

END USER LICENSE AGREEMENT

This End User Software License Agreement ("Agreement") is between Varcons Inc., a Virginia corporation with its address at 14120 Newbrook Dr. Suite 280, Chantilly VA 20151 ("CloudThrottle"), and the Customer identified on the Order. By entering into an Order, accessing the Software Platform, SaaS Services, or purchasing Professional Services, Customer agrees to be bound by the terms and conditions of this Agreement. The Agreement is effective as of the subscription start date specified in the Order ("Effective Date").

1. DEFINITIONS

Throughout this Agreement, specific capitalized terms are used and their meanings are assigned either in this section or elsewhere in the Agreement:

- "Affiliate" refers to any entity that exercises control over, is controlled by, or is under common control with a Party. For the purposes of this Agreement, an Affiliate is considered a third party.
- "Agreement" refers to this End User License Agreement, including any amendments or addenda thereto, entered into between the End User and the *CloudThrottle*.
- "Authorized Partner" refers to one of the following entities: (i) "Reseller" - A partner authorized by *CloudThrottle* to market and resell *CloudThrottle's* products. (ii) "Technology Partner" - A partner authorized by *CloudThrottle* to create integrations enabling other software products to seamlessly work with *CloudThrottle's* Software. (iii) "Service Partner" - A partner subcontracted by *CloudThrottle* to provide Professional Services to Customers who have purchased such services.
- "Authorized Users" refer to individuals who are Customer's employees, consultants, or contractors and have been assigned a user (or fall under an unlimited user subscription) to access and utilize the Software Platform solely on behalf of and for the benefit of Customer. Managing Agents are also considered Authorized Users.
- "Company" refers to the entity providing the software-as-a-service (SaaS) based product under this Agreement.
- "Confidential Information" Confidential Information refers to all written or oral communications disclosed by one party ("Discloser Party") to another party ("Recipient Party"). It includes information identified as confidential or reasonably treated as such, covering research, development, products, plans, services, software, customer data, inventions, processes, technologies, designs, strategies, pricing, finances, and other proprietary or confidential business information. This also encompasses *CloudThrottle's* Software Platform and Documentation. Excluded from Confidential Information are: (i) information already known by the Recipient independently; (ii) information received without restrictions from a third party; (iii) publicly available information not due to the Recipient's fault or breach of confidentiality obligations; and (iv) information independently created by the Recipient without violating this Agreement or other confidentiality obligations to the Discloser.
- "Documentation" refers to any user manuals, guides, or other written materials provided by the Company that describe the functionality and use of the Product. The Documentation is regularly updated to ensure it aligns with the then-current version of the Software Platform.
- "Effective Date" refers to the date when this Agreement becomes effective, as specified in the applicable Order or subscription plan.
- "End User" refers to the individual or entity that has obtained a license to use the SaaS based product from the Company, as specified in this Agreement.
- "Feedback" refers to any suggestions, ideas, or feedback provided by the End User to the Company regarding the Product, its features, or improvements.
- "Intellectual Property Rights" refers to all intellectual property rights, including copyrights, trademarks, patents, trade secrets, and any other proprietary rights, whether registered or unregistered, pertaining to the Product and associated materials.
- "License" refers to the right granted by the Company to the End User to access and use the Product, subject to the terms and conditions of this Agreement.
- "Managing Agent" refers to a third-party service provider contracted by Customer to oversee and manage their

information technology or cloud resources.

- "Order" refers to any of the following: (i) A document, such as a quote, order form, or similar, that is signed by both Customer and *CloudThrottle*. It specifies the *CloudThrottle* products and services, quantities, and associated fees. (ii) In the context of a negotiated Software Platform License Agreement signed by both Parties, an ordering document or purchase order submitted by Customer directly to *CloudThrottle* or through a Reseller. *CloudThrottle* accepts the order, either through email confirmation or by providing the product license key to Customer. (iii) Any document accepted by both *CloudThrottle* and a Reseller, through which Customer places an order for *CloudThrottle* products and/or services.
- "Party" refers to either the End User or the Company, and "Parties" refers to both collectively.
- "Product" refers to the specific software-as-a-service (SaaS) based product provided by the Company, including any associated documentation, updates, or enhancements.
- "Software": as used in this Agreement, encompasses the Software Platform, traditional software, SaaS-based access, and self-hosted software. The Software Platform refers to *CloudThrottle's* comprehensive SaaS solution, while traditional software refers to locally installed applications. SaaS-based access allows remote usage via the internet, while self-hosted software is deployed on the user's own infrastructure.
- "Subscription" refers to the End User's entitlement to access and use the Product for a specified period, as agreed upon in the applicable Order or subscription plan.
- "Term" refers to the duration of this Agreement, including any renewals or extensions, as specified in the applicable Order or subscription plan.
- "Termination" refers to the conclusion or cancellation of this Agreement, either by expiration of the Term or due to a breach of the terms and conditions outlined herein.

2. DELIVERY OF PRODUCT:

- 2.1. Product Delivery: *CloudThrottle* will arrange for the delivery of the Products based on the applicable shipping terms agreed upon between *CloudThrottle* and the Channel Partner. In the absence of agreed-upon terms, electronic delivery will be used for software Products and SaaS. Any shipping dates provided to the Customer are approximate and not guaranteed. *CloudThrottle* will not be held liable for any damages, losses, or expenses incurred by the Customer due to any failure to meet a specified shipping date. The SaaS Services provided by *CloudThrottle* are hosted on *CloudThrottle's* infrastructure, and the Customer will not be entitled to receive a copy of the software code for the SaaS Services, except for downloadable components that are generally offered by *CloudThrottle* at its discretion, as specified on an Order.

