

# Cloudnine Realtime Terms & Conditions

The scope of services subject to these Terms and Conditions (“Services”) are exclusively those that RTB Global, Inc. dba Cloudnine Realtime and its Affiliates (“Cloudnine”) provide to Client in direct connection with Cloudnine Realtime (“C9”) hosting services. These terms and conditions apply to all Service Orders and/or Service Order Addendums (if any) affirmatively accepted by Client for Cloudnine Realtime (which are incorporated by reference into the Terms and Conditions).

**1. Cloudnine Realtime**— In any Service Order Form and/or Service Order Addendum (if any) affirmatively accepted by Client for C9 and herein, “Cloudnine Realtime” means a subscription (per a designated number of unique users) to access and use a dedicated virtual cloud server(s). (This subscription is hereinafter referred to as “Client’s Cloudnine Realtime Subscription” and the number and type of virtual cloud server(s) and corresponding hardware and resources is hereinafter referred to as “Client’s C9 Environment”). Cloudnine may modify the computing environment used to provide Client’s C9 Environment without degrading its functionality or security features, however, the server specifications shall be no less than a Windows Server 2012 r2 running Microsoft Remote Desktop Services using enterprise grade server hardware, networking, security, and software technologies, and housed in Cloudnine's highly available and redundant data center environments located in the United States of America (unless the Service Order Form states that the data centers are to be located in Canada, in which case the redundant data center environments will be located in Canada). Each C9 Environment shall be provisioned with up to 50 GB of Document Storage and up to 50 GB of Application Storage. To the extent that Client wants or necessitates having a static IP address associated with Client’s C9 Environment, Cloudnine shall add each additional static IP address to Client’s C9 Subscription at a \$25.00 Monthly Recurring Charge (subject to availability). Client acknowledges and understands that due to availability limitations outside Cloudnine's control, Cloudnine is unable to discount the price for a static IPv4 address.

IN ORDER TO MAINTAIN THE SAFETY AND SECURITY OF CLIENT’S C9 ENVIRONMENT, CLIENT ACKNOWLEDGES THAT CLIENT WILL NOT RECEIVE ADMINISTRATIVE RIGHTS TO CLIENT’S C9 ENVIRONMENT OR ANY SUB-PART THEREOF UNLESS CLIENT SIGNS A SEPARATE WAIVER IN THE FORM MANDATED BY CLOUDNINE ACCEPTING ALL RISK AND LIABILITY FOR BEING GRANTED SUCH RIGHTS.

**2. Fees and Invoicing**— Client agrees to pay Cloudnine the Activation Fee (if applicable) and either the Total Contractual Value (upfront), or the Monthly Recurring Charges (“MRC”) each month for the full term of Client’s Cloudnine Realtime Subscription, or the Annual Recurring Charges (“ARC” = 12 x MRC) and other fees as set forth in the applicable Service Order Form together with any taxes payable by Client that are

required to be collected by Cloudnine pursuant to any applicable law. To the extent that any foreign government imposes a tax, tariff or similar charge on Cloudnine arising out of Client's Cloudnine Realtime Subscription, Client agrees Client will be solely responsible for paying such fees. Any fees listed in a Service Order Form or Service Order Addendum are set forth in US Dollars unless specifically indicated on the Service Order Form or Service Order Addendum that the charged are in CAD. To the extent Client wishes to be billed in Canadian Dollars, at the time of signature, Cloudnine will take the 30-day average of the conversion from US Dollars to Canadian, and charge that rate for the duration of Client's Initial Term. Client's MRC or ARC is billed in advance of Cloudnine providing the services arising out of Client's Cloudnine Realtime Subscription for that month or year. Upon 30 days advance notice, Cloudnine shall have the right to increase fees charged for power or third-party services, applications or utilities (where applicable) in the same percentage as the increase imposed upon Cloudnine. Upon request, Cloudnine shall provide Client with a written statement of such cost increases. Client authorizes Cloudnine to automatically bill the Client's credit card or process an Automated Clearing House transaction each month for the balance due. All payments made by Client to Cloudnine are non-refundable. As it relates to payments made by Client, Client will be charged a fee of \$35 for any returned payment, including but not limited to any check or Automated Clearing House transaction that is deemed invalid due to insufficient funds. Any fees due under these Terms and Conditions that are greater than 15 days past due shall bear interest at the rate of one and one-half percent per month.

**3. Term**— The term of Client's Cloudnine Realtime Subscription commences on either (1) the date when Cloudnine provides Client access to Client's C9 Environment via Remote Desktop (regardless of whether any other third-party software or applications have been installed in Client's C9 Environment or whether any Client data has been migrated to Client's C9 Environment) or (2) in the event that Client fails to provide Cloudnine with requested information necessary for Cloudnine to provision Client's C9 Environment, 30 days after Cloudnine made the request for the information. The term shall continue for the minimum term set forth in the Service Order Form affirmatively accepted by Client for Cloudnine Realtime (subject to the provisions in the Suspension and Termination Paragraphs set forth below) ("Initial Term"). Absent either party providing the other with written notification (as required pursuant to the Notice paragraph below) at least 60 days prior to the expiration of the Initial Term or any subsequent Renewal Term, Client's Cloudnine Realtime Subscription will automatically renew for a twelve (12) month term ("Renewal Term") subject to a price increase.

