

## CLOUDNINE REALTIME TERMS & CONDITIONS

RTB Global, Inc. d/b/a Cloudnine Realtime is herein referred to as “Cloudnine”. This Application Service Provider Agreement (“Agreement”) is entered into, by, and between Cloudnine and any user submitting either a proposal, contract, 7 Day Trial sign up form and/or any Add User forms herein referred to as “Customer, You, Your, and/or User”. Customer’s customer is herein referred to as “Customer’s client(s)”. Any individual or entity that directly or indirectly through another User: (a) accesses or uses Cloudnine’s Service (defined below) or ASP Application (defined below) or access or uses a Users’ content is herein referred to as an “End User”. It is strictly prohibited for any employee, staff member, management or affiliate of any companies that could be deemed a competitor of Cloudnine to submit such forms to gain access to Cloudnine systems. Any violation of this agreement shall be considered unlawful and a breach of contract. These terms and conditions are subject to change at any time without prior written notice, in Cloudnine’s sole discretion.

Subject to the terms and conditions of this Agreement, Customer desires that Cloudnine host such software so that Customer may access the software to use Customer’s data (the “Service”). Intending to be legally bound hereby, Cloudnine and Customer agree as follows:

### 1. HOSTING AND SUPPORT

- 1.1. **General.** Subject to the terms and conditions of this Agreement, Cloudnine, or its designee (which may include but is not limited to Abacus Data Systems, Inc. and its employees), shall remotely host the Cloudnine (“ASP Application”) for the purpose of providing Customer with access through the Internet. Cloudnine does not guarantee any 3<sup>rd</sup> party applications and Customer must have proper licenses for access to 3<sup>rd</sup> party applications and provide those license numbers to Cloudnine when requested.
- 1.2. **Hours of Availability.** Cloudnine shall use commercially reasonable efforts to make the ASP services available twenty-four (24) hours per day, 7 days a week. Notwithstanding the foregoing, Cloudnine reserves the right to suspend Customers access to the ASP Application (i) in the event that Customer materially fails to fulfill its obligations under this Agreement, (ii) for purposes of scheduled maintenance, or (iii) for purposes of emergency maintenance work at any time as deemed appropriate by Cloudnine.
- 1.3. **License.** During the Term and subject to the terms and conditions of this Agreement, Cloudnine hereby grants to Customer a non-exclusive, non-transferable license, royalty-free, to have its employees or Clients access the ASP Application.
- 1.4. **Restrictions.** Cloudnine will strictly adhere to all End User License Agreements (EULA) for all software, programs, applications, and services attached to the use of hosted Applications. Therefore, the Customer shall not reverse engineer, decompile, translate, disassemble, attempt to discover the source code of, or in any other way manipulate the Application in order to use it outside of the EULA agreement for that particular Application, or ask that Cloudnine assist in or complete such actions on behalf of the Customer. Additionally, the Customer shall not license, sub-license, distribute, or disclose the use of their Application(s) to any third party, or use their Application(s) for any purpose other than accessing the Customer’s own data in accordance with this Agreement. Customer agrees that they are solely responsible for the content of any material posted to their Application, and that no end-user will attempt to access programs, options, settings, services, files, applications, or servers not within their user rights. At no time may the Customer share user credentials, license numbers, or any other applicable information used to access Cloudnine services or 3<sup>rd</sup> party applications. All login credentials and license information should directly and accurately reflect the proper names, amounts, and versions of both the end users and software/applications

being utilized by the Customer. If the Customer is found to be performing any of the aforementioned actions or soliciting the services of Cloudnine in performing these actions,

Cloudnine reserves the right to cancel the existing contract with the Customer immediately with no refund.

1.5. **Support**. Cloudnine operates a help desk (“Customer Help Desk”) between the hours of 5:00 AM and 9:00 PM PST, Monday through Friday, exclusive of Cloudnine’s scheduled holidays (which are: Christmas Day, New Year’s Day, Thanksgiving, July 4th, Memorial Day, Labor Day). The Help Desk will accept inquiries by telephone, electronic mail, or ticketing system solely from those users designated by Customer to make inquiries. Cloudnine will use its best efforts to respond to inquiries within [SLA](#).

1.6. **Support Guidelines**.

1.6.1. Cloudnine offers full technical support free of charge for the e-Dashboard, Exchange Hosting, and any Cloudnine products/services.

1.6.2. Cloudnine will provide quality technical support for applications to a reasonable extent. Cloudnine is not responsible for application failures and is not the manufacturer of such products. If it is determined that Cloudnine cannot solve an application problem with reasonable effort, Customer will be given further instructions regarding what to do. In some instances, additional technical support may be offered at Cloudnine technical support rates.

1.6.3. Cloudnine is not responsible for technical support on Customer’s hardware, software or connection problems. This includes but is not limited to: internet connection issues, hardware failures, firewall problems, printers, scanners, etc. Cloudnine will recommend solutions that the Customer can either implement themselves, hire outside IT professionals or be billed by Cloudnine at the appropriate technical support rates.

1.6.4. Technical support is available Monday through Friday 5 AM – 9 PM PST. After hours technical support is available by calling the main number or submitting a ticket. If the request is an emergency, Customer will receive assistance ASAP free of charge. If the technical issue is a non-emergency during after-hours the Customer will be called back during regularly scheduled hours.

1.6.5. After hours emergency calls consist of not being able to login or access files. Printing problems, email problems etc. are not emergency issues.

1.6.6. Cloudnine’s technical support will respond to questions regarding the features and the functioning of the designated products. It is not the responsibility of the technical support agent to create or deliver forms, applications, documents or customizations such as macros, menus, batch files, directory objects, or product configuration objects for the caller or Customer, although assistance in these areas may be provided. These services may be available from Cloudnine under a separate consulting proposal or agreement.

1.7. **On-Site Support**. While at Customer’s facilities or data center, Cloudnine shall cause its personnel to comply with all of Customer’s security policies and other rules and regulations that are provided to Cloudnine. In the event that Customer determines in good faith that the continued assignment to Customer’s account of one of Cloudnine’s personnel is not in the best interests of Customer, then Customer shall give Cloudnine written notice to that effect. After receipt of such notice, Cloudnine

shall have a reasonable period of time in which to investigate the matters stated in such notice, discuss its findings with Customer, and resolve any problems with such person. If, following such period, Customer requests replacement of such person, Cloudnine shall replace that person with another person of suitable ability and qualifications. Cloudnine's personnel shall be subject to immediate removal from the premises or immediate removal from the Customer account for serious misconduct in the same manner as Customer employees and in accordance with applicable Customer security policies.

1.8. **Security**. Cloudnine will use industry standard security procedures to secure the transmission of all information to and from the user and the ASP Application. Such security precautions will include, at a minimum, the following: (i) user Identification and access controls designed to limit access to information to Customer's authorized users; (ii) industry standard encryption techniques when information is transmitted to or from the ASP Application; and (iii) physical security measures, including securing all information on a secure server, in locked data cabinets within a secure SOC2 Type II Certified Data Center. In cases of security breaches or any dispute with Customer, Cloudnine has the right to limit access to Services at its sole discretion.

1.9. **Scheduled Maintenance**. In order to keep Cloudnine infrastructure up-to-date and performing optimally, Cloudnine will perform scheduled maintenance to Customer's server, and the underlying hardware and software from time to time. The current scheduled maintenance window is from 10 PM each Friday through 12 AM Saturday (2 hours). We reserve the right to suspend access to the Customer's server during the time required for the scheduled maintenance. Cloudnine will make every reasonable effort to perform all maintenance within the prescribed window of time, however, should the maintenance require additional time to complete, Cloudnine will make relevant information available to the Customer through appropriate means of communication, as deemed necessary by Cloudnine.

Cloudnine is not responsible for the loss of hours in connectivity for the Customer or the Customers' Customers during scheduled maintenance, and every effort will be made by Cloudnine to schedule all maintenance during off-peak, or weekend hours in order to minimize the impact to our Customers.

1.10. **Unscheduled Maintenance**. In the event of unforeseen outages, service impacting issues, and other emergency maintenance that Cloudnine deems necessary, unscheduled maintenance may need to be performed in order to restore services, or repair underlying hardware and software. Cloudnine will make every reasonable effort to limit the amount of time that the Customer's services are unavailable, up to the time allowed for by our SLA, and proper updates and notifications will be provided as deemed necessary by Cloudnine. After any such unscheduled maintenance is performed, Cloudnine will provide a Post Incident Report to the affected Customers that will give a brief summary of the cause and the resolution of the unscheduled maintenance.

1.11. **Backup**. Cloudnine will maintain and follow a disaster recovery plan designed to minimize disruption to Customer's access to the information contained on the ASP Application, comprised of internal procedures to recover the Cloudnine environment in the event of a disaster. The plan provides for daily back-up of information contained on the ASP server. Daily back-ups are stored for 30 days rolling. Cloudnine is not responsible for corrupt files within the network. Customer must maintain its own local copy of all data uploaded or stored to the Cloudnine ASP application. Cloudnine is not responsible for Customer's lost or corrupted data for failure of Customer to maintain a local copy of all data. Customer acknowledges that it is Customer's responsibility to execute frequent and routine back-ups and frequent and routine test-restores of data and that

Cloudnine is not liable for any loss of data by Customer resulting from or relating to any action taken by Cloudnine pursuant to this Agreement.

