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# RESELLER TERMS AND CONDITIONS

## 1. Definitions

- 1.1.1. **“Effective Date”** means the date on which this agreement takes effect; the effective date is listed above in this document.
- 1.1.2. **“End User”** means the retail level user of any products or services provided by CloudNine Discovery™.
- 1.1.3. **“Initial Period”** means the period of twelve (12) months commencing on the Effective Date.
- 1.1.4. **“Intellectual Property Rights”** means all copyrights, patents, database rights, registered and unregistered design rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world and for the full term thereof including all rights to renew the same.
- 1.1.5. **“Month”** means a calendar month and “monthly” shall be construed accordingly.
- 1.1.6. **“Downtime”** means a period during Hosted Application Hours during which there is total loss of the Services.
- 1.1.7. **“Outage”** means an instance of Downtime.
- 1.1.8. **“Reseller”** means a Subscriber that is authorized to re-sell a product or service.
- 1.1.9. **“Service Interruption”** means a period during Hosted Application Hours during which there is partial loss of the Services.
- 1.1.10. **“Subscriber Data”** means all data delivered to CloudNine Discovery™ or collected by CloudNine Discovery™ for processing, data hosting or otherwise received as part of the Services including, but not limited to, data that is placed online using the exclusive SelfLoader™ system.
- 1.1.11. **“Subscription Fee”** means the fee associated with the subscription level selected by the Subscriber as outlined in Service Order Agreement.
- 1.1.12. **“System”** means the Hosted Applications and the Provider hardware as the same operate together in the provision of the Services.
- 1.1.13. **“Term”** means the effective term of this Agreement.
- 1.1.14. **“Trade Secret”** any information, including a formula, pattern, compilation, device, method, technique, or process, that: (i) derives independent 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, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

## 2. Appointment and Acceptance as a Reseller

- 2.1. Subject to the terms and conditions of this Agreement, CloudNine Discovery™ appoints the Subscriber as a non-exclusive authorized Reseller of the CloudNine Discovery™ Products and Services (the “Products and Services”).

## 3. Relationship of the Parties

- 3.1. The parties shall be deemed to be solely independent business entities and this Agreement shall not be construed to create any form of partnership, franchise, joint venture, agency relationship, or any other recognized business association other than that of a wholesale relationship where CloudNine Discovery™ is the wholesaler and Subscriber is the Reseller.

## 4. Duration

- 4.1. This Agreement shall continue in effect for one year commencing on the Effective Date.
- 4.2. This agreement shall be automatically renewed at the end of the current term for successive one year terms unless either party gives written notice of its intention not to renew thirty days before expiration of the current term.
- 4.3. In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Licensor believes that Licensee has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have fourteen (14) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the thirty (30) days, the non-breaching party shall have the right to terminate the Agreement without further notice.
- 4.4. Upon Termination of this Agreement for cause, online access to the Licensed Materials by Licensee and Authorized Users shall be terminated. Authorized copies of Licensed

## RESELLER TERMS AND CONDITIONS

Materials may be retained by Licensee or Authorized Users and used subject to the terms of this Agreement.

### 5. Display of Names of CloudNine Discovery™ and Products of CloudNine Discovery™

- 5.1. CloudNine Discovery™ grants Subscriber a limited, non-exclusive, nontransferable license to use the CloudNine Discovery™, OnDemand®, FirstPass™ and SelfLoader™ names, logos and trademarks (collectively the "Trademarks") subject to Subscriber's compliance with the current trademark usage policy for CloudNine Discovery™, and subject to change with 15 days written notice solely for purposes related to the performance of this Agreement. Notwithstanding the foregoing, CloudNine Discovery™ reserves the right to require prior written approval, for each and every advertisement, brochure, or other materials that reference the Trademarks.
- 5.2. Either party may issue a press release, publish an article, or engage in other types of publicity relating to this Agreement subject to obtaining the prior written approval, including approval by email, of the other party.
- 5.3. Subscriber may include the following statement on its letterhead and promotional literature: "Authorized Reseller of CloudNine".
- 5.4. Subscriber's exercise of the limited license granted under this subsection, if any, and any enhancement, benefit, or good will arising therefrom, inures to the sole benefit of CloudNine Discovery™, and will not give rise to compensation to Subscriber, during, upon the expiration or termination of this Agreement or otherwise. Subscriber assigns to CloudNine Discovery™, without further action, the copyright of the Software descriptions in all its sales and marketing materials that incorporate the Trademarks.