3. ORDER PAYMENT TERMS:

Order clause, (i) Payment Obligations: The Customer agrees to fulfill the payment obligations as specified in the applicable Order for the subscription-based service. The Customer shall remit the agreed-upon fees to the Reseller or *CloudThrottle*, as outlined in the Order. (ii) Payment Schedule: Unless otherwise stated in the Order, recurring fees for the subscription-based service will be automatically charged at the beginning of each billing cycle. The Customer's designated payment method will be used for the automatic renewal of the subscription. (iii) Payment Method: The Customer shall provide and maintain valid payment information for the automatic renewal of the subscription. The designated payment method will be charged for the recurring fees unless updated or changed by the Customer. (iv) Taxes: The Customer is responsible for any applicable taxes, duties, or other governmental charges imposed on the subscription-based service, unless stated otherwise in the Order.

Cancellation clause: (i) Order Cancellation: In the event the Customer wishes to cancel the subscription, the Customer must provide written notice to the Reseller or *CloudThrottle* within the specified cancellation period mentioned in the Order or as agreed upon in writing. Any cancellation requests received after the cancellation period may result in charges for the upcoming billing cycle. (ii) Automatic Renewal: The subscription-based service is set to automatically renew at the end of each billing cycle, unless the Customer cancels the subscription as per the cancellation terms outlined in the Order or the Agreement. (iii) Refunds: Refunds, if applicable, will be processed in accordance with the refund policy stated in the Order or as communicated by the Reseller or *CloudThrottle*. The refund amount, if any, may be subject to deductions for any expenses incurred or services provided up to the cancellation date. (iv) Termination by *CloudThrottle*: *CloudThrottle* reserves the right to terminate the Order or this Agreement if the Customer fails to make the required payment within the specified timeframe or breaches any other provision of this Agreement. In such cases, *CloudThrottle* may exercise its right to suspend the Customer's license, cancel the subscription, and/or terminate the Agreement without prior notice.

In the event that the Customer purchases the product from the Reseller, the Customer agrees to remit the applicable fees

directly to the Reseller. As a result, the Customer will not have any direct fee payment obligations to *CloudThrottle* for the Software Platform. Nonetheless, *CloudThrottle* reserves the right to suspend the Customer's license and/or terminate this Agreement (including the Customer's right to use the Software Platform) under the following circumstances: if *CloudThrottle* does not receive payment for the Customer's use of the Software Platform from the Reseller or if the Customer violates any provision of this Agreement. Please note that the agreement between the Customer and the Reseller is an independent arrangement solely between the Customer and the Reseller, and it does not impose any obligations on *CloudThrottle*.

4. SOFTWARE LICENSE

- 4.1. Software Usage License: In accordance with the terms and conditions of this Agreement, *CloudThrottle* grants the Customer a non-exclusive, non-transferable, and non-sublicensable license to install, access, and utilize the Software solely for internal business purposes during the active Subscription period, provided that timely payments are made. The license is limited to the purchased usage units and user licenses as specified in the Order. The Customer acknowledges and agrees that any unauthorized use, reproduction, or distribution of the Software is strictly prohibited.
- 4.2. Documentation Usage License: Customer is granted a non-exclusive, non-transferable license to access and copy the Documentation for internal business use of the Software Platform by Authorized Users during the Subscription Term. No rights to modify, distribute, or create derivative works of the Documentation are granted. The Documentation is considered confidential.
- 4.3. Authorized Users: Customer's Authorized Users, including Managing Agents, are permitted to use the Software Platform and Documentation subject to the terms of this Agreement. Authorized Users must use and access the Software Platform solely on behalf of and for the benefit of Customer. Customer is responsible for the acts and omissions of its Authorized Users, and any breach of this Agreement by an Authorized User will be deemed a breach by Customer. Customer must inform all Authorized Users, including Managing Agents, about the relevant provisions of this Agreement and ensure their compliance. Additionally, Customer may allow Managing Agents to use the Software Platform and Documentation if certain conditions are met, and Customer will be fully liable for the Managing Agent's compliance or breach of this Agreement.
- 4.4. Reference Materials: As part of the Subscription, the Customer will have access to a collection of sample policies, codes, scripts, templates, and other reference materials ("Reference Materials") at no additional cost. THESE REFERENCE MATERIALS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" BASIS WITHOUT ANY WARRANTIES OR GUARANTEES, AND *CLOUDTHROTTL* AND ITS LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THEIR ACCURACY OR SUITABILITY FOR ANY PURPOSE. The Customer acknowledges that the use of the Reference Materials is at their own risk.
- 4.5. Restriction on Third-Party Users: Affiliates. The Software, its Documentation and reference material are strictly for use by Customer only. Third-party users, including Customer's Affiliates, are not authorized to access or utilize the Software/Software platform or its Documentation

5. LICENSE RESTRICTIONS

- 5.1. All licenses granted restriction: Customer shall strictly limit the use of the Software Platform and Documentation to the purposes explicitly permitted under the granted licenses in this Agreement. The Software Platform and Documentation shall not be utilized for any unauthorized purposes or activities beyond the scope of this Agreement.
 - No Reverse Engineering: Customer shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code or underlying structure of the Software Platform, unless expressly permitted by applicable law.
 - No Modification or Creation of Derivative Works: Customer shall not modify, adapt, translate, or create derivative works based on the Software Platform, in whole or in part, without the prior written consent of *CloudThrottle*.
 - No Unauthorized Use: Customer shall not use the Software Platform for any purpose other than the intended internal business use specified in this Agreement. Unauthorized use includes, but is not limited to, using the Software Platform for any illegal, unethical, or prohibited activities.
 - No Redistribution or Resale: Customer shall not distribute, sublicense, lease, rent, loan, or otherwise transfer or disclose the Software Platform to any third party without the prior written consent of *CloudThrottle*. This includes any attempts to resell or offer the Software Platform as a service to others.
 - No Removal of Notices or Proprietary Rights: Customer shall not remove, alter, or obscure any proprietary notices, trademarks, or copyright information displayed or embedded in the Software Platform.
 - No Interference: Customer shall not interfere with or disrupt the functionality or integrity of the Software Platform or *CloudThrottle's* systems, networks, or security measures.
 - Compliance with Laws: Customer shall use the Software Platform in compliance with all applicable laws, regulations, and industry standards.
 - Failure to comply with these license restrictions may result in the termination of the license and other legal remedies as provided by law.

