

**Cloudtheapp  
Subscription Agreement**

**Thank you for your interest in Cloudtheapp. Please read the following:** THIS IS A BINDING LEGAL AGREEMENT BETWEEN YOU AND CLOUDTHEAPP, A DELAWARE REGISTERED COMPANY AT 651 N BROAD ST, SUITE 206 IN THE TOWN OF MIDDLETOWN, ZIP CODE 19709. THE NAME OF ITS REGISTERED AGENT AS SUCH ADDRESS IS LEGALINC CORPORATE SERVICES INC. SUBJECT TO ACCEPTANCE BY CLOUDTHEAPP, BY YOU ACCEPTING THIS AGREEMENT EITHER BY (A) SUBMITTING TO US AN ONLINE REGISTRATION FORM REFERENCING THIS AGREEMENT OR OTHERWISE INDICATING YOUR ACCEPTANCE OF AN ONLINE VERSION OF THIS AGREEMENT, (B) SIGNING A COPY OF THIS AGREEMENT, OR (C) SIGNING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY (E.G., YOUR EMPLOYER), YOU REPRESENT THAT YOU ARE AUTHORIZED TO DO SO, AND AGREE THAT THE TERMS "CUSTOMER," "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU ARE NOT SO AUTHORIZED OR IF YOU DISAGREE WITH THESE TERMS, YOU MUST NOT ACCEPT THIS AGREEMENT OR USE THE APPLICATION. CLOUDTHEAPP'S WILLINGNESS TO ENTER INTO THIS AGREEMENT IS CONTINGENT ON YOUR ACCEPTING THIS AGREEMENT WITHOUT MODIFICATION.

NOTE: IF YOU ARE A COMPETITOR OR PROSPECTIVE COMPETITOR OFFERING OR CONSIDERING OFFERING A PRODUCT OR SERVICE SIMILAR TO CLOUDTHEAPP, YOU ARE PROHIBITED FROM ACCESSING OR USING THE APPLICATION UNLESS CLOUDTHEAPP SPECIFICALLY AGREES IN WRITING TO PERMIT YOU TO DO SO. IN ADDITION, ANY ACCESS OR USE OF THE PLATFORM, SOLUTIONS, OR APPLICATIONS FOR COMPETITIVE PURPOSES, INCLUDING MONITORING OR DETERMINING THE PLATFORM'S, SOLUTIONS'S, AND APPLICATION'S AVAILABILITY, FEATURES, FUNCTIONALITY OR PERFORMANCE, OR FOR ANY OTHER BENCHMARKING OR SIMILAR PURPOSE, IS EXPRESSLY PROHIBITED.

CLOUDTHEAPP AND YOU AGREE TO THE FOREGOING, AND AS FOLLOWS:

**1. FREE TRIAL USE, FREE PLANS, & BETA SERVICES.**

**1.1 If You subscribe/register or have registered on Cloudtheapp's website to the Platform or any of the Solutions and or Applications, this Agreement will govern Your use of the Platform, Solutions, and Applications during the specified duration. Free trial period is the first two to four weeks of your subscription or as indicated under each plan. Charges will not be applied to your credit card until the free trial duration has gone by.**

**1.2 All Your Data and any Modules you create using our Platform or configurations and customizations You make to any Applications during the free trial period will be permanently deleted from the Application at the end of the free trial period. Cloudtheapp will have no responsibility or liability for any such deletion.**

**1.3 Notwithstanding Section 10 (Limited Warranty), during the free trial period the Platform, Solutions, and Applications are provided "as-is," without any warranty of any kind, express or implied, including any implied warranties of merchantability, fitness for a particular purpose and otherwise.**

**1.4 From time to time, Cloudtheapp may make Beta Services available to Customer at no charge. Customer may choose to try such Beta Services or not in its sole discretion.**

**1.5 Free Plans and Starter Plans: Cloudtheapp offers free plans to allow subscribing entities from reaching out to other external entities such as suppliers, auditors and others, subscribing entity may not use such free plans to licenses their internal users to avoid paying license fee for actual users of the system from within the subscribing entity. Cloudtheapp reserves the right to charge subscribing entities for such unlicensed users as well as cancel free plans at any time and without any prior notices.**

**2. DEFINITIONS.** As used in this Agreement, and in addition to any other terms defined herein, the following defined terms will have the following meanings:

**2.1 "Affiliate"** means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified person. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of more than fifty percent (50%) of the shares or voting securities, by contract or otherwise. Any such company shall be considered an Affiliate for only such time as such control is maintained.

**2.2 "Platform, Solution, and Application"** mean the computer software application developed through the use of the software or any third-party Software tools or services integrated and managed by the Software described in the applicable forms, including Updates thereto and Documentation, which are licensed to You on an online, hosted, Subscription basis.

**2.3 "Confidential Information"** means (a) information of a party in all forms which derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, as well as (b) other information that is provided to or obtained by one party and that is valuable to the other party and not generally known by the public. In the case of Cloudtheapp, Confidential Information includes the Platform, Solutions, Applications, Documentation, computer operations, all code, inventions, algorithms, business concepts, workflows, marketing, financial, business and technical information, the terms and pricing under this Agreement, authentication credentials each of which is deemed to constitute and comprise trade secrets of Cloudtheapp. In Your case, Confidential Information includes Your Data, which is deemed to constitute and comprise trade secrets of You.