- 1.12. **Hardware.** Any scanner hardware purchased from Cloudnine will include free technical assistance and setup to scan directly into the cloud. Customers that have scanners not purchased from Cloudnine can utilize the free scanner programming guide to setup scanning. If technical assistance is still needed there will be a per hour charge with a 1-hour minimum.
- 1.13. **3rd Party Application Hosting.** Virtual Server contracts are issued with a set number of 3<sup>rd</sup> party applications, each additional app Customer would like installed on the server will be billed according to the following criteria:
  - 1.13.1 All applications must be installed by a Cloudnine technician; no users on the system can install apps. Customers who violate this requirement are solely responsible for any consequences or liability. To add an app please complete the appropriate form at <https://www.cloudninerealttime.com/support/> or complete the request in the C9 Portal.
  - 1.13.2 Cloudnine does not guarantee the functionality of any 3<sup>rd</sup> party applications. There will be no refunds by Cloudnine should an app not function to Customer's satisfaction. Must be compatible with 2008R2 and 2012R2 Terminal Servers. An app is anything that requires an installation. If Customer is hosting a tax software, they are granted up to 3 years of the application to count as one single app. Each additional year will be considered its own application. Customer will be notified when resources have been added to maintain stability after addition of Users, Applications or other Services that Cloudnine had authorization to add. Customer will be notified of the additional costs and given an opportunity to approve or decline, after which the resources will be removed. However, if the Customer declines, Cloudnine's standard SLA (Service Level Agreement) for technical issues cannot be honored, as the actions Cloudnine deemed fit to resolve issues have been reversed.
- 1.14. **Server Reboots.** Server reboots are utilized to refresh resources, install drivers, updates and security patches. Reboots optimize resources and defrag memory to improve system performance. For these reasons, Cloudnine requires weekly server reboots and schedules them to occur during our weekly maintenance window each Friday from 10 PM through Saturday, 12 AM Pacific. It is the user's responsibility to save data at the end of each user session. To ensure that all work is saved, Cloudnine recommends that users save work and log out of all applications at the end of each session. We recommend nightly server reboots and empower the Primary Server Admin to set the nightly reboot schedule on their main server through the Cloudnine portal. We also empower the Primary Server Admin to schedule immediate server reboots when necessary. An immediate server reboot request requires a confirmation by the Primary Server Admin. After confirmation is received, Cloudnine will display a warning notification to all active server users both five minutes and sixty seconds prior to the reboot. Users must save all work and log off the server to avoid potential data loss associated with the reboot. Customer initiated reboots apply only to the customer's main server, not to data or other servers. Customer must call Cloudnine Technical Support to reboot other servers. Customer accepts all risk of loss associated with server reboots.
- 1.15. **System Requirements.**

**Broadband Internet Connection:**

- At least 3Mbps DOWNLOAD and 512Kbps UPLOAD speeds required.
- **Note:** If you have multiple concurrent users on the same network/office, add 1Mbps download and 512Kbps upload to the connection requirements above.

- **Example:** Five (5) concurrent users would require an 8Mbps download and 3Mbps upload connection speed. Ten (10) concurrent users would require a 13Mbps download and 5.5Mbps upload connection speed.

**Macintosh:**

- Minimum OS of 10.6 or above
- Must download and install Remote Desktop software (no additional charge) for connection to service
- **Processor:** 2.4GHz Intel Core 2 Duo
- **Memory:** 4 GB 667 MHz DDR2 SDRAM
- **Note:** Cloudnine does not host the Mac version of QuickBooks, all files must be the Windows version

**Windows PC:**

- **Minimum:**
  - Windows 7, or Windows 8 (as of 4/8/14 Microsoft is no longer supporting any versions of Windows XP; Cloudnine no longer supports Windows XP as of June 30th, 2014)
  - Remote Desktop Protocol (Connection) 7.1 or higher
  - 2 GB RAM
  - 1024×768 Monitor Resolution □ **Recommended:**
  - Windows 10 (Build 1607 “Anniversary Update”) ○ Remote Desktop Protocol (Connection) 10.2 or higher
  - 4 GB RAM
  - Dual Screen monitors with a combined screen resolution no higher than 4096×2048

**2. SOFTWARE LICENSE AGREEMENTS**

- 2.1. You agree to comply with software license agreements for software that you lease, such as Microsoft Office and the Windows Desktop, and will pay for all use of any such applications.
- 2.2. You agree to comply with software license agreements for all software that you use but do not own, herein called “Manufacturer Licensed Software”. Manufacturer Licensed Software includes but is not limited to QuickBooks, Microsoft Volume Licensed software, Sage and other software license granters.
- 2.3. You attest that you are the legal owner of all license information that you have provided.
- 2.4. You grant Cloudnine the right to signal your acceptance of license agreements for Manufacturer Licensed Software. You agree that such license agreements are strictly between you and the software manufacturer and that Cloudnine has the right to signal acceptance, including your acceptance, of such software license agreements. You understand and accept that it is your sole responsibility to ensure that your use of Manufacturer Licensed Software is in compliance with all software license agreements.
- 2.5. You understand and agree Cloudnine is not offering Manufacturer Licensed Software on an application service provider or time-sharing basis, but rather leases the platform on which you use such software. You agree that the relationship to such software license agreements is that of a consultant who maintains computers that are either leased or owned by you.

- 2.6. You grant the right to share with the software manufacturer of Manufacturer Licensed Software your respective license information including all license-related keys and numbers for all Manufacturer Licensed Software and all related services provided by the software manufacturer and that Cloudnine has the authorization, at will, to verify you are the owner of said license.
- 2.7. **Customer Warranty.** Customer warrants that it: (i) owns or has the right to use any and all software programs in Customer's possession, which software programs are to be integrated with the ASP Application and Cloudnine Services to be provided pursuant to this Agreement, (ii) will not do anything that would be contrary to the terms of Service, and (iii) will not download, upload, or install any software, applications, programs or updates to Cloudnine's servers or networks without consent from Cloudnine.

### 3. MICROSOFT SPLA.

- 3.1. **Software Use – Terms and Conditions.** Customer's use of computer software provided to you by Cloudnine as described below, and may include associated media, printed materials, and "online" or electronic documentation (individually or collectively "SOFTWARE PRODUCTS"). Cloudnine does not own the SOFTWARE PRODUCTS and the use thereof is subject to certain rights and limitations of which Cloudnine needs to inform you. Your right to use the SOFTWARE PRODUCTS is subject to your agreement with Cloudnine and to your understanding of, compliance with and consent to the following terms and conditions in this section labeled Microsoft SPLA, which Cloudnine does not have authority to vary, alter or amend.
- 3.2. **User Credentials.** In connection with such access, we or any third-party service provider may issue user credentials allowing your users to access the Services. All user credentials are Cloudnine Confidential Information, as defined herein. Customer shall not share Cloudnine user credentials with any third party without our prior written consent. User credentials may be distributed to authorized employees to access the Services, but no credentials may be transferred to or shared with a third party without our written approval. We reserve the right to require that you change your users' passwords at any time, with reasonable notice. All user credentials will automatically expire at the end of the Term.
- 3.3. **Restrictions.** As between the parties, Cloudnine retains all right, title and interest in and to the Services and their various components, along with all intellectual property rights associated therewith. Other than as expressly set forth in this Agreement, no license or other rights in or to the Services are granted to you, and all such licenses and rights are hereby expressly reserved. In addition, you shall not:
- Modify, copy or create derivative works based on the Services or on any Cloudnine Materials;
  - Create Internet "links" to or from the Services, or "frame" or "mirror" any content forming part of the Services, other than on your own intranet(s) or otherwise for your own internal business purposes;
  - Distribute or allow others to distribute any copies of any Cloudnine Materials or any part thereof to any third party;
  - Rent, sell, lease or otherwise provide any third party with access to the Services or to any Cloudnine Materials, or to any copy or part thereof, or use the Services or any Cloudnine Materials for the benefit of a third party; or
  - Remove, modify or obscure any copyright, trademark or other proprietary-rights notices that are contained in or on any Cloudnine Materials.
  - Reverse engineer, decompile, or disassemble the Cloudnine Materials, except to the extent that such activity is expressly permitted by applicable law.

For purposes of this Agreement, “Cloudnine Materials” means any text, graphical content, techniques, methods, designs, software, hardware, source code, data (including Reference Data), passwords, APIs, documentation or any improvement or upgrade thereto, that is used by or on our behalf to provide the Services.

- 3.4. **Third-Party Providers.** Some components of the Services or the Cloudnine Materials may be provided through or licensed from third parties. Customer’s use of all such components is subject to the terms of this Agreement. Cloudnine, and not those third parties, will provide any and all technical support related to the Services, including support related to those third-party components. However, under certain circumstances, pursuant to the terms of applicable third-party license or services agreements, Cloudnine may be obligated to provide certain information to those third parties regarding the Services and/or regarding your identity. You consent to such disclosures.

Third-Party publishers, including but not limited to, Microsoft will be intended third party

beneficiaries of the Agreement, with the right to enforce provisions of the Agreement and to verify compliance.

- **Compliance.** If Microsoft believes in good faith that Customer is not complying with the terms of its End User License, Cloudnine will cooperate in good faith with Microsoft to investigate and remedy the non-compliance.
- **Copies of Products.** Within thirty (30) days of the termination of the Agreement, Cloudnine shall:
  - remove all copies of Customer’s software, redistribution software, and/or Cloudnine Materials from the Customer’s devices or otherwise render the software, products, and/or Cloudnine Materials permanently unusable; and
  - require that Customer returns or destroys all copies of Customer software, redistribution software, and/or Cloudnine Materials that it received.

For purposes of this Service Attachment, “End User License” means any document containing “End User License Terms” applicable to a third-party publisher, including but not limited to Microsoft.

- 3.5. **No High-Risk Use.** You acknowledge that the Services are not fault-tolerant and are not guaranteed to be error-free or to operate uninterrupted. You shall not use the Services in any application or situation where the Services’ failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage (“High Risk Use”). High Risk Use does not include utilization of the Services for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. Customer agrees to indemnify and hold harmless Cloudnine from any third-party claim arising out of Customer’s use of the Services in connection with any High Risk Use.
- 3.6. **Support Services.** In connection with the Services that are within the scope of this Agreement, we will provide to your designated administrator(s), technical contacts or users (1) management of the Services by individuals trained in the Services you have selected, and (2) Support per the support guidelines outlined in section 1.6.
- 3.7. **Customer Liability.** You are solely responsible for damages resulting from your violation of this Agreement, and those damages will be subject to the obligations of indemnification set forth in Section labeled Indemnification. Our hosting of any software solution Services or Customer Data

does not relieve you of your responsibility or your obligation to indemnify us pursuant to the terms of this Agreement and any Service Level Agreements.