- 5.2. Usage Monitoring and Compliance Enforcement: The Software Platform has built-in mechanisms to monitor and enforce compliance with the Agreement. Unauthorized use, such as exceeding usage credits or the expiration of the Subscription Term, may trigger warnings, limitations on functionality, or the cessation of operations. *CloudThrottle* reserves the right to employ these measures, along with other lawful means, to verify Customer's compliance and protect *CloudThrottle's* rights under the Agreement. If Customer receives an electronic notice within their Software Platform account or via email indicating that they have exceeded the specified usage credit amount mentioned in the Order, Customer must promptly settle any outstanding amounts for excess usage and acquire additional usage credits within thirty (30) days of receiving the notice.
- 5.3. Self-Audit Function: The Software Platform incorporates a self-audit function that enables *CloudThrottle* to monitor and gather data on Customer's usage. This function ensures adherence to the Agreement and safeguards *CloudThrottle's* intellectual property rights. The collected data is utilized to verify license usage, identify unauthorized access, and enhance the performance of the Software Platform. Customer acknowledges and agrees to *CloudThrottle's* access and analysis of the collected data in accordance with relevant data protection laws and *CloudThrottle's* privacy policy. By using the Software Platform, Customer provides consent to the collection, processing, and utilization of data through the self-audit function. Customer will cooperate with reasonable requests from *CloudThrottle* for compliance verification. Maintaining accurate records and adhering to the Agreement are crucial to prevent disputes or disruptions associated with the self-audit process.

6. CUSTOMER RESPONSIBILITIES

- 6.1. Technical Requirements and Infrastructure: The Customer is responsible for ensuring that they have the necessary technical requirements and infrastructure to access and use the SaaS software effectively. This may include compatible devices, internet connectivity, and any required software or hardware components.
- 6.2. User Access and Security: The Customer is responsible for managing user access to the software platform and ensuring the security of user accounts. This includes maintaining strong passwords, preventing unauthorized access, and promptly revoking access for users who no longer require it.
- The Customer must register for a customer account, providing accurate information and promptly updating it when necessary. They are responsible for managing user access and account credentials, ensuring they are not shared or transferred to any other entity. The Customer agrees to notify *CloudThrottle* immediately of any unauthorized access or use of their account.
 - The log-in credentials and access keys are intended for internal use by the Customer's Authorized Users only. The Customer agrees not to sell, transfer, or sublicense these credentials or access keys to any other individual or entity. It is the responsibility of the Customer to ensure that multiple users do not engage in password, username, or account sharing.
 - The Customer acknowledges that it has full accountability for any and all activities carried out under its account when users access the Software Platform using the credentials of an Authorized User. This responsibility extends to both authorized and unauthorized activities, and the Customer assumes sole liability for any resulting damages arising from account compromise, breaches, or unauthorized actions. *CloudThrottle* bears no responsibility for any unauthorized access to the Customer's account.
 - The Customer agrees to immediately notify *CloudThrottle* if it becomes aware that its account credentials have been accessed or used without authorization and will promptly suspend the associated account credentials.
- 6.3. Cloud Services Provider (CSP): The Customer acknowledges the need for a compatible cloud services provider subscription and agrees to maintain the cloud service throughout the Subscription Term. They are responsible for confirming compatibility with *CloudThrottle* and obtaining the necessary rights and consents from their cloud services provider or from Cloud Resellers. The Customer is also responsible for any associated usage charges.
- 6.4. Third Party Agreements: The Customer must comply with any contractual obligations to third parties in their use of the Software Platform and Documentation. They should not enter into agreements that would restrict or encumber the use of the Software Platform.
- 6.5. Third-Party Integrations: If the software platform allows for integrations with third-party services or applications, the Customer is responsible for managing and ensuring the compatibility, security, and proper functioning of such integrations.
- 6.6. Proper Use of the Software: The Customer will use the software platform only for its intended purpose and in accordance with any user guides or instructions provided by the software provider. The Customer shall not engage in any illegal, unauthorized, or disruptive activities while using the software.
- 6.7. Reporting Issues and Feedback: The Customer agrees to promptly report any issues, bugs, or vulnerabilities encountered while using the SaaS software to the software provider. The Customer may also provide feedback and suggestions for improvement to enhance the software's functionality and user experience.

