



## US Government End User Agreement

THIS IS A LEGAL AGREEMENT BETWEEN CUSTOMER AND THE CLOUD SOFTWARE GROUP, INC. ENTITY REFERENCED IN THE ORDER THAT GOVERNS CUSTOMER'S ACCESS AND USE OF COMPANY PRODUCTS. BY ACCESSING AND/OR USING THE PRODUCTS, CUSTOMER IS AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. THIS AGREEMENT DOES NOT APPLY TO THIRD PARTY PRODUCTS SOLD SEPARATELY WHICH SHALL BE SUBJECT TO THE TERMS OF THE THIRD PARTY PROVIDER.

*THIS END USER AGREEMENT FOR THE US GOVERNMENT ("AGREEMENT") IS PROVIDED PURSUANT TO SECTION 12.212 OF THE FEDERAL ACQUISITION REGULATION (FAR), AND APPLICABLE TO PRODUCTS ACQUIRED FROM CITRIX SYSTEMS, INC. OR CLOUD SOFTWARE GROUP FEDERAL, INC., BOTH WHOLLY OWNED SUBSIDIARIES OF CLOUD SOFTWARE GROUP, INC., BY OR ON BEHALF OF UNITED STATES FEDERAL GOVERNMENT DEPARTMENTS, AGENCIES, ADMINISTRATIONS, OR OTHER INSTRUMENTALITIES ("GOVERNMENT" or "GOVERNMENT END USER(S)"), OR BY CONTRACTORS ON BEHALF OF, FOR TRANSFER OR RESALE TO, OR FOR THE BENEFIT OF GOVERNMENT END USERS (COLLECTIVELY, WITH GOVERNMENT END USERS, "GOVERNMENT CUSTOMER").*

### 1. **Definitions**

- 1.1. "Affiliate" means with respect to a party, any entity which directly or indirectly controls, is controlled by, or is under common control with such party, where "control" means the power, directly or indirectly, to direct, or to cause the direction of, the management and policies of an entity, through majority ownership of voting securities or equity interests.
- 1.2. "Agreement" means the End User Agreement and any other documents incorporated by reference, including an Order.
- 1.3. "Authorized Reseller" means Company's authorized resellers and distributors.
- 1.4. "Authorized User" means Customer's employees, agents, contractors, consultants, or other third parties permitted under the applicable license model, and who have agreed in writing to be bound by terms at least as protective of Licensor as those in this Agreement. Authorized User specifically excludes a third party that deploys, operates, and manages the Software in an environment owned or controlled by such third party on Customer's behalf.
- 1.5. "Business Unit" means a Company operating unit supporting a specific Product.
- 1.6. "Cloud Services" means software-as-a-service offerings made available via a remote network, inclusive of any applicable on-premises components.
- 1.7. "Company" means Cloud Software Group, Federal, Inc., or Citrix Systems, Inc., both wholly owned subsidiaries of Cloud Software Group, Inc.
- 1.8. "Confidential Information" means any information disclosed by either party, whether or not marked, including, without limitation, the provisions of the Agreement, the Products, Materials, individual contact information provided by either party, or related performance test results derived by Customer, but expressly excludes Customer Content and Personal Data.
- 1.9. "Consulting Services" means installation, configuration, training or other professional services performed by Company pursuant to an Order.
- 1.10. "Contact" means a Customer contact person who interfaces with Company's Maintenance personnel.
- 1.11. "Customer" means Government Customer.
- 1.12. "Customer Content" means (i) any data uploaded to a Cloud Service for storage or data in Customer's computing environment to which Company is provided access in order to perform Cloud Services or (ii)



disclosed by Customer to Company for the purpose of receiving Maintenance and/or Consulting Services. Customer Content may be confidential in nature and is subject to the standard of care set forth in Section 6.