**4. Default Configuration**— Unless otherwise specified in a Service Order Form or Service Order Addendum, all C9 Environments shall be delivered with stock configurations (which include but are not limited to configurations related to Server, User, RAM, System Storage, Document Storage, Application Storage, and Processor resource allocations, geolocation based access filtering, password cycling policies,

web content filtering, and multi-factor authentication, and herein referred to as “Default Configuration”). Cloudnine reserves the right at its sole discretion to change and/or incorporate and implement new security practices and protocols to the configuration of Client’s C9 Environment. Professional Services can be retained on an hourly basis to make any changes to the Stock Configuration of Client’s C9 Environment. Any such services shall be governed by a separated SOW, and all such changes shall be deemed allowable at Cloudnine’s sole discretion. Client further acknowledges and agrees that any requested changes or customizations to the Default Configuration of Client’s C9 Environment shall not alter Client’s obligations with respect to Cloudnine’s Acceptable Use Policy defined in the Acceptable Use provision.

**5. Servers**– The number and type of virtual cloud servers allocated to Client’s C9 Environment will depend upon the specific needs of Client (including but not limited to the number and/or type of users, software/application needs, and Client’s general use case). Client acknowledges that the configuration of Client’s C9 Environment and therefore Client’s Cloudnine Realtime Subscription may need to be changed as Client’s needs change.

**6. Users**– Each individual accessing Client’s C9 Environment (“User”) must have unique log-in credentials assigned to each User, and all Users must access Client’s C9 Environment in accordance with Cloudnine’s Acceptable Use Policy defined in the paragraph titled Acceptable Use. The use of generic users is not permitted. The number and type of Users that may be included in Client’s Cloudnine Realtime Subscription will depend on the specific needs of the Client (subject to certain limitations). If specified in any Service Order Form and/or Service Order Addendum affirmatively accepted by Client and herein, the following user types shall mean:

- “Standard User” – a User granted access to a designated C9 Environment comprising a Standard Server(s). With each Standard User, up to 4 GB of RAM will be provisioned to Client’s C9 Environment.
- “Power User” – a User granted access to a designated C9 Environment comprised of a Power Server(s). With each Power User, up to 8 GB of RAM will be provisioned to Client’s C9 Environment.
- “Collaborative User” – a User that will only have access to data files stored in specified folders on a Collaborative Server. A Collaborative User’s ability to open the particular data file is contingent upon that Collaborative User having the appropriate license to use the program through which the Collaborative User wishes to open the particular data file. It shall be Client’s sole responsibility to set, manage, and support a Collaborative User’s access to information and applications accessible through the Collaborative Server, which shall be accomplished through the Client Portal. With each Collaborative User, up to 2 GB of RAM will be provisioned to Client’s C9 Environment.
- “Flex User” – a User with rights to access Client’s C9 Environment and/or use of applications or services hosted within Client’s C9 Environment on a month-to-

month basis. A Flex User can be cancelled from Client's Cloudnine Realtime Subscription without having to pay an Early Termination Fee (as discussed in the paragraph titled Termination) so long as Client provides Cloudnine with an executed downgrade form 30 days prior to the effective date of the cancellation of the Flex User. With each Flex User, up to 8 GB of RAM will be provisioned to Client's C9 Environment (until the Flex User is cancelled).

- "Flex Collaborative User" – a Collaborative User on a month-to-month basis that can be cancelled from Client's Cloudnine Realtime Subscription without having to pay an Early Termination Fee (as discussed in the paragraph titled Termination) so long as Client provides Cloudnine with an executed downgrade form 30 days prior to the effective date of the cancellation of the Flex Collaborative User. With each Flex User, up to 2GB of RAM will be provisioned to Client's C9 Environment (until the Flex Collaborative User is cancelled).