- 6.8. Termination and Account Closure: Upon termination of the agreement or discontinuation of the SaaS software usage, the Customer is responsible for closing their account, removing their data, and ensuring compliance with any data retention or deletion requirements.
- 6.9. Export Control Laws: Each party will at all times comply with all applicable federal, state and local laws and regulations. The SaaS Services, Products and certain other services provided under this Agreement may fall within the group of "strategic" electronic or other products or services that are wholly or partly of U.S. origin or technology, the export of which is subject to export license control by the U.S. government. Therefore, Customer agrees to comply fully with all relevant export laws and regulations, including those of the United States and any other country where they use the Software Platform. This includes not exporting, re-exporting, shipping, transferring, or using the Software Platform or related technology in any country subject to a United States embargo or other sanctions.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. Ownership of Intellectual Property: All elements of this software platform, including but not limited to its design, code, algorithms, features, functionalities, user interfaces, graphics, logos, icons, text, and documentation, are the exclusive property of the respective owner or are licensed to the owner. These elements are protected by copyright, patent, trademark, trade secret, and other intellectual property laws. The ownership of the Software Platform and Documentation remains with *CloudThrottle* (or its licensors). The Customer acknowledges that *CloudThrottle* or its licensors hold all worldwide right, title, and interest in and to the Software Platform and Documentation, including all related Intellectual Property rights.
- 7.2. Patent and Patent-Pending Technology: The Customer acknowledges that the Software Platform and certain aspects of the services provided under this Agreement are protected by patents and/or are patent-pending. *CloudThrottle's* innovative technology, including but not limited to features related to budget management, cost optimization, and cloud resource scheduling, are covered under U.S. Patent No. [Patent Number], and additional patent applications are pending.
- 7.3. No Transfer of Ownership: This license agreement does not transfer any ownership rights of the Software Platform or Documentation to the Customer. The Customer acknowledges that they do not acquire, nor claim any right, title, or interest in or to the Software Platform or Documentation, except for the limited license granted in this agreement.
- 7.4. Reservation of Rights: *CloudThrottle* reserves all rights not expressly granted to the Customer in this agreement. This includes all rights, title, and interest in and to the Software Platform and Documentation, as well as any Intellectual Property rights associated with them.
- 7.5. Compliance with Intellectual Property Rights: The Customer agrees to take no action inconsistent with *CloudThrottle's* Intellectual Property rights. This includes refraining from infringing, misappropriating, or violating any Intellectual Property rights related to the Software Platform or Documentation.
- 7.6. Intellectual Property Enforcement: The owner reserves all rights not expressly granted to you. In the event of any unauthorized use, reproduction, distribution, or modification of this software or SaaS application, the owner reserves the right to pursue all available legal remedies, including injunctive relief and damages, to protect their intellectual property rights.
- 7.7. Trademarks: All trademarks, service marks, and logos used within this software or SaaS application are the property of their respective owners. Any use of these trademarks, service marks, or logos without the owner's permission is strictly prohibited.
- 7.8. Confidentiality and Trade Secrets: This software or SaaS application may contain valuable confidential information and trade secrets. You agree to maintain the confidentiality of such information and not to disclose it to any third party without the owner's prior written consent.
- 7.9. Modifications to Intellectual Property Rights Statement: The owner reserves the right to modify or update this Intellectual Property Rights statement at any time without prior notice. The updated statement will be effective upon its posting within the software or SaaS application.
- 7.10. Suggestion and Feedback: If the Customer provides *CloudThrottle* with any suggestion and Feedback regarding the Software Platform, Documentation, Support Services, or Professional Services, the Customer acknowledges and agrees to the following: (i) Usage of Suggestion: *CloudThrottle* may utilize the Suggestion for any purpose, which includes modifying its existing products and services or creating new ones. The Customer acknowledges that they will not be entitled to any compensation or royalty related to the product or service that incorporates their Suggestion. (ii) Transfer of Intellectual Property Rights: The Customer irrevocably transfers and assigns to *CloudThrottle* all right, title, and interest, present or future, in any Intellectual Property rights associated with the Suggestion. (iii) Additional Documents: Upon *CloudThrottle's* reasonable request, the Customer agrees to execute any additional documents necessary or convenient to establish and record *CloudThrottle's* ownership interest in the Suggestion. The Customer acknowledges that any costs incurred in preparing such additional documents will be the responsibility of *CloudThrottle*.

8. MAINTENANCE AND SUPPORT SERVICES

Nothing in this Agreement entitles Licensee to any Support Services and/or Maintenance of the Licensed Software without the required payment for such Support Services and/or Maintenance.

Maintenance Services: *CloudThrottle* agrees to provide maintenance services for the Software Platform during the term of the subscription. Maintenance services may include bug fixes, patches, updates, upgrades, and modifications to the Software Platform as deemed necessary by *CloudThrottle*. All such maintenance releases are considered part of the Software Platform and are subject to the terms of this Agreement. *CloudThrottle* will make reasonable efforts to ensure the availability and functionality of the Software Platform, and to promptly address any issues or errors that may arise.

Support Services: *CloudThrottle* will provide support services to assist the Customer in using and troubleshooting the Software Platform. Support services may include Standard technical support through email, or chat. *CloudThrottle* may also provide access to an online support portal containing instructional materials, user guides, and FAQs to aid the Customer in utilizing the Software Platform effectively. The Customer has the option to purchase premium support services, which encompass phone support and the assignment of a dedicated technical team. *CloudThrottle* does not have any obligation to install or configure the Software Platform unless the Customer separately procures the corresponding Professional Services. It is important to note that the premium support services come at an additional cost and provide enhanced assistance beyond the standard support offerings.

9. PROFESSIONAL SERVICES

Premium Support: Customer has the option to purchase additional services, such as software installation, configuration setup, data migration, onboarding, training, technology integrations, on-site support, or other predefined professional service packages. These services are available for separate purchase and are referred to as "Professional Services." If the Customer chooses to purchase Professional Services in connection with the software platform, the terms and conditions specified in the attached Professional Services Addendum will apply and be governed by this Agreement.

CloudThrottle may provide Professional Services either directly to the Customer or through authorized subcontractor Service Partners, unless otherwise restricted in the Order. *CloudThrottle* ensures that its Service Partners comply with all relevant terms and conditions stated in this Agreement. *CloudThrottle* serves as the sole point of contact for the Customer regarding Professional Services provided by Service Partners, including payment matters. No contractual relationship is established between the Customer and any Service Partner under this Agreement, and the Customer bears no obligation to pay to any Service Partner. If any delay in the provision of Professional Services is caused by Customer and results in additional fees, Customer will pay such additional fees. Customer will not hire *CloudThrottle* Personnel during the Term of this Agreement and for a period of twelve (12) months thereafter without the *CloudThrottle's* prior written consent

If *CloudThrottle*, at its sole discretion, determines that the Customer's failure prevents the provision of Professional Services, *CloudThrottle's* obligation to deliver the services will be suspended until the Customer addresses the failure. During this period, *CloudThrottle* will not be held responsible for any delays that may arise as a result.

