

## ON-PREMISE END-USER LICENSE AGREEMENT

*Updated 20220315*

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This On-Premise End-User License Agreement ("Agreement") is entered into between you (either an individual or a single entity, sometimes referred to herein as Customer) and CloudNine for the Software, if any, referenced in a corresponding Order Agreement, the terms of which are incorporated by reference as if fully set forth herein.

Capitalized terms used in this Agreement, are incorporated herein by reference, are defined in the last section of this Agreement.

### SECTION A. COMMON TERMS

#### 1. RIGHT TO USE

- 1.1. Subject to the restrictions set forth below, Customer may (a) use the Software, (b) install the number of copies of the Software licenses, concurrent User seats, or options (collectively, "Licenses") identified in the Order Agreement in executable form for Customer internal operations; (c) use the Documentation for Customer internal operations; and (d) permit the Customer's employees, agents, representatives, contractors or customers designated by Customer ("Authorized Users ") to access and use the Software locally or remotely in accordance with this Agreement. Additionally, CloudNine will provide the Customer with Maintenance & Support per this Agreement.
- 1.2. Copyright notices and any other proprietary legends on the original copy of the Software must be reproduced on any program software. The Customer may not transfer the rights to a backup copy of the Software unless the Customer transfers all rights in the Software.
- 1.3. CloudNine reserves all rights not expressly granted to the Customer.

#### 2. USE RESTRICTIONS AND LIMITATIONS

- 2.1. **License.** By accepting the License granted by CloudNine, the Customer may not access the Software if the Customer is 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, the Customer may not access the Software for purposes of monitoring for any other benchmarking for competitive purposes.

Customer agrees that Customer will not, without the prior written consent of CloudNine, (a) sell, license, sublicense, distribute, lease or otherwise transfer or allow the transfer of the Software, or any backup copy, to third parties; (b) use the Software in any manner inconsistent with the rights granted above, including but not limited to use of the Software in a service bureau, renting, leasing, lending or using the Software to provide commercial hosting services, or using more than the number of Licenses or permit access to the Software by more than the number of Authorized Users; (c) modify or create derivative works of the Software or Documentation or separate the Software's

component parts for use on more than one device; or (d) unless expressly permitted under applicable law without the possibility of contractual waiver, attempt to decompile, disassemble or reverse engineer the Software, or otherwise attempt to (i) derive source code or underlying ideas, algorithms, structure or organization from the Software or (ii) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Software, including without limitation any such mechanism used to restrict or control the functionality of the Software.

Customer may use the Software only for the Customer's internal business purposes and shall not interfere with or disrupt the integrity or performance of the Software or the data contained therein or attempt to gain unauthorized access to the Software.

2.2. **Right to Use for Service Providers.** Notwithstanding the terms herein, if the Customer is a Program Member, Customer is granted the additional revocable right to use the Authorized Products to provide services to Customer customers in the ordinary course of Customer business. Customer may permit Customer's clients' use of the Licensed Software only per the rights and restrictions of the terms set forth herein.

2.3. **Reactivation.** THERE MAY BE TECHNOLOGICAL MEASURES IN THE PROGRAM THAT ARE DESIGNED TO PREVENT UNLICENSED USE OF THE PROGRAM. The Customer understands that the Customer may need to activate or reactivate the Software from time to time.

2.4. **Transfer or Assignment.** The Customer may not assign this Agreement without the prior written approval of CloudNine. Still, it may be assigned without Customer 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 Customer that would result in a direct competitor of CloudNine directly or indirectly owning or controlling 50% or more of Customer shall entitle CloudNine to terminate this Agreement for cause immediately upon written notice.

Any permitted transfer of the Software must include the Software 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 Customer 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 Customer. 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.

2.5. **Customer Responsibilities.** The Customer is responsible for all activity occurring under Customer User accounts. Furthermore, Customer shall abide by all applicable local, state, national and foreign laws, treaties, and regulations in connection with Customer use of the Software, including those related to data privacy, international communications, and the transmission of technical or personal data.

