority, control, information, and assistance (at Customer’s expense) for defense and settlement of the same, Customer shall defend and indemnify Catalogic, its Subsidiaries, Affiliates and their respective employees, officers, directors, agents, successors and assigns against any Indemnified Liabilities, in any Third Party Legal Proceeding so far as it relates to the content of Customer Data, including without limitation, intellectual property infringement right claims. If Catalogic has given to Customer authority, control, information, and assistance of a kind in accordance with this section, Customer shall not settle such matter without the prior written approval of Catalogic, which approval shall not be unreasonably withheld.
- b. **Catalogic Indemnification Obligations.** Subject to the Indemnification Exceptions in Section 11c., if notified promptly in writing and given authority, control, information, and assistance (at Catalogic’s expense) for defense and settlement of the same, Catalogic shall defend and indemnify Customer against any Indemnified Liabilities, in any Third Party Legal Proceeding so far as it is based on a claim that the use of the Cloud Services furnished under this Agreement infringes third-party intellectual property rights. If Catalogic reasonably believes that Customer’s use of the Cloud Services is likely to be enjoined, or if the Cloud Services are held to infringe such intellectual property rights and all use of such Cloud Services by Customer is therefore enjoined, Catalogic shall, at its expense and in its sole discretion (i)

- procure for Customer the right to continue using the Cloud Services; **(ii)** replace the Cloud Services with other non-infringing software or services of substantially equivalent functionality; or **(iii)** modify the Cloud Services so that there is no infringement, provided that such modified software or services provide substantially equivalent functionality. If, in Catalogic’s opinion, the remedies in subparts (i), (ii) and (iii) above are infeasible or commercially impracticable, Catalogic may, in its sole discretion, terminate this Agreement and refund Customer, directly or through the Reseller with which Customer contracted, a prorated amount of the applicable fees prepaid by Customer covering the whole months that would have remained, absent such early termination, in the then-current term. If Customer has given to Catalogic authority, control, information, and assistance of a kind in accordance with this section, Catalogic shall not settle such matter without the prior written approval of Customer, which approval shall not be unreasonably withheld. **Nothing in this Paragraph No. 11, nor the acceptance by Catalogic of such Indemnification Obligations, shall be construed as a warranty of non-infringement or to otherwise limit, modify, nullify, or alter other terms of this Agreement, including without limitation, Paragraph Nos. 9c and 10 hereinabove.**
- c. **Indemnification exceptions.** The indemnification obligation in Section 11b (Catalogic Indemnification Obligations) will not apply to the extent the infringement is caused by any of the following: **(i)** the modification of the Cloud Services in an unauthorized manner by Customer; **(ii)** the combination of the Cloud Services with other unauthorized software, hardware, application, or process by Customer; **(iii)** the use of Cloud Services by the Customer in violation of this Agreement or the Documentation; **(iv)** any third party deliverables or components contained within the Cloud Services that are not provided by Catalogic; or **(v)** any materials, data or information provided by Customer, including Customer Data.
 - d. **Sole Remedy.** THIS SECTION 11 SETS FORTH CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND CATALOGIC’S ENTIRE OBLIGATION WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT, THIRD PARTY OR OTHERWISE.

12. **SUSPENSION.**

- a. **Strict Liability For Abuse Of Services, Misappropriation of Services, or Both.** Although termination based on Abuse of Services or Misappropriation of Services (“Abuse/Misappropriation of Services”) outlined in Sections 6b and 6c requires that Customer knowingly engage in the types of Abuse/Misappropriation of Services so described, the threshold for suspension of service is much lower.

In the event of any Abuse/Misappropriation of Services by Customer or anyone for whose use Customer is responsible, whether such Abuse/Misappropriation of Services is intentional or unintentional, Catalogic, in its sole discretion, may immediately and entirely suspend Customer’s use of and access to the Cloud Services.

Catalogic, in its sole discretion will determine if any suspension of a Customer’s use of and access to the Cloud Services will also result in the suspension of a Customer’s Authorized Users.