- 1.13. "Documentation" means material provided with a Product, as updated by Company from time to time, describing how to make use of that Product.
- 1.14. "Education Services" means training services performed or delivered by Company.
- 1.15. "Error" means a material failure of the Software, Cloud Services, or Hardware to conform to its functional specifications described in the Documentation that is reported by Customer to and replicable by Company.
- 1.16. "Fees" means all fees and/or payments stated in an Order applicable to the Products.
- 1.17. "Hardware" means appliances or other physical devices offered as Products.
- 1.18. "Maintenance" means Company's provision of technical support services and Updates, which are provided pursuant to the Business Unit Terms associated with the Product purchased in an Order.
- 1.19. "Materials" means any tangible or intangible information, design, specification, instruction, projectware or data (and any modifications, adaptations, derivative works or enhancements) provided by Company during the performance of Consulting Services which incorporates, reinforces or is used to apply Company's configuration or implementation methodologies, processes and know-how to Customer's use of the Software, excluding Customer Content.
- 1.20. "Number of Units" means, for each Order, the license entitlement under the applicable license model for each Product, and for multiple Orders, collectively, the cumulative entitlement to each.
- 1.21. "Perpetual" means a license for Software, where Maintenance (if available) is in addition to the Software license Fees, and the right to use the Software is for an indefinite period of time, unless applicable law renders a perpetual license invalid, in which case, "Perpetual" means the right to use the Software for a period of ninety-nine (99) years from the Order Effective Date.
- 1.22. "Order" means a document or process memorializing Customer's purchase of Products (including an order form, Purchase Order, statement of work, Work Order, on-line order, or other form of an ordering document delivered or made available by Company) submitted by Customer to (i) Company, (ii) a Company authorized reseller, and/or (iii) through Company Product websites.
- 1.23. "Product" means Software, Cloud Services, Hardware, Maintenance, Consulting Services, and Education Services.
- 1.24. "Purchase Order" means any document issued by Customer requesting Products.
- 1.25. "Software" means a Company proprietary or licensed third party program and/or Open Source Software program in object code form which is licensed hereunder including Documentation and any subsequent Updates provided under Maintenance.
- 1.26. "Subscription" means the license to use the Software or Cloud Service stated in an Order and identified as Subscription, that includes the right to receive Maintenance during the Term.
- 1.27. "Term" means the duration for which the Customer is entitled to use the Products as stated in an Order, including renewal terms if any.
- 1.28. "Updates" means any corrections, bug fixes, features or functions added to or removed from the Software or Cloud Services if and when made generally available by Company under Maintenance.

## 2. **Product terms**

- 2.1. **Software.** Unless otherwise stated in the Agreement or in the Order, Company grants Customer a limited, non-transferable, non-sublicensable, non-exclusive, worldwide license to install, run, and use the Number



of Units of Software during the Term (if applicable) solely for internal business purposes in accordance with the applicable license restrictions stated in the Business Unit Terms, an Order, and Documentation.

- 2.2. **Cloud Services.** Unless otherwise stated in the Agreement or in the Order, Company grants Customer a limited, non-transferable, non-sublicenseable, non-exclusive, worldwide license to access and use the Number of Units of Cloud Services during the Term solely for internal business purposes in accordance with the applicable license restrictions stated in the Business Unit Terms, Order, and Documentation. Additional Cloud Service Terms are stated at <https://www.cloud.com/legal/terms>, which are incorporated by reference.
- 2.3. **Hardware.** Hardware is provided for use of Software as licensed hereunder in accordance with the Business Unit Terms and Hardware Documentation.
- 2.4. **Consulting Services.** Consulting Services available under this Agreement are limited to those defined as Commercial Items in FAR 2.101, Commercial Item definition at (5) and (6). Consulting Services are provided pursuant to the Consulting Services Terms available at Exhibit A.
- 2.5. **Maintenance.** Maintenance is provided pursuant to the Business Unit Terms (defined below).
- 2.6. **Education Services and Courseware.** Unless otherwise stated in the Agreement or in the Order, Company grants Customer a limited, non-transferable, non-sublicensable, non-exclusive, worldwide license use the Number of Units of Education Services and/or Courseware as stated in an Order in accordance with the applicable license restrictions stated in the Business Unit Terms and Documentation solely for internal business purposes.
- 2.7. **Limitations on Use.** Except to the extent permitted by applicable law, Customer shall not (i) make more copies of the Software than required for use (except for a reasonable number of copies for archival purposes) or use any unlicensed versions of the Products; (ii) use any Products that are not listed in an Order even if such unlicensed software is made available to Customer as part of Company's general delivery mechanisms; (iii) provide access to Products to anyone other than Authorized Users; (iv) sublicense, distribute or pledge the Software or any of the rights granted in the Agreement; (v) modify, distribute, prepare derivative works of, reverse engineer, reverse assemble, disassemble, decompile or attempt to decipher any code relating to Products; (vi) use or access any embedded or bundled component of Products on a stand-alone basis where such embedded or bundled component is provided to Customer for the sole purpose of enabling the functionality of such Product; (vii) use third party software except in conjunction with Products and subject to the same use rights that it has to the Products; (viii) use any third party software in conjunction with any Products, unless Customer ensures that such use does not cause the Product to become subject to any third party license applicable to such third party software or require the public disclosure or distribution of any Product or the licensing of any Product or Materials or the purpose of making derivative works; (ix) market, offer to sell, and/or resell Products (but Products may be used by Customer in support of Customer's proprietary offering(s)); and (x) if the Customer is a Company competitor, use Products for competitive benchmarking or analysis, unless permitted under applicable law.
- 2.8. **Business Unit Terms.** Additional Product specific terms are defined and stated at <https://www.cloud.com/legal/terms> ("Business Unit Terms").