#### 4. INTUIT INC.

- 4.1. QuickBooks® Software is owned by Intuit Inc. (“Intuit”). All rights reserved. QuickBooks software is hosted by Cloudnine under license from Intuit Inc. You authorize Cloudnine to install QuickBooks software updates at its discretion and understand that the installation of such software updates may result in your need to perform a data file update of your QuickBooks company file(s).
- 4.2. In addition to all other terms and conditions herein:
- You grant the right to share your QuickBooks license information, including all license-related keys and numbers, payroll keys, and numbers, and number of users for which you provide such licenses, with Intuit for verification and tracking purposes;
  - You understand and agree that Intuit is not a party to this User Agreement;
  - You disclaim any liability by Intuit for the provision of QuickBooks hosting;
  - You disclaim any warranties by Intuit for the provision of QuickBooks hosting;
  - You understand and agree that Intuit is responsible solely for QuickBooks software and services and is not responsible for any other products or services offered or its third parties;
  - You understand and agree that QuickBooks software is subject to Intuit’s discontinuation policies. Upon receipt of notice by Intuit that a particular version of the QuickBooks is being discontinued, you agree to upgrade to the latest version of QuickBooks, unless Intuit expressly agrees to permit use of discontinued software;
  - You understand and agree that except for those licenses that you bring as a new customer that you must either subscribe to QuickBooks licenses, purchase QuickBooks licenses, or purchase new QuickBooks licenses through Intuit;
  - You understand and agree that all QuickBooks licenses that you subscribe to are valid only while you are hosted with Cloudnine and that each such license may be disabled at any time after the user account to which they were assigned is no longer paid.
  - You authorize Cloudnine to install QuickBooks software updates at its discretion and understand that the installation of such software updates may result in your need to perform a data file update of your QuickBooks company file(s).
- 4.3. Under its Authorized Hosting Program, Intuit requires all hosting providers to pay a fee per user monthly surcharge that applies to each user of QuickBooks hosting who supplies their own QuickBooks licenses. You agree that Intuit is solely responsible for this fee.

#### 5. CUSTOMER OBLIGATIONS

- 5.1. **Customer Administrator**. Customer shall provide in writing the name of the Firm Administrator who is authorized by Customer to communicate with Cloudnine regarding users, user setup, system configuration and similar functions. Customer may change the named Firm Administrator only in writing through the C9 Portal.



5.2. **Integrity.** Use of Cloudnine services and networks, along with ASP Applications and 3<sup>rd</sup> party applications is granted to the Customer based on their contractual agreement(s) with Cloudnine. Cloudnine reserves the right to immediately terminate a contractual agreement/relationship with the Customer at any time for unlawful, malicious, or inappropriate conduct carried out by the Customer on such systems, including, but not limited to:

- Accessing or attempting to access Cloudnine company information of any kind as a means to view, learn, solicit, or steal Cloudnine company information.
- Accessing or attempting to access networks, servers, drives, folders, or files other than that of the Customer, or those that the Customer has not been expressly given permission to access;
- Violating the laws and regulations of the United States or any other nation or any state, city, province, or other local jurisdiction in any way;
- Deliberately propagating any virus, worm, Trojan horse, trap-door program code, or other code or file designed to disrupt, disable, impair, or otherwise harm Cloudnine, services, networks, ASP Applications or 3<sup>rd</sup> party application or systems of any other individual or entity;
- Deliberately causing congestion, disruption, disablement, alteration, or impairment of Cloudnine networks or systems;
- Without the express written approval of Cloudnine, downloading, uploading, or installing any software, applications, or programs on Cloudnine servers or networks that have not been approved by Cloudnine in a Customer contract or by written consent from Cloudnine is strictly prohibited. Any unauthorized installations of software constitutes a violation of this Agreement.
- Defeating or attempting to defeat security restrictions on Cloudnine systems and applications.

5.3. **End User License Agreements.** Customer shall not reverse engineer, decompile, translate, disassemble, attempt to discover the source code of, or in any other way manipulate any Cloudnine service, ASP Application, or 3<sup>rd</sup> party application in order to “break” or use it outside of the EULA agreement for that particular Application or software, or ask that Cloudnine assist in or complete such actions on behalf of the Customer. Customer agrees that they are solely responsible for the content of any material posted to their Application, and that no end user will attempt to access programs, options, settings, services, files, applications, or servers not within their user rights. Customer is solely responsible for any damages, whether technically, virtually, physically, or financially to a software, application, or Cloudnine service, that derives from negligent use or tampering by an end user breaking or attempting to break the EULA for a particular service, software, or application. At no time may the Customer share user credentials, license numbers, or any other applicable information used to access Cloudnine services or 3<sup>rd</sup> party applications. All login credentials and license information should directly and accurately reflect the proper names, amounts, and versions of both the end users and software/applications being utilized by the Customer. If the Customer is found to be performing any of the aforementioned actions or soliciting the services of Cloudnine in performing these actions, Cloudnine reserves the right to cancel the existing contract with the Customer immediately with no refund.

5.4. **Piracy.** Customer shall not license, sub-license, distribute, or disclose the use of their Application(s) to any third party, or use their Application(s) for any purpose other than accessing the Customer’s own data in accordance with this Agreement. At no time may the Customer share user credentials, license numbers, or any other applicable information used to access Cloudnine

services or 3rd party applications. All login credentials and license information should directly and accurately reflect the proper names, amounts, and versions of both the end users and software/applications being utilized by the Customer. If the Customer is found to be performing any of the aforementioned actions or soliciting the services of Cloudnine in performing these actions, Cloudnine shall view these actions as piracy and can cancel the existing contract with the Customer immediately with no refund.

- 5.5. **Cooperation.** Customer, Customer's client, or any End User shall reasonably cooperate with Cloudnine in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as Cloudnine may reasonably request from the Customer, Customer's client, or any End User. Customer, Customer's client, or any End User shall reasonably cooperate with Cloudnine by maintaining a local copy of all data before uploading or storing data to the Cloudnine ASP Application. Additionally, Customer, Customer's client, or any End User shall reasonably cooperate with Cloudnine in transferring any local copy of data to Cloudnine if requested so as to maintain data integrity. Customer, Customer's client, or any End User shall reasonably cooperate with Cloudnine in instances of data breach, hacking attempts, privacy or data loss before any litigation is filed or authorities notified, notwithstanding any legal obligations under state or federal law.
- 5.6. **Investigations.** If Customer requests Cloudnine to investigate any anomalies in the ASP Application, including but not limited to data breach, hacking attempts, privacy or data loss, Customer will be charged at Cloudnine's then prevailing hourly rate. Customer shall pay such charges on its then applicable monthly invoice, and payment will be subject to the Payment and Late Payment terms described in this Agreement.
- 5.7. **Authorized Users/Contacts.** Any person(s) listed on a Customer account as either an "Authorized User" or "Authorized Contact" shall be the only representation of the Customer allowed to make billable changes to their account with Cloudnine. The authorized users/contacts have the ability to add additional authorized users/contacts by submitting the request directly to a representative of Cloudnine via the C9 Portal. These authorized users/contacts serve as the primary business contact between Cloudnine and users, and they are responsible for ensuring that all users within their account are aware of contract renewal dates and Cloudnine company policies and procedures.
- 5.8. **State or Federal Tax Code.** Cloudnine is not responsible for Customer's obligations under State or Federal Tax Code, procedures, or regulations related to maintaining electronic or hard copies of tax returns. Customer is solely responsible for its compliance with its obligations under State or Federal Tax Code, procedures, or regulations and its relation to maintaining electronic or hard copies of Customer information or tax returns.
- 5.9. **Security.** Customer shall adhere to the following security protocols:
  - 5.9.1. **Login Information Assignment.** You agree that upon the assignment of your login information such as a username and password that you will maintain the confidentiality of your account information and assume all responsibility of and from any loss, theft or other destruction of any data as the result of any access to your account via the use of your login information. You further agree to defend and indemnify and hold harmless Cloudnine of and from any and all third party claims, causes of action, demands, costs, damages including both direct and consequential damages, specifically including attorney's fees and costs, expert fees and costs and mediation and/or arbitration fees and costs incurred (whether paid or not) as the result of any claim for damages in any way related to the disclosure of your confidential login information. Choice of counsel remains exclusively that of Cloudnine.

5.9.2. **Login Information Protection/Password Strength.** You are solely responsible for ensuring that your login information is utilized only by you. Your responsibility includes ensuring the secrecy and strength of your passwords. Cloudnine shall have no liability resulting from the unauthorized use of your login information. If you use weak passwords or do not change your password frequently, you increase the risk of your password being discovered by unauthorized parties. If login information is lost, stolen, or used by unauthorized parties or if you believe that your hosted data has been accessed by unauthorized parties, it is your responsibility to notify Cloudnine to request the login information be reset or unauthorized access otherwise be prevented. Cloudnine will use commercially reasonable efforts to affect such requests as soon as practicable after their receipt. Cloudnine will use commercially reasonable efforts to notify Customer's primary contact in the event of a confirmed security breach. Cloudnine requires all applications with sensitive data, including but not limited to the ASP Application and ATX Application should be password protected.

