

SaaS

END USER LICENSE AGREEMENT

Version 2: 20201229

This End User License Agreement (“Agreement”) is entered into between You (either an individual or a single entity, sometimes referred to herein as “Customer”) and Cloud9 Discovery LLC (dba CloudNine), for the number of Authorized Users (as defined below) as referenced in a corresponding Software Order, the terms of which are incorporated by reference as if fully set forth herein.

Capitalized terms used in this Agreement and Schedule A hereto, which is incorporated herein by reference, are defined in the last section of this Agreement.

1. RIGHT TO USE

CloudNine will provide you with use of CloudNine Review software-as-a-service. Your use of the Service shall be deemed to be your agreement to abide by this Agreement. With respect to CloudNine Software as a Service products use includes a browser interface and data encryption, transmission, access, and storage.

CloudNine permits You to use the Program(s) only in accordance with the terms of this Agreement. Subject to Your payment of the Subscription Fees set forth in the Software Order and Your compliance with the other terms of this Agreement, CloudNine grants to You a limited, personal, non-exclusive, nontransferable and non-assignable (except as this Agreement otherwise provides) right to use the Program and Documentation during the Term as set forth in this Agreement.

2. TERM, TERMINATION OR EXPIRATION OF AGREEMENT

The term of this Agreement shall commence with the term of as outlined in a Software Order (the Term”). Thereafter, You may renew this agreement by written agreement. The amount of charges to Your subscription for any such renewal shall be at CloudNine’s then current prices in effect.

During the Term, the Agreement may not be terminated except as follows:

- 2.1. If You fail to pay any invoice in full within a period of Forty-five (45) days after the same is due, CloudNine may terminate this Agreement upon five (5) business days’ notice to You without any liability to You whatsoever.
- 2.2. Except for Your failure to make payments, as invoiced, either party may terminate this Agreement on notice if the other party has defaulted in the performance of its obligations under this Agreement upon forty-five (45) days written notice, provided however, that the party in breach will have forty-five (45) days from the receipt of notice of termination to correct the default.
- 2.3. A party becomes insolvent, invokes as a debtor any laws relating to the relief of debtors’ or creditors’ rights, or has such laws invoked against it as a debtor. Such termination shall be effective forty-five (45) days after notice unless the terminating party is satisfied with other party’s solvency within that time.
- 2.4. Upon termination of the Agreement due to Your breach, CloudNine shall be entitled to accelerate all remaining payments due for the term outlined in the Software Order and any prepaid fees shall not be refunded. On termination or expiration of this Agreement for any reason, You, at Your option, will either (1) destroy all copies of the Program, including any backup copies and the originals and any copies of the Documentation and certify such destruction in writing to CloudNine, or (2) return them to CloudNine. This obligation shall survive the termination of this Agreement. Upon termination of the Agreement due to CloudNine’s material breach (which breach CloudNine fails to cure within forty-five (45) days after receipt of written notice thereof) or in the event any CloudNine assignee fails to agree to abide by the material terms and conditions of this Agreement following any applicable assignment (which failure such assignee fails to

cure within forty-five (45) days after receipt of written notice thereof) and if CloudNine or assignee is unable to cure the breach within the 45 day period, all remaining prepaid fees will be refunded, or credit provided. If Your Subscription is terminated, You will no longer have the right to access to the software.

- 2.5. 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

3. USE RESTRICTIONS AND LIMITATIONS

- 3.1. **License.** By accepting the License granted by CloudNine, you may not access the Program if you are a direct competitor of CloudNine with a product competitive to CloudNine or a product powered by CloudNine except with CloudNine's prior written consent. In addition, you may not access the Program for purposes of monitoring its availability, performance or functionality, or for any other benchmarking for competitive purposes.

You agree that You will not, without the prior written consent of CloudNine, (a) sell, license, sublicense, distribute, lease or otherwise transfer or allow the transfer of the Program, or any backup copy, to third parties; (b) use the Program in any manner inconsistent with the rights granted above, including but not limited to use of the Program in a service bureau, renting, leasing, lending or using the Program to provide commercial hosting services, or using more than the number of Licenses or permit access to the Program by more than the number of Authorized Users; (c) modify or create derivative works of the Program or Documentation or separate the Program's component parts for use on more than one device; or (d) unless specifically permitted under applicable law without the possibility of contractual waiver, attempt to decompile, disassemble or reverse engineer the Program, or otherwise attempt to (i) derive source code or underlying ideas, algorithms, structure or organization from the Program or (ii) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Program, including without limitation any such mechanism used to restrict or control the functionality of the Program.