### 3. **Orders and Delivery**

- 3.1. **Orders.** Customer shall order Products by issuing an Order to Company using the ordering and renewal process pursuant to the applicable Business Unit Terms. The ordering process may specify Orders be submitted to Authorized Resellers or directly to Company. All Orders, including renewals, are subject to acceptance by Company at its discretion.
- 3.2. **Delivery.** Company shall deliver the Software, Cloud Services and Courseware electronically and delivery is deemed complete when the Product is made available to Customer. Company shall ship Hardware (or other tangible Product components, if any) Ex Works Company's shipping location (Incoterms 2020), and title shall pass to Customer upon delivery by Company to the shipping location.

### 4. **Financial Terms**



- 4.1. Payment terms and interest in connection with this Agreement are subject to the provisions of FAR 552.212-4. All purchases are final, with no right to a refund or set-off, except as expressly provided in this Agreement. Company Government Contracting Affiliate reserves the right to suspend or terminate delivery of any Product, or any portion thereof, for non-payment of Fees.
- 4.2. **Multiyear Subscriptions.** If Customer purchases a multi-year Subscription for any Product, or a multi-year renewal for any Product, the purchase is for the full value stated in the Order and is non-cancellable during the Term stated in the Order.
- 4.3. **Renewal Fees.** Company Government Contracting Affiliate may increase any other recurring Fees upon written notice 60 days prior to the end of the then current Term stated in the Order

## 5. **Intellectual Property**

- 5.1. **Company Proprietary Rights.** Subject to Section 5.3, Company and its Affiliates own, or have license rights to, all intellectual property rights in Software, Cloud Services, Materials, and Documentation, and all derivatives thereof (collectively "Protected Materials"), and Company trademarks ("Company Marks"), which are protected by applicable patent, copyright, trademark and trade secret laws. Customer must duplicate unaltered copies of all proprietary notices incorporated in or affixed to any Protected Materials. Except as expressly licensed stated in the Agreement, Customer receives no other rights to use any of Company's Protected Materials or Company Marks. Except for the limited license use rights expressly granted in the Agreement, Customer has no right, title or interest in or to the Protected Materials, Products, or Company Marks or any intellectual property rights related thereto. In no event may Customer alter or delete any proprietary notices on Protected Materials.
- 5.2. **Customer Proprietary Rights.** Customer Content and Personal Data remains the property of Customer; except for a limited, non-exclusive, worldwide license to Company to provide any services under this Agreement.
- 5.3. **Open Source Software.** Certain Products include Open Source Software that is governed by the open source license(s) indicated as applicable to the code at <https://www.citrix.com/buy/licensing/open-source.html> or as listed in Documentation. "Open Source Software" means third party software distributed by Company under an open source licensing model (e.g., MIT License, Apache License BSD license, the GNU General Public License, or a license similar to those approved by the Open Source Initiative).

## 6. **Confidentiality**

- 6.1. For Government Customers, all confidentiality obligations are subject to the Freedom of Information Act and other applicable Federal law. Company Products delivered under this Agreement constitute commercial Restricted Computer Software as defined in the FAR and are delivered with no greater than the rights identified in FAR 52.227-14; data delivered under this Agreement constitutes Limited Rights data, and was developed at private expense, embodies trade secrets, or are commercial or financial and confidential or privileged. Pursuant to FAR 52.227-14(g) (Alternate II, DEC 2007), these data may be reproduced by the Government with the express limitation that they will not, without written permission of Company or Company Government Affiliate, be used for purposes of manufacture nor disclosed outside the Government.
- 6.2. **Non-Disclosure.** Neither party shall disclose Confidential Information to any third party (other than an Affiliate) without the disclosing party's prior consent. Confidential Information may only be disclosed to individuals that need to know such information, and on the condition that the individual is subject to a written agreement to protect information with terms as protective as this Agreement. Company may use data collected during the Term for any purpose in an aggregated, anonymized form, provided that such data is aggregated from more than one customer and does not identify Customer, Customer employees, or Customers' customers. Confidential Information remains the sole property of the disclosing party; except for rights explicitly granted in the Agreement, the receiving party does not acquire any rights to such Confidential Information.
- 6.3. **Exclusions.** The duty to protect Confidential Information does not apply to information that is shown to be:  
(i) available to the public other than by a breach of a confidentiality obligation; (ii) rightfully received from a third party not in breach of a confidentiality obligation; (iii) independently developed by one party without use of the Confidential Information of the other; (iv) known to the recipient at the time of disclosure (other



than under a separate confidentiality obligation); (v) produced in compliance with applicable law or court order, provided the other party is given reasonable advance notice of the obligation to produce Confidential Information (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure.