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- 2.4 “Your Data”** means any data or information inputted by You to the Application and any data or information outputted by the Platform, Solution, and Application as a result of processing such data or information inputted.
- 2.5 “Online Order/Subscription Form”** means the ordering documents entered into between You and Cloudtheapp by which You order Subscriptions to the Platform Application and any related services, and any agreed upon amendments or addenda to such documents. By entering into an Order Form, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party to this Agreement. All Order Forms agreed to hereunder shall be deemed incorporated into this Agreement by reference.
- 2.6 “Documentation”** means the online “Help” features of the Application and any downloadable resources and documentation made available from Cloudtheapp describing the functionality or operation of the Application, i.e., user manuals, images, videos, etc.
- 2.7 “Hosting Environment”** means the online web-based computing environment from which the Application is made accessible on a Subscription basis.
- 2.8 “Work/Services Order”** means the mutually agreed upon written document by which You order Services from Cloudtheapp, which shall be incorporated herein by reference and governed by the Services Terms.
- 2.9 “Technical Support”** means the provision of technical support services related to the Application and Hosting Environment and such other services as are described in the Cloudtheapp Technical Support Terms.
- 2.10 “Updates”** means updates, corrections, modifications and/or functional enhancements to the Platform, Solutions, and Applications, including new versions.
- 2.11 “You” or “Your”** refers to the company or other legal entity for which You are accepting this Agreement and that company’s or other legal entity’s Affiliates.
- 2.12 “Effective Date”** means the effective date of this Agreement, as indicated in the initial Online Order/Subscription Form.
- 2.13 “Work Product”** means any software, documentation or other materials developed and provided to You as part of the Services.
- 2.14 “User”** means an individual person permitted by You to access or use the Application by means of a specific User ID and password used exclusively by that individual and for whom You have purchased a Subscription, at all times up to the maximum number of Subscriptions for Users purchased by You, as specified in the applicable Order/Subscription Form and controlled by the applicable License Key, regardless of the location from which the Application is accessed. Named Users shall be limited to Your and Your Affiliates’ respective employees, agents, independent contractors, suppliers or other individuals who are authorized by You to access or use the Platform, Solutions, and Applications, provided they have first agreed to written confidentiality obligations owed to You that provide substantially the same protection to the Application as Section 11 (Confidentiality) herein, and You have paid Cloudtheapp the applicable Subscription fee for each Named User. You shall be responsible for the acts and omissions of Named Users as if they were Your acts and omissions and for any damages resulting from use, disclosure, or duplication of the Application or Documentation resulting from its possession by any person or entity which You permit to access or use the Application.
- 2.15 “Services”** means professional services including consulting, training, implementation and/or configuration of the Application for Your operations, as may be offered and performed by Cloudtheapp on a time and materials or fixed price basis as specified and detailed pursuant to a separate agreed upon Order between You and Cloudtheapp.
- 2.16 “Subscription”** means a subscription license purchased by You allowing access to and use of the Platform, Solutions, and Applications for the duration of the Subscription Term by a single Named User.
- 2.17 “Subscription Term”** means the period of time for which you acquired subscription from Cloudtheapp and during which an applicable Subscription remains valid.
- 2.18 “Beta” “Beta Services”** mean Cloudtheapp services, access to certain unreleased environments, or functionality that may be made available to Customer to try at its option at no additional charge which is designated as beta, , pilot, limited release, developer preview, non-production, evaluation, or by a similar description by Cloudtheapp either in writing or verbally communicated through its agents.
- 2.19 “Cloud Offering”** refers to Cloudtheapp software including all updates and enhancements, the Documentation, and the information technology infrastructure used by the Service Providers to make Cloudtheapp software available to Subscriber over the Internet.
- 2.20 “Cloudtheapp”** refers to Cloudtheapp Corporation, a Delaware registered corporation.

### **3. SUBSCRIPTION LICENSE.**

**3.1 Additional Users/Subscriptions.** You may increase the number of Users permitted use of the Platform, Solutions, and Applications at any time by purchasing additional Subscriptions for each additional User at Cloudtheapp’s defined pricing. All Subscriptions shall terminate at the end of the applicable Subscription Term.

**3.2 License.** Subject to the terms of this agreement, Cloudtheapp hereby grants to You, and You hereby accept, subject to the terms of this Agreement, a non-exclusive, nontransferable (subject to Section 15.1 (Assignment)) license to permit each User to access and use the Platform, Solutions, and Application solely for its intended purpose as described in the Documentation and as permitted by this Agreement, in each case for the duration of the Subscription Term(s) specified in the applicable Order/Subscription Form, and for your own internal business purposes. Under any circumstances, use of the Platform, Solutions, and Applications created or downloaded from Cloudtheapp’s store, shall be limited to the quantity of Users for which You have purchased Subscriptions. No other use of the Platform, Solution, and Application or Documentation is permitted. You acknowledge being advised that the Platform and Applications are programmed to prevent use by more than the number of Users for which Subscriptions have been purchased, as controlled by the applicable License Key.

**3.3 User IDs and Passwords.** Each User shall require a unique User ID and password assignable by You in order to access his/her Subscription. User IDs and passwords associated with any User and Subscription. You are responsible and liable for all access to and use of the Application through Your Subscriptions by Your Users or through Your user IDs or passwords or otherwise, any of which shall be deemed use by You. You will be responsible for Users’ compliance with this Agreement. You shall notify Cloudtheapp

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immediately of any unauthorized use of any user ID or password for your Subscriptions, or any other actual or suspected breach of security related to the Platform, Solutions, and Applications or Your Subscriptions of which You become aware.