**7. Random Access Memory (RAM)**– In any Service Order Form and/or Service Order Addendum (if any) affirmatively accepted by Client and herein, "Random Access Memory" and/or "RAM" refers to the memory available to operate programs, software or applications in Client's C9 Environment. Pursuant to industry best practices, Cloudnine recommends that Client's RAM utilization in Client's C9 Environment not consistently exceed 85% of the allocated amount, as doing so can put Client's C9 Environment at a performance risk. Client acknowledges Cloudnine cannot predict Client's RAM usage and thus Client may need to purchase additional RAM in order for Client's C9 Environment to properly function. Cloudnine will regularly monitor Client's RAM usage and may recommend that Client purchase additional RAM. All recommendations to purchase additional RAM will be based on information obtained by systems monitoring and reporting, and/or the RAM requirements of particular applications and use cases Client uses or intends to use. CLIENT ACKNOWLEDGES THAT ABACUS WILL BE RELIEVED OF ANY OBLIGATION TO PROVIDE CLIENT WITH CUSTOMER SERVICE RELATED TO CLIENT'S C9 ENVIRONMENT IN THE EVENT THAT CLIENT REFUSES TO PURCHASE ADDITIONAL RAM FOLLOWING A RECOMMENDATION MADE BY ABACUS TO DO SO. Client understands and agrees that due to technical reasons, once RAM has been provisioned to Client's C9 Environment, Client will not be able to remove the additional RAM from Client's C9 Environment or Client's Cloudnine Realtime Subscription. Client further acknowledges that in order to add additional RAM to Client's C9 Environment, Cloudnine may need to perform maintenance to Client's C9 Environment, and Client will not have access to Client's C9 Environment during this process. Diagnosing or determining the cause of inadequate RAM is outside the scope of Cloudnine' obligations set forth in these Terms and Conditions. Professional Services can be retained on an hourly basis to assist with this diagnosis. Any such services shall be governed by a separate SOW.

**8. System Storage**– In any Service Order Form and/or Service Order Addendum (if any) affirmatively accepted by Client and herein, "Hard Drive Space" or "System Storage" refers to the amount of space available on each of Client's C9 Servers for the storage of Client's system and data files. Pursuant to industry best practices, Cloudnine

recommends that Client's System Storage utilization within each Client's C9 Servers not exceed 90% of the allocated amount, as doing so can put Client's C9 Environment at a performance risk, including a hard shut down. Cloudnine will regularly monitor Client's System Storage usage. Cloudnine shall notify Client when Client's System Storage usage is 85% of Client's allocation (through support tickets accessible in the Client Portal), at which point Client will have the opportunity to add additional System Storage to Client's affected C9 Server by contacting an Cloudnine representative. In the event that Client does not purchase additional System Storage and Client's System Storage utilization reaches 90% of the allocated amount, Client authorizes Cloudnine to add System Storage to Client's affected C9 Server in increments being sold by Cloudnine at that time, and in sufficient amounts (depending on the minimum necessary size increments of System Storage that are being sold by Cloudnine at that time) to bring Client's System Storage usage below 90% , and to charge Client Cloudnine' then current rate for the applicable GB increments added, in order to preserve the performance of the service. Once System Storage is added to Client's C9 Environment, the monthly cost of the added System Storage will be added to Client's MRC for the remainder of the term of Client's Cloudnine Realtime Subscription. Client understands and agrees that due to technical reasons, once additional System Storage has been provisioned to Client's C9 Environment, Client will not be able to remove the additional System Storage from Client's C9 Environment. Client further acknowledges that in order to add additional System Storage to Client's C9 Environment, Cloudnine may need to perform maintenance to Client's C9 Environment, and Client will not have access to Client's C9 Environment during this process. Diagnosing or determining the cause of inadequate System Storage is outside the scope of Cloudnine' obligations set forth in these Terms and Conditions. Professional Services can be retained on an hourly basis to assist with this diagnosis. Any such services shall be governed by a separate SOW.

**9. Document Storage**— In any Service Order Form and/or Service Order Addendum (if any) affirmatively accepted by Client and herein, "Document Storage" refers to the amount of space available on Client's C9 Environment for the storage of data files. Pursuant to industry best practices, Cloudnine recommends that Client's Document Storage utilization in Client's C9 Environment not exceed 90% of the allocated amount, as doing so can put Client's C9 Environment at a performance risk, including an inability to save additional files that would exceed available Document Storage. Cloudnine will regularly monitor Client's Document Storage usage. Client will have the opportunity to add additional Document Storage to Client's C9 Environment by contacting an Cloudnine representative. In the event that Client does not purchase additional Document Storage and Client's Document Storage utilization reaches 90% of the allocated amount, Client authorizes Cloudnine to add an additional Document Storage to Client's C9 Cloud Environment in increments being sold by Cloudnine at that time, and in sufficient amounts (depending on the minimum necessary size increments of Document Storage that are being sold by Cloudnine at that time) to bring Client's Document Storage usage below 90%, and to charge Client Cloudnine' then current rate for the applicable GB increments added, in order to preserve the performance of the

service. Once Document Storage is added to Client's C9 Environment, the monthly cost of the added Document Storage will be added to Client's MRC for the remainder of the term of Client's Cloudnine Realtime Subscription. Client understands and agrees that due to technical reasons, once additional Document Storage has been provisioned to Client's C9 Environment, Client will not be able to remove the additional Document Storage from Client's C9 Environment. Client further acknowledges that in order to add additional Document Storage to Client's C9 Environment, Cloudnine may need to perform maintenance to Client's C9 Environment, and Client will not have access to Client's C9 Environment during this process. Diagnosing or determining the cause of inadequate Document Storage is outside the scope of Cloudnine' obligations set forth in these Terms and Conditions. Professional Services can be retained on an hourly basis to assist with this diagnosis. Any such services shall be governed by a separate SOW.