5.9.3. **Can't Impersonate Another User (Share Logins). Duty to Notify of Unauthorized Use.** Customer is responsible for all activity occurring under Customer's, Customer's clients, or any End User accounts and shall comply with all applicable laws and regulations in connection with Customer's use of the Services, including but not limited to those related to data privacy, international communications, the transmission of technical or personal data and export control laws and regulations. Customer shall: (i) notify Cloudnine immediately of any unauthorized use of any password or account or any other known or suspected breach of security with respect to the Services; (ii) report to Cloudnine immediately and use reasonable efforts to stop immediately any copying or distribution or misuse of any content, Cloudnine's ASP Application or technology, Services or deliverable that becomes known or suspected by Customer's, Customer's clients, or any End User accounts; (iii) not impersonate another Cloudnine user or provide false identity information to gain access to or use the Services. Customer shall not share its login credentials with another geo-location site. Each site must have its own login credentials.

5.9.4. **Security Protocol Violation.** If Customer violates any of these security protocols, such violation shall be considered a breach of contract. Cloudnine retains all rights to disable and the right to restrict access to all data until Customer becomes compliant with the terms in this Agreement. Customer remains solely responsible for any claims or causes of actions related to any portion of section 4.8.

## 6. LIMITATIONS ON USE

6.1. Customer shall not use the Services to: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, pornographic, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or in violation of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Services or the data contained therein; or (v) attempt to gain unauthorized access to the Services or its related systems or networks.

6.2. **Network Abuse.** Any use of Cloudnine systems to commit network abuse (including, but not limited to, denial of service attacks such as ping bombing, email bombing, "smurf", "winnuke", "land", "teardrop", etc.) or otherwise compromise the security of hosts or networks is prohibited.

## 7. BILLING / PAYMENT / FEES / PROMOTION RATES / TAXES

- 7.1. **Billing Information.** Customer agrees to provide Cloudnine with accurate billing and contact information, including Customer's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and Administrator. Customer agrees to update this information within thirty (30) days of any change to it. If the contact information Customer has provided is false or fraudulent, Cloudnine reserves the right to terminate Customer's access to the Services in addition to any other legal remedies.
- 7.2. **Work Order Documents.** If Customer does not provide requested Work Order Documents within thirty (30) days of signing their contract with Cloudnine, therefore delaying the launch of their ASP Application at no fault of Cloudnine, then Customer agrees that their ASP Application will be considered live at this point (the "Go Live Date") and their billing cycle will begin thirty (30) days from contract signature date and any annual renewal will be based on this Go Live Date.
- 7.3. **Payment by Credit Card or Bank Transfer.** Prior to activation of user accounts and at any applicable time thereafter, Customer authorizes Cloudnine to charge the credit card provided or transfer funds from the bank account provided for the amount of the fees due for the agreed upon services, together with any applicable set-up charges, registration fees, bank transfer fees, or fees resulting from services provided in addition to or in excess of the previously agreed-upon limits, or any other charges outlined in the signed contract.

In consideration of Cloudnine providing access to the ASP Application, Customer shall pay to Cloudnine all applicable License Fees. The License Fee is charged as contracted on the Cloudnine Proposal or Sign Up document in conjunction with this Agreement. All license fees are subject to change with a thirty (30) day notice. Cloudnine further reserves the right to institute new services and change fees in association with the provision of such new services as it deems appropriate. Periodic services fees are due for a period if the service was available for your use in the period regardless of whether the service was used in that period.

Cloudnine is a licensed Intuit Commercial Hosting company. Intuit charges all users accessing QuickBooks on the Cloudnine System a per month hosting fee. These charges will be automatically processed each month and charged to Customer then paid to Intuit, Inc.

- 7.4. **Changes to Fees or Billing Methods.** We reserve the right to change License Fees or billing methods at any time and we will provide notice of any such change at least thirty (30) days in advance. If any change is unacceptable to Customer, Customer may cancel account at that time, but Cloudnine will not refund any fees that may have accrued prior to cancellation.
- 7.5. **Credit Card/Bank Draft.** Customer may pay the Hardware, Software and License Fees by credit card or bank draft and is representing and warrants that they are the authorized user of the credit card and/or signee. Where a contract is entered into on a yearly subscription basis, Customer agrees that the contract will automatically renew if written notice is not received within thirty (30) days prior to expiration. Customer agrees to promptly notify Cloudnine of any changes to credit card account number, its expiration date or billing address, and agrees to promptly notify Cloudnine if credit card expires or is cancelled for any reason.
- 7.6. **Setup Fees.** Setup Fees apply from the moment you place an order with Cloudnine. Service Fees apply from the moment the setup work is completed until Cancellation or Termination of the Services (outlined below in Section 8) regardless of your use of the Services or whether your access has been suspended.

- 7.7. **Support or Consulting Fees.** Support or Consulting Fees apply at Cloudnine's then current hourly rate to be invoiced as such Services are rendered, on a monthly basis.
- 7.8. **Renewal Service Term and Right to Modify Fees.** Cloudnine reserves the right to modify its Fees with respect to its Services and to introduce new charges to become effective upon the upcoming Renewal Service Term by providing Customer written notice at least thirty (30) days prior to the end of the then current Service Term. In the event that Customer does not provide notice of cancellation to Cloudnine as described in section 8 below, such Fee changes shall become effective at the commencement of the next Renewal Service Term. In the event Customer fails to make payments per payment terms as set forth in this Agreement, and legal enforcement by Cloudnine is deemed necessary, Customer agrees to pay all reasonable legal fees and costs incurred by Cloudnine.
- 7.9. **Software Fees.** Cloudnine does not charge for your use of software when you are using traditional software licenses (as distinguished from leased/subscription or "as-a- service" software licenses). Cloudnine is in no way renting or sublicensing such software and does not offer such software on an application service provider or time-sharing basis because Cloudnine fees are not for use of such software, but for your lease of the hosting platform, for maintenance of this platform, and for support for your use and the availability of this platform. Cloudnine charges for use of software that you lease through Cloudnine including any use of Microsoft Office but excluding any use of Intuit products except those explicitly leased through Cloudnine.
- 7.10. **Promotional Rates.** Cloudnine reserves the right to offer subsequent promotional rates which may or may not be more favorable than the terms under which you entered this Agreement. Any such periodic special rates shall not affect the then existing rights and responsibilities of each party. Promotional offers and rates may not be combined.
- 7.11. **Past Due Accounts.** Past due accounts are subject to revocation of any or all discounts or promotional rates at Cloudnine's sole discretion. If any of your accounts are past due in any three separate service periods, you grant Cloudnine the right to contact all users associated with your accounts for direct billing.
- 7.12. **Time & Materials.** All Services are provided on a time and materials basis. Cloudnine does not guarantee that Services performed on a time and materials basis can be fully performed for any "not to exceed" or maximum price set forth in an order. Cloudnine shall assign an adequate number of personnel to perform the Services.
- 7.13. **Taxes.** Fees under this Agreement are exclusive of all taxes, including national, state or provincial and local use, sales, property and similar taxes, where applicable, Cloudnine agrees to itemize any such taxes on the invoices, and Customer agrees to pay such taxes to Cloudnine as set forth.

## **8. LATE PAYMENT / CANCELLATION OF SERVICES / TERMINATION OF SERVICES / BILLING DISPUTES / COLLECTIONS**

- 8.1. **Late Payment Policy.** Cloudnine understands that at times our Customers forget information has changed on their credit cards, or a new number is issued and the Customer forgets to change billing information with Cloudnine. A Customer's first offense will be excused under courtesy discretion; all other offenses will be treated as follows in regards to fees:
- 8.1.1. **Credit Cards & Charge Cards.** If you do not pay your minimum payment by the due date, you will be charged a late payment fee. However, you will not be charged a late payment fee that is greater than your minimum payment due. However, if you do not pay for two billing

periods in a row your late fee will be compounded at 1.25% per month of the past due amount.

8.1.2. **Returned Check Fees.** If your payment is returned unpaid by your bank (also known as “bouncing a check,”) you will be charged a returned check fee.

8.2. **Daily E-mails.** You will receive email notifications informing you payment is due. Once your invoice has reached its due date, you will receive daily emails informing you that an invoice is past due and must be paid. If you fail to meet your payment obligation, Cloudnine has the right to suspend or terminate your account. The following policies are available at the discretion of Cloudnine management:

8.2.1. **Suspension of Services.** If your payment is not received within 72 hours (3 days) after its due date, Cloudnine holds the right to suspend your account access, and accounts connected to your account until payment is received in full. You will also be charged a minimum late fee.

If your payment is not received within 120 hours (5 days) after its due date, Cloudnine holds the right to suspend your account access, and the accounts connected to your account until payment is received in full, plus a per user reinstatement fee and a minimum late fee. If your payment is not received within 240 hours (10 days) after its due date, Cloudnine holds the right to terminate your contract and archive Customer’s data for a period of thirty (30) days. If payment is not received within a thirty (30) day period, and all fees which are assessed are not paid, Customers data, and all accounts data associated with this account will be permanently removed from its servers.

8.2.2. **Cancellation of Services.** Customer has the right to cancel services at any time. Cloudnine does not offer refunds on its specialized services (please refer to Cloudnine’s refund policy).

Upon cancellation, Customer has the right to request transfer of all data files which reside on Cloudnine infrastructure, but, must provide Cloudnine a personal hard drive large enough to backup Customer’s data. Hard drive must be a single unit, portable drive, USB connected. (Cloudnine can provide you a Hard Drive at a cost). The following fees will apply and payment must be received before data is released:

- Backup fee per 250GB of information.
- Postage and handling fee (Cloudnine uses FEDEX, but if Customer chooses a different carrier, appropriate fees will be billed back to Customer before shipment.)

8.2.3. **Termination of Services.** Cloudnine holds the right to terminate a Customer’s services if it finds the Customer is in violation of any of Cloudnine’s Terms of Services, Security or Privacy Policies. Cloudnine will hold terminated Customers data for a period of 30 days and provide the Customer an opportunity to retrieve its data under section 12 of this policy.