### 6. Subscriber Responsibility for User Accounts

- 6.1. Subscriber is responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Subscriber's use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data.
- 6.2. Subscriber shall: (a) notify CloudNine Discovery™ immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (b) report to CloudNine Discovery™ immediately and use

reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Subscriber or End Users to be in violation of any state or federal laws, or in the event of a security breach; and (c) not impersonate another CloudNine user or provide false identity information to gain access to or use the Service.

- 6.3. Subscriber is responsible for obtaining all necessary Federal, State and local governmental approvals applicable for storing and managing Subscriber's Data and allowing restricted Internet access. Subscriber shall observe and comply will all laws, statutes, ordinances, rules and regulations of the United States government, the state of Texas, the County of Harris, the City of Houston and any department or agency of the above.
- 6.4. Subscriber is responsible for providing Data to CloudNine Discovery™ in a specific index load file and data format compatible with CloudNine Discovery™ applications. Failure to provide data in the required format for the particular application and service desired may result in delays and/or additional fees, or inability to provide the requested service.

### 7. Payment Terms

- 7.1. Subscriber will pay CloudNine Discovery™ any amounts due and owing to CloudNine Discovery™ relating to the purchase of Products and Services within thirty (30) days of the date of the invoice from CloudNine Discovery™ in connection with such Products and Services. The pricing related to such products and services is found in the Service Order Agreement.
- 7.2. Invoices are due and payable within thirty (30) days of issuance of each invoice. An interest rate of 1.5% per month will be charged on the principal amount of the credit extended beginning on the 30th day after the date on which the amount is due.

**FAILURE OF PAYMENT WITHIN THIRTY (30) DAYS OF THE DUE DATE WILL RESULT IN SERVICE INTERRUPTION; IF DATA IS WITHIN THE CLOUDNINE SYSTEM, A PUBLIC NOTICE WILL BE PLACED ON THE SYSTEM PRIOR TO SERVICE INTERRUPTION.**

- 7.3. If a dispute arises in relation to a particular invoice, it is the Subscriber's sole responsibility to dispute charges within 10 business days of invoice date. Subscriber agrees that failure to dispute charges within 10 days of invoice date will result in forfeiture of Client's right to dispute and will render Client liable for total amount as invoiced.

## RESELLER TERMS AND CONDITIONS

- 7.4. Subscriber acknowledges a minimum invoice amount of one-hundred dollars (\$100).
- 7.5. Subscriber further acknowledges that a minimum of two-hundred fifty dollars (\$250) will be invoiced per non-demo hosted database, over the lifetime of the database with any amount lacking at the time of destruction to be invoiced at destruction.

### 8. Attorney's Fees for Collection of Past Due Balance

- 8.1. In the event legal action is necessary to enforce the payment terms of this Agreement, CloudNine Discovery™ shall be entitled to collect from the Client any judgment or settlement sums due plus reasonable attorney's fees, court costs and other expenses incurred by CloudNine Discovery™ for such collection action.

### 9. Pricing and Special Pricing

- 9.1. It is understood and agreed to by both parties that pricing for Products and Services provided by CloudNine Discovery™ to Subscriber shall be as outlined in the Service Order Agreement with the End User.
- 9.2. It is acknowledged that specific projects may require "Special Pricing" in certain competitive bid situations.