**10. Application Storage**— In any Service Order Form and/or Service Order Addendum (if any) affirmatively accepted by Client and herein, "Application Storage" refers to the amount of space available on Client's C9 Environment for the storage of application files (e.g., SQL database storage). Pursuant to industry best practices, Cloudnine recommends that Client's Document Storage utilization in Client's C9 Environment not exceed 90% of the allocated amount, as doing so can put Client's C9 Environment at a performance risk, especially regarding the performance of the associated applications. Cloudnine will regularly monitor Client's Application Storage usage. Client will have the opportunity to add additional Application Storage to Client's C9 Environment by contacting an Cloudnine representative. In the event that Client does not purchase additional Application Storage and Client's Application Storage utilization reaches 90% of the allocated amount, Client authorizes Cloudnine to add an additional Application Storage to Client's C9 Environment in sufficient amounts (depending on the minimum necessary size increments of Application Storage that are being sold by Cloudnine at that time) to bring Client's Application Storage usage below 90%, and to charge Client Cloudnine' then current rate for the applicable GB increments added, in order to preserve the performance of the service. Once Application Storage is added to Client's C9 Environment, the monthly cost of the added the Application Storage will be added to Client's MRC for the remainder of the term of Client's Cloudnine Realtime Subscription. Client understands and agrees that due to technical reasons, once additional Application Storage has been provisioned to Client's C9 Environment, Client will not be able to remove the additional Application Storage from Client's C9 Environment. Client further acknowledges that in order to add additional Application Storage to Client's C9 Environment, Cloudnine may need to perform maintenance to Client's C9 Environment, and Client will not have access to Client's C9 Environment during this process. Diagnosing or determining the cause of inadequate Application Storage is outside the scope of Cloudnine' obligations set forth in these Terms and Conditions. Professional Services can be retained on an

hourly basis to assist with this diagnosis. Any such services shall be governed by a separate SOW.

**11. Processor**— In any Service Order Form and/or Service Order Addendum (if any) affirmatively accepted by Client for Cloudnine Realtime and herein, “Processor” and/or “CPU” refers to Client’s C9 Environment’s processor cycles. Pursuant to industry best practices, Cloudnine recommends that Client’s CPU utilization in Client’s C9 Environment not exceed 90% of the allocated resources, as doing so can put Client’s C9 Environment at a performance risk. Client acknowledges Cloudnine cannot predict Client’s CPU usage and thus Client may need to purchase additional resources (including but not additional servers) in order for Client’s C9 Environment to properly function. Cloudnine will regularly monitor Client’s CPU usage and may recommend that Client purchase an additional server(s). All recommendations to purchase additional servers will be based on information obtained by systems monitoring and reporting, and/or other information provided to Cloudnine by Client. CLIENT ACKNOWLEDGES THAT ABACUS WILL BE RELIEVED OF ANY OBLIGATION TO PROVIDE CLIENT WITH CUSTOMER SERVICE RELATED TO CLIENT’S C9 ENVIRONMENT IN THE EVENT THAT CLIENT REFUSES TO PURCHASE ADDITIONAL SERVER(S) FOLLOWING A RECOMMENDATION MADE BY CLOUDNINE TO DO SO. Client understands and agrees that due to technical reasons, once additional servers(s) have been provisioned to Client’s C9 Environment, Client will not be able to remove the additional server from Client’s C9 Environment. Client further acknowledges that in order to add additional server(s) to Client’s C9 Environment, Cloudnine may need to perform maintenance to Client’s C9 Environment, and Client will not have access to Client’s C9 Environment during this process. The assessment or analysis of the cause of CPU related issues is outside the scope of Cloudnine’s obligations set forth in these Terms and Conditions. Professional Services can be retained on an hourly basis to assist with this assessment or analysis. Any such services shall be governed by a separate SOW.

**12. MS365**— In any Service Order Form and/or Service Order Addendum (if any) affirmatively accepted by Client for Cloudnine Realtime and herein, “MS365” means a non-transferable license to use Microsoft 365 only during the term set forth in the Service Order and/or Service Order Addendum, and within Client’s C9 Environment (contingent upon Client timely paying its MRC), and is otherwise governed by all terms and policies set forth by Microsoft applicable to MS365, and may include penalties for early termination of the MS365, which will be Client’s sole responsibility to pay. For further information on these terms, contact Microsoft directly. The particular MS365 license selected by Client shall be either an E1, E3, Exchange Online Plan 1 or a MS365 Apps for Business (formerly referred to as a MS365 “ProPlus”) license, with the particular rights and functionality for each such licenses being determined by Microsoft. ABACUS DOES NOT WARRANT THE PERFORMANCE OR FUNCTIONALITY OF MS365 OR DATA THAT RESIDES IN MICROSOFT’S CLOUD OR INFRASTRUCTURE. If purchased, this MS365 license will be deemed part of Client’s

Cloudnine Realtime Subscription. Thus, any suspension or termination of Client's Cloudnine Realtime Subscription will also result in a corresponding suspension or termination of the MS365 license. ABACUS WILL SERVE AS ADMINISTRATOR OF CLIENT'S MS365 ACCOUNT. CLIENT ACKNOWLEDGES THAT IT WILL NOT RECEIVE ADMINISTRATIVE RIGHTS TO MS365. The deployment of MS365 on Client's C9 Environment shall be in the form supplied by Microsoft without modification and with all default settings pre-determined by Microsoft. Professional Services can be retained on an hourly basis to make any desired changes to the settings of MS365. Any such services shall be governed by a separated SOW. Client hereby understands that as a Certified Microsoft partner, Cloudnine may receive a payment from Microsoft arising from the sale of MS365.