You may use the Program only for your internal business purposes and shall not interfere with or disrupt the integrity or performance of the Program or the data contained therein; or attempt to gain unauthorized access to the Program.

- 3.2. **Right to Use for Service Providers.** Notwithstanding the terms herein limiting use to the licensee's internal business purposes or prohibiting use thereof in a Service Provider, if you are a Partner Program Member, you are hereby granted the additional revocable right to use the Authorized Products to provide services to your customers in the ordinary course of your business. You may permit your customers' use of the Licensed Software only in accordance with the rights and restrictions of the terms set forth herein.
- 3.3. **Reactivation.** THERE MAY BE TECHNOLOGICAL MEASURES IN THE PROGRAM THAT ARE DESIGNED TO PREVENT UNLICENSED USE OF THE PROGRAM. You understand that You may need to activate or reactivate the Program from time to time to continue use of the Program.
- 3.4. **Transfer or Assignment.** This Agreement may not be assigned by you without the prior written approval of CloudNine but may be assigned without your consent by CloudNine 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 you that results or would result in a direct competitor of CloudNine directly or indirectly owning or controlling 50% or more of you shall entitle CloudNine to terminate this Agreement for cause immediately upon written notice.

Any permitted transfer of the Program must include the Program and Documentation, any backup copies, any Updates and Upgrades, if applicable, and a copy of this Agreement. Written notice of the permitted transfer must be sent by You to CloudNine within fifteen (15) business days of the transfer, specifying the new licensee, who must agree in writing to be bound by the terms and conditions of this Agreement. CloudNine may assign this Agreement to any Affiliate or successor on notice to You. As a condition to assignment, each party's assignee must agree in writing to assume and be bound by all terms and conditions of this Agreement.

- 3.5. **Internet-Based Services**. If the Program accesses a CloudNine internet-based service associated with the Program, You agree that You will not use the Program in any manner that could damage, disable, overburden, or impair such services or interfere with any other party's use and enjoyment of them
- 3.6. **Your Responsibilities**. You are 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 your use of the Program, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify CloudNine or your authorized CloudNine Reseller ("CloudNine Reseller") immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to CloudNine or your CloudNine Reseller immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another CLOUDNINE™ user or provide false identity information to gain access to or use the Program.

4. **ACCOUNT INFORMATION AND DATA**

CloudNine or your CloudNine Reseller does not own any data, information or material that you submit to the Service while using the Service ("Customer Data"). You, not CloudNine or your CloudNine Reseller, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and CloudNine or your CloudNine Reseller shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of your breach), CloudNine will make available to you a file(s) of the Customer Data within 30 days of termination if you so request at the time of termination, as long as your account balance is paid. CloudNine reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and CloudNine or your CloudNine Reseller shall have no obligation to maintain or forward any Customer Data.

5. **CONFIDENTIALITY**

In connection with providing and performing the Services, a party (the "Discloser") may disclose to the other party (the "Recipient") information that is non-public, proprietary, a trade secret or confidential in nature ("Confidential Information"). Notwithstanding anything to the contrary herein, Confidential Information shall be deemed to include, but not limited to: (a) information of or regarding Your or CloudNine's business and customers; (b) the Program and documentation; and (c) either party's technical and business information relating to inventions or software, research and development, future product specifications, implementation methodologies, engineering processes, costs, profit or margin information, and marketing and future business plans. The parties agree, unless required by law, to refrain from disclosing any Confidential Information to any third party for any purpose other than as necessary to perform under this Agreement. The Recipient shall use the same degree of care as it uses to protect its own confidential information of a similar nature, but no less than reasonable care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information. Each Recipient may disclose Confidential Information to its representatives, which shall include its officers, directors, members, agents, employees, contractors, on a need-to-know basis only, and Recipient shall advise each such representative of these confidentiality obligations. The parties acknowledge that any breach of its obligations with respect to Confidential Information may cause the other irreparable injury for which there may be inadequate remedies at law and that Discloser shall be entitled to seek equitable relief in addition to all other remedies available to it. A party's Confidential Information shall not include information that: (i) is or becomes publicly available through no act or omission of Recipient; (ii) was in the Recipient's lawful possession prior to the disclosure and was not obtained by Recipient either directly or indirectly from the Discloser; (iii) is lawfully disclosed to the Recipient by a third party without restriction on Recipient's