Subscriber must contact the appropriate CloudNine Discovery™ representative, provide specific Product and Services requirements, provide the particular reason for the "Special Pricing", and proceed through the qualification process for "Special Project Pricing".

If "Special Pricing" is agreed to, a Service Order Agreement will be issued containing all Products and Services along with pricing for that project. Once the Subscriber has executed and returned this Service Order Agreement to CloudNine Discovery™, work will commence on those services at the prices listed.

Nothing in a Service Order Agreement shall change any terms of this agreement for any project not listed in that Service Order Agreement.

### 10. Duty to Report Technical Difficulties

- 10.1. CloudNine Discovery™ and Subscriber have and acknowledge a joint and vested interest in expedited and accurate technical support.

- 10.2. In efforts to provide accurate and timely technical support, it is essential that CloudNine Discovery™ and Subscriber have a firm understanding of both, the Technical Support expectations and responsibilities, as well as any charges associated with that support.

## 11. SelfLoader™

### 11.1. Warranty Disclaimer

11.1.1. CloudNine Discovery™ and its Licensors make no representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the SelfLoader™ service or any content.

11.1.2. CloudNine Discovery™ and its licensors **DO NOT** represent or warrant that (a) the use of the SelfLoader™ service will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data, (b) the quality of any products, services, information, or other material purchased or obtained by you through the service will meet your requirements or expectations, (c) errors or defects will be corrected or correctable, or (d) the service or the server(s) that make the service available are free of viruses or other harmful components.

11.1.3. The service and all content is provided to you strictly on an "as is" basis.

11.1.4. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by CloudNine Discovery™ and its Licensors.

### 11.2. SelfLoader™ Waiver of Liability

11.2.1. By utilizing SelfLoader™ you, and your company, release, and agree to indemnify and hold harmless, CloudNine Discovery™ and Trial Solutions of Texas, LLC, from any and all liability that may be associated with the loading of data. This release includes, but is not limited to data loss, corruption, destruction, unwanted or unauthorized access, misorganization of meta-data or any other data defect regardless of cause.

## RESELLER TERMS AND CONDITIONS

11.2.2. Under no circumstances shall CloudNine Discovery™ be liable to you or any other person for any damages, including without limitation any indirect, incidental, special or consequential damages, expenses costs, profits, lost savings or earnings, lost or corrupted data, or other liability arising out of or related to the services provided by CloudNine Discovery™ or by services offered, including, but not limited to SelfLoader™.

11.2.3. Subscriber acknowledges and agrees to release and hold harmless CloudNine Discovery™ from and against any loss, liability, or damage, including without limitation, any indirect, incidental, special or consequential damages, expense, costs, profits, lost savings or earnings or liability that you, your clients, or any related third-parties may suffer arising out of, or related to, the services provided.

### 11.3. SelfLoader™ Risk Mitigation

11.3.1. Subscriber acknowledges and agrees that in attempts to mitigate the potential risks only properly trained personnel will be given access to load data utilizing the SelfLoader™ system. There is a presumption that if your personnel have not participated in a CloudNine Discovery™ sponsored SelfLoader™ training program that they ARE NOT QUALIFIED to operate the SelfLoader™ system.

## 12. Export Control and Local Laws

12.1. This site provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies. The user of any CloudNine Discovery™ site ("User") acknowledge and agree that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals").

The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, you represent and warrant that

you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

This site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

CloudNine Discovery™ its Subscribers, and its licensors make no representation that the Service is appropriate or available for use in other locations.

If you use the Service from outside the United States of America you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries.

**Any diversion of the Content contrary to United States law is prohibited.** None of the Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States government for such purposes.

## 13. Protection of Proprietary Rights

13.1. Subscriber acknowledges and agrees that it shall only acquire the right to provide the Products and Services on behalf of CloudNine Discovery™ in accordance with the provisions of this Agreement, and that no right, title or interest in or to any copyrights, trademarks, patents or other proprietary rights relating CloudNine Discovery™ or the Products and Services are or are intended to be transferred or licensed from CloudNine Discovery™ to Subscriber.

