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**1.0 DEFINITIONS.**

“**CloudBolt**” means CloudBolt Software, Inc.

“**Connector**” means a component of the Software that connects the Software to technologies and resources the Software manages.

“**Documentation**” means that documentation that is made generally available by CloudBolt to its licensees of the Software and which is provided to Licensee by or on behalf of CloudBolt with the Software, as which may be revised by CloudBolt from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.

“**Intellectual Property Rights**” means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

“**Licensee**” means the entity or individual identified in the Quote/Order Form.

“**License Fees**” has the meaning ascribed to such term in Section 4.2.

“**License Key**” means a serial number that enables Licensee to activate and use the Software for the License Term and quantity of Connectors and VMs licensed.

“**License Term**” has the meaning ascribed to such term in Section 10.1.

“**Maintenance and Support**” or “**M&S**” means CloudBolt’s maintenance and support services as set forth on Exhibit A hereto.

“**Open Source Software**” or “**OSS**” means software components that are licensed under a license approved by the Open Source Initiative (“OSI”) or similar open source or freeware license.

“**Quote/Order Form**” or “**QOF**” means quotation and/or order form executed by the Licensee and incorporated herein by reference. The QOF sets forth and identifies the Software, the Connectors, the License Term, the number of VMs, the fees and other specifics and terms of this Agreement not set forth or identified in the body of this Agreement.

“**Server**” or “**VM**” means any physical computer, hardware based device, virtual machine or cloud compute instance, that is capable of running an operating system or serves as a software container that can run a virtualized instance of an operating system.

“**Software**” means the object or interpreted code of the computer software listed in the QOF, together with any fixes, updates or other software code relating to the foregoing that is provided to Licensee pursuant to Maintenance and Support and that is not subject to a separate license agreement.

“**Third Party Agent**” means a third party outsourcer providing information technology services for Licensee’s internal use, pursuant to a written contract.

**2.0 LICENSE GRANT.**

2.1 **Scope of License.** Subject to the terms and conditions of this Agreement, CloudBolt grants Licensee a limited, non-exclusive, non-transferable license to use the Software, only for Licensee’s internal operations and during the License Term, in accordance with (a) the Documentation; (b) the number of VMs and Connectors listed on the QOF and for which have the applicable fees have been paid; and (c) other applicable limitations, if any, set forth in the QOF. Except for the express licenses granted in this Section 2.0, no other licenses are granted by implication, estoppel or otherwise.

2.2 **Third Party Agent Use.** Subject to the terms and conditions of this Agreement, CloudBolt grants Licensee a non-exclusive, non-transferable license to permit Licensee’s Third Party Agents to access, use and/or operate the Software on Licensee’s behalf for the sole purpose of delivering outsourcing services to Licensee. Licensee acknowledges and agrees that it is fully responsible for its Third Party Agents’ compliance with terms and conditions of this Agreement and that any breach of the terms and conditions of this Agreement by a Third Party Agent shall be deemed to be a breach of this Agreement by Licensee.

2.3 **Permitted Copies.** Licensee may make one copy of the Software for archival purposes only. The copy shall: (a) be kept within Licensee’s possession or control; (b) include all titles, trademarks, and copyright and restricted rights notices in the original; and (c) be subject to this Agreement. Licensee may not otherwise copy the Software without CloudBolt’s prior written consent.

2.4 **Open Source Software.** CloudBolt may provide OSS with the Software. Any OSS supplied by CloudBolt is included for use at Licensee's option. CloudBolt shall provide information regarding such OSS in accompanying README or text files, in the Documentation, on a web page, upon request or by some other reasonable means, as CloudBolt deems appropriate. If Licensee elects to use the CloudBolt supplied OSS, then such use shall be governed by such third party's license agreement and not by this Agreement. Licensee represents and warrants that prior to use of the CloudBolt supplied OSS, Licensee will have accepted and agreed to the applicable third party license for such software.

### 3.0 RESTRICTIONS; OWNERSHIP.

3.1 **Restrictions.** Licensee acknowledges that the Software and the structure, sequence, organization, user interface and source code of the Software constitute valuable trade secrets of CloudBolt. Accordingly, except as expressly authorized by CloudBolt in writing, Licensee will not and will not permit any third party to: (a) sell, lease, license, distribute, sublicense or otherwise transfer in whole or in part the Software or Documentation to any third party; (b) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part; (c) copy the Software, except for archival purposes, as set out in Section 2.3; (d) circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Software as described in this Agreement; (e) use any Connectors that are not described, or exceed the number of VMs listed, in the QOF; (f) translate, modify or create derivative works based upon the Software; (g) permit any use of or access to the Software by any third party other than Third Party Agents as set forth in Section 2.2; (h) remove any product identification, proprietary, copyright or other notices contained in the Software; (i) operate the Software on behalf of or for the benefit of any third party; including the operation of any service that is accessed by a third party; or (j) benchmark the operation of the Software without CloudBolt's prior written consent. Licensee acknowledges and agrees that Licensee may not use the Software in conjunction with, or with the assistance of, any codes, keys, mechanisms, or hardware or software components that are meant to circumvent the protection and that are supplied to Licensee by someone other than CloudBolt or one of its authorized distributors.