**3.4 Modifications.** Notwithstanding the foregoing, You may create modified versions or configurations of the forms, workflows, and/or routings contained in the Application as permitted by the Application's functionality (collectively, "Modifications"). You shall have a license to use such Modifications to the same extent that You have a license to use the Application pursuant to this Agreement and such Modifications shall be deemed part of the Platform Application, subject to all restrictions contained herein, to which Cloudtheapp retains and is hereby assigned all rights, title and interest thereto.

**3.5 Manner of use.** Subject to the terms of this Agreement, including the specifications and limitations set forth in the applicable Order, Customer agrees not to use or permit use of the Platform, Solutions, and Applications (Software) to display, store, process or transmit any Content, that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (d) constitute an infringement of intellectual property or other proprietary rights, or (e) otherwise violate applicable laws, ordinances or regulations. If Cloudtheapp receives information that Customer is in violation of any of the foregoing restrictions, Cloudtheapp will notify Customer, and Customer will promptly take appropriate action to resolve such violations. If Customer does not take required action in accordance with the above, Cloudtheapp reserves the right, but has no obligation, to take remedial action if any material violates the foregoing restrictions, including the removal or disablement of access to such material. Cloudtheapp shall have no liability to Customer in the event that Cloudtheapp takes such action.

### **3.6 Restrictions.**

**3.6.1 General.** You shall not (a) reverse assemble, reverse engineer, decompile, or otherwise translate, use, copy, modify, prepare derivative works from, transmit or distribute by any means any portion of the Platform, Solutions, Applications, or Documentation; (b) sell, rent, lease, sublicense or transfer the Application or Documentation to any third party; (c) charge, or allow others to charge, any third party for use of the Application; (d) use the Application in the operation of a service bureau or time-sharing arrangement, or otherwise allow direct or indirect use of the Application (including via the Internet) to generate revenue for You; (e) defeat any security mechanism of the Application or Hosting Environment, including License Keys, or knowingly permit any third party to do so; (f) use the Application in any manner that would violate or infringe upon any intellectual property, privacy or any other right of a third party; or (g) use the Application in any other manner that does not comply with applicable laws and regulations, nor attempt to do any of the foregoing. You shall indemnify, hold harmless and defend Cloudtheapp from and against any claims, demands or lawsuits, including any damages resulting therefrom and attorneys' fees, arising from Your use or operation of Application.

**3.6.2 Suspension of Access.** Cloudtheapp may immediately suspend or disable Your access to and use of the Platform, Solutions, and Applications if, as a result of Your use of the Platform, Solutions, and Applications or breach of this Agreement, Cloudtheapp reasonably believes: (a) Cloudtheapp is likely to be subject or exposed to criminal or civil sanctions, prosecution or suit; (b) such use or breach is likely to cause harm to Cloudtheapp or Cloudtheapp's other customers or their respective employees or interfere with the integrity, operations or security of the Application or Cloudtheapp's network or systems or those with which Cloudtheapp is interconnected, or interfere with another customer's use of any of the foregoing. Cloudtheapp may also suspend or disable Your access to and use of the Application if required in order to comply with a court order or government notice. In the exercise by Cloudtheapp of its right to act immediately under this paragraph, Cloudtheapp shall provide as much advance notice as is reasonably practicable under the circumstances. If advance notice is not reasonably practicable, Cloudtheapp shall provide subsequent notice promptly thereafter. You shall promptly cooperate with Cloudtheapp in attempting to resolve the issue giving rise to any suspension or disablement of Your access to and use of the Application. The foregoing shall be in addition to the termination rights of either party hereunder.

**3.6.3 Usage Limits.** Use of the Platform, Solutions, and Applications licensed under subscription shall be subject to limitations specified in the different subscription plans such as disk storage space, memory, and data transfer ("in" and "out") as well as specific application features.

**3.7 Restriction of use.** Unless otherwise authorized under this agreement, customer may not and will not allow any third party to a sell, rent, lease, license, sublicense, pledge, distribute, assign or otherwise transfer in whole or in part the Software or the Services or any interest in them to another party; b) install or use the Software in a manner that circumvents or interferes with the operation of the technological measure that controls the access to the Software; c) modify, translate, adapt or create derivative works based on the Software ; d) export or re-export the Software or any derivative work thereof ; e) remove or modify any Software markings or any notice of Cloudtheapps' proprietary rights; f) use the Software to develop, test, host, or run and operate applications on behalf of third-parties to this Agreement, without Cloudtheapps' prior written consent; g) use the Software in any way that is contrary to the terms and conditions of this Agreement.

**3.8 Availability; Security.** Cloudtheapp will use commercially reasonable and appropriate measures and efforts through its third party hosting services provider, Amazon Web Services, to: (a) make the Application available to the best of its ability, except for minimal planned downtime (e.g., for maintenance), and (b) secure Your Data against accidental or unlawful loss, access or disclosure, in all cases subject to events outside Cloudtheapp's reasonable control and as stated in Section 15.16 (Force Majeure).

**4. SERVICES AND INTEGRATIONS.** Services which Cloudtheapp may elect to provide and which You may elect to purchase shall be described in an agreed upon Work Order, which will be governed by this Agreement, including Cloudtheapp's standard Services Terms, which will be made available concurrently with any proposed Work Order. Cloudtheapp Services may contain features designed to integrate/ interoperate with Non-Cloudtheapp Applications. Cloudtheapp cannot guarantee the continued availability of such Service features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for

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example and without limitation, the provider of a Non-Cloudtheapp Application ceases to make the Non-Cloudtheapp Application available for interoperation with the corresponding Service features in a manner acceptable to Cloudtheapp.