## 7. **Security and Privacy**

- 7.1. **Software Security.** Company develops and delivers Products, and provides Cloud Services, Maintenance, or Consulting Services, in accordance with the Services Security Exhibit at <https://www.citrix.com/buy/licensing/citrix-services-security-exhibit.html> ("Security Exhibit"), which is incorporated by reference into the Agreement.
- 7.2. **Data Security.** For Cloud Services, Maintenance, or Consulting Services that requires Company to process Personal Data, Company (as defined in the DPA) shall (i) implement and maintain the administrative, physical and technical security controls as set forth in the Security Exhibit, and (ii) process Personal Data on Customer's behalf as set forth in the Company Data Processing Addendum at <https://www.citrix.com/buy/licensing/citrix-data-processing-agreement.html> ("DPA"), which is incorporated by reference into the Agreement. Customer shall provide any notices, obtain any consents, or otherwise establish the legal basis necessary for Company to access and process Personal Data as specified in this Agreement.

## 8. **Term and Termination**

- 8.1. **Term.** This Agreement remains in effect until terminated. The Term for any Product starts on the Effective Date stated in an Order and continues as indicated on the Order.
- 8.2. **Termination.** Between the Company and Government Customers, termination shall be pursuant to FAR 552.212-4(l) (Termination for the Government's convenience) and FAR 552.212(m) (Termination for cause); no other termination rights shall apply. Nothing in the foregoing, however, grants the Government Customer the right to use Products beyond the Term set forth in the applicable Order.
- 8.3. **Effect of Termination.** Upon termination, the Government Customer will immediately discontinue all access and use of the Products. Neither party shall be liable for any damages resulting from termination, including without limitation unavailability of Customer Content arising therefrom; provided, however, termination shall not affect any claim arising prior to the effective termination date. Company shall have the right to invoice the Government Customer and the Government Customer shall pay for any use of the Cloud Service past the date of termination other than the Government Customer's access to download Customer Content. Termination of this Agreement or any Order does not (i) relieve the Government Customer of its obligation to pay all fees that have accrued or are otherwise owed by the Government Customer under this Agreement or (ii) limit either party from pursuing other remedies available to it, including injunctive relief.
- 8.4. **Survival.** The provisions of Sections 1 (Definitions), 2.7 (Limitations on Use), 3 (Orders and Delivery), 5 (Proprietary Rights), 8.3 (Effect of Termination), 9 (Warranties and Disclaimer), 10 (Indemnification), 11 (Limitation of Liability), 13 (Export Restriction and Compliance with Laws), 14 (Miscellaneous) survive any termination of the Agreement. The provisions of Section 6 (Confidentiality) survive any termination of the Agreement for three (3) years.
- 9. **Warranties and Disclaimer** The warranty provisions stated in this section apply to Government End Users to the extent permitted and enforceable by applicable Federal law, including FAR 12.404(b)(2).
  - 9.1. **Software Warranty.** Company warrants that for a period of ninety (90) days from initial delivery of Software, the Software, as updated and used in accordance with the Documentation, will operate in all material respects in conformity with the functional specifications in the Documentation.
  - 9.2. **Cloud Services Warranty.** Company warrants that during the Term of a Cloud Service, the Cloud Service, when used in accordance with the Documentation, will operate in all material respects with the Documentation.
  - 9.3. **Hardware Warranty.** Company warrants that for a period of one (1) year from delivery of Hardware, Hardware will be free from defects in material and workmanship in normal use, but does not cover any of





the following: (i) improper installation, maintenance, adjustment, repair or modification by Customer or a third party; (ii) misuse, neglect, or any other cause other than ordinary use, including without limitation, accidents or acts of God; (iii) improper environment, excessive or inadequate heating or air conditioning, electrical power failures, surges, water damage or other irregularities; (iv) third party software or software drivers; or (v) damage during shipment.