3.2 **Decompilation.** Licensee hereby waives any right it may have under any jurisdiction to reverse engineer the Software provided, however, if European Community law is applicable, the restrictions in this Section 3.2 are limited so that they prohibit such activity only to the maximum extent such activity may be prohibited without violating the EC Directive on the Legal Protection of Computer Programs. Notwithstanding the foregoing, prior to any such legally excused decompiling, disassembly or reverse engineering of the Software, Licensee must first issue a written request to CloudBolt for information or assistance and Licensee shall refrain from decompiling, disassembling, or otherwise reverse engineering any of the Software unless CloudBolt cannot, or fails, to comply with such request within a commercially reasonable period of time.

3.3 **Ownership.** The Software and Documentation, all copies and portions thereof, and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of CloudBolt and its licensors. Licensee's rights to use the Software and Documentation shall be limited to those expressly granted in this Agreement and any applicable QOF. No other rights with respect to the Software or any related Intellectual Property Rights are implied. Licensee is not authorized to use (and shall not permit any third party to use) the Software, Documentation or any portion thereof except as expressly authorized by this Agreement or the applicable QOF.

### 4.0 ORDERS, PAYMENT.

4.1 **Purchase Order.** If Licensee requires a purchase order to be issued prior to its payment of any invoiced fees, Licensee will provide a purchase order upon Licensee's execution of the initial QOF and upon Licensee's execution of any subsequent QOF. Notwithstanding any language to the contrary therein, no terms or conditions stated in Licensee's purchase order or any other ordering document will be incorporated into, form any part of, add to or amend or modify the Agreement and all such terms or conditions will be null and void.

4.2 **Payment.** Licensee shall pay the license fees set forth in the QOF (the "License Fees") in accordance with the terms therein. Unless otherwise set forth in the QOF, the License Fees are due within thirty (30) days of the date of each invoice. All License Fees are exclusive of any taxes, duties, or similar charges imposed by any government. Licensee shall pay or reimburse all federal, state, dominion, provincial, or local sales, use, personal property, excise, value added, withholding or other taxes, fees, or duties relating to the transactions contemplated by this Agreement. All amounts that are not paid when due shall be subject to a late charge equal to one and one-half percent (1.6%) per month, or, if less, the maximum amount allowed by applicable law. If payment of any License Fee is overdue, CloudBolt may also suspend performance until such delinquency is corrected.

### 5.0 AUDIT RIGHTS.

5.1 **Records.** For a period of two (2) years from the expiration or any earlier termination of this Agreement, Licensee agrees to maintain accurate records of the use of the Software sufficient to demonstrate Licensee's compliance with the terms of this Agreement and all QOFs.

5.2 **Audit Rights.** During the period in which the Licensee is obligated to maintain such records, CloudBolt, or its third party auditor, may, upon reasonable notice to Licensee and on not more than one occasion in any 12-month period (provided that if an audit reveals that if Licensee has breached any provision of this Agreement then such audit shall not count toward the limitation of the number of audits that may be conducted in a given period), audit such records to verify that Licensee has: (a) used the Software solely in the manner authorized herein; (b) paid all applicable fees; and (c) otherwise complied with the terms of this Agreement and all QOFs. Audits will be conducted during normal business hours and CloudBolt will use commercially reasonable efforts to minimize the disruption of Licensee's normal business activities. Licensee agrees to cooperate with CloudBolt and/or its third-party auditor and will promptly pay directly to CloudBolt any underpayments revealed by such audit. Licensee will promptly reimburse CloudBolt for all reasonable costs and expenses incurred by CloudBolt for such audit if: (i) such audit reveals an underpayment by Licensee of more than five percent (5%) of the fees payable by Licensee to CloudBolt for the period audited; or (ii) such audit reveals Licensee has materially failed to maintain accurate records of Licensee's use of the Software.

5.3 **Electronic Reporting.** The Software may periodically transmit analytical information and data about how the Software is being used in Licensee's environment. This information consists of only non-attributable, non PII, non PCI-regulated data and information, such as the license serial number, the Software's unique identifier, a total count of managed resources, Connectors or total count of users, and other pieces of data intended to help CloudBolt improve the Software. Licensee acknowledges and agrees that CloudBolt shall have the unrestricted right to use, distribute, market, exploit and display any information, analysis, statistics and other data generated by Licensee's use of the Software, including compilation of aggregated statistics about the Software; provided, however, that CloudBolt shall not publicly disclose or distribute any such data unless such data is in an aggregated form that would not permit a third party to identify the data as associated with Licensee.