### 5. OWNERSHIP.

**5.1 Cloudtheapp Materials.** The Platform, Solutions, and Applications, including all computer software in source code, object code or other form, databases, indexing, search, and retrieval methods and routines, hypertext markup language code, active server pages, intranet pages, and similar materials, and all intellectual property and other rights, title, and interest therein, including copyrights, trade secrets, rights in patents, compilations, inventions, modifications, Modifications, Updates, extensions, enhancements, configurations, derivative works, discoveries, improvements, processes, methods, designs and know-how, whether or not copyrightable or patentable, pertaining to any of the foregoing (all of which shall be deemed part of the Platform, Solutions, and Applications), whether conceived by Cloudtheapp alone or in conjunction with others, constitute Cloudtheapp trade secrets and Confidential Information and the valuable intellectual property and proprietary material of Cloudtheapp and/or its licensors and are protected by applicable intellectual property laws of the United States and other countries. Except for the rights expressly granted to You in this Agreement, all rights in the Application and all of the foregoing elements thereof, including any deliverables and Work Product resulting from Services or otherwise to the extent consisting of or containing any element of the Application, including any configuration or modification thereof, and all intellectual property and proprietary rights thereto, are and shall remain solely owned by Cloudtheapp and its respective licensors and are hereby assigned to Cloudtheapp. Cloudtheapp retains the right to use and provide software applications and products (hosted or otherwise) and Services which may be similar to those provided to You hereunder, and to use for itself or others any knowledge, skills, experience, ideas, concepts, know-how and techniques used or gained in the provision thereof, provided that, in all cases, no Confidential Information attributable to and identifying You is disclosed thereby. Cloudtheapp reserves all rights not expressly granted to You in this Agreement.

**5.2 Your Data.** As between the parties, You own and shall retain all rights, title, and interest in and to Your Data. You grant to Cloudtheapp a non-exclusive and non-transferable (subject to Section 15.1 (Assignment)) right and license to copy, store, process, transmit and otherwise use Your Data during the Term solely as necessary and appropriate for Cloudtheapp to fulfill its obligations under this Agreement. Notwithstanding the foregoing, Cloudtheapp may, license, sell and otherwise use or dispose of, in any manner, aggregated and anonymized statistical data regarding Your and Cloudtheapp's other customers' use of the Application and information that may be gleaned from such aggregated and anonymized statistical data, provided that You are not identifiable by name in any such data. Cloudtheapp shall own all rights, title, and interest in and to such aggregated and anonymized statistical data. Cloudtheapp shall backup the data on daily basis using AWS automated tools for backup, we will retain backups for up to 28 days. In case of unsubscribing to the system, subscriber must request data they want to extract from the system within 30 days from unsubscribing, Cloudtheapp will not keep data for periods over 30 days from the date of unsubscribing or for unrequested data.

**6. UPDATES; TECHNICAL SUPPORT; CHANGES TO APPLICATION.** Cloudtheapp Technical Support and the provision of Updates are included with each Subscription (and payment of the annual Subscription fee) for the duration of each such Subscription. Additional provisions applicable to Technical Support are set forth in Exhibit A. Cloudtheapp expressly reserves the exclusive right to, without prior notice, at any time and from time to time: (a) offer a new, additional, or substitute Platform, Solutions, and Applications; and (b) modify, amend, or discontinue offering all or any particular Application.

### 7. FEES AND PAYMENT TERMS

**7.1 Payment.** You shall pay Cloudtheapp the Subscription and Services fees (if applicable) and other specified charges set forth in the applicable Order/Subscription Form (or Work Order for Services, if any). Unless otherwise set forth in the applicable Order/Subscription Form, all Subscription fees shall be due upon execution of this Agreement and are non-refundable except as expressly provided herein. Customer will pay or reimburse Cloudtheapp for all applicable taxes, duties, or any similar assessments imposed by applicable law. All other fees shall be due and payable upon subscribing, unless otherwise agreed, except that Cloudtheapp may charge the credit card number provided by You on the date of the applicable invoice. Payment obligations cannot be canceled, regardless of actual usage of the Application. Cloudtheapp reserves the right to suspend Your use of the Application at any time until all past due fees are paid in full. Except as expressly provided to the contrary herein, Cloudtheapp may adjust its prices from time to time to reflect market conditions or other factors. You shall pay a late charge of two and one-half percent (2.5%) per month or the highest amount allowed by law, whichever is less, on all amounts not paid to Cloudtheapp when due hereunder. You shall reimburse Cloudtheapp for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts.

**7.2 Taxes.** The fees and all other amounts due to Cloudtheapp as set forth in this Agreement are net amounts to be received by Cloudtheapp, exclusive of all taxes, duties, and assessments, including all sales, withholding, VAT, GST, excise, ad valorem, and use taxes, (collectively, "Taxes") and are not subject to offset or reduction because of any Taxes incurred by You or otherwise due as a result of this Agreement. You shall be responsible for and shall pay directly, any and all Taxes relating to the performance of this Agreement, provided that this paragraph shall not apply to taxes based solely on Cloudtheapp's income.

**8. AUDIT RIGHTS.** During the term of this Agreement, You grant Cloudtheapp the right, which Cloudtheapp may exercise, to audit usage of the system to ensure that it is in line with your subscription plan and inline with the set agreement.

### 9. TERM AND TERMINATION.

**9.1 Term.** The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue in force and effect unless not renewed in accordance with Section 9.2 or until terminated in accordance with Section 9.3. Except as otherwise provided in any given Order Form, the Subscription Term shall commence on the start date indicated in the Order/Subscription Form and, unless

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earlier terminated in accordance with Section 9.3, shall continue for the period specified therein. Each Work Order (if any) shall take effect on the date executed by both parties and shall, unless earlier terminated in accordance with Section 9.3, continue in force and effect until all Services to be provided thereunder have been completed.