13.2. Subscriber shall not remove, alter or cover any copyright notice, trademark, patent or other proprietary rights notice placed by or for CloudNine Discovery™ on the Products and Services or any portion thereof.

13.3. CloudNine Discovery™ alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the CloudNine Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service.

## RESELLER TERMS AND CONDITIONS

13.4. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the CloudNine Technology or the Intellectual Property Rights owned by CloudNine Discovery™. The OnDemand® or CloudNine Discovery™ name, the OnDemand® or CloudNine Discovery™ logo, and the product names associated with the Service are trademarks of Trial Solutions of Texas, LLC or third parties, and no right or license is granted to use them absent express written permission and approval by an authorized CloudNine Discovery™ representative.

### 14. Non-disparagement

14.1. The Subscriber agrees not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of CloudNine Discovery™, its employees, directors, and officers. Further, this prohibition extends to statements, written or verbal, made to anyone, including but not limited to, the news media, investors, potential investors, any board of directors or advisory board or directors, industry analysts, competitors, strategic partners, vendors, employees (past and present), and clients.

14.2. The Subscriber acknowledges and agrees that this prohibition extends to pricing matters, inasmuch as the price requested by Subscriber to an End Client is unrelated to and entirely disproportionate to the amount invoiced to Subscriber by CloudNine Discovery™, and that price negatively impacts the image of CloudNine Discovery™.

14.3. Nothing in this paragraph is intended to limit the price for which a Subscriber may charge an End User, inasmuch as that price does not negatively disparage CloudNine Discovery™ and any of the CloudNine Discovery™ products or services, included, but not limited to services related to OnDemand®.

14.4. The CloudNine Discovery™ and Subscriber understand and agree that this Paragraph is a material provision of this Agreement and that any breach of this Paragraph shall be a material breach of this Agreement, and that each Party would be irreparably harmed by violation of this provision.

### 15. Non-Circumvent

15.1. CloudNine Discovery™ and Subscriber each agree not to interfere with, circumvent or attempt to circumvent customer or prospective customer relationships that come to their respective attention through introductions or efforts of the other party. CloudNine Discovery™ and Subscriber each agree not to hire, or attempt to hire, either directly or indirectly, employees or individuals under contract of either party, that were employed either permanently or temporarily, at any time during this agreement.

### 16. Indemnification

16.1. Subject to the other provisions of this Agreement, Subscriber agrees to indemnify, defend and hold harmless CloudNine Discovery™ from any and all claims, suits, damages and liabilities (including reasonable attorneys' fees, court costs and related expenses, if applicable) incurred by CloudNine Discovery™ as a result of (i) the actions or omissions of Subscriber, its employees and agents, in connection the provision of Products and Services pursuant to this Agreement or (ii) the breach of this Agreement by Subscriber.

### 17. Injunctive Relief

17.1. Subscriber and CloudNine Discovery™ hereby acknowledge that a remedy at law for any breach or threatened breach of the provisions contained in Sections 5 or 6 of this Agreement will be inadequate and that CloudNine Discovery™ shall be entitled to specific performance, injunctive relief, and any other remedies available to it for such breach or threatened breach. If a bond is required to be posted in order for CloudNine Discovery™ to secure an injunction, then the parties hereby stipulate that a bond in the amount of \$1,000 will be sufficient and reasonable in all circumstances to protect the rights of the parties hereto.