## 6.0 MAINTENANCE AND SUPPORT.

6.1 **M&S.** CloudBolt shall provide Maintenance and Support to Licensee during the License Term at no additional fee.

6.2 **Community Support.** As part of the Maintenance and Support, Licensee is entitled to community support and to access CloudBolt's community support portal and knowledge base at no additional charge. Community support is access to CloudBolt's public forum on its support portal where CloudBolt customers are able to review existing discussions, and registered licensees are able to participate in community discussions related to various aspects of the Software. CloudBolt reserves the right to moderate all support forums. Violation of CloudBolt terms of use may result in a user being denied access to CloudBolt community support. The knowledge base is designed to provide 24x7x365 access to comprehensive information on known issues, workarounds, tips and tricks via the community support portal. CloudBolt's technical team regularly creates timely knowledge base articles to assist customers in the self- investigation and resolution of issues and queries.

## 7.0 WARRANTIES.

7.1 **Software Warranty.** CloudBolt warrants that the Software will, for a period of ninety (90) days following issuance of the License Key ("**Warranty Period**"), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times and in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than CloudBolt or its authorized representative. CloudBolt will, at its own expense and as its sole obligation and Licensee's exclusive remedy for any breach of the foregoing warranty, either replace the applicable Software or correct any reproducible error in the Software reported to CloudBolt by Licensee in writing during the Warranty Period. If CloudBolt determines that it is unable to correct the error or replace the Software, CloudBolt will refund to Licensee the license fees actually paid by for the applicable Software and Licensee's right to use such Software will terminate.

7.2 **Maintenance and Support.** CloudBolt warrants that Maintenance and Support shall be performed in a professional and workmanlike manner by skilled and proficient personnel.

7.3 **Disclaimer of Warranties.** Software that is provided to Licensee on a trial, demonstration, product extensions, proof of concept and/or evaluation basis ("**Sample Code**"), and information and Software Maintenance provided by CloudBolt as part of M&S, is provided on an "AS IS", "WHERE IS" basis, without warranty of any kind, including without limitation any warranties that the Sample Code is free of defects, merchantable, fit for a particular purpose or non-infringing. Licensee bears the entire risk as to the quality and performance of Sample Code. THE EXPRESS WARRANTIES IN SECTIONS 7.1 AND 7.2 ABOVE IS IN LIEU OF AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CLOUDBOLT AND ITS LICENSORS DISCLAIM, ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE)

REGARDING OR RELATING TO THE SOFTWARE, THE DOCUMENTATION, M&S OR ANY OTHER MATERIALS OR SERVICES FURNISHED, PROVIDED OR OTHERWISE MADE AVAILABLE. CLOUDBOLT AND ITS LICENSORS AND PARTNERS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED. THAT IT WILL BE FREE FROM DEFECTS, THAT ALL ERRORS WILL BE CORRECTED OR THAT THE SOFTWARE WILL MEET (OR IS DESIGNED TO MEET) LICENSEE'S BUSINESS REQUIREMENTS.

## **8.0 INDEMNIFICATION.**

**8.1 Indemnification by CloudBolt.** CloudBolt will, at its expense, defend or settle and will hold Licensee harmless from any claim, action or allegation brought against Licensee that the Software and Documentation provided by CloudBolt infringes any US or EU copyright or trade secret ("**Claim**") and will pay any final judgments awarded or settlements entered into, provided that Licensee notifies CloudBolt in writing within thirty (30) days of the discovery of any such Claim, and gives CloudBolt the authority to proceed as contemplated herein. CloudBolt will have the exclusive right to control and defend any such Claim and make settlements thereof at its own discretion, and Licensee may not settle or compromise such Claim, except with prior written consent of CloudBolt. Licensee will give such assistance and information as CloudBolt may reasonably require to settle or defend all Claims. In the event any such Claim is brought or threatened, or if in the opinion of CloudBolt is likely to become, the subject of a Claim, CloudBolt may, at its sole option and expense: (a) procure for Licensee the right to continue to use the Software or infringing part thereof; (b) modify or amend the Software or infringing part thereof, or replace the Software or infringing part thereof with other software having substantially the same or better capabilities; or (c) if neither of the foregoing is commercially practicable, CloudBolt may terminate the license and this Agreement with respect to the infringing part of the Software and CloudBolt shall refund to Licensee the portion of the pre-paid License Fees attributable to the remainder of the License Term.