- 9.2 Automatic Renewal.** UNLESS AND UNTIL TERMINATED BY EITHER PARTY PURSUANT TO SECTION 9.3, THE SUBSCRIPTION TERM OF EACH ORDER/SUBSCRIPTION FORM SHALL AUTOMATICALLY RENEW AND BE EXTENDED UPON ITS EXPIRATION (REGARDLESS OF WHETHER PREVIOUSLY RENEWED OR EXTENDED), FOR A PERIOD OF THE SAME DURATION AS THE SUBSCRIPTION TERM SPECIFIED ON SUCH ORDER/SUBSCRIPTION FORM.
- 9.3 Termination.** This Agreement and the right to use the Application and Documentation, and/or any Exhibit hereunder, may be terminated as follows: (a) by Cloudtheapp immediately, at its option, upon written notice to You in the event of a material breach by You of the confidentiality, license or other terms protecting the Application or Documentation or a violation or misappropriation by You of Cloudtheapp's intellectual property or rights therein or in the event of an incurable breach of the type described in Section 3.6.2 (Suspension of Access); (b) by either party upon thirty (30) days prior notice to the other party in the event of a material breach by the other party of any terms of this Agreement, and the failure to cure such material breach during such thirty (30) day period, except in the case of Your failure to pay any amount when due under this Agreement, in which case the cure period shall be fifteen (15) days; or (c) by either party immediately upon notice to the other party in the event the other party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency or reorganization pursuant to bankruptcy laws or laws of debtor's moratorium.
- 9.4 Effects of Termination.** Upon termination of this Agreement, all rights and Licenses granted hereunder to You shall terminate immediately. Immediately upon such termination, You shall (a) cease all use of the Platform, Solutions, Applications, and Documentation; (b) return to Cloudtheapp all copies of the Application (if any) and any other Confidential Information of Cloudtheapp; and (c) delete all copies of the Application (if any) contained on any computer and storage media under Your control. Termination of this Agreement (or any Exhibit) shall not relieve You of any unmet payment obligations. Upon termination of this Agreement, all rights and licenses of any You Affiliates and Permitted Affiliates related to the Application shall immediately terminate and the requirements of this paragraph shall apply to such Affiliates and Permitted Affiliates.
- 9.5 Survival.** Upon termination of this Agreement, the following Sections shall continue and survive in full force and effect: Sections 2, 5, 7, 8, 9.4, 9.5, 10.2, 10.3, 10.4, 11, 13 and 15
- 9.6 Termination for Insolvency .** Either Party may terminate the Agreement immediately if the other Party becomes insolvent and the entity licensed and authorized by the applicable law to act in relation to such insolvent Party does not personally guarantee the future payment of any due Fees

### **10. LIMITED WARRANTY.**

- 10.1 Warranty.** Cloudtheapp warrants, for Your benefit alone, as follows: a) Cloudtheapp has all necessary rights to grant the licenses provided herein, b) upon delivery, the Software shall operate in compliance with the documentation; c) upon delivery, the Software shall work with the hardware required, recommended, or authorized by Cloudtheapp;
- 10.2 Exclusive Remedy.** Cloudtheapp's entire liability and Your sole and exclusive remedy for the breach of Cloudtheapp's warranty shall use commercially reasonable efforts to correct such breach. If Cloudtheapp determines, in its sole discretion, that it is unable to effectuate the foregoing remedies through the exercise of commercially reasonable efforts, Cloudtheapp may terminate this Agreement (and/or the applicable Order Form or Work Order). In such event, Cloudtheapp will refund to You the prorated Subscription fees paid by You.
- 10.3 Exclusions.** The warranties set forth in Section 10.1 shall not apply with respect to any problem to the extent due to causes outside Cloudtheapp's reasonable control, including Your misuse, modification or configuration of the Application or use in a manner contrary to that described or recommended in the applicable online "Help" feature or Documentation or with computer software or equipment other than those recommended in Cloudtheapp's published specifications, or to the extent due to problems within or impacting Your computing environment, including third party software Application, hardware, network or Internet connectivity.
- 10.4 Warranty Limitations.** OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 10.1, ABOVE, NEITHER CLOUDTHEAPP NOR ITS LICENSORS, EMPLOYEES, AGENTS, DISTRIBUTORS, MARKETING PARTNERS, RESELLERS, PARENT, AFFILIATES OR SUBSIDIARIES MAKE ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS TO YOU, ANY OF YOUR AFFILIATES, OR TO ANY OTHER PARTY WITH RESPECT TO THE APPLICATION, THE DOCUMENTATION, SERVICES, OR TECHNICAL SUPPORT OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, OR STATUTORY. CLOUDTHEAPP DOES NOT WARRANT THAT THE PLATFORM, SOLUTIONS, OR APPLICATIONS (SOFTWARE), SUPPORT, PROFESSIONAL SERVICES, WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS EXPRESSLY EXCLUDED AND DISCLAIMED. CLOUDTHEAPP DOES NOT WARRANT THAT THE PLATFORM, SOLUTIONS, AND APPLICATIONS WILL MEET YOUR REQUIREMENTS, THAT THE PLATFORM, SOLUTIONS, AND APPLICATIONS ARE WITHOUT DEFECT OR ERROR OR THAT THE PLATFORM, SOLUTIONS, AND APPLICATIONS WILL OPERATE WITH ANY HARDWARE OR APPLICATION NOT SPECIFIED IN THE DOCUMENTATION. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION AND/OR CONTENT. CLOUDTHEAPP PROVIDES THE SOFTWARE, SUPPORT, SERVICES, AND DELIVERABLES "AS IS", WITHOUT WARRANTY OF ANY KIND, INCLUDING BUT NOT LIMITED TO, EXPRESS OR IMPLIED OR STATUTORY OR OTHER WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. CUSTOMER SHALL HAVE SOLE RESPONSIBILITY FOR THE ACCURACY, QUALITY, INTEGRITY, LEGALITY, RELIABILITY, APPROPRIATENESS AND OWNERSHIP OF ALL CUSTOMER CONTENT AND APPLICATIONS.