### 18. Limitation of Liability

18.1. **IN NO EVENT SHALL CLOUDNINE DISCOVERY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF**

## RESELLER TERMS AND CONDITIONS

**ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

18.2. Subscriber shall be financially responsible for Data delivered to CloudNine Discovery™ by or on behalf of Subscriber in the event of fire, theft or other catastrophe. CloudNine Discovery™ will cooperate fully to aid the Subscriber in any insurance claims or investigations. CloudNine Discovery™ will provide reasonable security of the Data Center Premises by means of a third party Security Company. CloudNine Discovery™ DOES NOT provide 24-7 manned security. CloudNine Discovery™ DOES NOT provide fire detection/prevention of the Data Center Premises. CloudNine Discovery™ IS NOT RESPONSIBLE for any damage caused by fire, theft or other catastrophe regardless of location of loss.

18.3. **NOTWITHSTANDING THE ABOVE, RESELLER'S EXCLUSIVE REMEDIES FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTIONS WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE AGGREGATE DOLLAR AMOUNT WHICH RESELLER PAID DURING THE TERM OF THIS AGREEMENT.**

18.4. CloudNine Discovery™ shall use its best efforts to provide Availability of hosted services during 99.9% of each month during the term of this Agreement, where "Availability" refers to a User's ability to access Data on a CloudNine Discovery™ hosted application solutions, as described below. The service will be deemed to be up when Internet connection to Subscriber, or Subscriber's Client's Data is up. The hosting fees due to CloudNine Discovery™ by Subscriber will be reduced by 1% for each 1% loss in "Availability" during any month of the term of this Agreement, up to a maximum of a 10% reduction in fees due in any month. If CloudNine Discovery™ fails to meet Availability for three consecutive calendar months, Subscriber may terminate this Agreement without penalty, regardless of any term remaining on the Agreement, without liability to either party for penalties or damages associated with such

termination and upon thirty (30) days' prior written notice to CloudNine Discovery™.

18.5. "Availability" percentage shall be calculated as the product of 100, times a fraction, the numerator of which is the number of hours that services are provided by CloudNine Discovery™ in a particular month, and the denominator of which is the total number of hours in the month, less the hours during which service is interrupted for any of the following reasons: (a) scheduled maintenance windows; (b) reasons of Force Majeure; (c) issues associated with Subscriber's Data; (d) Subscriber's local area networks or Internet Service connections and/or; (e) issues arising from the misuse of the Application Solution by the Subscriber, its employees, agents, customers or contractors.

18.6. The remedies stated in this Section are RESELLER'S sole and exclusive remedies for service interruption.

18.7. NOTHING in this section shall be read to reduce a Subscriber's liability for services requested where the service interruption is due to non-payment or delinquency of an account.

### 19. Confidentiality

19.1. CloudNine Discovery will consider and treat as such all electronic data and printed documents provided by the Subscriber to CloudNine Discovery™ under this Agreement as Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to CloudNine Discovery™. Confidential Information will not include information that:

19.1.1. is generally known in the industry of the Subscriber or CloudNine Discovery™;

19.1.2. is now or subsequently becomes generally available to the public through no wrongful act of CloudNine Discovery™;

19.1.3. CloudNine Discovery™ rightfully had in its possession prior to the disclosure to CloudNine Discovery™ by the Subscriber;

19.1.4. is independently created by CloudNine Discovery™ without direct or indirect use of the Confidential Information; or

19.1.5. CloudNine Discovery™ rightfully obtains from a third party who has the right to transfer or disclose it.

19.2. Except as otherwise provided in this Agreement, the Confidential Information will remain the exclusive property of the Subscriber; and will only be used by CloudNine Discovery™ for the installation and maintenance of Subscriber's Data

# RESELLER TERMS AND CONDITIONS

(“Permitted Purpose”).

19.3. CloudNine Discovery™ will not knowingly use the Confidential Information for any purpose which might be directly or indirectly detrimental to the Subscriber or any of its affiliates or clients.

19.4. The obligations to ensure and protect the confidentiality of the Confidential Information imposed on CloudNine Discovery™ in this Agreement and any obligations to provide notice under this Agreement will survive the expiration or termination, as the case may be, of this Agreement.