- 9.4. **Other Services Warranties.** Company warrants that Maintenance, Consulting Services, and Educational Services will be delivered in a professional manner, but does not warrant that every question or problem raised will be resolved, or resolved in a certain amount of time.
- 9.5. **Customer Content Warranties.** Customer warrants that (i) it has the right to transmit Customer Content as part of the Cloud Services or any other service that Company may provide in connection with delivering Products to Customer and (ii) its use of Cloud Services will not cause the transmission of spam, unsolicited messages, or infringing, offensive, threatening, or otherwise unlawful content that violates applicable law.
- 9.6. **Warranty Remedy.** If the Software, Cloud Services, or Hardware does not perform as warranted during the applicable warranty period, Company shall use commercially reasonable efforts to correct Errors. Customer shall promptly notify Company in writing of its claim within the applicable warranty period. Provided that such claim is determined by Licensor to be Company's responsibility, Customer's exclusive remedy under warranty as Customer's exclusive remedy for any warranty claim, Company shall, within 30 days of its receipt of Customer's written notice, (i) correct such Error; (ii) provide Customer with a plan reasonably acceptable to Customer for correcting the Error, or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Company, then Company may terminate the license for the affected Product and issue Customer a refund of the license Fees paid for the affected Product. The preceding warranty cure constitutes Company's entire liability and Customer's exclusive remedy for Company's breach of the warranties stated in this Section 9. Customer's exclusive remedy under this warranty for Maintenance, Consulting Services, and Educational Services is re-performance of the services.
- 9.7. **WARRANTY DISCLAIMER.** TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE ABOVE LIMITED WARRANTIES, COMPANY AND ITS SUPPLIERS MAKE AND CUSTOMER RECEIVES NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE; AND COMPANY AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY CONDITIONS OF QUALITY, AVAILABILITY, RELIABILITY, SECURITY, LACK OF VIRUSES, BUGS, OR ERRORS, AND ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. PRODUCTS, ARE NOT INTENDED FOR ANY USE WHERE FAILURE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. CUSTOMER ASSUMES FULL RESPONSIBILITY FOR ITS SELECTION TO ACHIEVE ITS INTENDED RESULTS, AND FOR ITS USE, AND RESULTS OBTAINED THEREFROM.
- 9.8. Company shall not be responsible for any claimed breach of warranty arising out of i) modifications to Products made by Customer or any party other than Company, (ii) Customer's failure to use any Updates or other corrected versions of Products made available by Company, (iii) Errors caused by customizations, (iv) any use of Products by Customer that is outside the operating procedures stated in the Documentation, (v) adherence to Customer's instructions by Company during the delivery of Consulting Services. in Section 9 of the Agreement
10. **Indemnification.** For Government End Users, claims that Products infringe any patent, copyright or trade secret shall be subject to the provisions of FAR 52.227-2 and 52.227-3.
- 10.1. **Remedies.** If Customer's use of any of the Products is, or in Company's opinion is likely to be, enjoined as a result of an Infringement Claim, Company shall, at its sole option and expense, either (i) procure for Customer the right to continue to use the Products as contemplated in an Order, or (ii) replace or modify the Services to make their use non-infringing without degradation in performance or a material reduction in functionality. If options (i) and (ii) are not reasonably available, Company may, in its sole discretion and upon written notice to Customer, cancel access to the Products and refund to Customer any prepaid, but unused, Fees on the Products.