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### 11. CONFIDENTIALITY.

**11.1 General.** Effective retroactive to the date a party first disclosed Confidential Information to the other, each party will hold in confidence and, without the consent of the other party, will not use, reproduce, distribute, transmit, or disclose, directly or indirectly, the Confidential Information of the other party except as expressly permitted hereunder. The recipient of Confidential Information may only disclose the Confidential Information to its employees and third party independent contractors with a need to know the information in connection with the performance of this Agreement, provided that any such third party independent contractors must first agree in writing with the recipient to protect Confidential Information in a manner consistent with this Agreement and the recipient shall be responsible to the disclosing party for any damages for unauthorized use, disclosure, duplication or other misuse of the Confidential Information resulting from its possession by a third party. Without limiting the foregoing, the recipient of the Confidential Information agrees that it will exercise at least the same standard of care in protecting the confidentiality of the other party's Confidential Information as it does with its own Confidential Information of a similar nature, but no less than a reasonable degree of care. Either party may only disclose the general nature, but not the specific terms, of this Agreement except with the prior consent of the other party.

**11.2 Exceptions.** Except with respect to the Platform, Solutions, and Applications which shall remain Confidential Information of Cloudtheapp, Confidential Information shall not include information if and only to the extent that the recipient establishes that the information: (a) is or becomes a part of the public domain through no act or omission of the recipient; (b) was in the recipient's lawful possession prior to the disclosure and had not been obtained by the recipient either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the recipient by a third party without restriction on disclosure; (d) is independently developed by the recipient; or (e) is disclosed by the recipient pursuant to a requirement of a governmental agency or by operation of law, provided that the recipient shall disclose only that part of the Confidential Information which it is required to disclose and shall notify the owner prior to such disclosure in order to provide the owner an opportunity to seek an appropriate protective order or other relief to prevent such disclosure. The recipient shall cooperate (at the other party's expense) in all efforts to prevent disclosure of the other party's Confidential Information. A copyright notice on any Application, Documentation or other materials shall not be deemed evidence of publication or public disclosure.

**11.3 Permitted Disclosures.** Notwithstanding the foregoing, either party may disclose Confidential Information of the other party to its third party legal or financial advisors under existing legal obligations of confidentiality or in connection with litigation or other dispute resolution attempts between the parties. To the extent any such recipient may not be under an existing legal obligation of confidentiality, such recipient shall sign an appropriate form of confidentiality agreement containing obligations of confidentiality substantially the same as those set forth herein.

**11.4 Remedy.** Both parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the other party irreparable damage for which remedies other than injunctive relief may be inadequate, and each party agrees that the other party shall be entitled to receive from a court of competent jurisdiction injunctive or other equitable relief to restrain such use or disclosure in addition to other appropriate remedies.

**11.5 Term.** Each party's obligations under this Section 11 shall survive the termination of this Agreement for a period of Two (2) years, except with respect to trade secrets of a party, in which case such obligations with respect to Confidential Information constituting a trade secret shall survive the termination of this Agreement for a period of ten (10) years thereafter plus such additional period of time as such trade secret remains a trade secret under applicable law.

### 12. INDEMNIFICATION

**12.1 (a) Infringement by Application.** Cloudtheapp shall indemnify and defend Subscriber against any claims, legal actions, damages, losses and other expenses (a "Claim") brought by a third party against Subscriber alleging that the Cloud Offering or Maintenance Services (the "Offerings") infringe any United States patent, copyright, or trademark rights of such third party. Subscriber must provide Cloudtheapp prompt notice of any Claim for which defense is sought hereunder.

**12.1 (b)** Cloudtheapp shall have no obligation to indemnify, defend, or hold You harmless from any Claim to the extent that it is based upon: (a) a modification by You (or by anyone under Your direction or control or using user IDs or passwords for Your Subscriptions) to the Application or results of the Services; (b) a modification made by Cloudtheapp pursuant to Your order or specification or in reliance on materials or information provided by You; or (c) the use by You (or by anyone under Your direction or control or using IDs or passwords for your Subscriptions) of any Application or results of the Services other than in accordance with this Agreement. Subject to Section 13 (Limited Liability), this Section 12.112 sets forth Your sole and exclusive remedy, and Cloudtheapp's entire liability, for any claim that any materials of or provided by Cloudtheapp violate or infringe upon the rights of any third party.

**12.1 Use of Application, Etc.** Except for claims subject to indemnification under Section 12.1, You shall defend, indemnify, and hold Cloudtheapp harmless from and against all Claims, and shall pay all Losses, to the extent arising out of or related to (a) Your use or modification of the Application or Documentation; (b) the violation of any rights of any third party in connection with Your use or modification of the Application or Documentation; (c) Your Data; and/or (d) Your violation of any laws, rules or regulations applicable to Your use of the Application and/or Your Data.