**8.2 Exclusions.** CloudBolt will have no obligation or liability under Section 8.1 for any Claim based on: (a) any unauthorized use or reproduction of the Software or Documentation by the Licensee; (b) use of other than the most recent update of the Software if infringement could have been avoided by use of the most current release to the extent that the most recent release has been provided to the Licensee; (c) use of the Software in combination with products, equipment, software or data not provided by CloudBolt, if such infringement would have been avoided in the absence of such combination; (d) compliance by CloudBolt with specifications or instructions supplied by Licensee; (e) use or incorporation in the Software of any design, technique or specification supplied by Licensee if the infringement would not have occurred but for such use or incorporation; (f) modification of the Software by the Licensee or a third party; and (g) Sample Code or Open Source Software. The provisions of Section 8.1 and 8.2 state CloudBolt's entire liability and Licensee's sole and exclusive remedy for any violation or infringement of Intellectual Property Rights.

**8.3 Indemnification by Licensee.** Licensee shall defend, indemnify and hold harmless CloudBolt and its officers, directors, employees and shareholders from and against any and all loss, damage, settlement, costs or expense (including legal expenses and expenses of other professionals), as incurred, resulting from, or arising out of: (a) Licensee's use of the Software, Documentation or any material furnished or provided by CloudBolt except to the extent CloudBolt is responsible under Section 8.1; and (b) breach by Licensee of Section 2.0 or 3.0.

## **9.0 LIMITATION OF LIABILITY.**

**9.1 Limitation of Liability.** EXCEPT FOR A BREACH OF SECTION 11.0, IN NO EVENT SHALL A PARTY BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, LOSS OF USE, LOSS OF DATA, COMPUTER FAILURE OR MALFUNCTION, HOWEVER CAUSED, AND WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES. IN NO EVENT SHALL CLOUDBOLT'S CUMULATIVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR LICENSEE'S USE OF THE SOFTWARE EXCEED THE AMOUNT OF LICENSE FEES RECEIVED BY CLOUDBOLT FROM LICENSEE PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE CONSIDERATION EXCHANGED HEREUNDER IS BASED IN PART UPON THE ABOVE LIMITATIONS, AND FURTHER AGREE THAT SUCH LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**9.2 Further Limitations.** CloudBolt's licensors shall have no liability of any kind under this Agreement and CloudBolt's liability with respect to any third party software embedded in the Software shall be subject to Section 9.1. Licensee may not bring a claim under this Agreement more than eighteen (18) months after the cause of action arises.

## **10.0 TERM; TERMINATION.**

**10.1 License Term.** This Agreement shall commence on the date CloudBolt issues the first License Key to Licensee and will continue in effect for the duration of the Initial License Term and any renewal term (each, a "License Term") unless otherwise terminated in accordance with Section 10.2 below. The Initial License Term shall be the term set

forth on the Order Form. Unless either party provides thirty (30) days prior written notice to the other party of its intent not to renew an Order Form, upon the expiration of a License Term, the Order Form will automatically renew for a term equal in duration to the Initial License Term of such Order Form. For any License Term after the Initial License Term, CloudBolt reserves the right to change or reasonably increase the rates, applicable charges and usage policies and to introduce new charges for the renewing Order Form by providing Licensee written notice thereof (which notice may be provided by e-mail) at least thirty (30) days prior to the License Term for which the changes or increases will take effect.

**10.2 Termination for Breach.** CloudBolt may terminate this Agreement in its entirety effective immediately upon written notice to Licensee if: (a) Licensee is in breach any provision in Section 2.0 or 3.0 and does not cure the breach within ten (10) days after receiving written notice thereof from CloudBolt; (b) Licensee fails to pay any portion of the License Fees under an applicable QOF within ten (10) days after receiving written notice from CloudBolt that payment is past due; (c) Licensee is in breach of any other provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from CloudBolt; or (d) Licensee commits a material breach that is not capable of being cured. Licensee may terminate this Agreement in its entirety effective immediately upon written notice to CloudBolt if (a) CloudBolt is in breach of any other provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from Licensee; or (b) CloudBolt commits a material breach that is not capable of being cured.

**10.3 Termination for Insolvency.** A party may terminate this Agreement in its entirety effective immediately upon written notice to the other party if the other party if: (a) terminates or suspends its business; (b) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors; or becomes subject to any bankruptcy or insolvency proceeding or the control of a trustee, receiver or similar authority.