- 10.2. **Exclusions.** Company assumes no liability, and shall have no liability, for any Infringement Claim based on (i) Customer's access to and/or use of the Products following notice of an Infringement Claim; (ii) any modification of the Products by Customer or at its direction; (iii) Customer's combination of the Products with third party programs, services, data, hardware, or other materials; or (iv) any trademark or copyright infringement involving any marking or branding not applied by Company or involving any marking or branding applied at Customer's request. THE FOREGOING STATES COMPANY'S SOLE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT CLAIM HEREUNDER.
11. **Limitation of Liability**
- 11.1. EXCEPT FOR (a) A BREACH BY CUSTOMER OF SECTION 2 (b) INFRINGEMENT OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE SECRETS, (c) DAMAGES FOR BODILY INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY, AND (d) TO THE EXTENT PERMITTED BY APPLICABLE LAW (THE "EXCLUDED MATTERS"), NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSSES, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATING TO: (i) LOSS OF DATA; (ii) LOSS OF INCOME; (iii) LOSS OF OPPORTUNITY; (iv) LOST PROFITS; and (v) UNAVAILABILITY (EXCLUDING CREDITS DUE FOR ANY SERVICE LEVEL AGREEMENT OBLIGATION) OR NON-PERFORMANCE OF ANY OR ALL OF THE SERVICES, IN EACH CASE, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR VIOLATION OF STATUTE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY. EXCEPT FOR THE EXCLUDED MATTERS, THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY ARISING OUT OF THIS AGREEMENT AND/OR THE TERMINATION THEREOF, SHALL BE LIMITED TO THE SUM OF THE AMOUNTS PAID FOR THE APPLICABLE PRODUCT(S) DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY, OR IN THE CASE OF MAINTENANCE, CONSULTING SERVICES OR EDUCATION SERVICES, THE AMOUNTS PAID FOR THE APPLICABLE SERVICE. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S OBLIGATIONS TO PAY ANY FEES AND/OR OTHER SUMS DUE UNDER ANY ORDER.
- 11.2. For Government Customers, DISPUTES UNDER THIS AGREEMENT WILL BE GOVERNED IN ACCORDANCE WITH FAR 52.233-1 AND THE CONTRACT DISPUTES ACT OF 1978 (41 U.S.C. 7101-7109).
12. **U.S. Government End-Users** If Customer is a U.S. Government agency, Customer hereby acknowledges and agrees that the Products constitute "Commercial Computer Software" as defined in Section 2.101 of the Federal Acquisition Regulation ("FAR"), 48 CFR 2.101. Therefore, in accordance with Section 12.212 of the FAR (48 CFR 12.212), and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement ("DFARS") (48 CFR 227.7202-1 and 227.7202-3), the use, duplication, and disclosure of the software and related Documentation by the U.S. Government or any of its agencies is governed by, and is subject to, all of the terms, conditions, restrictions, and limitations set forth in this Agreement. If, for any reason, FAR 12.212 or DFARS 227.7202-1 or 227.7202-3 or these license terms are deemed not applicable, Customer hereby acknowledges that the Government's right to use, duplicate, or disclose the software and related Documentation are "Restricted Rights" as defined in 48 CFR Section 52.227-14(a) (May 2014) or DFARS 252.227-7014(a)(15) (Feb 2014), as applicable. Manufacturer is Cloud Software Group, Inc., 851 West Cypress Creek Road, Fort Lauderdale, Florida 33309.
13. **Export Restriction and Compliance with Laws** Customer acknowledges that the Products are subject to U.S., foreign, and international export controls and economic sanctions laws and regulations and agrees to comply with all such applicable laws and regulations, including, but not limited to, the U.S. Export Administration Regulations ("EAR") and regulations promulgated by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). Customer specifically shall not, directly or indirectly, allow access to or use of the Products in embargoed or sanctioned countries/regions, by sanctioned or denied persons, or for prohibited end-uses under U.S. law without authorization from the U.S. government.



#### 14. Trial and Development Usage

- 14.1. **Trial Usage.** If a Product offering is provided for trial, demonstration, or evaluation use ("Trial") under an Order, Customer may use the Product for the Term stated in an Order for internal demonstration, test, or evaluation purposes only. Company PROVIDES TRIALS "AS IS" AND WITHOUT WARRANTY, MAINTENANCE OR INDEMNITIES. ANY CUSTOMER DATA PROVIDED BY CUSTOMER TO COMPANY IN CONNECTION WITH A TRIAL WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME PRODUCT AS THOSE COVERED BY THE TRIAL OR EXPORTS SUCH DATA BEFORE THE END OF THE TRIAL PERIOD. These terms supersede any conflicting terms and conditions in this Agreement. Trial versions may be suspended or terminated at any time by Company in its sole discretion with or without notice to Customer. Notwithstanding anything to the contrary in this Agreement, Products subject to Trial license may be deployed by Customer on AWS, Microsoft Azure, or similar environments.
- 14.2. **Developer Evaluation.** Products provided for Developer evaluation, or described as "Alpha," "Beta," "Tech Preview," or "Labs" by the Business Unit under an Order, may be used for development evaluation purposes only, must not be used or deployed in or on a Production or non-evaluation development environment, and are provided "AS IS" without Maintenance or any warranties or indemnities. Such offerings may contain bugs, errors, and other defects. Company does not make any representations, promises, or guarantees that such offerings will be publicly announced or made generally available. Such offerings can be suspended or terminated at any time by Company in its sole discretion with or without notice to Customer. Notwithstanding anything to the contrary in this Agreement, such offerings may be deployed by Customer on AWS, Microsoft Azure, or similar environments.