**12.2 Defense.** With regard to any Claim subject to indemnification pursuant to this Section 12, the indemnified party shall grant the indemnifying party the right to assume full defense and control of such Claim and shall reasonably cooperate with the indemnifying party regarding such Claim. Nevertheless, the indemnified party may reasonably participate in such defense, at its sole expense, but shall not settle any such Claim without the indemnifying party's prior consent. The indemnifying party shall not settle or compromise any Claim in a manner other than the payment of monies by the indemnified party without the prior consent of the indemnified party, such consent not to be unreasonably withheld or delayed.

### 13. LIMITED LIABILITY.

**13.1** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, CLOUDTHEAPP'S TOTAL AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS, BASED ON ANY

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THEORY OF LIABILITY, WHETHER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, WHETHER RELATING TO THE APPLICATION, DOCUMENTATION, SERVICES, TECHNICAL SUPPORT, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF APPLICABLE FEES PAID TO CLOUDTHEAPP UNDER THE APPLICABLE ORDER/SUBSCRIPTION FORM OR WORK ORDER RELATED TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE ACT, OMISSION OR OCCURRENCE PRIMARILY GIVING RISE TO SUCH LIABILITY.

- 13.2** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL CLOUDTHEAPP, ITS LICENSORS, SUPPLIERS, EMPLOYEES, AGENTS, DISTRIBUTORS, MARKETING PARTNERS, RESELLERS, PARENT, AFFILIATES OR SUBSIDIARIES BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES INCLUDING LOSS OF OR DAMAGE TO DATA, DELAYS, LOSS OF PROFIT, INTERRUPTION OR UNAVAILABILITY OF SERVICE OR LOSS OF BUSINESS OR ANTICIPATORY PROFITS, BASED ON ANY THEORY OF LIABILITY, WHETHER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, WHETHER RELATING TO THE APPLICATION, DOCUMENTATION, SERVICES, TECHNICAL SUPPORT, OR OTHERWISE, EVEN IF CLOUDTHEAPP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY LIMITED REMEDY OF ITS ESSENTIAL PURPOSE.
- 13.3** THE PROVISIONS OF SECTIONS 13.1 AND 13.2 OF THIS AGREEMENT ARE FUNDAMENTAL AND SPECIFIC REQUIREMENTS OF THE BASIS OF THE BARGAIN BETWEEN CLOUDTHEAPP AND CUSTOMER AND CLOUDTHEAPP WOULD NOT BE ABLE TO ENTER INTO THIS AGREEMENT WITHOUT SUCH PROVISIONS.

- 14. U.S. GOVERNMENT RESTRICTED RIGHTS.** The Platform, Solutions, and Applications are provided with RESTRICTED RIGHTS and constitute "Restricted Computer Application." "Restricted Computer Application," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is unpublished copyrighted computer software, including minor modifications of any such computer software. Use, duplication or disclosure by the U.S. Government, its agencies and/or instrumentalities, is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer software clause at 48 C.F.R. 252.227-7013 or subparagraphs (i) (1) and (2) of the Commercial Computer Application Restricted Rights of 48 C.F.R. 52.227-b19, as applicable, or their respective successor provisions. In addition, or alternatively, at Cloudtheapp's option, all software and software-related items licensed herein are "Commercial Computer Application" or "Commercial Computer Application Documentation" as defined in FAR 12.212 for civilian agencies and DFARS 227.7202 for military agencies, as applicable, or their respective successor provisions. The contractor/manufacturer of the Application and the Documentation is Cloudtheapp, Inc., The intent of the parties is that no intellectual property rights or confidentiality of the Application is lost, diminished or transferred as a result of the execution of this Agreement. *For purposes of this Agreement, the Application is unpublished - rights reserved under the Copyright Laws of the United States.*

### **15. GENERAL PROVISIONS.**

- 15.1 Assignment.** Neither party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder, either voluntarily or by operation of law, without the prior consent of the other party (such consent not to be unreasonably withheld); provided, however, that either party may assign this Agreement without the other party's consent in the event of a sale of all or substantially all of its assets or in the event of a merger, corporate reorganization or business consolidation of the party (but excluding any assignment by You to a competitor of Cloudtheapp). For avoidance of doubt, in the event of a permitted assignment by You of this Agreement, the Subscriptions purchased by You hereunder would continue to be subject to the restrictions and limitations specified herein and in the applicable Order/Subscription Form, including any limits focused on a specific business line, group, division or department of You. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- 15.2 EXPORT Laws.** Unless expressly stated herein, customer shall not use or export (electronically or otherwise) the Platform, Solutions, and Applications outside of the U.S. other than in compliance with all applicable U.S. export laws, rules, and regulations. You shall be solely responsible for such compliance. You agree to keep such books and records and to take such other actions as may be required by such applicable laws, rules and regulations.
- 15.3 No Waiver.** No delay or failure in exercising any right hereunder and no partial or single exercise thereof shall be deemed to constitute a waiver of such right or any other rights hereunder. No consent to a breach of any express or implied term of this Agreement shall constitute a consent to any prior or subsequent breach.
- 15.4 Notices.** Notices shall be addressed to each party at their address set forth in the initial paragraph of this Agreement, which the parties may change the address for notice by compliance with this Section.
- 15.5 Severability.** If any provision hereof is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.
- 15.6 Force Majeure.** Except for payment obligations hereunder, and notwithstanding anything in this Agreement to the contrary, neither party will be liable or deemed to be in default for any delay or failure in performance hereunder to the extent resulting from causes beyond the party's reasonable control, including the acts or omissions of third parties, the acts or omissions of the other party or any delay or failure of the other party to fulfill its obligations hereunder, acts of God, terrorism, war, civil insurrection, strikes or other organized labor interruption, communications, mechanical, electronic, Internet or other utility interruptions or failures, including denial of service and other cyber attacks or unauthorized or malicious data or system intrusions, including computer viruses or other malicious code, fire, explosions, floods or other natural disasters, or any similar cause.
- 15.7 Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of the United States without regard to its conflicts of laws principles.
- 15.8 Complete Agreement.** This Agreement, including the Exhibits attached hereto, supersedes in full all prior discussions and agreements, oral and written, between the parties relating to the subject matter hereof, and constitutes the entire understanding of the parties. No additional terms proposed by You, whether electronically or otherwise or associated with any purchase order or