**13. Data Center Security**– Client acknowledges that all data centers are prone to intrusion. To address this concern, Cloudnine will maintain at all times what are generally considered to be enterprise-class security protecting its data centers used to host Client's C9 Environment.

**14. Viruses and Malware**– Client acknowledges that no computer system or software can be made completely stable or secure, and that Cloudnine cannot guarantee that Client's C9 Environment will not be subject to viruses or malware or other threats. To address this concern, Cloudnine shall provide what are generally considered enterprise class proactive and routine monitoring and protection of Client's C9 Environment from viruses and malware. Client also acknowledges that it may become exposed to viruses or malware if it turns off protections, disregard warnings, or accesses its C9 Environment from a device that is infected. Cloudnine recommends that client maintain virus and malware protection on every device that accesses Client's C9 Environment.

**15. Passwords**– Access to Client's C9 Environment is limited by certain password requirements. It is Client's responsibility to ensure that its passwords to Client's C9 Environment are maintained as confidential information, this includes but is not limited to immediately informing Cloudnine when any of Client's users' access to Client's C9 Environment should be terminated or suspended. Client acknowledges that the failure to properly maintain and routinely change its passwords could jeopardize the security of Client's data maintained on Client's C9 Environment.

**16. Backup Systems**– Cloudnine is not responsible for corrupt files stored within Client's C9 Environment. Client must maintain its own local copy of all data stored in Client's C9 Environment. Cloudnine is not responsible for Client's lost or corrupted data for failure of Client to maintain a local copy of all data. Client acknowledges that it is Client's responsibility to execute frequent and routine back-ups and frequent and routine test-restores of data that Cloudnine is not liable for any loss of data by Client resulting from or relating to any action taken by Cloudnine pursuant to these Terms. Notwithstanding anything in this section, during the term of Client's Cloudnine



Realtime Subscription, Cloudnine shall perform incremental daily backups of Client's C9 Environment which will be stored at Cloudnine' primary data center as well as at Cloudnine' secondary data center (which is in a different state/province than the primary data center) for 30 days. The restoration of Client's data from a backup is outside the scope of Cloudnine' obligations set forth in these Terms and Conditions. Professional Services can be retained on an hourly basis to assist with the restoration of data from a backup. Any such services shall be governed by a separate SOW. Client acknowledges that due to security concerns, no one other than Cloudnine can perform the task of restoring Client's data from a backup. Client may purchase additional Backup Storage and recovery points, in the amount specified in any Service Order Form or Service Order Addendum, which includes backup recovery points objectives (RPO) beyond the standard thirty (30) days. In order to provision Backup Storage and create Client's data protection strategy, Client must purchase Professional Services hours, which will be rendered pursuant to a separate SOW.

**17. Migration of Client's Data to/from Client's C9 Environment**– Included in the initial purchase of a Cloudnine Realtime Subscription is 2 hours of Professional Service time to assist Client with the migration of Client's data files (as opposed to e-mail files, which are discussed in the next paragraph MS365 E-mail Services) to the designated Document Storage within Client's C9 Environment. All data migration to/from Client's C9 Environment beyond the initial two hours for data files is outside the scope of Cloudnine' obligations set forth in these Terms and Conditions. Professional Services can be retained on an hourly basis to assist with this additional data migration. Any such services for additional data migration shall be governed by a separate SOW. To the extent Client provides Cloudnine with data for the purposes of migrating that data to Client's C9 Environment, Client hereby confirms that it has the legal right to have that data migrated to its C9 Environment. Client further acknowledges that if a dispute arises over whether Client has the legal right to possess or control the data prior to Cloudnine performing the migration, Cloudnine will not migrate the data to Client's C9 Environment absent written authorization from the party originally disputing Client's right to the data or a court order.

**18. MS365 E-mail Services**– Where Client has purchased MS365 through a Service Order Form or Service Order Addendum, Cloudnine will perform the following tasks to set up Client's e-mail accounts in MS365:

- 1· Establish Client's MS365 account in Client's name.
- 2· Associate the domain name provided by Client to the MS365 account. Cloudnine's obligation to complete this task is contingent upon Client providing Cloudnine with any domain names that Client owns and intends to utilize in MS365, as it is Client's sole responsibility to obtain the domain names Client wishes to utilize in MS365. For technical reasons, Cloudnine cannot complete this task if Client's specified domain is still attached to an existing Microsoft Office 365 account that Client may have or had through a vendor other than Cloudnine. It shall be Client's sole responsibility to take

the necessary steps to ensure that Client's specified domain is no longer attached to such an account.