#### 15. Miscellaneous

- 15.1. **Assignment.** Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part without Company's prior written consent. Any attempted assignment in violation of the foregoing shall be void. This Agreement will bind and inure to the benefit of each party's successors or permitted assigns.
- 15.2. **Audit.** During the term of any Order and for a period of one year following termination of an Order, Company and/or its independent auditors, at Company's expense, may, upon 10 days' notice and at reasonable times, audit a Government Customer's compliance with this Agreement, and report any results to Company and its licensors. Customer shall, at no cost to Company, (i) provide any assistance reasonably requested by Company or its designee in conducting any such audit, (ii) make personnel, records, and information available to Company or its designee to facilitate the timely completion of such audit. Customer's failure to comply with the provisions of this section will constitute a material breach of this Agreement. Notwithstanding the foregoing, for (i) Government facilities and systems containing classified information ("CI") or controlled unclassified information ("CUI") , or (ii) any other Government facilities and systems restricted by law or regulation, the Government Customer shall maintain adequate records of its use of Company Software, and shall self-assess its environment annually. Upon Company's written request, no more than annually, Customer shall provide to Company a written representation executed by a Contracting Officer or other senior officer of the Government Customer that states the following information (i) the Number of Units and type of Software in use, and (ii) verification that the Software is being used in accordance with the provisions of this Agreement.
- 15.3. **Notices.** All notices required under this Agreement must be in writing and delivered to the address last designated on the account for Customer, and the Company contracting entity as specified in the Agreement or Order. Notice is deemed given (i) upon personal delivery; (ii) if delivered by air courier or email, upon confirmation of receipt; or (iii) five (5) days after deposit in the mail. A copy of all legal notices from Customer to Company must also be sent to [contract-notice@cloud.com](mailto:contract-notice@cloud.com), or other email addresses provided by Company. Company may provide Customer with non-legal notices through [www.mycitrix.com](http://www.mycitrix.com) and/or through in-product messaging or dashboards, which shall likewise be deemed effective immediately.
- 15.4. **Entire Agreement; Order of Precedence.** The Agreement sets forth the entire agreement and understanding of the parties relating to its subject matter and supersedes all prior and contemporaneous oral and written agreements. Any conflict between these terms and any supplementary terms is subject to the following order of precedence: (1) an Order, (2) the Business Unit Terms, and (3) this End User





Agreement. Unless otherwise agreed to in writing between the parties, nothing contained in any Customer Purchase Order or other document submitted by Customer shall in any way add to or otherwise modify the Agreement or any Company license program terms under which an Order is submitted. The Business Unit Terms, Service Descriptions, Maintenance terms, Security Exhibit, or DPA may be updated by Company from time to time without notice (but will be identified by the last updated date). Customer's continued access to and use of the Products constitutes acceptance of the then-current terms.

- 15.5. **Headings.** Captions and headings are used in the Agreement are for convenience only, are not a part of this Agreement, and are not to be used in interpreting or construing this Agreement.
- 15.6. **Validity.** If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect.
- 15.7. **Relationship of the Parties.** The parties are independent contractors and nothing in this Agreement creates a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between or among the parties. Company may subcontract responsibilities under this Agreement, but remains responsible for its breach of this Agreement by the acts or omissions of Company or its subcontractors. Company's Affiliates may fulfill obligations under an Order and such activity is not considered to be a subcontracted responsibility
- 15.8. **Resellers.** Company Authorized Resellers and distributors do not have the right to make modifications to this Agreement or to make any additional representations, commitments, or warranties binding on Company.
- 15.9. **Waiver.** No waiver or amendment of any term or condition of this Agreement shall be valid or binding on any party unless agreed to in writing by such party. Company failure to enforce any term of this Agreement will not be construed as a waiver of the right to enforce any such terms in the future. Unless otherwise specified, remedies are cumulative.
- 15.10. **Force Majeure.** Neither party will be responsible or have any liability for any delay or failure to perform its non-monetary obligations hereunder to the extent due to unforeseen circumstances or causes beyond its reasonable control, including acts of God, earthquake, fire, flood, sanctions, embargoes, strikes, lockouts or other labor disturbances, civil unrest, pandemics, failure, unavailability or delay of suppliers or licensors, riots, terrorist or other malicious or criminal acts, war, failure or interruption of the internet or third party internet connections or infrastructure, power failures, acts of civil and military authorities and severe weather ("Force Majeure"). The affected party will give the other party prompt written notice (when possible) of the failure to perform due to Force Majeure and use its reasonable efforts to limit the resulting delay in its performance.
- 15.11. **Governing Law and Venue.** For Government Customers, this Agreement shall be governed by and construed under applicable Federal law, including but not limited to the Contract Disputes Act of 1978 as amended, and GSA Schedule Contract Clause 552.238-114 Use of Federal Supply Schedule Contracts by Non-Federal Entities (May 2019), with venue in the Federal courts of competent jurisdiction.
- 15.12. **Third Party Beneficiary.** Except as expressly stated, the Agreement is for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party. CERTAIN THIRD PARTY SOFTWARE MAY BE PROVIDED TO CUSTOMER ALONG WITH CERTAIN PRODUCTS. THIS THIRD PARTY SOFTWARE IS PROVIDED "AS IS", IS SUBJECT TO THE TERMS OF THE THIRD PARTY LICENSE, AND MAY ONLY BE USED WITH THE PRODUCTS WITH WHICH IT IS PROVIDED TO CUSTOMER. SUCH THIRD PARTY SOFTWARE IS PROVIDED SOLELY AS AN ACCOMMODATION TO CUSTOMER AND CUSTOMER IS UNDER NO OBLIGATION TO USE SUCH THIRD PARTY SOFTWARE.