6. **STORAGE CALCULATIONS**

The total data size of files on CloudNine's servers will be calculated based on the maximum data size hosted during the calendar month, including but not limited to, TIF files, Native files, OCR/Extracted text files, HTML files, metadata, hosted exports and other supporting data files as required.

7. DATA PROCESSOR

To the extent CloudNine's SaaS or Professional Services team is used by You as a Processor, CloudNine and its employees shall act only on instructions from You

8. INTELLECTUAL PROPERTY OWNERSHIP

CloudNine alone 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. 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. The CloudNine name, the CloudNine™ or CloudNine logo, and the product names associated with the Service are trademarks of CloudNine or third parties, and no right or license is granted to use them.

Each party shall retain ownership of all its Marks and other intellectual property rights. Subject to the terms and conditions of this Agreement, each party grants to the other a limited, non-exclusive and non-transferable right and license to use, reproduce and display each other's Marks in connection with the performance of this Agreement. A party's use of the other's Marks shall be in accordance with the specifications provided for such use by the party whose Marks are being used. In the event such specifications are not provided, the party whose Marks are being used may provide specifications regarding the use of their Mark.

9. INVOICES AND PAYMENT

9.1. **Payment Due.** You shall pay all fees or charges as due to CloudNine in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable.

All Fees and any related charges shall be payable within thirty (30) days of the date of CloudNine's invoice. At its sole option, CloudNine may use a third party or affiliate as CloudNine's billing, payment and invoicing agent for selected products and services offered by CloudNine and its affiliated companies.

9.2. **Delinquent Invoices.** Delinquent invoices (accounts in arrears) are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for your licenses during any period of suspension. If, CloudNine initiates termination of this Agreement due to non-payment or other breach of this Agreement, you will be obligated to pay the balance due on your account. In the event legal action is necessary to enforce the payment terms of this Agreement, CloudNine shall be entitled to collect from you or any associated Users any judgment or settlement sums due plus reasonable attorney's fees, court costs and other expenses incurred by CloudNine for such collection action.

9.3. **Non-Payment and Suspension.** In addition to any other rights granted to CloudNine herein, CloudNine reserves the right to suspend or terminate this Agreement and your access to the Service if your account or associated account becomes delinquent (falls into arrears). Payments not received by CloudNine by the invoice due date is cause for service interruption. No credits will be issued for unavailable service caused by a late payment. If a User's account or associated account goes more than 45 days past the due date of any invoice, CloudNine reserves the right to remove User data from its equipment and place it onto external storage devices. Any damage caused by an improper shutdown of User data for non-payment is the responsibility of the User. Data exports/destructions require all outstanding invoices, including any invoice for export requests, to be paid in full before data will be delivered or destroyed. If service interruption occurs due to non-payment, the Service will not be available for use until payment is received by CloudNine. In addition to service interruption for non-payment, CloudNine reserves the right to place the following message online, "***This account is PAST DUE. Contact your database administrator to avoid service interruption."

- 9.4. **Termination for Cause.** Any breach of your payment obligations or unauthorized use of the Software will be deemed a material breach of this Agreement. CloudNine, in its sole discretion, may terminate your use of the Software if you breach or otherwise fail to comply with this Agreement. In addition, CloudNine or your CloudNine Reseller may terminate a free/demo account at any time in its sole discretion. You agree and acknowledge that CloudNine and your CloudNine Resellers has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

10. TAXES

If any authority imposes a duty, tax, levy or fee, excluding those based on CloudNine's net income, upon the Program, You agree to pay the amount specified. You are responsible for any personal property taxes for the Program from the date it was acquired.