Cloudnine may terminate a Customer’s services if it fails to make timely payments based upon its monthly, yearly or quarterly financial obligations to Cloudnine. If for any reason the credit card or bank transfer information you provided is insufficient to pay any fees at the commencement of any service period, Cloudnine at its sole discretion will have the right to suspend and/or terminate your account under the terms in this Agreement. Refusal or rejection of any charge or any portion thereof is grounds for account suspension and/or termination at the sole option of Cloudnine under the terms of this Agreement.

Cloudnine may delete all Customer data from its infrastructure if it has not received payment from Customer in regards to services rendered or fees assessed within a 30-day period.

Cloudnine is not responsible for any loss of data after a thirty (30) day period of time should Customer's services be cancelled or terminated.

8.2.4. **Effect of Termination of Services.** If Customer: (i) ceases to provide services to Customer's clients, or (ii) if Customer fails to pay Cloudnine for any reason, or (iii) if Customer fails to pay Cloudnine for a period of thirty (30) days from the invoice date, then Cloudnine reserves the right to transfer and assign all rights under this Agreement from Customer to Customer's client or any End User to whom Cloudnine is providing services prior to termination.

8.3. **Billing Disputes.** If Customer disputes an invoice, it must provide notice to Cloudnine within three (3) days of the invoice, designating which part of the invoice is disputed, the reason for the dispute, and payment for the undisputed portion. If Customer's account is in arrears for three (3) days or more, Cloudnine's Late Payment Policy will apply, and Cloudnine may suspend or terminate the Services until such time as Customer's account is brought current. The rights in this Section 8 are in addition to any other rights under this Agreement, at law, or in equity.

8.4. **Collections.** All past due and unpaid balances are subject to collection through collection agencies. In the event of such collection action, Customers are liable for costs of collection including but not limited to attorney's fees, court costs, and collection agency fees.

## 9. REFUND POLICY

9.1. **General.** This policy governs your purchase of the Cloudnine ASP Application and/or Services. Your placement of an order constitutes your agreement that this policy applies to the order.

If you are not fully satisfied with your purchase of the Cloudnine ASP Application and/or Services, you can get your money back upon the Refund Conditions set forth below. However, we believe that most refunds can be avoided if you get professional assistance from our qualified staff.

9.2. **Refund Conditions.** We highly encourage our Customers to evaluate our Cloudnine ASP Application and/or Services by using the available free trial prior to placing any order. After the free trial period is over, Customer must cancel the Cloudnine Service Pursuant to cancellation procedure set forth below in Section 11.3, and seek a refund pursuant to the refund procedures set forth below in Section 9.3.

9.3. **Refund Procedure.** All refund requests must be submitted to our Customer Help Desk. Refund requests must be made within a 30-day period of customer cancellation. Requests made via e-mail, problem ticket, or by voicemail are not acceptable. You must speak directly to our Customer Help Desk to use our refund procedure for claiming unsatisfactory services, or else we may refuse to process the claim. Our refund procedure is as follows:

9.3.1. Customer must contact and speak directly with someone in our Customer Help Desk to notify Cloudnine of any unsatisfactory service, at which time the Customer Help Desk attendant may ask questions about the unsatisfactory service and may transfer your call to a technician or other Cloudnine service representative who will investigate your claim.

9.3.2. During the investigation, a Cloudnine technician or service representative will notify you as to whether the services provided were unsatisfactory, and will seek to provide an appropriate remedy.

9.3.3. After speaking with you over the phone, Cloudnine will then create a report as to whether it believes the services were of a level of quality that an average person would expect of that

type of service or not. In that report, the Customer Help Desk may tell you that they do not believe you have an unsatisfactory claim.

9.3.4. If the services were cancelled and our report says that we believe the services were of a level of quality that an average person would expect of that type of service, then we will inform you that we are unfortunately unable to remedy or refund the service. We will send you the written report.

9.3.5. If our report says that we believe the services were not of a level of quality that an average person would expect of that type of service, then we will contact you, and inform you how to proceed.

9.4. The decision about whether to grant a refund request will be made within five to ten business days.

9.5. If the refund is granted, the user must remove all copies of Cloudnine ASP Application or any of its derivatives and must not use any of the hosted software unless another license is purchased.

## **10. CONFIDENTIALITY**

10.1. **Confidential Information**. Shall mean confidential or shall include proprietary information that is disclosed by one party to the other party under this Agreement including, without limitation, business and product plans, customer information, marketing materials, employee names and other confidential business information. Confidential Information shall not include information which: (i) is or becomes public knowledge without any action by, or involvement of, the party receiving the Confidential Information hereunder; (ii) is independently developed by the receiving party without use of the other parties Confidential Information; (iii) is already known on an unrestricted basis to the receiving party at the time of disclosure under this Agreement; (iv) is disclosed to the receiving party by a third party who is entitled to disclose it without restriction; (v) is anything that is posted to the internet or public domain, including but not limited to, Customer's name, Customer's business, and/or Customer's URLs. Additionally, Confidential Information shall not include any information to show that Customer is a Customer of Cloudnine.

10.2. **Confidentiality of Pricing**. For the avoidance of doubt, Confidential information also includes all pricing terms offered to Customer under this Agreement. In addition, neither party will disclose any pricing terms or other terms of this Agreement to anyone other than its attorneys, accountants, and other professional advisors under a duty of confidentiality except (a) as required by law, or (b) pursuant to a mutually agreeable press release.

10.3. **Protection of Confidential Information**. Each party agrees not to transfer or otherwise disclose the Confidential Information of the other party to any third party. Each party shall (i) give access to such Confidential Information solely to those employees with a need to have access thereto for purposes of this Agreement, and (ii) take the same security precautions to protect against disclosure or unauthorized use of such Confidential Information that the party takes with its own confidential information, but, in no event, shall a party apply less than a reasonable standard of care to prevent such disclosure or unauthorized use. Nothing in this Agreement shall prevent either party from disclosing the Confidential Information of the other party pursuant to any judicial or governmental order, provided that the party gives the other party reasonable prior notice of such disclosure (to the extent it is permitted to do so under such order) to contest such order.

10.4. **Non-Use and Non-Disclosure**. Commencing on the date hereof and at all times thereafter, Cloudnine shall hold in the strictest confidence (except as previously approved by the Customer in writing), and shall not, directly or indirectly, disclose, divulge, reveal, report, publish, transfer or



otherwise communicate, or use for its or his own benefit or the benefit of any other person, partnership, firm, corporation or other entity, or use to the detriment of the Customer, or misuse in any way, any Confidential Information received from Customer. Cloudnine will in no way infringe upon any copyrights of the Customer or and will in no way use, copy, appropriate or redistribute any part of the Confidential Information, whether obtained directly or indirectly from the Customer, without a specific written license agreement with the Customer. It is agreed that any derivative, modification or elaboration of any Confidential Information by any third party remains the proprietary property of the Customer for purposes of this Agreement. Cloudnine and the Customer each hereby stipulate that, as between them, all Confidential Information acquired by the Customer constitutes important, material and confidential and/or proprietary information of the Business, constitutes unique and valuable information, and affects the successful conduct of the Business and the Customer's goodwill, and that the Customer shall be entitled to recover its damages, in addition to any injunctive remedy that may be available, for any breach of this agreement. Finally, Confidential Information disclosures made under this Agreement are subject to the Limitation of Liability and other terms of this Agreement. Customer may not release to any third party the results of any evaluation of the Services performed by or on behalf of Customer for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes without the prior written approval of Cloudnine.

10.5. **Intellectual Property Rights**. Except as expressly set forth herein, Cloudnine shall retain all right, title and interest in, and shall be the sole owner of all forms of intellectual property rights and protections in and to the ASP Application, the documentation for the Cloudnine Software, and Cloudnine Confidential Information. Customer shall maintain all rights in the content that it provides to Cloudnine, as well as all of its Confidential Information, including, without limitation, information in Cloudnine's databases related to Customer, its users, Customers and their respective users. Neither party shall copy, distribute, reproduce or use the other party's property except as expressly permitted under this Agreement. If Customer breaches any portion of these terms and conditions, Cloudnine reserves the right to restrict user access to all data until Customer becomes compliant with terms & conditions. Customer agrees to receive written authorization from Cloudnine before performing any security analysis of any Cloudnine service. Customer agrees not to attempt to reproduce, reverse engineer, decompile, or disassemble any Cloudnine service and you agree that any derivative work is the sole property of Cloudnine.

10.6. **Marketing**. Customer hereby grants Cloudnine the right to reference Customer's name, industry, logo, and URLs in its marketing literature, website, and/or correspondence to potential new Customers, so as to identify Customer as a Cloudnine customer and for Cloudnine's benefit. Such information is not considered Confidential Information subject to non-disclosure. Customer agrees to a joint press release with Cloudnine outlining Customer's reasons for choosing Cloudnine services. Customer also agrees to participate in Cloudnine reference and case study programs.

## **11. TERM / TERMINATION POLICY / EARLY TERMINATION FEE**

11.1. **Term**. It is agreed and understood that after the contract period (identified in the signed proposal), the term of this Agreement shall automatically convert to month-to-month, unless terminated by either party, by giving thirty (30) calendar days written notice to the other party prior to the expiration of the initial Term or any successive Term.

11.2. **Right to Terminate**. For any reason set forth herein or in the event that Customer breaches any term of this agreement, Cloudnine may suspend or terminate Customer's account by deactivating any access to any information contained on the Cloudnine servers related to Customer's account. Suspension hereunder shall specifically include the disabling of Customer's access to Cloudnine's Services or any access to information or data related to Customer's account. Service charges will

continue to accrue on suspended accounts and Customer continues to remain responsible for the payment of any such charges during the period of suspension. Cloudnine reserves the right to terminate Customer's account forthwith and without notice for any breach of this Agreement.