10. USAGE TERMS AND TERMINATION:

- 1.1. **Term:** This Agreement shall commence on the effective date specified in the Order Form and shall continue for the duration of the subscription term selected by the Customer (the "Subscription Term"), unless terminated earlier in accordance with the provisions of this Agreement.
- 1.2. **Renewal:** Upon the expiration of the initial Subscription Term, this Agreement will automatically renew for successive renewal terms of equal duration, unless either party provides written notice of non-renewal at least fifteen (15) days prior to the end of the then-current Subscription Term.
- 1.3. **Service Interruption:** To avoid interruptions in service due to overdue payments
 - **Payment Due Date:** Payment must be made by the specified due date.
 - **Grace Period:** A limited 10 days grace period is granted after the due date for customers to make payment without service interruption.
 - **Late Payment Fees:** Late payment fees will be charged for payments received after the grace period. The amount or percentage of the late fee will be specified.
 - **Notifications:** Customers will receive payment reminders or notifications before and during the grace period.
 - **Service Interruption:** If payment remains overdue beyond the grace period, access to the SaaS product may be temporarily suspended.
 - **Payment Reinstatement:** To reinstate service after suspension, customers must settle the outstanding payment and provide confirmation of payment to customer support.
 - **Account Termination:** In cases of significant overdue payments or repeated failure to make timely payments, the

customer's account may be permanently terminated.

- Payment Methods: Specify acceptable payment methods and any necessary payment references.
- Dispute Resolution: Provide information on the process for resolving payment-related disputes.
- Payment Information Updates: Customers are responsible for keeping their payment information up to date.

1.4. Termination: This agreement may be terminated by following clause

- Failure to pay an overdue amount: if Customer failure to pay an overdue amount continues for ten (10) days following written notice or demand for payment, CloudThrottle shall have the right to terminate this Agreement by providing written notice.
- Termination for Convenience: Either party may terminate this Agreement for convenience by providing written notice to the other party. Upon such termination, the Customer shall be responsible for payment of all fees and charges incurred up to the effective date of termination.
- Termination for Cause: Either party may terminate this Agreement for cause if the other party commits a material breach of any provision of this Agreement and fails to cure such breach within a reasonable period of time after receiving written notice specifying the breach.
- Termination for Customer Financial Instability: This Agreement may be terminated by the Provider, effective immediately and irrespective of written notice to the Customer, if the Customer becomes insolvent, unable to pay debts, undergoes bankruptcy proceedings, dissolves or liquidates, makes a general assignment for creditors, or applies for the appointment of a trustee or receiver. Upon termination, the Provider is released from further obligations, and the Customer is liable for outstanding payments and damages. This termination clause takes immediate effect upon the aforementioned events, overriding conflicting provisions within the Agreement.
- Effects of Termination: Upon termination of this Agreement, the Customer's right to access and use the Software Platform and any related services shall cease immediately. The Customer shall promptly return or delete all confidential information and intellectual property provided by CloudThrottle. Any outstanding fees or charges shall become immediately due and payable upon termination.

1.5. Survival: Upon the termination or expiration of this Agreement, the following provisions shall survive and continue to be binding upon the parties.

- Intellectual Property Rights: Any provisions related to intellectual property rights, including but not limited to ownership of intellectual property, licenses, restrictions on use and disclosure of proprietary information.
- Confidentiality: Any provisions related to the protection and confidentiality of confidential information shared between the parties during the term of this Agreement.
- Limitation of Liability: Any provisions limiting the liability of the parties, including disclaimers of warranties and limitations on indirect, incidental, or consequential damages.
- Payment Obligations: Any provisions regarding payment obligations, including any outstanding fees or charges incurred prior to termination.
- Dispute Resolution: Any provisions related to the resolution of disputes, including the choice of law, jurisdiction, and the governing law of this Agreement.
- Data Protection: Any provisions related to data protection, privacy, and compliance with applicable laws and regulations governing the handling and processing of personal data.

1.6. Audit Rights: Any provisions granting audit rights to either party, including rights to verify compliance with the terms of this Agreement.

1.7. Termination Obligations: Any provisions that outline the obligations of the parties upon termination, such as the return or deletion of data, termination of user access, and transition assistance.

11. CONFIDENTIALITY

The Receiving Party agrees to keep all Confidential Information received from the Disclosing Party confidential and use it solely for fulfilling their obligations under the agreement. They will exercise reasonable care to prevent unauthorized disclosure and limit access to authorized personnel. Exceptions include information already known, publicly available, lawfully obtained from a third party, or independently developed. Disclosure may be required by law, in which case the Receiving Party shall notify the Disclosing Party. Confidential Information must be returned or destroyed upon request or termination. Obligations of confidentiality persist after termination, and breach may lead to legal remedies.

12. LIMITED WARRANTY AND DISCLAIMER

Limited Warranty: CloudThrottle provides a limited warranty for a duration of thirty (30) days from the Delivery Date (referred to as the "Warranty Period"), ensuring that the Software Platform conforms, in all material aspects, to the specifications outlined in the Documentation (known as the "Limited Warranty"). In the event of any breach of the Limited Warranty, CloudThrottle's sole obligation and liability, and the Customer's exclusive remedy, is as follows: (i)

CloudThrottle will repair or replace the Software Platform, or (ii) *CloudThrottle* may terminate the Agreement and refund the Fee paid by the Customer for the Software Platform if, in *CloudThrottle's* reasonable judgment, repairing or replacing the Software Platform is impractical.