### **3. PHONE HOME CAPABILITY**

CloudNine Software may include a "phone home" feature that summarizes basic configuration and operational information, such as version number, and periodically send this information via the internet to CloudNine. The content transmitted contains no user-stored data – only information about the version. The Customer acknowledges and accepts this feature as part of this Agreement. Usage-based licensees agree to have this feature report, the case number and volume of data, and basic configuration and operational information, such as version number.

### **4. INTELLECTUAL PROPERTY OWNERSHIP**

CloudNine 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 Customer or any other party relating to the Service. This Agreement is not a sale and does not convey to Customer any ownership rights 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. If such specifications are not provided, the Party whose Marks are being used may provide specifications regarding the use of their Mark.

### **5. COPYRIGHT, PROPRIETARY INFORMATION, AND CONFIDENTIALITY**

CloudNine and its suppliers reserve all of the rights with respect to the Software, 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 Customer in this Agreement are retained by CloudNine and its suppliers. Except as otherwise provided in this Agreement, Customer shall not cause or permit unauthorized copying, reproduction, or disclosure of any portion of the Software 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.

5.1. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other Party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure. Confidential Information excludes information that: (i) is or becomes generally known to the public; (ii) was known to the Receiving Party prior to its disclosure

by the Disclosing Party without breach of any obligation to the Disclosing Party; (iii) is received from a third party without breach of any obligation to the Disclosing Party; or (iv) was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information. Customer Confidential Information includes, without limitation, customer data.

The Receiving Party shall: (i) at all times protect the confidentiality of the Disclosing Party's Confidential Information using no less than reasonable care; and (ii) not use Confidential Information of the Disclosing Party except to the extent necessary to exercise its rights or fulfill its obligations under this Agreement. To the extent necessary under this Agreement, the Receiving Party may disclose the Confidential Information of the Disclosing Party to the Receiving Party's employees or subcontractors who are bound by written obligations of confidentiality and non-use restrictions at least as protective as those set forth herein. In the event of a court order or government regulation compelling disclosure of any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice thereof if permitted by applicable law, and shall reasonably cooperate with the Disclosing Party to seek confidential or other protective treatment. If any party becomes aware of any actual or threatened breach of this Agreement (including any threatened or actual unauthorized use or disclosure of any Confidential Information), or in the event of any loss of, or inability to account for, Confidential Information previously received, it will immediately notify the other Party in writing and will reasonably cooperate with any such other party's efforts to seek appropriate injunctive relief or otherwise investigate, prevent, or curtail such threatened or actual breach, or to recover its Confidential Information. The Receiving Party shall promptly return to the Disclosing Party or destroy (with certification of such destruction provided by the Receiving Party upon request) all Confidential Information of the Disclosing Party in its possession or control upon request from the Disclosing Party.

Each Party agrees that a threatened or actual breach of this Agreement involving unauthorized use and disclosure of Confidential Information or information protected under this Agreement could cause the other party irreparable injury not wholly compensable by monetary damages and for which the other Party may have no adequate remedy at law. Accordingly, each Party specifically agrees that the other Party may be entitled to obtain injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Agreement or any applicable law.

## **6. 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 Software, Customer represents and warrants that Customer are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Customer agrees 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 Software is appropriate or available for use in other locations. If Customer uses the Software from outside the United States of America Customer 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 Software, 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.

Customer will not ship, transfer or export the Software to any country, nor will Customer use the Software, 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 Software. Customer agree to indemnify and hold CloudNine harmless for any violation of this provision.

## **7. U.S. GOVERNMENT RIGHTS**

The Software 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 Software 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.

## **8. LIMITED WARRANTY**

8.1. CloudNine warrants that it has sufficient rights to grant the rights in the Software pursuant to this Agreement; CloudNine further warrants that the Software will operate substantially in accordance with its written specifications. No warranty is made that the Software will run uninterrupted or error-free. The warranty period for the Software and Documentation is ninety (90) days from the date the Software is first made available for Customer use ("Warranty Period").