If Customer's or Customer's clients use of the Services is paid for by or through a third party, Customer or Customer's clients understand and agree that the third party has the right to have Customer or Customer's clients account suspended or terminated at any time for any or no reason and that their failure to pay for services that Customer or Customer's clients use could result in termination or suspension of Customer or Customer's clients access to the services and/or Customer or Customer's clients hosted data.

11.3. **Early Termination.** Customer of Cloudnine may terminate services at their discretion, but are subject to penalties and fees for early termination.

Termination Fees and Penalties will be assessed at the time of termination of contract. As longer contracts receive greater discounts, the following penalties and fees will be accrued by Customer for early termination:

- 100% of the remaining contract value will be charged to Customer.
- Upon termination, Customer has the right to request transfer of all data files which reside on Cloudnine infrastructure, within THIRTY (30 DAYS), but, must provide Cloudnine a personal hard drive large enough to backup Customer's data. Hard drive must be a single unit, portable drive, USB connected. (Cloudnine can provide you a 500 GIG Hard Drive at a cost). The following fees will apply and payment must be received before data is released:
- Backup fee per 250GB of information.
- Postage and handling fee (Cloudnine uses FEDEX, but if Customer chooses a different carrier, appropriate fees will be billed back to Customer before shipment.)

## **12. RIGHTS TO DATA AFTER TERMINATION OF CONTRACT ON CLOUDNINE INFRASTRUCTURE**

After 30 days from date of termination, Cloudnine has the right to permanently remove all Customer data from Cloudnine's infrastructure, including live and archived data for Customer, and all live and archived data for Customer's Customers. Cloudnine will not be responsible for any losses of sensitive data after 30 days from Customer termination date. It is the Customer's responsibility to request or perform a backup of all personal data on Cloudnine's infrastructure within this 30-day period.

Customer has right to request backup of personal and Customer data for a period of 30 days from date of termination, but will be assessed a fee.

Upon termination date, Customer will not be allowed access to Cloudnine infrastructure, and all data will be archived for no longer than 30 days from date of termination.

**CUSTOMER AGREES AND ACKNOWLEDGES THAT (I) CLOUDNINE IS NOT OBLIGATED TO RETAIN ANY CUSTOMER DATA FOR LONGER THAN THIRTY (30) DAYS AFTER TERMINATION, AND (II) CLOUDNINE HAS NO OBLIGATION TO RETAIN CUSTOMER DATA, AND MAY DELETE CUSTOMER DATA, IF CUSTOMER HAS MATERIALLY BREACHED THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO FAILURE TO PAY OUTSTANDING FEES.**

UPON TERMINATION FOR CAUSE RESULTING FROM AN UNCURED BREACH, CUSTOMER'S RIGHT TO ACCESS OR USE CUSTOMER DATA IMMEDIATELY CEASES, AND CLOUDNINE SHALL HAVE NO OBLIGATION TO MAINTAIN OR FORWARD ANY CUSTOMER DATA.

THIRTY (30) DAYS IS REPRESENTED AS THIRTY (30) CALENDAR DAYS, INCLUDING ALL WEEKENDS, HOLIDAYS OR DAYS CLOUDNINE IS CLOSED. MONTHS THAT INCLUDE AN ADDITIONAL DAY, (DECEMBER), OR MONTHS THAT ARE FEWER THAN THIRTY (30 DAYS) (FEBRUARY) WILL STILL BE TREATED AS THIRTY (30 DAYS) FROM DATE OF TERMINATION.

### 13. LIMITED WARRANTY

13.1. **Software; Repair or Replace.** Cloudnine warrants that the ASP Application when operated on a Supported System will be free from Material Defects (defined below) during the Term. Cloudnine's sole responsibility under this warranty shall be, at Cloudnine option, to either repair or replace the Material Defect in the ASP Application, or, if Cloudnine cannot repair or replace the Material Defect to return to Customer a pro-rata refund of fees paid hereunder, limited to the time period during which the Material Defect impaired Customer's use of the ASP Application. Cloudnine represents and warrants that: (1) the Cloudnine and the ASP Application will perform in accordance with its documentation and specifications in existence as of the date hereto; (2) Cloudnine is the sole owner of the Cloudnine Software and the ASP Application, and has obtained any and all valid

software licenses for any of the software it uses to perform its services; and (3) all of the services to be performed will be rendered using sound, professional practices and in a competent and professional manner consistent with the standards of service in its industry using appropriately trained and qualified personnel. Cloudnine shall have no liability resulting from (a) the combination, operation or use of the ASP Application with equipment, devices or software not supplied or approved by Cloudnine; or (b) the alteration or modification of the ASP Application that was not made or authorized (in advance, and in writing) by Cloudnine. A "Material Defect" shall mean any reported malfunction, error or other defect in the Cloudnine Software that: (i) can be reproduced by Cloudnine; and (ii) constitutes a material nonconformity with the specifications for the Cloudnine Software; or (iii) prevents or severely impairs Customer's use of the Cloudnine Software for its intended purposes. Material defect does not include any problems that arise due to any 3<sup>rd</sup> party manufacturer's software.

13.2. **Hardware; Repair or Replace.** Cloudnine warrants all equipment purchase by the customer for material defects during the standard manufacturer warranty. Hardware Warranty is simply a guarantee that if a piece of hardware should fail to function properly, the hardware will be repaired or replaced by Cloudnine at no additional cost to the customer. The obligation of Cloudnine does not extend to any warranty for fire, theft, damage, harm, consequential or incidental damages resulting from Customer. Warranty on hardware is valid for the duration the purchaser is an Cloudnine Customer.

13.3. **Warranty Disclaimer.** BOTH PARTIES HEREBY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND TITLE. CLOUDNINE DOES NOT REPRESENT OR WARRANT THAT THE OPERATION OF ASP APPLICATION WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL ERRORS WILL BE CORRECTED. CLOUDNINE MAKES NO WARRANTIES OF ANY KIND WITH RESPECT TO THIRD PARTY SOFTWARE.

ALL CLOUDNINE SERVICES ARE PROVIDED TO YOU ON AN “AS IS” BASIS, AND WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

#### **14. INDEMNIFICATION**

14.1. **Customer Indemnity.** Customer shall indemnify and hold Cloudnine and its affiliates and subsidiaries and their respective directors, officers, employees and representatives, harmless from any and against any third party claims, damages, losses, liabilities, causes of action or injuries, together with all costs and expenses, including penalties, interest levied, reasonable attorney’s fees and court costs, arising out of or resulting from:

14.1.1. Any failure by Customer, its employees or representatives to comply fully with the obligations set forth in this Agreement, including without limitation obligations for payment of taxes or failure to obtain legally licensed software;

14.1.2. Any failure by Customer, its Authorized Users, employees or representatives to comply fully with the posted or published terms of Cloudnine Privacy Policy available at <https://www.cloudninerealttime.com/privacy-policy> (which policy may be updated by Cloudnine from time-to-time) and Terms of Use with respect to any customer network, a portion of Services;

14.1.3. The infringement of a third party copyright, trade secret, trademark, moral right or other proprietary right caused by the unauthorized use of any licensed product or hardware by Customer; or

14.1.4. The gross negligence or intentional misconduct of Customer, Customer Affiliate, or Customer employee, contractor or other personnel.

#### **15. LIMITATION OF LIABILITY**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE ASP APPLICATION OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, LOST WAGES, MAN HOURS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF FEES PAID TO CLOUDNINE HEREUNDER DURING THE PRECEDING SIX MONTHS. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**CUSTOMER AND CLOUDNINE ACKNOWLEDGE THE RISKS INVOLVED WITH USING THE CLOUDNINE ASP APPLICATION AND/OR THE CLOUDNINE SERVICES, AND CUSTOMER IS AWARE OF THE TERMS IN THIS LIMITATION OF LIABILITY. BOTH CUSTOMER AND CLOUDNINE AGREE THAT THE LIMITATION OF LIABILITY SET FORTH HEREIN WAS SUFFICIENTLY BARGAINED FOR TO ASSESS THE ALLOCATION OF RISKS IN USING THE CLOUDNINE ASP APPLICATION AND/OR CLOUDNINE SERVICES DESCRIBED IN THIS AGREEMENT (INCLUDING THE RISK THAT A CONTRACT REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE AND CAUSE CONSEQUENTIAL LOSS); OTHERWISE THE PRICE OF THE CLOUDNINE ASP APPLICATION AND/OR CLOUDNINE SERVICES WOULD BE DIFFERENT. BY USING THE CLOUDNINE ASP APPLICATION AND/OR CLOUDNINE SERVICES, CUSTOMER AGREES TO BE BOUND BY THIS LIMITATION OF LIABILITY.**

## **16. GENERAL PROVISIONS**

- 16.1. **Relationship of the Parties.** The relationship established between the parties by this Agreement is that of independent contractors.
- 16.2. **Subcontracting.** Cloudnine may subcontract any work under this Agreement to any third party without Customer's prior written consent. Cloudnine shall remain responsible for the performance, acts, and omissions of any subcontractors.
- 16.3. **Complete Understanding; Modification.** This Agreement constitutes the complete and exclusive agreement of the parties and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof. No modification of or amendment to this Agreement nor any waiver of any rights under this Agreement shall be effective unless agreed in writing signed by both parties.
- 16.4. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable under the circumstances, such provisions application in any other circumstances and the remaining provisions of this Agreement shall not be affected thereby.
- 16.5. **Non-assign ability and Binding Effect.** Neither party shall assign this Agreement to any third party without the prior written consent of the other party which will not be unreasonably withheld, except that either party may assign this Agreement to any successor all or substantially all of its stock or assets.
- 16.6. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed effective when delivered by hand or upon receipt when mailed by registered or certified mail (return receipt requested), postage prepaid, to the parties at the addresses first listed above (or at such other address for a party as shall be specified by like notice).
- 16.7. **Force Majeure.** Neither party shall be liable for any loss resulting from a cause over which it does not have reasonable control including, but not limited to, failure of electronic or mechanical equipment or communication lines, telephone or other interconnect or Internet problems, severe weather, earthquakes, or natural disasters, wars, or governmental restrictions. To the extent any such event continues for a period of more than thirty (30) days, Customer may terminate this Agreement without liability of any kind.
- 16.8. **Waiver.** No failure or delay on the part of any party in exercising any right hereunder, irrespective of the length of time for which such failure or delay shall continue, will operate as a waiver of, or impair, any such right. No single or partial exercise of any right hereunder shall preclude any other

or further exercise thereof or the exercise of any other right. No waiver of any right hereunder will be effective unless given in a signed writing.