- 3· Using best efforts, add a MS365 verification Text record to the DNS zone file for each of the domains that Client intends to use in MS365. Cloudnine's obligation to complete this task is contingent upon Client providing Cloudnine access to Client's Domain Names System ("DNS") provider portal.
- 4· Create specific user accounts, mailboxes, e-mail addresses and distribution groups specified by Client to use in Client's MS365 portal. Cloudnine's obligation to complete this task is contingent upon Client providing Cloudnine an accounting of the user accounts, mailboxes, email addresses and distribution groups Client wants set up in Client's MS365 account. To the extent Client needs assistance in compiling this information, Professional Services can be retained on an hourly basis to assist with this task. Any such services for additional data migration shall be governed by a separate SOW.
- 5· Issue MS365 user account credential information to Client.
- 6· Configure each Cloudnine Realtime user's desktop profile in order to sync each user's MS Outlook to the newly created MS365 accounts.
- 7· Where applicable and using best efforts, make the DNS cutover of e-mail from Client's then current e-mail provider to Client's MS365 account. Cloudnine's obligation to complete this task is contingent upon Client providing Cloudnine access to Client's DNS provider portal.

Client acknowledges that for security reasons all of these tasks (with the exception of Task Nos. 3 and 7, which can be performed by Client or a third party upon Client executing a waiver of responsibility) must be performed by Cloudnine. Client further acknowledges that due to the numerous unknowns associated with completing these tasks, Cloudnine cannot guarantee that these tasks will be completed error free.

Where Client wishes to migrate Client's e-mail off of MS365, Cloudnine's sole support obligation shall be to release the DNS domain from being associated with MS365.

Cloudnine shall have this obligation only when Client's account with Cloudnine is current.

Where identified in a Service Order Form or Service Order Addendum, Client may purchase daily backups for Client's MS365 mailbox, which shall be stored within an Azure blob and indexed within Cloudnine's secondary data center, located within Client's country and geographic region.

Where Client has not purchased MS365 through a Service Order Form or Service Order Addendum, the set up or maintenance of Client's e-mail service is outside the scope of Cloudnine' obligations under these Terms and Conditions. Regardless of whether or not Client has purchased MS365, the migration of Client's historical e-mail of any kind, as well as the configuration of e-mail access on non-Cloudnine Realtime devices (such as local workstations, smartphones and tablets) or converting Client's e-mail service to something other than MS365 within Client's C9 Environment (or otherwise) is outside the scope of Cloudnine' obligations set forth in these Terms and Conditions.

Professional Services can be retained on an hourly basis to assist with e-mail migration and configuration. Any such services for e-mail migration or configuration on non-Cloudnine Realtime devices shall be governed by a separate SOW.

**19. Third Party Applications and Services**– Except as it relates to the installation of Microsoft software products (which can only be installed in Client's C9 Environment if such software product licenses are purchased through Cloudnine via Microsoft Service

Provider License Agreement (SPLA) or Microsoft Cloud Solutions Provider (CSP) programs, as mandated by Microsoft's software licensing terms), the installation or integration of third-party software or services to Client's C9 Environment or ensuring that third-party software or services used by Client functions properly in Client's C9 Environment is outside the scope of Cloudnine' obligations set forth in these Terms and Conditions. Professional Services can be retained on an hourly basis to ensure that Client's third-party software applications and services are properly installed (including working with the third-party software manufacturer to determine appropriate resources), conditioned on Client providing Cloudnine with the installation media, a valid license permitting the software to be installed and operated in either Windows Server 2012 r2 running Microsoft Remote Desktop Services or Windows Server 2016 running Microsoft Remote Desktop Services (depending upon which server type Client's C9 Environment has been deployed with), and sufficient documentary proof that Client is legally authorized to use this license. Where Client requests Cloudnine to perform any installation (including but not limited to patches or updates) related to any third-party software application, Client authorizes Cloudnine to click to accept the third-party software vendor's applicable terms and conditions on behalf of Client. Client acknowledges that Cloudnine may be required (as mandated by certain third-party vendors) to charge Client a fee in order to install and use third-party software within Client's C9 Environment. Client hereby authorizes Cloudnine to add such fees to Client's Monthly Recurring Charge, and further acknowledges that such fees may be subject to change. Client acknowledges that certain third-party software or applications may require additional resources to function within Client's C9 Environment, which must be added to Client's Cloudnine Realtime Subscription (at an additional charge to Client) prior to the application or software being installed in Client's C9 Environment. The need for additional resources is based upon several factors including but not limited to software manufacturer system requirements, software usage forecasting, existing C9