**10.4 Effect of Termination.** Licensee acknowledge and agree that that if CloudBolt has the right to suspend or terminate this Agreement, CloudBolt may do so remotely through the use of the License Key or by other means. In the event of termination of this Agreement, Licensee acknowledges and agrees that CloudBolt shall not be liable to Licensee because of such termination for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases or commitments in connection with Licensee's business or goodwill. If a party terminates this Agreement under this Section 10: (a) all license rights to all Software granted to Licensee under this Agreement will immediately cease to exist; and (b) Licensee must promptly discontinue all use of all Software, and (destroy all copies of the Software and all License Key(s)) and return, or if requested by CloudBolt, destroy, any related CloudBolt Confidential Information in Licensee's possession or control and upon request certify in writing to CloudBolt that Licensee has fully complied with these requirements. If Licensee terminated this Agreement in accordance with Section 10.2, then CloudBolt shall refund to Licensee the portion of the pre-paid License Fees attributable to the remainder of the License Term. Sections 1 (Definitions), 2.4 (Open Source Software), 3.0 (Restrictions; Ownership), 5.1 (Records), 5.2 (Audit Rights), 7.3 (Disclaimer of Warranties), 9.0 (Limitation of Liability), 10.0 (Termination), 11.0 (Confidential Information) and 12.0 (Miscellaneous) will any survive termination of this Agreement.

**11.0 CONFIDENTIAL INFORMATION.** "**Confidential Information**" shall mean the terms of this Agreement, and all technical and other business information of a party ("Discloser") that are marked as confidential in writing or, if disclosed orally, is identified as confidential at the time of disclosure or is of an inherently confidential nature such that a reasonable person would know the information is confidential. The Software and the Documentation shall be deemed confidential information of Cloudbolt. A party ("Recipient") shall not use Discloser Confidential Information except in the exercise of its rights granted herein and shall not to disclose such Confidential Information to any third party. Without limiting the foregoing, Recipient shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Discloser Confidential Information disclosed to it by Discloser under this Agreement. Recipient agrees that it will make Discloser Confidential Information available only on a "need to know" basis and only to its employees and representatives who are bound in writing to protect the confidentiality of such Confidential Information on terms no less restrictive than those set forth in this Agreement. Recipient shall promptly notify Discloser of any actual or suspected misuse or unauthorized disclosure of Discloser Confidential Information, and, upon the request, shall promptly return all copies of Discloser Confidential Information within its possession or control. Notwithstanding the foregoing, Recipient shall have no liability to Discloser with regard to any Discloser Confidential Information which Recipient can demonstrate: (a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Recipient; (b) was known to Recipient without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (c) was disclosed with the prior written approval of Discloser; (d) was independently developed by Recipient without any use of the Confidential Information, as demonstrated by files created at the time of such independent development; or (e) is required to be disclosed by law or pursuant to the order or requirement of a court, administrative agency or other governmental body; provided that Recipient provides prompt written notice thereof to Discloser to enable it to seek a protective order or otherwise prevent or restrict such disclosure.

## **12.0 MISCELLANEOUS.**

**12.1 Force Majeure.** Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquakes, fire and explosions, but the inability to meet financial obligations is expressly excluded. In addition, Licensee is aware that: (a) the Software is based on a portfolio of third party technology products, industry standards and/or official standards; and (b) the hypervisors, server automation software, hardware, framework software and storage and network software that the abstraction layer of the Software that connects to; are constantly evolving and changing or may be even be succeeded by yet unknown new products or techniques. Therefore performance interruptions or incompatibilities due to such cause(s) are excluded from any liability of CloudBolt to Licensee and are a form of force majeure.

**12.2 Waiver.** Any waiver of the provisions of this Agreement or any agreement related to this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or agreement related to this Agreement, or its rights or remedies at any time will not be construed nor deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action.

**12.3 Applicable Law and Jurisdiction.** This agreement will be governed by and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflict of laws. The parties acknowledge and agree that this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

**12.4 Severability.** If any term, condition, or provision in this Agreement or Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties will endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

**12.5 Independent Parties.** The parties will at all times be independent parties and will present themselves to all other parties as such. Nothing in this Agreement will be construed to make either party, and each party agrees that it is not an agent, employee, franchisee, joint venture or legal representative of the other party. Each party hereto is an independent contractor. A party does not have, and shall not represent itself to have, any authority to bind the other party or act on its behalf.

**12.6 Compliance with Laws; Export Control; Government Regulations.** Each party shall comply with all laws applicable to the actions contemplated by this Agreement. Licensee acknowledges that the Software is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. Licensee represents that: (a) it is not, and is not acting on behalf of: (i) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (ii) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (b) it will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by the U.S. Government shall be governed solely by the terms and conditions of this Agreement.

**12.7 Notices.** Any notices required or permitted under the terms of this Agreement or required by law will (unless otherwise provided) be in writing and will be delivered in person, sent by registered mail or fax or delivered via email (with confirmation of delivery) to the respective contact persons and addresses indicated in the QOF, as may be updated from time to time upon notification by one party to the other party. Any such notice will be considered to have been given at the time of actual delivery in person or, if sent by fax, at the time mentioned on the transmission result report, or within five (5) days after it was mailed in the manner specified above.