- 16.9. **Governing Law.** This Agreement is governed by the substantive laws of the State of California. The federal and state courts sitting in San Diego, California, U.S.A. shall have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement.
- 16.9 **Data Processing Addendum.** The Data Processing Addendum set forth below shall be incorporated by reference into the Cloudnine Realtime Terms & Conditions.

## DATA PROCESSING ADDENDUM

### Scope, Order of Precedence and Term

This Data Processing Addendum shall be incorporated into the Cloudnine Realtime Terms & Conditions.

1.1. Except as expressly stated otherwise in this Data Processing Addendum, in the event of any conflict between the terms set forth in the Cloudnine Realtime Terms & Conditions, including any policies or schedules referenced therein, and the terms of this Data Processing Addendum, the relevant terms of this Data Processing Addendum shall take precedence.

### 2. Definitions

2.1. “Cloudnine” means RTB Global Inc. d/b/a Cloudnine Realtime, together with the Cloudnine Affiliates.

2.2. “Affiliate,” or “Affiliates” means any entity which is controlled by, controls or is in common control with Cloudnine, which includes Abacus Data Systems, Inc.

2.3. “Applicable Data Protection Law” means (i) Directive 95/46/EC of October 24, 1995, as amended, on the protection of individuals with regard to the Processing of Personal Data and on the free movement of such data (‘Directive’) until such time that it is replaced by GDPR, applicable as of May 25, 2018; (ii) the GDPR; and (iii) any other data privacy or data protection law or regulation that applies to the Processing of Personal Data under the Cloudnine Realtime Terms & Conditions.

2.4. “Data Controller” means the entity which determines the purposes and means of the Processing of Personal Data.

2.5. “Data Processor” means the entity which Processes Personal Data on behalf of the Data Controller.

2.6. “Data Subject” “means the individual to whom Personal Data relates (not a business or other entity).

2.7. “GDPR” means the General Data Protection Regulation (EU 2016/679) and/or any legislation which preserves or replaces it following the United Kingdom’s exit from the European Union. To the extent that any legislation preserves or replaces the GDPR following the United Kingdom’s exit from the European Union, references to the GDPR shall be interpreted as references to the nearest equivalent provision(s) of such new legislation.

2.8. “Personal Data” means any information that Cloudnine may Process on Customer’s behalf in connection with the products or services provided to Customer by Cloudnine relating to a Data Subject who can be identified, such as by a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that Data Subject. A Data Subject can also be directly or indirectly identified by a person’s online identifiers such as internet protocol addresses and cookie identifiers which monitor the person’s online behavior.

2.9. “Processing,” “Process,” “Processes” and “Processed” mean any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structure, storage (including archiving), adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

2.10. “Supervisory Authority” means an independent public authority which is established by an EU Member State.

2.11. “Third Party Sub-processor” means a third-party subcontractor, other than an Affiliate, engaged by Cloudnine and which may Process Personal Data as set forth in Section 8

2.12. “Customer” means the customer (sole proprietorship or entity) that has affirmatively accepted the Cloudnine Realtime Terms & Conditions.

### **3. Controller and Processor of Personal Data and Purpose of Processing**

3.1. Customer is and will at all times remain the Controller of the Personal Data Processed by Abacus. Customer is responsible for compliance with Customer’s obligations as a Controller under Applicable Data Protection Law, in particular for justification of any transmission of Personal Data to Cloudnine (including providing any required notices and obtaining any required consents and/or authorizations, or otherwise securing an appropriate legal basis under Applicable Data Protection Law), and for Customer’s decisions and actions concerning the Processing of such Personal Data.

3.2. Where Cloudnine Processes Personal Data, Cloudnine is and will at all times remain a Processor with regard to the Personal Data provided by Customer to Cloudnine. Cloudnine is responsible for compliance with its obligations as a Processor under Applicable Data Protections Law. Not all products or services governed by the Cloudnine Realtime Terms & Conditions necessarily require Cloudnine to Process Personal Data.

3.3. Cloudnine and any persons acting under the authority of Abacus, including any Cloudnine Affiliates and Third-Party Sub-processors as set forth in Section 8 will Process Personal Data solely for the purpose of (i) providing the Service, (ii) complying with Customer’s documented written instructions in accordance with Section 5, or (iii) complying with Cloudnine’s regulatory obligations in accordance with Section 13.

3.4. As the Data Controller, Customer warrants, represents and undertakes to Cloudnine that Customer has lawful grounds for the processing of Personal Data.

### **4. Categories of Personal Data and Data Subjects**

4.1. In order to provide Customer with the services contemplated by the Cloudnine Realtime Terms & Conditions, Cloudnine may Process some or all of the following categories of Personal Data: personal contact information such as name, home address, home telephone or mobile number, fax number, email address, and passwords; information concerning family, lifestyle and social circumstances including age, date of birth, marital status, number of children and name(s) of spouse and/or children; employment details including employer name, job title and function, employment history, salary and other benefits, job performance and other capabilities, education/qualification, identification numbers, social security details and business contact details; financial details; goods and services provided; unique IDs collected from mobile devices, network carriers or data providers, IP addresses, and online behavior and interest data.

4.2. Categories of Data Subjects whose Personal Data may be Processed in order to perform any obligations under the Cloudnine Realtime Terms & Conditions or otherwise providing the Service may include, among others, Customer’s representatives and end users, such as Customer’s employees, job applicants, contractors, collaborators, partners, suppliers, customers and clients.

4.3. Content provided to Cloudnine by Customer may not include any sensitive or special personal data that imposes specific data security or data protection obligations on Cloudnine in addition to or different from those specified in the Cloudnine Realtime Terms & Conditions.



## **5. Processing of Personal Data**

5.1. Cloudnine will Process Personal Data on Customer's written instructions as specified in the Cloudnine Realtime Terms & Conditions and this Data Processing Addendum, including instructions regarding data transfers as set forth in Section 7.

5.2. Customer may provide additional instructions in writing to Cloudnine with regard to Processing of Personal Data in accordance with Applicable Data Protection Law. Cloudnine will comply with all such instructions to the extent necessary for Cloudnine to (i) comply with its Processor obligations under Applicable Data Protection Law; or (ii) assist Customer to comply with Customer's Controller obligations under Applicable Data Protection Law relevant to Customer's use of the Service, including assistance with notifying Personal Data breaches as set forth in Section 11, Data Subject requests as set forth in Section 6, and Data Protection Impact Assessments (DPIAs).

5.3. To the extent required by Applicable Data Protection Law, Cloudnine will immediately inform Customer if, in its opinion, Customer's instruction infringes Applicable Data Protection Law. Customer acknowledge and agrees that Cloudnine is not responsible for performing legal research and/or for providing legal advice to Customer.

5.4. Without prejudice to Abacus' obligations under Section 5, the parties will negotiate in good faith with respect to any charges or fees that may be incurred by Cloudnine to comply with instructions with regard to the Processing of Personal Data that require the use of resources different from or in addition to those Cloudnine is required to perform pursuant to the Cloudnine Realtime Terms & Conditions.

## **6. Rights of Data Subjects**

6.1. Cloudnine will grant Customer electronic access to the ASP Application to enable Customer to respond to requests from Data Subjects to exercise their rights under Applicable Data Protection Law, including requests to access, delete or erase, restrict, rectify, receive and transmit, block access to or object to Processing of specific Personal Data or sets of Personal Data.

6.2. To the extent such electronic access is not available to Customer, Customer can submit a "service request" to [compliance@abacusnext.com](mailto:compliance@abacusnext.com), and provide detailed written instructions to Abacus, including the Personal Data necessary to identify the Data Subject, on how to assist with such Data Subject requests in relation to Personal Data stored in an applicable cloud environment that holds Personal Data related to the Service. If applicable, the parties will negotiate in good faith with respect to any charges or fees that may be incurred by Cloudnine to comply with instructions that require the use of resources different from or in addition to those Cloudnine is required to perform in connection with the Service.

6.3. If Cloudnine directly receives any Data Subject requests regarding Personal Data, it will promptly pass on such requests to Customer without responding to the Data Subject if the Data Subject identifies Customer as the Data Controller. If the Data Subject does not identify Customer, Cloudnine will instruct the Data Subject to contact the entity responsible for collecting their Personal Data.

## **7. Personal Data Transfers**

7.1. Cloudnine may access and Process Personal Data on a global basis as necessary to perform any duties or obligations Cloudnine is required to perform pursuant to the Cloudnine Realtime Terms & Conditions, including for IT security purposes, maintenance and performance of underlying infrastructure, technical support and change management.

7.2. To the extent such global access involves a transfer of Personal Data originating from the

European Economic Area (“EEA”) or Switzerland to Cloudnine Affiliates or Third-Party Sub-processors located in countries outside the EEA or Switzerland that have not received a binding adequacy decision by the European Commission or by a competent national EEA data protection authority, such transfers are subject to EU-U.S. Privacy Shield Framework and Swiss-U.S. Privacy Shield Framework.

## **8. Cloudnine Affiliates and Third Party Sub-processors**

8.1. Subject to the terms and restrictions specified in Sections 3.3 and 7, Customer agrees that Cloudnine may engage Cloudnine Affiliates and Third Party Sub-processors to assist in the performance of any duties or obligations Cloudnine is required to perform pursuant to the Cloudnine Realtime Terms & Conditions.