platform usage patterns and general IT best practices/recommendations. Where such software manufacturer system requirements or licensing limits the installation or use of the particular software to Windows Server 2012 R2 and Client's C9 Environment has been deployed with Windows Server 2016, Client will be assessed an additional fee to redeploy Client's C9 Environment with Windows Server 2012 R2. Any such Professional Services performed by Cloudnine related to third-party applications or services, shall be governed by a separate SOW. If under any circumstances Client directly or indirectly provides Cloudnine with the installation media for a third-party software product or service to be installed or used within Client's C9 Environment, Client hereby warrants that Client has the appropriate license(s) to install and/or use that third-party software product or service in Client's C9 Environment for all intended users. Cloudnine cannot guarantee that Client's third-party software or services will properly function in Client's C9 Environment. All issues with the functionality of the third-party software or services should be directed to the particular software or service provider. Cloudnine reserves the right to prevent the of any third-party software or services on Client's C9 Environment that Cloudnine at its sole discretion deems may compromise the health or security of Client's C9 Environment or Cloudnine' infrastructure, or that Cloudnine suspects is or assists in the violation of any law.

With respect to the hosting of QuickBooks or other Intuit products within Client's C9 Environment, Client use of QuickBooks is subject to all terms, conditions, rights, responsibilities and limitations set forth in the respective End User License Agreements for QuickBooks. By requesting to host Quickbooks or other Intuit products, Client grants Cloudnine the authority to: (1) accept on Client and its users' behalf all End User License Agreements; and (2) register the license for Client and each user directly with Intuit. Client acknowledges that Clients use of QuickBooks within Client's C9 Environment is subject to Intuit's discontinuation policies. Client acknowledges that Client may be responsible for paying an additional fee not set forth in a Service Order Form or Addendum for the right to host QuickBooks in Client's C9 Environment, and hereby authorizes Cloudnine to add such charge to Client's Monthly Recurring Charge, in the event such charges become applicable.

**20. Customer Service**— Cloudnine and its parent company Abacus Data Systems, Inc. and its Affiliates in Canada, the United Kingdom, and India ("Affiliates") shall provide technical support and troubleshooting for reported issues that are directly related to the C9 product(s) purchased by Client. Cloudnine shall not be obligated to provide technical support or to cure issues regarding third-party applications, customizations, integrations with third-party applications, internet or local network connectivity, Client's local infrastructure or workstations, or issues caused by Client's users, agents, or other technology providers. Included with Client's Cloudnine Realtime Subscription is access to AbacusNext standard technical support, during Technical Support business hours for Cloudnine Realtime, located within the FAQ section of the Cloudnine Realtime Knowledge Base found at <https://support.abacusnext.com/hc/en-us>. Client must first initiate its support

request using the AbacusNext Customer Portal, by creating a support ticket or using the live chat feature included on the AbacusNext Customer Portal. Cloudnine's obligation to provide Client with customer service or support is contingent upon Client timely paying that month's MRC and keeping the account current. For non-business hours, Cloudnine will use its best efforts to maintain a Mean Time to Respond ("MTTR") of 1 hour for "Urgent" issues and next business day for "Non-Urgent" issues. An issue shall be deemed "Urgent" if Client cannot connect to Client's C9 Environment, data stored in Client's C9 Environment, and/or Client's e-mail in MS365 where Client purchased MS365 through a Service Order or Service Order Addendum. All other issues shall be deemed "Non-Urgent." Depending on the nature of the reported technical issue, Cloudnine may initiate further troubleshooting efforts, which may include support via the live chat feature, responding via e-mail to a support ticket created by Client, or in certain cases providing direct phone support and/or remote screen sharing, including Cloudnine taking screen grabs of Client's Users' screens; any support response or combination thereof shall be provided in Cloudnine's sole discretion. If Cloudnine determines that the reported issue is caused by an error with Cloudnine's infrastructure or in Client's C9 Environment (hereinafter referred to as "System Related Error") and not caused by the Client, its computer(s), printer(s), scanners, other hardware, network, server(s), connectivity or third-party software or services (hereinafter referred to as "User Error"), then Cloudnine will make its best efforts to correct the problem at no charge to Client. Reported errors that cannot be observed or replicated by Cloudnine cannot by definition be a System Related Error. If the issue is caused by User Error, Client can purchase Professional Services hours to assist with further training and/or correcting the problem with Client's computer(s), network, server(s), connectivity or third-party software or services. All such Professional Services shall be governed by a separate SOW.

In order to facilitate a consultative sales process for Cloudnine Realtime, and to allow Cloudnine to make recommendations to Client about which products and services to purchase, Cloudnine may employ network diagnostic tools and questionnaires to learn about and analyze Client's workflow, business systems, applications, and connectivity. Client expressly acknowledges that any issue arising out of Cloudnine's inability to gather information or make recommendations about products and services shall not constitute a System Related Error, or otherwise provide a basis to cancel or void Client's C9 Subscription.

**21. ADVANCED SUPPORT OFFERINGS**– Clients can purchase the following advanced support options to optimize their Cloudnine Realtime experience.