11. COPYRIGHT AND PROPRIETARY INFORMATION

11.1. CloudNine and its suppliers reserve all of rights with respect to the Program, Documentation and any copies under all applicable national and international laws and treaties for the protection of Intellectual Property Rights, including, but not limited to, trade secrets, copyrights, trademarks and patents. Any rights not expressly granted to You in this Agreement are retained by CloudNine and its suppliers.

11.2. Except as otherwise provided in this Agreement, You shall not cause or permit unauthorized copying, reproduction or disclosure of any portion of the Program or Documentation, or the delivery or distribution of any part thereof, to any third party, for any purpose, without the prior written permission of CloudNine. This restriction shall continue beyond the termination of this Agreement.

12. EXPORT

CloudNine 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 this software ("User") acknowledges and agrees that the software 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 Program, 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 software 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 and its licensors make no representation that the Program is appropriate or available for use in other locations. If you use the Program 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 Program, 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.

You will not ship, transfer or export the Program to any country, nor will You use the Program, in any manner prohibited by the United States Export Administration Act or any other export laws national or international, restrictions or regulations that apply to the Program. You agree to indemnify and hold CloudNine harmless for any violation of this provision.

13. U.S. GOVERNMENT RIGHTS

The Program and Documentation are “Commercial Items” as that term is defined at 48 CFR 2.101 consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation” as such terms are used in 48 CFR 12.212 or 48 CFR 227.7202, as applicable. The rights to the Program and Documentation are granted to U.S. Government end users (a) only as Commercial Items and (b) only with those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement.

14. LIMITED WARRANTY

- 14.1. CloudNine warrants that it has sufficient rights to grant the rights in the Program pursuant to this Agreement; CloudNine further warrants that the Program will operate substantially in accordance with its written specifications. No warranty is made that the Program will run uninterrupted or error-free. The warranty period for the Program and Documentation is ninety (90) days from the date the Program is first made available for Your use (“Warranty Period”).
- 14.2. CloudNine’s and its suppliers’ entire liability and Your exclusive remedy for any breach of this limited warranty or for any other breach of this Agreement or for any other liability relating to the Program shall be, at CloudNine’s option from time to time exercised subject to applicable law, (a) repair, or (b) replacement. You will receive the remedy elected by CloudNine without charge, except that You are responsible for any expenses You may incur (e.g., cost of shipping the Program to CloudNine). This limited warranty is void if failure of the Program has resulted from accident, abuse, misapplication, abnormal use or malware. Any replacement Program will be warranted for the remainder of the original warranty period or forty-five (45) days, whichever is longer, and CloudNine will use commercially reasonable efforts to provide You with a remedy within a commercially reasonable time of Your compliance with CloudNine’s warranty remedy procedures. Outside of the United States or Canada, neither these remedies nor any product support services offered by CloudNine are available without proof of subscription from an authorized international source.
- 14.3. THE PRECEDING WARRANTIES ARE THE ONLY WARRANTIES RELATED TO THE PROGRAM, DOCUMENTATION AND SUPPORT SERVICES AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.
- 14.4. If an implied warranty or condition is created by Your state/jurisdiction and federal or state/provincial law prohibits disclaimer of it, You also have an implied warranty or condition, BUT ONLY AS TO DEFECTS DISCOVERED DURING THE WARRANTY PERIOD. AS TO ANY DEFECTS DISCOVERED AFTER THE WARRANTY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND. Some states/jurisdictions do not allow limitations on how long an implied warranty or condition lasts, so the above limitation may not apply to You. This limited warranty gives You specific legal rights. You may have other rights which vary from state/jurisdiction to state/jurisdiction.
- 14.5. CloudNine is acting on behalf of its suppliers for the purpose of disclaiming, excluding, and/or limiting obligations, warranties, and liability as provided in this Agreement, but in no other respects and for no other purpose.