8.2. Within fourteen (14) calendar days of Cloudnine providing such notice to Customer, Customer may object to the intended involvement of a Third Party Sub-processor or Cloudnine Affiliate in the performance of any duties or obligations Cloudnine is required to perform pursuant to the Cloudnine Realtime Terms & Conditions, providing objective justifiable grounds related to the ability of such Third Party Sub-processor or Cloudnine Affiliate to adequately protect Personal Data in accordance with Applicable Data Protection Law in writing by submitting a “service request” via Cloudnine Support, or other applicable primary support tool provided for the Services. In the event Customer’s objection is justified, Customer and Cloudnine will work together in good faith to find a mutually acceptable resolution to address such objection, including but not limited to reviewing additional documentation supporting the Third Party Sub-processors’ or Cloudnine Affiliate’s compliance with this Data Processing Addendum and Applicable Data Protection Law, or the performance of any duties or obligations Cloudnine is required to perform pursuant the Cloudnine Realtime Terms & Conditions without the involvement of such Third Party Sub-processor. To the extent Customer and Cloudnine do not reach a mutually acceptable resolution within a reasonable timeframe, Customer shall have the right to terminate the relevant agreement for products or services (i) upon serving prior notice in accordance with the Cloudnine Realtime Terms & Conditions; and (ii) without relieving Customer from Customer’s payment obligations under the Cloudnine Realtime Terms & Conditions.

8.3. The Cloudnine Affiliates and Third Party Sub-processors are required to abide by the same level of data protection and security as Cloudnine under this Data Processing Addendum as applicable to their Processing of Personal Data. Customer may request that Cloudnine audit a Third Party Sub-processor or provide confirmation that such an audit has occurred (or, where available, obtain or assist Customer in obtaining a third-party audit report concerning the Third Party Sub-processor’s operations) to verify compliance with such obligations. Customer will also be entitled, upon written request, to receive copies of the relevant privacy and security terms of Abacus’ agreement with any Third Party Sub-processors and Cloudnine Affiliates that may Process Personal Data.

8.4. Cloudnine remains responsible at all times for the performance of the Cloudnine Affiliates’ and Third Party Sub-processors’ obligations in compliance with the terms of this Data Processing Addendum and Applicable Data Protection Law.

## **9. Technical and Organizational Measures, and Confidentiality of Processing**

9.1. Cloudnine has implemented and will maintain appropriate technical and organizational security measures for the Processing of Personal Data. These measures take into account the nature, scope and purposes of Processing as specified in this Data Processing Addendum, and are intended to protect Personal Data against the risks inherent to the Processing of Personal Data in the performance of any duties or obligations Cloudnine is required to perform pursuant to the Cloudnine Realtime Terms & Conditions, in particular risks from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise Processed.

9.2. In particular, Cloudnine has implemented the physical access, system access, data access, transmission and encryption, input, data backup, data segregation and security oversight, enforcement and other

security controls and measures specified in the Cloudnine Realtime Terms & Conditions. Customer is advised to carefully review the Cloudnine Realtime Terms & Conditions to understand which specific security measures and practices apply to the particular products or services ordered by Customer, and to ensure that these measures and practices are appropriate for the Processing of Personal Data pursuant to this Data Processing Addendum.

9.3. All Cloudnine and Cloudnine Affiliate staff, as well as any Third Party Sub-processors that may have access to Personal Data are subject to appropriate confidentiality arrangements.

## **10. Audit Rights and Cooperation with Customer and Customer's Supervisory Authorities**

10.1. Customer may audit Abacus' compliance with its obligations under this Data Processing Addendum up to once per year. In addition, to the extent required by Applicable Data Protection Law, including where mandated by Customer's Supervisory Authority, Customer or Customer's Supervisory Authority may perform more frequent audits. Cloudnine will contribute to such audits by providing Customer or Customer's Supervisory Authority with the information and assistance reasonably necessary to conduct the audit, including any relevant records of Processing activities applicable to the products or services ordered by Customer.

10.2. If a third party is to conduct the audit, the third party must be mutually agreed to by Customer and Cloudnine (except if such Third Party is a competent Supervisory Authority). Cloudnine will not unreasonably withhold its consent to a third-party auditor requested by Customer. The third-party must execute a written confidentiality agreement acceptable to Cloudnine or otherwise be bound by a statutory confidentiality obligation before conducting the audit.

10.3. To request an audit, Customer must submit a detailed proposed audit plan to Cloudnine at least two weeks in advance of the proposed audit date. The proposed audit plan must describe the proposed scope, duration, and start date of the audit. Cloudnine will review the proposed audit plan and provide Customer with any concerns or questions (for example, any request for information that could compromise Cloudnine security, privacy, employment or other relevant policies). Cloudnine will work cooperatively with Customer to agree on a final audit plan.

10.4. If the requested audit scope is addressed in a SSAE 16/ISAE 3402 Type 2, ISO, NIST, PCI DSS, HIPAA or similar audit report issued by a qualified third-party auditor within the prior twelve months and Cloudnine provides such report to Customer confirming there are no known material changes in the controls audited, Customer agrees to accept the findings presented in the third party audit report in lieu of requesting an audit of the same controls covered by the report.

10.5. The audit must be conducted during regular business hours at the applicable facility, subject to the agreed final audit plan and Abacus' health and safety or other relevant policies, and may not unreasonably interfere with Cloudnine business activities.

10.6. Customer will provide Cloudnine any audit reports generated in connection with any audit under this Section 10, unless prohibited by Applicable Data Protection Law or otherwise instructed by a Supervisory Authority. Customer may use the audit reports only for the purposes of meeting Customer's regulatory audit requirements and/or confirming compliance with the requirements of this Data Processing Addendum. The audit reports shall be and shall remain the Confidential Information of the parties.

10.7. All audits are at Customer's expense. The parties will negotiate in good faith with respect to any charges or fees that may be incurred by Cloudnine to provide assistance with an audit that requires the use of resources different from or in addition to any duties or obligations Cloudnine is required to perform pursuant to the Cloudnine Realtime Terms & Conditions.

## **11. Incident Management and Personal Data Breach Notification**

11.1. Cloudnine promptly evaluates and responds to incidents that create suspicion of or indicate unauthorized access to or Processing of Personal Data (“Incident”). All Cloudnine and Cloudnine Affiliates’ staff that have access to or Process Personal Data are instructed on responding to Incidents, including prompt internal reporting, escalation procedures, and chain of custody practices to secure relevant evidence. Abacus’ agreements with Third Party Sub-processors contain similar Incident reporting obligations.

11.2. In order to address an Incident, Cloudnine defines escalation paths and response teams involving internal functions such as Information Security and Legal. The goal of Abacus’ Incident response will be to restore the confidentiality, integrity, and availability of any applicable cloud environment and the Personal Data that may be contained therein, and to establish root cause(s) and remediation steps. Depending on the nature and scope of the Incident, Cloudnine may also involve and work with Customer and outside law enforcement to respond to the Incident.

11.3. To the extent Cloudnine becomes aware and determines that an Incident qualifies as a breach of security leading to the misappropriation or accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed on Cloudnine systems or the applicable cloud environment that compromises the security, confidentiality or integrity of such Personal Data (“Personal Data Breach”), Cloudnine will inform Customer of such Personal Data Breach without undue delay but at the latest within 72 hours.

11.4. Cloudnine will take reasonable measures designed to identify the root cause(s) of the Personal Data Breach, mitigate any possible adverse effects and prevent a recurrence. As information regarding the Personal Data Breach is collected or otherwise reasonably becomes available to Cloudnine and to the extent permitted by law, Cloudnine will provide Customer with (i) a description of the nature and reasonably anticipated consequences of the Personal Data Breach; (ii) the measures taken to mitigate any possible adverse effects and prevent a recurrence; (iii) where possible, the categories of Personal Data and Data Subjects including an approximate number of Personal Data records and Data Subjects that were the subject of the Personal Data Breach; and (iv) other information concerning the Personal Data Breach reasonably known or available to Cloudnine that Customer may be required to disclose to a Supervisory Authority or affected Data Subject(s).

11.5. Unless otherwise required under Applicable Data Protection Law, the parties agree to coordinate in good faith on developing the content of any related public statements or any required notices for the affected Data Subjects and/or notices to the relevant Supervisory Authorities.

## **12. Return and Deletion of Personal Data**

Following termination of Abacus’ obligations to provide the Services, Cloudnine will return or otherwise make available for retrieval Customer’s Personal Data, unless otherwise expressly stated in the Cloudnine Realtime Terms & Conditions.

12.1. Upon termination of Abacus’ duty to provide the Service or upon expiry of the retrieval period following termination of the Term (if available), Cloudnine will promptly delete all copies of Personal Data from Abacus’ systems by rendering such Personal Data unrecoverable, except as may be required by law.

## **13. Legally Required Disclosure Requests**

13.1. If Cloudnine receives any subpoena, judicial, administrative or arbitral order of an executive or administrative agency, regulatory agency, or other governmental authority which relates to the Processing of Personal Data (“Disclosure Request”), it will promptly pass on such Disclosure Request to Customer without responding to it, unless otherwise required by applicable law (including to provide an acknowledgement of receipt to the authority that made the Disclosure Request).

13.2. At Customer's request, Cloudnine will provide Customer with reasonable information in its possession that may be responsive to the Disclosure Request and any assistance reasonably required for Customer to respond to the Disclosure Request in a timely manner.

#### **14. Contact**

14.1. If Customer have any questions or concerns regarding the terms and conditions set forth in this Data Processing Addendum, Customer may write to us at [compliance@abacusnext.com](mailto:compliance@abacusnext.com) or by mail to:

Attn: Sr. Cyber Security & Compliance Engineer  
AbacusNext  
9171 Towne Centre Dr.  
Suite 200  
San Diego, CA 92122