Exclusion of Warranty: The Limited Warranty does not apply under the following circumstances: (i) If the Software Platform is not utilized in accordance with the terms of this Agreement or the Documentation. (ii) If any part of the Software Platform, or the entire Software Platform itself, has been modified by a party other than *CloudThrottle* or by authorized Service Partner. (iii) If a malfunction in the Software Platform has been caused by hardware or software that was not provided by *CloudThrottle*.

Warranty Disclaimer: EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, *CLOUDTHROTTLE* PROVIDES THE SOFTWARE PLATFORM, DOCUMENTATION, SAMPLE POLICIES, CODES, SCRIPTS, TEMPLATES, AND OTHER REFERENCE MATERIALS, SUPPORT SERVICES, AND PROFESSIONAL SERVICES "AS IS" AND "WITH ALL FAULTS," WITHOUT ANY WARRANTY, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, STATUTORY, OR ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICE. *CLOUDTHROTTLE* EXPLICITLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, ACHIEVEMENT OF CUSTOMER'S REQUIREMENTS OR INTENDED RESULTS, AND COMPATIBILITY WITH ANY OTHER SOFTWARE, SERVICE, TECHNOLOGY, OR MATERIALS UNLESS EXPRESSLY STATED IN THE DOCUMENTATION.

FURTHERMORE, *CLOUDTHROTTLE* MAKES NO WARRANTY OF ANY KIND REGARDING THE SECURITY, ACCURACY, DATA LOSS, COMPLETENESS, ERROR-FREE NATURE, FAIL-SAFE OPERATION, FREEDOM FROM HARMFUL CODE, UNINTERRUPTED FUNCTIONALITY, OR THE CORRECTION OF ALL DEFECTS IN THE SOFTWARE PLATFORM OR DOCUMENTATION. THIRD-PARTY SOFTWARE, OPEN-SOURCE COMPONENTS, AND ANY OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" WITH ALL FAULTS AND WITHOUT ANY WARRANTY.

13. LIMITATION OF LIABILITY:

- 13.1. No Indirect Damages: Both parties acknowledge and agree that neither party shall be held responsible to the other for any indirect, incidental, special, punitive, consequential, or exemplary damages, regardless of the nature of the claim. This encompasses, but is not limited to, claims arising from lost profits, costs incurred due to delays, unsuccessful deliveries, interruptions in business operations, data loss, theft or damage, expenses associated with data restoration, computer or system failures or disruptions, costs of seeking alternative solutions, loss of business, loss of use, loss of goodwill, or liabilities to any third parties. This limitation on indirect damages applies even if the party has been previously informed about the possibility of such damages.
- 13.2. Limitation of Direct Damages: Subject to the exclusions stated in Section 13.3, the total cumulative liability of each party for all claims arising from or relating to this agreement (whether in contract, tort, negligence, strict liability, or otherwise) shall be limited to the proven direct damages. The total amount of such direct damages shall not exceed the total subscription fees paid or payable by the customer to *CloudThrottle* under this agreement for the subscription term during which the event, act, or omission giving rise to such liability occurred. This limitation of liability applies irrespective of any breach or ineffectiveness of other provisions in this agreement.
- 13.2.1. Cap on Liability for Data Loss or Corruption: Notwithstanding anything to the contrary, *CloudThrottle's* liability for any data loss or corruption shall not exceed the total subscription fees paid or payable by the customer during the twelve (12) months immediately preceding the event giving rise to such liability.
- 13.3. Exclusions on Limitation of Liability: The limitations on liability set forth in this Agreement shall not apply to liability arising from willful misconduct or gross negligence, death or personal injury caused by negligence, fraud or fraudulent misrepresentation, breach of confidentiality obligations, infringement of intellectual property rights, indemnification obligations, or any statutory rights that cannot be excluded or limited under applicable law. In no event shall the total liability of either party exceed the total amount of subscription fees paid or payable by the Customer during the relevant subscription term.
- 13.4. Liability for Third-Party Claims: *CloudThrottle* shall have no liability to the Customer for any third-party claims arising out of or relating to the Customer's use of the Software Platform, unless such third-party claims are a direct result of *CloudThrottle's* willful misconduct or gross negligence.
- 13.5. Force Majeure: *CloudThrottle* shall not be liable for any failure or delay in performance due to circumstances beyond its reasonable control, including but not limited to acts of God, natural disasters, war, terrorism, labor disputes, pandemics, governmental actions, failures of the internet or any public telecommunications network, or issues related to cloud providers' services, network, bandwidth, or performance.
- 13.6. Misconfigurations and Monitoring: *CloudThrottle* shall not be liable for any issues, damages, or losses arising from

misconfigurations, overlooked settings, improper assignments, incorrect time zone or date selections, synchronization failures, inadequate monitoring by the Customer, health check failures, connectivity issues, policy changes in Cloud Infrastructure, third-party services and integrations, data breaches or security incidents originating from third-party cloud providers, service downtime or availability issues caused by third-party cloud providers, performance degradation due to third-party services, transaction losses, or any discrepancies, functionality issues, or accuracy issues identified by the Customer but not reported to or escalated to *CloudThrottle* support on time. The Customer is responsible for ensuring proper configuration, regular monitoring, and maintenance of the Software Platform to meet their specific needs and requirements.

CloudThrottle will implement reasonable and appropriate measures to protect Customer data. However, *CloudThrottle* shall not be liable for data breaches or security incidents caused by factors beyond its reasonable control, including but not limited to, vulnerabilities in third-party services or integrations used by the Customer. In the event of a security breach resulting from a hack or unauthorized access to *CloudThrottle's* systems, CloudThrottle shall take all reasonable steps to mitigate the impact and inform the Customer promptly.