**12.8 Equitable Relief.** Each party acknowledges that a breach of Section 2.0, 3.0 or 11.0 will cause the non-breaching party irreparable damage, for which the award of damages would not be adequate compensation and therefore each party agrees that the non-breaching party is entitled to seek prompt injunctive relief to enjoin such breaching party from any and all acts in violation of those provisions without the necessity of posting a bond or other security. Such injunctive relief remedy shall be cumulative and not exclusive, and the non-breaching party may seek any other relief available at law or in equity.

**12.9 High Risk Activities.** The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Accordingly, CloudBolt and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities. Licensee assumes all risk of loss or damage for use of the Software in High Risk Activities.

**12.10 Feedback.** In connection with M&S, the CloudBolt knowledge base, community forum(s) or Licensee's use of the Software, Licensee may provide suggestions, enhancement requests, recommendations or other feedback ("**Feedback**"). Licensee hereby grants to CloudBolt a non-exclusive, transferable, sublicensable, world-wide, perpetual, royalty-free, irrevocable license to reproduce, create derivative works from, distribute, perform, display and otherwise use Feedback (including, but not limited to, incorporating it into the Software) and without any confidentiality obligation in any manner whatsoever.

**12.11 Assignment.** This Agreement may not be assigned, subcontracted or transferred by Licensee, in whole or in part, whether voluntary, by operation of contract, law or otherwise, without the prior written consent of CloudBolt. Any attempted assignment or transfer in violation of the foregoing will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

**12.12 Third Party Rights.** Other than as expressly set out in this Agreement, this Agreement does not create any rights for any person who is not a party to it, and no person who is not a party to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.

**12.13 Entire Agreement, Order of Precedence.** This Agreement (including all Quote/Order Forms, which are incorporated herein by reference), constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral or written communications between the parties relating in any way to the subject matter hereof. No terms or conditions of any purchase order, acknowledgement or other business form that Licensee may use in connection with the acquisition or licensing of the Software and related services will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of CloudBolt to object to such terms, provisions or conditions. In the event of a conflict between the terms of this Agreement and a QOF, this Agreement shall prevail unless the QOF expressly states the provisions in this Agreement over which it will preside. Notwithstanding the foregoing, if there is a separate signed agreement between Licensee and CloudBolt governing Licensee's use of the Software the order of precedence shall be: (a) the signed agreement; (b) this Agreement; and (c) the QOFs.

**Exhibit A**  
**Maintenance and Support Terms**

**1. Definitions**

**"Business Hours"** or **"Business Days"**: means Monday Through Friday 8:00AM to 8:00PM Eastern time, exclusive of Federal Holidays.

**"Error"** means any verifiable and reproducible failure of the Software to materially conform to the Documentation. Notwithstanding the foregoing, the term "Error" shall not include any failure of the Software to materially conform to the Documentation that: (a) results from Licensee's misuse or improper use of the Software; (b) does not materially affect the operation and use of the Software; (c) results from the modification or addition to the Software that is not part of the Software that CloudBolt makes generally available; or (d) results from Licensee's failure to implement in a timely manner any Software Maintenance.

**"M&S Fees"** means those fees that are applicable to the M&S as specified in a Quote/Order Form

**"M&S Period"** means the annual period for which Licensee has purchased M&S and any subsequent renewal periods.

**"Named Contacts"** means the individual(s) identified by Licensee as having authority to receive M&S on behalf of Licensee.

**"Response Times"** shall mean the time between the Licensee completes and logs a support ticket with CloudBolt to request interactive technical support and the time CloudBolt responds to such request. Response Times are measured in CloudBolt Business Hours.

**"Severity"** means the relative impact an Error has on the production use of the Software, as determined by CloudBolt. The following Severity levels are applicable to all Software.

**"Severity One"** means Licensee's use of the Software is completely down, with no immediately available workaround. The Software will not start, or is non-functional in all respects and is negatively affecting or impairing the remote 3rd-party provisioning of virtual instances. Severity One support requires Licensee to have dedicated resources available to work on the issue on an ongoing basis during Licensee's contractual hours.

**"Severity Two"** means when major functionality is severely impaired. Although operations may continue in a restricted fashion, a Licensee's ability to use the Software has been significantly impaired, with no functional workaround possible. For example, the Software will start, but new instances cannot be provisioned.

**"Severity Three"** describes a partial Software outage, affecting a non-critical aspect of the functionality. In these cases, either a workaround exists, or the functionality impacted is not required for typical production use. For example, users are not able to provision new instances, but administrators will be able to.

**"Severity Four"** involves any general usage questions, or issues related to user interface anomalies, artifacts, or rendering issues. An example of this can include a Software user interface page looking different between two different browsers.