19.5. CloudNine Discovery™ may disclose any of the Confidential Information:

19.5.1. to its employees, agents, representatives and advisors that have a need to know for the Permitted Purpose provided that CloudNine Discovery™ has informed such personnel of the confidential nature of the Confidential Information; such personnel agree to be legally bound to the same burdens of confidentiality, non-use and non-disclosure as CloudNine Discovery™; CloudNine Discovery™ agrees to take all necessary steps to ensure that the terms of this Agreement are not violated by such personnel; and, CloudNine Discovery™ agrees to be responsible for and indemnify Subscriber for any breach of this Agreement by CloudNine Discovery™ personnel.

19.5.2. to a third party where the Subscriber has consented in writing to such disclosure; and

19.5.3. to the extent required by law or by the request or requirement of any judicial, legislative, administrative or other governmental body.

19.6. Recipient shall protect the confidentiality of the Discloser’s Confidential Information and prevent the unauthorized use, dissemination, or publication of the Discloser’s Confidential Information by using the same degree of care as Recipient uses to protect its own information of a like nature, but in no event less than a reasonable degree of care.

## 20. Assignment

20.1. This Agreement may not be assigned in whole or in part by any Subscriber without the prior express written permission of CloudNine Discovery™, but may be assigned without your consent by CloudNine Discovery™ to (i) a parent

or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of Subscriber’s company that results or would result in a direct competitor of CloudNine Discovery™ directly or indirectly owning or controlling 30% or more of Subscriber shall entitle CloudNine Discovery™ to terminate this Agreement for cause immediately upon written notice to Subscriber.

## 21. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the internal law, and not the law pertaining to conflicts or choice of law, of the State of Texas.

## 22. Jurisdiction and Venue

22.1. In respect of any action, suit or other proceeding relating to this Agreement, each party hereto hereby irrevocably submits to the non-exclusive jurisdiction of any state or federal court located in the County of Harris, State of Texas. **EACH PARTY HEREBY WAIVES ANY RIGHT IT OR HE MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS, TO ASSERT THAT IT IS NOT SUBJECT TO THE JURISDICTION OF THE AFORESAID COURTS, OR TO OBJECT TO VENUE TO THE EXTENT THAT ANY ACTION, SUIT OR OTHER PROCEEDING IS BROUGHT IN RELATION TO OR ANCILLIARY TO THIS AGREEMENT.**

## 23. Execution

23.1. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same instrument.

23.2. Each party hereto agrees that no law or rule of construction shall be raised or used in which the provisions of this Agreement shall be construed in favor or against one party because such party is deemed to be the author thereof.

23.3. This document may be executed by electronic signature, and Subscriber agrees that electronic signature will carry the full weight and intent of the signatory, and shall fully comply with the rules and guidelines associated with electronic signatures as listed in the Texas Uniform Electronic Transactions Act (Texas Business & Commerce Code – Chapter 43).

## 24. Severability Clause

## RESELLER TERMS AND CONDITIONS

24.1. In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this agreement, but this agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

24.2. It is further agreed that if part of the Agreement is determined invalid, either party may open negotiations solely with respect to a substitute for such Article, Section, or portion, within two (2) weeks after a ruling has been made.

### 25. Drafting

25.1. Each of the parties hereto acknowledges that each party was actively involved in negotiating and finalizing this Agreement.

25.2. Each party hereto agrees that no law or rule of construction shall be raised or used in which the provisions of this Agreement shall be construed in favor or against one party because such party is deemed to be the author thereof.

### 26. Notice

26.1. All notices given under this Agreement must be in writing and will be effective if delivered by hand, or sent by certified mail, postage prepaid, or by a nationally recognized overnight courier service, addressed as follows, or to such other address as either party may substitute by prior notice. In the event alternative mailing addresses are not provided, the Parties agree that notice is proper if transmitted, as provided herein, to the Subscriber at the address listed on the Subscription Order Agreement document, and to CloudNine at 14655 Northwest Freeway, Suite 135, Houston, Texas 77040.