15. LIMITATION OF LIABILITIES

IN NO EVENT WILL CLOUDNINE, ITS PROGRAM DEVELOPERS OR SUPPLIERS HAVE ANY OBLIGATION OR LIABILITY (WHETHER IN TORT, CONTRACT, WARRANTY OR OTHERWISE AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE, PRODUCT LIABILITY, OR STRICT LIABILITY), FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST REVENUE, LOSS OF OR DAMAGE TO DATA, PROFITS OR BUSINESS INTERRUPTION LOSSES, SUSTAINED OR ARISING FROM OR RELATED TO THE PROGRAM, DOCUMENTATION OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLOUDNINE'S LIABILITY FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL AT ALL TIMES AND IN THE AGGREGATE AMOUNT BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU TO CLOUDNINE UNDER THIS AGREEMENT. NO ACTION OR PROCEEDING AGAINST CLOUDNINE MAY BE COMMENCED MORE THAN ONE YEAR AFTER THE CLAIM ARISES EXCEPT FOR CLOUDNINE CLAIMS RELATING TO COLLECTION OF FEES DUE AND PAYABLE BY YOU. THIS SECTION SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.

Some states/jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to You.

16. MUTUAL INDEMNIFICATION

You shall indemnify and hold CloudNine, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the a customers' data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that CloudNine (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release CloudNine of all liability and such settlement does not affect CloudNine's business or Program); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

CloudNine shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Program directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by CloudNine of its representations or warranties; or (iii) a claim arising from breach of this Agreement by CloudNine; provided that you (a) promptly give written notice of the claim to CloudNine; (b) give CloudNine sole control of the defense and settlement of the claim (provided that CloudNine may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to CloudNine all available information and assistance; and (d) have not compromised or settled such claim. CloudNine shall have no indemnification obligation, and you shall indemnify CloudNine pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Program with any of your products, service, hardware or business process(es).

17. INTERNET DELAYS

CLOUDNINE AND YOUR CLOUDNINE RESELLER'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. CLOUDNINE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

18. MISCELLANEOUS

- 18.1. **General.** No text or information set forth on any other purchase order, preprinted form or document (other than a CloudNine Order Agreement or Master Services Agreement, if applicable) shall add to or vary the terms and conditions of this Agreement.
- 18.2. **Governing Law.** Any action, suit, or proceeding arising under or in connection with this Agreement must be commenced within one (1) year after the claim or cause of action arises. This Agreement shall be governed in all respects by the laws of the State of Texas without regard to conflicts of law. If You acquired this Program in Canada, unless expressly prohibited by local law, this Agreement is governed by the laws in force in the Province of Ontario, Canada; and, in respect of any dispute which may arise hereunder; You consent to the jurisdiction of the federal and provincial courts sitting in Toronto, Ontario. If You acquired this Program in any other country, then local law may apply. The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- 18.3. **Severability.** If any term of this Agreement is held invalid or unenforceable for any reason, the parties agree that such invalidity will not affect the validity of the remaining provisions of this Agreement, and further agree to substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision.
- 18.4. **Waiver.** The failure of CloudNine to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by CloudNine in writing. All waivers must be done in writing, and then only by persons executing this Agreement or other duly authorized agents or representatives. The waiver by either party of a breach or a violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach or violation.
- 18.5. **Compliance with Rights Granted.** You agree that, upon request from CloudNine or CloudNine's reseller, You will within thirty (30) days fully document and certify any and all use of the Program at the time of the request is in conformity with Your valid and authorized rights granted from CloudNine.
- 18.6. **Entire Agreement.** This Agreement is the entire agreement between You and CloudNine relating to the Program and the Services (if any) and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Program, the Services or any other subject matter covered by this Agreement.
- 18.7. **Parties Bound.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, legatees, successors, and permitted assignees.
- 18.8. **Force Majeure.** Except with respect to Your obligation to make timely payments, neither party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by fires, strikes, embargoes, explosions, earthquakes, floods, wars, water, the elements, labor disputes, government requirements, civil or military authorities, acts of God or by the public enemy, inability to secure raw materials or transportation, facilities, acts or omissions of carriers or suppliers, or other causes beyond its control whether or not similar to the foregoing.
- 18.9. **Notices.** CloudNine may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in CloudNine's or your CloudNine Reseller's account information, or by written communication sent by first class mail or pre-paid post to your address on record in CloudNine's or your CloudNine Reseller's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to CloudNine (such notice shall be deemed given when received by CloudNine) at any time by any of the following: letter sent by confirmed facsimile to CloudNine at the following fax numbers (whichever is appropriate): (713) 462-6463; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to CloudNine at the following addresses (whichever is appropriate): CloudNine, 14655 Northwest Freeway, Suite 135, Houston, Texas 77040, in either case, addressed to the attention of: President and CEO.
- 18.10. **Independent Contractor.** All work performed under the Agreement by a party shall be performed as an independent contractor and not as an agent of the other. No persons furnished by either party shall be considered the other party's employees or agents, and each party shall be responsible for its own and its

employees' compliance with all laws, rules, and regulations involving employment of labor, working conditions, payment of wages, and payment of taxes, such as unemployment, social security, and other payroll taxes, including applicable contributions from such persons when required by law.