**"Software Maintenance"** means the provision of Major Releases, Minor Releases and Maintenance Releases, if any, to the Software, as well as any corresponding Documentation. Licensee's use of such Major Releases, Minor Releases and Maintenance Releases shall be subject to the terms of the Agreement.

**"Maintenance Release"** means a generally available release of the Software that typically provides maintenance corrections or fixes only, designated by CloudBolt by a change in the digit to the right of the second decimal point (e.g. Software 2.0 >> Software 2.0.1).

**"Major Release"** means a generally available release of the Software that contains functional enhancements or extensions, designated by CloudBolt as a change in the digit to the left of the first decimal point (e.g. Software 2.0 >> Software 3.0).

**"Minor Release"** means a generally available release of the Software that introduces a limited amount of new features and functionality, designated by CloudBolt as a change in the digit to the right of the decimal point (e.g. Software 2.0 >> Software 2.1).

**2. Service Terms**

**2.1 Provision of M&S.** CloudBolt support plans, access methods and Response Times are described on **Attachment I** hereto. CloudBolt shall provide Software Maintenance and support for Error Severity at the support plan level purchased during the M&S Period, subject to Section 2.2 of this **Exhibit A** below. CloudBolt will use reasonable efforts to respond to a request for interactive technical support within the Response Times stated in the applicable Support Plan. M&S shall be delivered solely to the Named Contact(s) identified by Licensee. CloudBolt is not responsible for lost data or information in the event of Errors or other malfunction of the Software or computers on which the Software is used.

**2.2 Supported Releases.** Software will be supported according to the following schedule: (a) a Major Release will be supported for a period of twelve (12) months after the commercial release of the next Major Release, but no longer than 2 years and provided always that Licensee makes use of the last Minor Release and Maintenance Release of the



first mentioned Major Release; (b) a Minor Release will be supported for a period of six (6) months after the commercial release of the next Minor Release, provided always that Licensee makes use of the last Maintenance Release of the related Minor release. Non-current Software as per the terms above will not be supported.

2.3 **Proper use of Software.** CloudBolt's obligation to provide M&S is contingent upon the Licensee's proper use and application of the Software. Problems caused by any of the following situations are not included in the M&S but may be addressed separately upon request at CloudBolt's then-current hourly rates for consulting subject to then-current standard consulting services terms and conditions:

(a) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media not furnished by CloudBolt; operation of the Software with other media not in accordance with CloudBolt specifications; or causes other than ordinary use; (b) improper installation by Licensee or use of the Software that deviates from any operating procedures as specified in the Documentation; (c) actual or attempted modification, alteration or addition to the Software undertaken by Licensee or any third party; (d) the use of third-party software or hardware not specified in the Documentation; (e) the failure of Licensee to install and implement Software Maintenance; (f) any customized deliverables created by CloudBolt for Licensee as part of consulting services; (g) installing and/or operating the Software in non-supported environments or versions of operating systems, utilities and databases; or (h) any technical issue unrelated to an Error.

2.4 **Change in Services.** CloudBolt may change or discontinue the scope of M&S at any time without notice. CloudBolt will provide notification of discontinuance either directly to Licensee or through an announcement posted on the CloudBolt website, at least 180 days in advance. CloudBolt will continue to provide M&S during the 180 days or for the remainder of the then current annual M&S Period, whichever is longer.

2.5 **Open Source Software.** M&S is not provided for Open Source Software.

**3. Licensee Responsibilities.** CloudBolt's obligations regarding M&S are subject to the following:

(i) Licensee agrees to receive from CloudBolt communications via e-mail, telephone, and other formats, regarding renewals, quotes, and other topics relating to M&S (such as communications concerning an Error or other technical issues and the availability of new releases). Licensee's Named Contacts shall cooperate to enable CloudBolt to deliver the M&S;

(ii) Licensee will ensure that all Named Contact(s) have a reasonable understanding of the Software and the system that it is operating on, and shall be fully aware of Licensee's obligations regarding Confidential Information. Licensee is solely responsible for the use of the Software by its personnel and shall properly train its personnel in the use and application of the Software;

(iii) Licensee shall promptly report to CloudBolt all Errors with the Software, and shall implement any corrective procedures provided by CloudBolt reasonably promptly after receipt; and

(iv) Licensee is solely responsible for protecting and backing up the data and information stored on the computers on which the Software is used and should confirm that such data and information is protected and backed up before contacting CloudBolt. Licensee shall be solely responsible for any and all restoration and reconstruction of lost or altered files, data, or programs. Licensee will maintain and implement a complete data backup and disaster recovery plan. Licensee shall be solely responsible for any and all security of its confidential, proprietary and/or classified information.