- 13.7. **Data Loss:** CloudThrottle shall not be liable for any data loss or corruption unless directly caused by *CloudThrottle's* gross negligence or willful misconduct. In such cases, *CloudThrottle's* liability shall be limited to the total subscription fees paid or payable by the Customer during the twelve (12) months immediately preceding the event giving rise to such liability. The Customer is responsible for maintaining appropriate backups of their data and ensuring that such data can be restored in the event of loss or corruption.
- 13.8. **Essential Basis:** The parties acknowledge and agree that the limitations on liability set forth in this Agreement are an essential basis of the bargain between the parties and were taken into account in determining the fees and other consideration to be paid under this Agreement. The parties further acknowledge that the allocation of risk and limitation of liability in this Agreement is fair and reasonable given the nature of the services provided and the fees charged.

14. INDEMNIFICATION

CloudThrottle will defend Customer against any third party claim that a SaaS Service, Product, Support Service, Professional Service or deliverable ("Deliverables") infringes such party's patent, and pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction or the amounts in a written settlement signed by *CloudThrottle*. The foregoing obligations are subject to Customer's obligation to (i) notify *CloudThrottle* promptly in writing of any such claim, (ii) grant *CloudThrottle* sole control over the defense and settlement thereof, (iii) reasonably cooperate in response to a *CloudThrottle* request for assistance in connection with the defense and settlement thereof, and (iv) comply with the terms of this Agreement.

Should any such SaaS Service, Product, Support Service, Professional Service or Deliverable become, or in *CloudThrottle's* opinion be likely to become, the subject of such a claim, *CloudThrottle* may, at its option and expense, (a) procure for Customer the right to make continued use thereof, (b) replace or modify such so that it becomes non-infringing, (c) request return of the Product or deliverable and, upon receipt thereof, refund the price received by *CloudThrottle*, less straight-line depreciation based on a five year useful life, or (d) discontinue the provision of the SaaS Service, Support Service or Professional Service and refund the portion of any applicable pre-paid service fee that corresponds to the period of service discontinuation.

CloudThrottle will have no liability under this Section to the extent that the alleged infringement arises out of or relates to: (1) the use or combination of a Product, SaaS Services, or Deliverable with third party products or services not supplied by *CloudThrottle*, (2) use for a purpose or in a manner for which the Product, SaaS Services, or Deliverable was not designed, supplied, or licensed, (3) any modification to a Product, SaaS Services, or Deliverable made by anyone other than *CloudThrottle* or its authorized representatives, (4) any modifications to a Product, SaaS Services, or Deliverable made by *CloudThrottle* pursuant to Customer's specific instructions, (5) any Evaluation Products or Freemium Services, or (6) ongoing use of the infringing version of a Product, SaaS Services, or Deliverable when use of a non-infringing version made available to Customer for purposes of avoiding such infringement would have avoided the infringement.

THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND *CLOUDTHROTTLER'S* ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

15. EVALUATION SOFTWARE

- 15.1. **Evaluation Products:** At times, the Customer may desire to evaluate the Products or SaaS Services before making a purchase or participate in testing and providing feedback for pre-release versions of the SaaS Services or Products upon the *CloudThrottle's* request (referred to as "Evaluation Products"). Upon receiving or accessing the Evaluation Product, the *CloudThrottle* grants the Customer a nonexclusive, revocable, limited term, and non-transferable license to use the Evaluation Products solely for internal evaluation purposes for a specified Trial Period. The Trial Period is

thirty (30) days for Products and fourteen (14) days for SaaS Services unless otherwise agreed in writing by the *CloudThrottle*. If the Customer fails to return any hardware Evaluation Products promptly after the Trial Period, the Customer is liable to purchase such Evaluation Products at the current list prices within thirty (30) days of the *CloudThrottle*'s invoice date. The Customer shall be responsible for any loss of or damage to the hardware Evaluation Products during their possession, excluding normal wear and tear. Upon the conclusion of the Evaluation Period, the Customer must uninstall and delete any copies of standalone software Evaluation Products unless otherwise instructed by the *CloudThrottle*. For SaaS Services-based Evaluation Products, the *CloudThrottle* may disable access to the same.

- 15.2. Data Retention: ANY CUSTOMER DATA ENTERED INTO EVALUATION PRODUCTS MAY BE PERMANENTLY LOST UNLESS THE CUSTOMER PURCHASES A LICENSE OR SUBSCRIPTION TO THE EVALUATION PRODUCTS OR EXPORTS THE DATA PRIOR TO THE TERMINATION OF THE TRIAL PERIOD.
- 15.3. No Guarantees: THE *CLOUDTHROTTLER* DOES NOT COMMIT, GUARANTEE, PROMISE, OR AGREE TO RELEASE OR OFFER FOR SALE ANY EVALUATION PRODUCT. EVALUATION PRODUCTS ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES, SUPPORT SERVICES, PROFESSIONAL SERVICES, OR INDEMNITIES OF ANY KIND.
- 15.4. Freemium Use: If offered by the *CloudThrottle*, the Customer may use free versions of the SaaS Services or Products ("Freemium Services"). Subject to compliance with the terms and conditions and requirements specified by the *CloudThrottle*, the Customer is granted a nonexclusive, revocable, limited term, and non-transferable license to use the Freemium Services for internal business purposes, with certain limitations on usage as communicated by the *CloudThrottle*. The *CloudThrottle* reserves the right to revoke, terminate, suspend, modify, limit, or condition further use of Freemium Services at any time. The Customer may cancel the Freemium Services at any time, and access to the Freemium Services will also terminate automatically under certain circumstances as described in the agreement.
- 15.5. Restrictions and Disclaimers: Freemium Services may be subject to limitations and may contain bugs or errors. They are provided "AS IS" without any express or implied warranty. The Customer assumes all risks associated with the use of Freemium Services, and the *CloudThrottle* may discontinue offering them at any time.
- 15.6. Data Retention for Freemium Services: ANY CUSTOMER DATA ENTERED INTO FREEMIUM SERVICES MAY BE PERMANENTLY LOST UPON TERMINATION OF THE FREEMIUM SERVICES UNLESS THE CUSTOMER EXPORTS THE DATA PRIOR TO TERMINATION.
- 15.7. Limited Liability: THE *CLOUDTHROTTLER*'S ENTIRE LIABILITY IN CONNECTION WITH THE USE OF FREEMIUM SERVICES, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, WILL NOT EXCEED \$40. IF THE CUSTOMER DISAGREES WITH THIS ALLOCATION OF RISK, THEIR SOLE RECOURSE IS TO DISCONTINUE THE USE OF FREEMIUM SERVICES.
- 15.8. Restrictions: The Customer agrees not to reverse engineer, modify, resell, distribute, or use the SaaS Services, Products, or Software for unauthorized purposes. The licenses granted are subject to ongoing compliance with the agreement.
- 15.9. Ownership: The *CloudThrottle* and its licensors retain all rights, title, and interest in the SaaS Services, Software, Products, Evaluation Products, and related materials. The Customer acknowledges that they are licensed to use these items and do not acquire ownership rights. The *CloudThrottle* may incorporate feedback provided by the Customer into its services without disclosing the Customer's identity.