19. DEFINITIONS

"Affiliate" means a corporation, partnership, or other legal entity that controls, is controlled by, or is under common control with that party, either directly or through another Affiliate, but only while that control relationship exists; "control" of an entity means the power to direct the management and policies of that entity through a controlling vote on the board of directors or similar governing body of that entity or the ownership of interests entitled to more than fifty percent (50%) of the votes of that entity.

"Authorized Users" means Your employees, agents, representatives, contractors or customers whom You provide access to the Program.

"CPU" means a single computer, a central processing unit or logical partition (if a computer or server has more than one processor or logical partition).

"Documentation" means written guides in any form or media describing the use and operation of a Program, together with any related supporting documentation.

"Fix(es)" means a Workaround and/or additional or replacement lines of software code provided by CloudNine to remedy a defect in the Program that caused it to not operate substantially in accordance with its written specifications.

"Intellectual Property Rights" means all current and future patents, patent applications (including, without limitation, all reissues, divisions, renewals, extensions, continuations and continuations-in-part), copyrights (including but not limited to rights in audiovisual works and moral rights), trade secrets, trademarks, service marks, trade names and all other intellectual property rights and proprietary rights, whether arising under the laws of the United States or any other country, state or jurisdiction.

"Partner Program Member" means a legal entity or individual that has been granted permission by way of executing a Partner Program Agreement to promote, sell or otherwise distribute CloudNine's products.

"Program" means all CloudNine software including, but not limited to, CloudNine Review, and CloudNine Explore, as well as associated media and Internet-based services

"Problem" means Software that does not operate substantially in accordance with its written specifications; or Documentation that is not correct.

"Service Provider" means a legal entity or individual that rents, **subscribes or licenses** software applications from CloudNine or other third-party software companies and packages it with service and/or other software for sale to its customers.

"Software" means computer programs identified herein or on any associated Software Order, in machine-readable form for use on designated CPU(s) or by Authorized Users including (1) the original and all whole or partial copies, (2) components, (3) audio-visual content (such as images, text, recordings, or pictures), (4) related software materials, and (5) software use documents or keys, and documentation. Software does not include any version of Source Code and any operating system software installed on the CPU

"Order Agreement" means that document setting forth the number of units, Subscription Fees associated with the Program. The Software Order may be a paper form or may be comprised of an order form, order agreement proposal, quote or the online form You completed or the information You provided verbally, when ordering a Program and any confirmation of the information You provided, including but not limited to Your election with regard to Term, and is a part of this Agreement. The Software Order incorporates by reference this End User License Agreements.

“**Source Code**” means a high-level program in that is not machine-readable.

“**Start Date**” means the date specified in Order Agreement.

“**Subscription**” means a license to access and use the Program, subject to this Agreement, for a Term specified in a Software Order, which use is conditioned on payment of a Subscription Fee for the current period. A Subscription may be renewed by paying the Subscription Fee for the succeeding period. A Subscription includes Maintenance & Support Services at no additional charge.

“**Subscription Fee**” means the amount payable by You for the access and use of the Program for a period specified in a Software Order.

“**System Administrator**” means Your employee or agent with sufficient training and experience to identify and isolate Problems and to provide sufficient information and assistance to CloudNine to be able to reproduce such Problems. The System Administrator or his/her delegate shall be the single point of contact with CloudNine when reporting Problems. CloudNine may require You to appoint a new System Administrator if CloudNine reasonably determines that the System Administrator does not possess the training or experience necessary to perform the required functions of the System Administrator or cannot communicate effectively with CloudNine’s support personnel.

“**Workaround**” means a temporary solution to a Problem.