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other document You send to Cloudtheapp, shall be applicable to this Agreement or any Cloudtheapp products or services at present or in the future, absent the express manual written consent thereto by Cloudtheapp. If Cloudtheapp has commenced work at Your request in connection with the matters described in any Work Order or proposal for Services, or request for proposal, all provisions of this Agreement as originally proposed by Cloudtheapp shall apply to such activities even if this Agreement has not been formally executed by both parties.

- 15.9 Amendment or Modification.** No amendment or modification of this Agreement shall be valid or binding upon the parties unless it is in writing and signed by the duly authorized officers of the parties.
- 15.10 No Third Party Benefit.** The provisions of this Agreement are for the sole benefit of the parties hereto. Except as expressly provided herein, this Agreement neither confers any rights, benefits, or claims upon any person or entity not a party hereto nor precludes any actions against, or rights of recovery from, any persons or entities not parties hereto.
- 15.11 Conflicts.** In the event of any conflict between the terms in the body of this Agreement and those contained in an Exhibit, the terms of the Exhibit shall prevail over the terms in the body of this Agreement as they relate to the activities described in the Exhibit. Similarly, in the event of any conflict between the terms of an Exhibit and the terms of any sub-Exhibit (an attachment or exhibit to an Exhibit), the terms in the sub-Exhibit shall prevail over the terms of the Exhibit as they relate to the activities described in the sub-Exhibit. All Exhibits and sub-Exhibits are incorporated into and made part of this Agreement.
- 15.12 Publicity.** Cloudtheapp may publish Your name and logo on Cloudtheapp's web site and refer to You as a customer in Cloudtheapp's online, print and other advertising and materials.
- 15.13 Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but which together shall constitute the same instrument.
- 15.14 Feedback.** During the course of this Agreement or otherwise, You may provide, or Cloudtheapp may solicit, input regarding the Platform, Solutions, and Applications, including comments or suggestions regarding the possible creation, modification, configuration, correction, improvement or enhancement of the Application, Cloudtheapp's web site or any of Cloudtheapp's or Cloudtheapp's Affiliates' products or services, or their operation, functions or features (collectively, "Feedback"). Any information Cloudtheapp discloses to You related to or in response to Feedback shall be protected as Confidential Information of Cloudtheapp subject to the protections of Section 11 (Confidentiality). For the consideration provided to You in the form of the right to use the Application, You agree that Cloudtheapp shall own all rights, title, and interest in and to the Feedback, even if you have designated the Feedback as confidential. Cloudtheapp and its affiliates will be entitled to use the Feedback without restriction. You hereby irrevocably assign to us all rights, title, and interest in and to the Feedback and agree to provide us any reasonable assistance Cloudtheapp may require to document, perfect, and maintain its rights in the Feedback.
- 15.15 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.
- 15.16 Terms Generally.** The defined terms in this Agreement shall apply equally to both the singular and the plural forms of the terms defined. The term "person" includes individuals, corporations, partnerships, trusts, other legal entities, organizations and associations, and any government or governmental agency or authority. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." . The word "term" shall be deemed to refer to any term, condition or other type of provision under this Agreement. References to this Agreement in the context of any requirement of either party to perform in accordance with this Agreement shall be interpreted to refer to the terms of this document, and such other terms as are contained in any Exhibit.
- 15.17 Construction.** Each party acknowledges that it has had the opportunity to have this Agreement reviewed by legal counsel and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any other document executed and delivered by either party in connection with the transactions contemplated by this Agreement. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement. All dollar amounts stated in this Agreement are in U.S. dollars.



**CLOUDTHEAPP**  
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**EXHIBIT A**  
**Cloudtheapp Technical Support Terms**

**Cloudtheapp™ Technical Support Program** (sometimes referred to as “Technical Support”)

Cloudtheapp Technical Support is delivered as specified in your subscription plan for the duration of each such Subscription.

To receive Technical Support, You must complete and submit to Cloudtheapp the online subscription Form. Technical Support shall be provided through the channels Cloudtheapp has identified on its website.

**Terms**

Cloudtheapp Technical Support program provides technical support and assistance by means identified on the website. Cloudtheapp Technical Support staff provide technical support only to Your registered named Admins and according to your subscription plan.

The term for Technical Support runs concurrently with the Subscription Term. The terms and availability of these programs are subject to change for any renewal period upon prior notice from Cloudtheapp.

Technical Support shall not be provided in any of the following instances: (1) You are not using the Application in accordance with the terms of the Agreement; (2) You are using the Application with hardware or software (including operating system software) other than those specifically designated by Cloudtheapp for use with the Platform, Solutions, and Applications; (3) You are not current in any payment obligation to Cloudtheapp; (4) Cloudtheapp Technical Support staff determines that the cause of the error or other problem reported is the malfunctioning or failure of any hardware or software not furnished by Cloudtheapp.

Cloudtheapp reserves the full right to make changes to its Master Subscription Agreement at any time including changes to its subscription plans, the addition of new plans, pricing, technical Support Service and Criteria.

END