8.2. CloudNine's and its suppliers' entire liability and Customer 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 Software shall be, at CloudNine's option from time to time exercised subject to applicable law, (a) repair, or (b) replacement. The Customer will receive the remedy elected by CloudNine without charge, except that the Customer is responsible for any expenses Customer may incur (e.g., cost of shipping the Software to CloudNine). This limited warranty is void if failure of the Software has resulted from accident, abuse, misapplication, abnormal use, or malware. Any replacement

Software 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 the Customer with a remedy within a commercially reasonable time of Customer compliance with 'CloudNine's warranty remedy procedures. Outside of the United States, neither these remedies nor any product support services offered by CloudNine are available without proof of subscription from an authorized international source.

8.3. 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.

8.4. If an implied warranty or condition is created by Customer state/jurisdiction and federal or state/provincial law prohibits disclaimer of it, Customer 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 the Customer. This limited warranty gives the Customer specific legal rights. The Customer may have other rights which vary from state/jurisdiction to state/jurisdiction.

8.5. 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.

## **9. 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 CUSTOMER 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 THE COLLECTION OF FEES DUE AND PAYABLE BY THE CUSTOMER. 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 Customer or CloudNine.

## **10. MUTUAL INDEMNIFICATION**

The Customer 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 the Customer of its representations and warranties; or (iii) a claim arising from the breach by Customer or Customer Users of this Agreement, provided in any such case that CloudNine (a) gives written notice of the claim promptly to the Customer; (b) gives Customer sole control of the defense and settlement of the claim (provided that Customer may not settle or defend any claim unless Customer unconditionally release CloudNine of all liability and such settlement does not affect CloudNine's business or Software); (c) provides to the Customer all available information and assistance; and (d) has not compromised or settled such claim.

CloudNine shall indemnify and hold the Customer and its 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, Software or Documentation infringes the Intellectual Property Rights 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 the Customer (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 the Customer 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 the Customer shall indemnify CloudNine pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Program with any of the Customer products, service, hardware or business process(es) not approved by or intended by CloudNine to be combined with such products, service, hardware or business process(es).

## 11. MISCELLANEOUS

- 11.1. **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.
- 11.2. **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. The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- 11.3. **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 that most closely approximates the intent and economic effect of the invalid provision.

- 11.4. **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.
- 11.5. **Compliance with Rights Granted.** Customer agrees that, upon request from CloudNine or CloudNine's reseller, Customer will within thirty (30) days fully document and certify any and all use of the Software at the time of the request is in conformity with Customer valid and authorized rights granted from CloudNine.
- 11.6. **Entire Agreement.** This Agreement is the entire agreement between Customer and CloudNine relating to the Software and the Services (if any) and supersedes all prior or contemporaneous oral or written communications, proposals, and representations with respect to the Software, the Services, or any other subject matter covered by this Agreement.
- 11.7. **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.
- 11.8. **Force Majeure.** Except with respect to Customer 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.
- 11.9. **Notices.** CloudNine may give notice by means of written communication sent by first-class mail or pre-paid post to Customer address on record in CloudNine's or CloudNine Reseller's account information. Such notice shall be deemed to have been given when received by the Customer (by mail or email). Customer 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, 12848 Queensbury Lane, Suite 208; Houston, Texas 77024, in either case, addressed to the attention of: President and CEO.

## 12. 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.



### 13. 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.

**Agent Workstation or Seat** means a micro-computing unit or other assemblages of computer equipment that is enabled to allow the use of the Licensed Software by a maximum of one (1) agent at any given time. An Agent Workstation may be configured to allow multiple agents working in shifts to use the Licensed Software, provided that it is not enabled for concurrent use. Once enabled, a workstation is defined as an Agent Workstation until disabled, whether or not it is in active use by any End User-agent.

**Authorized Users** means Customer employees, agents, representatives, contractors or customers whom Customer provide access to the Software.

**Covered Softwares** means any current Software that Customer have licensed pursuant to this Agreement that is a currently supported Software version for the numbers of Licenses set forth on the current Order Agreement. Supported versions include the current version and the prior two (2) minor releases (Updates) of the Software.

**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 Software, 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 Software 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.