1. Unless otherwise stated in an Order, Consulting Services are: (a) performed on a time-and-materials basis ("T&M") and (b) deemed accepted upon delivery. A T&M work day is eight hours of Consulting Services performed during regular business hours (8am – 5pm local time, Monday through Friday), excluding a federal, local, or bank holiday, which is observed by Company or Customer.
2. If applicable, daily rates are calculated as follows: (a) up to four hours at 50% of the daily T&M rate and (b) over four and up to eight hours per day at 100% of the daily T&M rate. Each hour over eight hours in a single day will be charged on a pro-rata basis (the daily rate divided by eight hours to determine the charge per hour). Company staff will be entitled to home (or equivalent) visits every weekend. The estimated total fees stated in an Order cover labor costs only and do not include Expenses that Company will invoice separately subject to the Agreement.
3. Expenses. The estimated total fees set out in a Order are for labor costs only and do not include meals, lodging, travel and other reasonably necessary out-of-pocket expenses or other project related costs (such as hardware and software, which may be acquired by Company to support the project implementation, with Customer's prior written approval and in accordance with the Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable) ("Expenses") which will be invoiced to Customer separately. Company staff will be entitled to home (or equivalent) visits every weekend. "Expenses" means meals, lodging, travel, and other reasonably necessary out-of-pocket expenses or other project related costs (such as hardware and software, which may be acquired by Company on behalf of Customer to support the project implementation, with Customer's prior written approval).
4. Except as provided for in Section 8 of the Agreement, Customer shall not be entitled to a refund or credit for any Consulting Services purchased on a prepaid basis or purchased in conjunction with Software or Cloud Services that are not utilized within the time period stated in an Order.
5. The Order is intended to describe the scope of work that may be provided by Company. Company will provide only those Consulting Services as directed and requested by Customer and only as time allows. Company will use commercially reasonable efforts to complete the Consulting Services described in a Work Order and does not guarantee that such Consulting Services will be completed within the estimated hours or days stated in an Order. Any changes to the scope or description of Consulting Services must be stated in a change order approved and executed by both parties before Company may begin work on any Consulting Services not stated in the Order.
6. Consulting Services available under this Agreement are limited to those defined as Commercial Items in FAR 2.101, Commercial Item definition at (5) and (6). Company Materials are developed using private funds, and Company owns all intellectual property rights to all Materials and all derivatives thereof. Upon full payment by Customer of the Consulting Services fees, Company grants Customer a non-exclusive, royalty-free, world-wide, non-transferable license to use the Materials, including a reasonable number of copies, solely (i) for Customer's internal business and (ii) as necessary for use with the Products. The copyright notice and other legends of ownership must be reproduced on each copy of such Materials (in whole or in part). Whole or partial copies of the Materials in any form is subject to the same terms as the original copy.
7. Customer must not use any third party software, including any open source software, in conjunction with any Materials, that causes the Materials to become subject to any third party license applicable to such third party software or require the public disclosure or distribution of any Materials or the licensing of any Materials for the purpose of making derivative works.
8. In order to support Consulting Services, Customer shall provide Company with the following without charge: (a) design documents needed to support the provision of Consulting Services; (b) office space, phones, facilities, and network connectivity and computer systems for on-site Company personnel or on-site Company training; (c) timely access to Customer business experts and project team members to identify and resolve business or technical issues; and (d) necessary software licenses for Licensor's software



products referenced in an Order and any third party licenses for development tools as needed to support the scope of work set out in an Order.

9. In addition to the warranty in the End User Agreement, Licensor warrants that the Consulting Services will be performed using reasonable skill and care. The sole and exclusive remedy for breach of this warranty is Company 's re-performance of the defective Consulting Services. Materials are licensed "as is" and are not eligible for Maintenance. Company makes no other express, implied, or statutory warranties, including all warranties of merchantability, fitness for a particular purpose, or non-infringement, for any Materials delivered in connection with the Consulting Services. Further, Customer must ensure that the Software made available to Company during the course of performing Consulting Services, including for deployment, implementation, or installation, is covered by Customer's stated license entitlement and Company's performance of Consulting Services is not a representation that Customer's deployment is compliant with Customer's license entitlements.
10. Company may suspend any or all Consulting Services upon ten days written notice to Customer in the event Customer is in breach of the Agreement.
11. Content provided during training courses are Materials for the purpose of this Agreement. Materials from education or training services are limited to one copy for each registered attendee. Training services are charged the full daily rate regardless of the number of hours worked.