**4. Termination.** CloudBolt may suspend performance of M&S if Licensee fails to fulfill its responsibilities in Section 3 of this Exhibit A. CloudBolt may terminate M&S if such failure continues for thirty (30) days after CloudBolt's written notice of such failure. CloudBolt may terminate M&S at any time if it is discovered that Licensee is currently in breach of the Agreement.

**ATTACHMENT I To Exhibit A**  
**CloudBolt Support Plan, Response Times and Access Methods**

**Support Plan** CloudBolt's support is defined as follows:

	<b>Standard</b>	<b>24x7</b>	<b>Premier</b>
Support Hours	8 AM – 8 PM ET*	24x7	24x7
Unlimited Online Knowledge Base Access	Included	Included	Included
Unlimited Online Community Support Access	Included	Included	Included
Number of Named Contacts**	Four (4)	Six (6)	Eight (8)

\* Excludes Weekends and Federal US Holidays

\*\* Online, Email and Phone support access for Named Contacts. Unlimited number of support cases opened by Named Contacts.

**Initial Response**

After the Customer creates a case, CloudBolt will use commercially reasonable efforts to respond to Customer within the target response time indicated below for the corresponding severity level and support package.

<b>Severity</b>	<b>Standard</b>	<b>24x7</b>	<b>Premier</b>
1	1 business hour	1 hour	30 minutes
2	2 business hours	2 hours	1 hour
3	4 business hours	4 business hours	2 business hours
4	1 business day	8 business hours	8 business hours

**Resolution Process**

CloudBolt will address and resolve issues that are within the control of CloudBolt based on the resolution process indicated below for the corresponding severity level. If Customer purchases a Premier Support Package, CloudBolt will provide notification of a target resolution or workaround plan, updates, and escalation based on the process for the corresponding severity level specified below, unless specified otherwise in the Agreement.

<b>Severity</b>	<b>Standard &amp; 24x7</b>	<b>Premier</b>			
		<b>Notification of Resolution Target</b>	<b>Updates</b>	<b>Escalation to CloudBolt Management</b>	<b>Final Resolution</b>
1	Investigate the issue & work continuously until the error is fixed or a temporary workaround is implemented.	Within 4 hours after confirmation the issue is within CloudBolt control	Every hour	If the issue is not resolved within 8 hours after confirmation the issue is within CloudBolt control	If temporary workaround works and permanent code change is required, a dedicated sustaining engineer will be assigned to work on a software fix. A software fix in a form of a patch will be delivered based on level of effort for the fix.
2	Investigate the issue & work during standard business hours until the error is fixed or a temporary workaround is implemented.	Within 48 hours after confirmation the issue is within CloudBolt control	Every 4 hours	If the issue is not resolved within 3 business days after confirmation the issue is within CloudBolt control	If temporary workaround works and permanent code change is required, a dedicated sustaining engineer will be assigned to work on a software fix. A software fix in a form of a patch will be delivered based on level of effort for the fix.
3	Investigate the issue & work during standard business hours. Typically fixed in next release.	Within 4 days after confirmation the issue is within CloudBolt control	Every day	If the issue is not resolved within 5 business days after confirmation the issue is within CloudBolt control	If temporary workaround works and permanent code change is required, a dedicated sustaining engineer will be assigned to work on a software fix. A software fix in a form of a patch will be delivered with the next product/version release.

4	Does not require immediate response and is typically a documentation or configuration question.	Within 7 days after confirmation the issue is within CloudBolt control	Every day	As agreed by the parties	N/A
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Temporary resolution and workaround will be measured from the time our support engineers have access to customer’s relevant third party engineers and the CloudBolt platform. Our response times will be extended by the time in excess of fifteen minutes while the Customer provides the following: (a) access to customer’s CloudBolt environment to our Premier Support engineers within fifteen minutes (15 mins) of our initial receipt of the Support request; and (b) availability and access to the relevant third party engineers within fifteen minutes (15 mins) of our initial receipt of the Support request.

**Support Access Methods**

All access methods are subject to the Licensee’s account being in good standing, and are subject to the Business Hour and Business Day restrictions as defined above, in addition to Licensee’s purchased support level.

**Email** Support requests may be sent to support@cloudboltsoftware.com. If submitting an issue via this method, Licensee must include the observed Severity Level in the email subject (e.g. “Subject: Severity 1 Application will not start”)

**Web** The CloudBolt self--service support portal is accessible under the “Support” section on CloudBolt’s Support Home page: <http://support.cloudboltsoftware.com>. In the self--service portal, Licensee is able to self--select the observed Severity Levels. Although any user of Licensee is able to submit a ticket via the Self--Service portal, only Named Contacts will receive a response. To enter the Self-- Service Portal, Licensee will need a user ID and password.

**Telephone** Named Contacts may call CloudBolt Support at 703.665.1060.