**Maintenance & Support** means the delivery of Updates and technical support to be provided pursuant to the terms of this Agreement repairing or replacing Software that does not operate in accordance with its written specifications

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

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

**Software means all CloudNine software including, but not limited to, CloudNine LAW, CloudNine Explore, CloudNine Concordance, CloudNine Review, CloudNine ESI Analyst CloudNine Collection, CloudNine Data Wrangler, CloudNine Insight, CloudNine Connect, and CloudNine Discovery Portal 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 companies that package it with service and/or other Software for sale to its customers.

**Software** means computer programs identified herein or on any associated Order Agreement, 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. The Software does not include any version of Source Code and any operating system software installed on the CPU

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

**Start Date** means the date the user or Customer executes the Order Agreement or accessed the Software.

**Subscription** means a license to access and use the Software, subject to this Agreement, for a Term specified in the Order Agreement, 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 at no additional charge.

**Subscription Fee** means the amount payable by Customer for the access and use of the Software for a period specified in the Order Agreement.

**System Administrator** means Customer 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 the Customer 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.

**Updates** mean subsequent releases of Software which are generally made available for supported Software, other than media and handling charges, to add new features and add other enhancements to the Software. Updates are generally designated by a change in the number appearing to the right of the initial decimal point in the Software's version number (i.e., 1.1 vs. 1.0).

**Upgrades** mean subsequent releases of the Materials that contain an improvement in the Materials that generally includes enhancements and new functionality and is generally designated by a change in the number appearing to the left of the initial decimal point in the Software's version number (i.e., 2.0 vs. 1.0). Upgrades that include Changes to the base code or platform or changes that include interoperability with other applications or functionality provided by third-party code ("Core Upgrades") may be provided at incremental additional cost to Customer.

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

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## SECTION B. SOFTWARE PERPETUAL TERMS

### 1. RIGHT TO USE

CloudNine permits the Customer to use the Software only in accordance with the terms of this Agreement. Subject to Customer payment of the License Fees set forth in the Order Agreement and Customer compliance with the other terms of this Agreement, CloudNine grants to Customer a limited, personal, perpetual, non-exclusive, non-transferable, and non-assignable (except as this Agreement otherwise provides) license to use the Software and Documentation as set forth in this Agreement.

The Customer are eligible for Upgrades and Updates so long as the Customer has paid for Customer's perpetual license in full pursuant to the order terms and Customer is current in any and all payments for Maintenance.

Any lapses in payment for the Customer perpetual right or maintenance will be subject to a reinstatement fee.

### 2. TERMINATION

If the Customer fails to pay for its perpetual license, CloudNine reserves the right to terminate the right to use.

## SECTION C. SOFTWARE SUBSCRIPTION TERMS

### 1. RIGHT TO USE

CloudNine will provide the Customer with the use of CloudNine Software. Customer use of the Service shall be deemed to be the Customer agrees 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 the Customer to use the Software(s) only in accordance with the terms of this Agreement. Subject to Customer payment of the Subscription Fees set forth in the Order Agreement and Customer compliance with the other terms of this Agreement, CloudNine grants to Customer a limited, personal, non-exclusive, non-transferable, and non-assignable (except as this Agreement otherwise provides) right to use the Software 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 the Order Agreement (the "Term"). Thereafter, the Customer may renew this agreement by written agreement. The charges to Customer 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:

- 1.1. If Customer 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 Customer without any liability to Customer whatsoever.
- 1.2. Except for Customer 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.
- 1.3. 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 the other Party's solvency within that time.
- 1.4. Upon termination of the Agreement due to Customer failure to make or by default in the performance of Customer obligations, accelerate all remaining payments due for the term outlined in the Order Agreement shall accelerate and become due immediately. Any prepaid fees shall not be refunded. Upon termination or expiration of this Agreement for any reason, the Customer, at Customer's option, will either (1) destroy all copies of the Software, 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 software license fees will be refunded, or credit provided

If Customer's Subscription expires without renewal or is terminated, the Customer will no longer have the right to access and use the Software or the online subscriber portal.