These terms regarding Evaluation Software Subscription are part of the broader agreement and should be read in conjunction with other applicable terms and conditions.

16.U.S. Federal Government Customers

Software Platform and Documentation: *CloudThrottle* provides the Software Platform and related Documentation to federal government customers for their ultimate end use, subject to the following terms.

- 16.1. Government Rights: The rights granted to the federal government for the Software are limited to those typically provided to the public under a customary commercial license, as defined in this Agreement.
- 16.2. Applicable Regulations: For federal government transactions, the rights and regulations governing the Software are in accordance with the Federal Acquisition Regulation (FAR) FAR 12.211 (Technical Data) and FAR 12.212 (Software). For Department of Defense transactions, the Defense FAR Supplement (DFARS) DFARS 252.227-7015 (Technical Data- Commercial Items) and DFARS 227.7202-03 (Rights in Commercial Computer Software or Computer Software Documentation) apply.
- 16.3. Commercial Item Definition: The Customer acknowledges that the Software Platform meets the definition of a "commercial item" as defined in FAR 2.101. Additionally, all components of the Software Platform have been developed exclusively at private expense.

- 16.4. Negotiation for Additional Rights: If a government agency requires rights beyond what is conveyed under these terms, it must engage in negotiations with *CloudThrottle*. Both parties must mutually agree to the terms for transferring such rights, and a written addendum signed by both parties must be included in any applicable contract or agreement.

17. GENERAL PROVISIONS

- 17.1. Entire Agreement: These General Provisions, together with the main agreement or contract entered into by the parties, constitute the entire agreement between them regarding the subject matter covered herein. They supersede any prior or contemporaneous agreements, communications, or understandings, whether oral or written.
- 17.2. Governing Law/Jurisdiction: This Agreement is governed by and construed in accordance with the laws of the State of Virginia without giving effect to any choice or conflict of law provisions. The Parties hereby irrevocably agree to submit to the jurisdiction of the state courts of the State of Virginia and the U.S. District Court for the District of Virginia and agree that such courts shall be the exclusive venue for any action arising under this Agreement. The Parties Agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement.
- 17.3. Dispute Resolution: In the event of any disputes or claims arising out of or relating to this agreement, the parties shall make good faith efforts to resolve the matter through negotiation. If the parties are unable to reach a resolution within a reasonable period of time, either party may initiate binding arbitration in accordance with the rules and procedures of a mutually agreed-upon arbitration institution. The decision of the arbitrator shall be final and binding on both parties.
- 17.4. Injunctive Relief: Both Parties acknowledge that a breach or threatened breach by either Party of their obligations under License Grant, License Restrictions, or Confidentiality would result in immediate and irreparable harm to the non-breaching Party. Monetary damages would not be sufficient to address this harm. As an additional remedy, the non-breaching Party is entitled to seek injunctive relief without the requirement to prove actual damages or provide a bond or other security.
- 17.5. Assignment: Neither party may assign or transfer any rights or obligations under this agreement without the prior written consent of the other party, except in the case of a merger, acquisition, or sale of all or substantially all of the assets of the assigning party. Any attempted assignment or transfer without such consent shall be void.
- 17.6. Severability: If any provision of this agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions shall continue in full force and effect. The parties shall negotiate in good faith to replace the invalid, illegal, or unenforceable provision with a valid and enforceable provision that achieves the intended purpose to the maximum extent possible.
- 17.7. Waiver: The failure of either party to enforce any provision of this agreement shall not be deemed a waiver of that provision or the right to enforce it. Any waiver must be in writing and signed by the party granting the waiver.
- 17.8. Notices: All notices, requests, demands, or other communications required or permitted under this agreement shall be in writing and delivered personally, sent by registered or certified mail, or sent by recognized overnight courier service to the addresses specified in the main agreement or as subsequently provided by the parties in writing.
- 17.9. Survival: Any provisions of this agreement that, by their nature, are intended to survive termination or expiration, shall survive and remain in effect, including but not limited to provisions related to confidentiality, intellectual property rights, and limitation of liability.
- 17.10. Independent Contractors: The relationship between the parties is that of independent contractors. Nothing in this agreement shall be construed to create a partnership, joint venture, agency, or employment relationship between the parties. Neither party shall have the authority to bind or obligate the other party in any manner.
- 17.11. Amendments: Any amendments or modifications to this agreement must be in writing and signed by both parties. No amendment or modification shall be effective unless expressly agreed to in writing by the parties.
- 17.12. Headings: The headings used in this agreement are for convenience purposes only and shall not affect the interpretation or construction of the provisions contained herein.