- b. **Notice & Period of Suspension.** In the case of such suspension, Catalogic will, when at all reasonably possible, notify Customer within 24 hours of the suspension of service and advise Customer that use of and access to Cloud Services will only be re-enabled if the identified abuse(s)/misappropriation(s) have been cured within 30 days. Failure to cure the identified Abuse(s)/Misappropriation(s) of Services will result in termination and Catalogic will have no continuing obligations to Customer or its Authorized Users.
- c. **Rights Cumulative & Optional.** Nothing in this Section or its provisions regarding the right to suspend service shall be interpreted, deemed, or found to limit Catalogic’s other rights under this Agreement. The fact that Catalogic shall have the right to suspend Customer for Abuse of Services or Misappropriation of Services shall not be interpreted as an obligation to do so, nor shall the exercise of the right to suspend a given Customer be interpreted as an obligation to suspend others for the same conduct. Any election by Catalogic not to suspend service for a given Abuse/Misappropriation of Services shall not be considered, deemed, or found to be a waiver of Catalogic’s right to suspend Customer’s use and access to Cloud Services for a subsequent occurrence of the same or similar Abuse/Misappropriation of Services, nor shall it be considered, deemed, or found to be a waiver of Catalogic’s right to suspend use and access to Cloud Services by other Customers and their Authorized Users.

13. **GENERAL.**

- a. **Entire Agreement.** Titles, Sections, and Paragraph headings are included solely for convenient reference, are not intended to be full and accurate descriptions of the contents thereof and shall have no legal meaning or import. This Agreement, as defined in Section 1, supersedes in full all prior discussions, understandings, interpretations, communications, and agreements (oral or written) between the parties relating to the subject matter hereof, and together with attached or incorporated Exhibits, Supplements and Annexes, constitutes the entire agreement between the parties related thereto, and may be modified or supplemented only by a written document signed by an authorized representative of each party.
- b. **Force Majeure.** Notwithstanding anything in this Agreement to the contrary, neither Catalogic nor Customer shall bear any responsibility or liability for any losses arising out of any delay in, or interruptions of, performance of their respective obligations under this Agreement due to: any act of God, terrorism, act of governmental authority or act of public enemy, or due to war, the outbreak or escalation of hostilities, riot, fire, flood, hurricane, civil commotion, insurrection, labor difficulty (including, without limitation, any strike, other work stoppage, or slow-down), cyberterrorism, state sponsored cyber-attacks, pandemic-related disruptions, severe or adverse weather conditions, power failure, communications or other technological failure or any other similar cause beyond the reasonable control of the party so affected.
- c. **Waiver.** No waiver of any breach or failure or delay in exercising any right, power, or remedy of any provision of this Agreement shall constitute a waiver of the same or any other provision hereof with respect to prior, concurrent, or subsequent occurrences and no waiver shall be effective unless made in writing and signed by an authorized representative of the party against whom enforcement of such waiver is sought.
- d. **Severability.** The provisions of this Agreement are severable and the unenforceability of any provision, section, subsection, subparagraph, phrase, or word(s) of this Agreement shall not affect the enforceability of this Agreement or any other provision, section, subsection, subparagraph, phrase, or word(s) hereof. In addition, in the event that any provision, section, subsection, subparagraph, phrase, or word(s) of this Agreement is determined by a court to be unenforceable as drafted, the parties acknowledge that it is their intention that such provision, section, subsection, subparagraph, phrase, or word(s) shall be construed in a manner designed to effectuate the purposes of such provision, section, phrase, or word(s) to the maximum extent enforceable under applicable law.
- e. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of New Jersey, USA, including its choice of law provisions and each of the Parties hereto hereby consents to the non-exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in the state of New Jersey.
- f. **Export Laws.** Customer understands that the Cloud Services and the export and re-export of data via the Cloud Services may be controlled by the laws of one or more countries governing technology use and transfer, including without limitation U.S. Export Administration Regulations and EU data privacy regulations. Customer will not use or transfer any technology or data in violation of such laws.
- g. **Publicity.** Customer authorizes Catalogic to use Customer's name, logo, and/or trademark in connection with promotional, marketing, sales, and public relations activities. If Customer provides any written or recorded testimonials to Catalogic, Customer hereby authorizes Catalogic to reproduce, publish, distribute and/or translate such Testimonials for marketing purposes **(i)** on websites or social media channels operated by Catalogic, **(ii)** on the Catalogic video repository on www.Youtube.com, and/or **(iii)** in commercial presentations or events.
- h. **Waiver of Jury Trial.** Each party hereby irrevocably waives any and all right to trial by jury in connection with any dispute that arises out of or relates in any way to this Agreement.

- i. **Binding Nature and Assignment.** This Agreement will inure to the benefit of and be binding on the Parties, their successors, permitted assigns, and legal representatives.

Catalogic's Right of Assignment. Catalogic may assign or transfer this Agreement, in whole or in part, to any Subsidiary or in connection with any acquisition, consolidation, merger, reorganization, transfer of all or substantially all of its assets or other business combination, or by operation of law without Customer's consent upon written notice, except when doing so without Customer's consent would violate applicable laws or further agreements between the parties. Catalogic shall notify Customer of any such assignment or transfer as soon as practicable, but such notice shall not be a condition to such assignment or transfer. Customer may terminate this Agreement by providing written notice of termination to Catalogic no later than thirty (30) days after receiving notice of such assignment or transfer, if (i) Catalogic or this Agreement is acquired by Customer's direct competitor, (ii) Catalogic is acquired by a vendor with whom Customer has an active dispute and/or litigation, or (iii) Catalogic is acquired by a vendor that is subject to a pending state or federal regulatory investigation. Customer may not assign or transfer any part of this Agreement by business combination, operation of law or otherwise without Catalogic's prior written consent, which consent shall not be unreasonably withheld.

Customer's Right of Assignment Upon Notice & Approval. Customer shall have the right to assign this Agreement to any of its Subsidiaries (whether or not such Subsidiary exists as of the Effective Date) upon thirty (30) days' notice provided to and approval granted by Catalogic.

- j. **Data Center Providers.** Customer hereby consents to Catalogic's use of data center and public cloud providers identified in our list of sub-processors to supply hosting services for the Cloud Services. The list of sub-processors is available under the legal section of our website: <https://cloudcasa.io/legal/>. Customer understands that this list of sub-processors may be amended, augmented, or changed from time to time. Customer hereby consents to such amendments, augmentations, or changes made in accordance with the Data Processing Supplement to this Agreement.
- k. **Counterparts.** This Agreement may be signed in counterparts, including via PDF, Docusign or other electronic reproduction, and any such counterpart will be valid and effective for all purposes.
- l. **Remedies Cumulative.** Subject to the express exclusions and limitations set forth herein, all remedies set forth in this Agreement are cumulative and in addition to and not in lieu of any other remedies of a party at law or in equity.
- m. **Disclaimer of Partnership and Agency.** The parties acknowledge and agree that each is an independent contractor and not engaged in a joint venture nor an agent or partner of the other party. This Agreement shall not be construed as constituting either party as a partner of the other party or to create a joint venture or any other form of legal association that would impose liability upon one party for the act or failure to act of the other party or as providing either party with the right, power or authority (express or implied) to create any duty or obligation on behalf of the other party.
- n. **Survival.** The following Sections or Provisions will survive the expiration or termination of this Agreement: 2 (Term and Termination); 4 (Customer Ownership & Responsibility); 5 (Catalogic Ownership & Responsibility); 6 (Restrictions and Requirements); 7 (Privacy and Confidentiality); 9b (Limited Warranty of Performance); 10 (Limitation of Liability); 11 (Indemnification); 12 (Suspension); and 13 (General).

14. **NOTICES.**

All notices required or permitted to be given hereunder shall be in writing, and shall be deemed to have been given and sufficient in all respects when delivered **(a)** by hand (against receipt); **(b)** when received by

registered or certified mail, postage prepaid, return receipt requested, at the address shown below for the intended recipient; **(c)** when received at the email address shown below for the intended recipient; or **(d)** at such other address or email address as the intended recipient may specify in a notice pursuant to this Section.

If to Catalogic:

If to Customer:

Email: info@cloudcasa.io

[_____]

Mail:

Contract Management

[_____]

Catalogic Software

[_____]

140 E. Ridgewood Ave.

[_____]

Suite 415, South Tower

[_____]

Office 416

[_____]

Paramus, NJ 07652

[_____]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives.

[_____]

[_____]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A:

Attach Service Level Agreement