- **Premium Support** – Where purchased in a Service Order Form or Service Order Addendum, Premium Support shall include unlimited maintenance, support, and updates for AbacusNext software products, access to C9's Self-Service Update Program ("SSUP"). In addition to receiving access for up to ten (10) designated Users to use a priority level support queue, unlimited access to an online training database, and 50% discounted fees to attend all Cloudnine events and webinars,

Premium Support shall also include a dedicated Technical Account Manager (“TAM”), which shall serve as Client’s primary point of contact. Where Client has made Premium Support a part of Client’s Cloudnine Subscription, Cloudnine will make its best efforts to respond to support inquiries in accordance with the following table:

Severity Level	Initial Response Objective
<b>Severity Level 1</b> – Mission critical software application(s) unavailable within Client’s Cloudnine Environment, risk of loss or corruption of data, business operations severely disrupted.	30 Minutes Response Time, 24/7.
<b>Severity Level 2</b> – Mission critical software application(s) available within Client’s Cloudnine Environment, but critical function of application is unavailable, business operations disrupted.	2 Hours Response Time, 24/7.
<b>Severity Level 3</b> – Mission critical software applications available within Client’s Cloudnine Environment, but non-critical function of application is unavailable, business operations not immediately interrupted.	4 Regular Business Hours Response Time.

- Technical Account Manager (“TAM”)** – Where purchased in a Service Order Form or Service Order Addendum, or as included within Client’s purchase of Premium Support, Client’s TAM includes a dedicated resource available for technical account management or technical support escalations, with scheduled weekly or bi-weekly case scrub/project management calls, and one (1) annual onsite visit to Client’s principal place of business to discuss strategic planning, project or product roadmaps, with travel expenses paid by Client. In addition, Client’s TAM will assist in scheduling application upgrades, and can provide step- by-step resolution guides or screen recordings on certain types of technical support tickets in order to elevate Client’s self-service ability and result in more successful use of platform features.
- 24/7 Support** – Where purchased in a Service Order Form or Service Order Addendum 24/7 Support shall mean 24/7 access for Client’s Users to a support queue including the ability to report technical incidents via chat, email, portal, and a dedicated phone line. Pricing will be determined in accordance with Client’s number of Users (based on multiples of 10), and Client acknowledges and understands that Client’s MRC for 24/7 Support will increase by \$100 each time Client’s number of Users increases in multiples of 10 to the next tier (i.e., 10 Users, 20 Users, 30 Users, and so on, until Client reaches 100+ Users which requires custom pricing).

**22. Service Level Agreement (SLA)**– Cloudnine will use commercially reasonable efforts to make Client’s C9 Environment “available” to Client 99.999% of the time (calculated monthly) outside of scheduled maintenance, emergency maintenance, the rebooting of Client’s C9 Environment after adding or reducing resources (including but not limited to RAM, System Storage, Document Storage or CPU), connectivity issues caused by User Error, or the suspension of Client’s Cloudnine Realtime Subscription. In this context, “available” shall mean that Client’s C9 Environment is accessible from an C9 Compatible Device (as defined below) via Remote Desktop with a Reliable Connection (as defined below).

In the event that Client believes that Cloudnine has failed to meet the Service Commitment in a particular month, Client will be eligible to receive a Service Credit only if Client requests a Service Credit via email to [billing@abacusnext.com](mailto:billing@abacusnext.com) within 7 days of the end of such month and it is determined by Cloudnine that Cloudnine failed to meet the Service Commitment for that month. Where Client is eligible for a Service Credit, the Client will be credited an amount equal to one day’s worth of MRC, multiplied by each hour (or portion thereof round to the next hour) Cloudnine failed to meet the Service Commitment in that month, however, at no point will Client be entitled to a Service Credit that exceeds the amount of MRC for Client’s Cloudnine Realtime Subscription for that month. Any Service Credit will be applied to any invoice of Client within two billing cycles after Cloudnine’ receipt of the applicable request for Service Credit. Service Credits are exclusive of any applicable taxes charged to Client or collected by Cloudnine. A SERVICE CREDIT IS CLIENT’S SOLE AND EXCLUSIVE REMEDY FOR A BREACH OF THE SERVICE COMMITMENT.

Client acknowledges that it shall not receive any credits under this SLA if the failure or deficiency is caused by a suspension or termination of Client’s Cloudnine Realtime Subscription pursuant to the Suspension and Termination paragraphs set forth below, caused by Client, Client’s equipment, software or other technology, or caused by factors outside of Cloudnine’ reasonable control, including but not limited to any force majeure event, Internet access or related problems beyond the demarcation point of Cloudnine’ Internet Protocol routing infrastructure.

**23. Scheduled Maintenance**– Every Friday at 11:00PM through Saturday 3:00AM and every Saturday at 11:00PM through Sunday 3:00AM (in the time zone of the primary datacenter in which Client’s C9 Environment is hosted), Cloudnine provides weekly maintenance “windows” for routine and ongoing maintenance to include but not limited to: infrastructure improvements or changes, Microsoft published updates (when available) to Client’s Microsoft Windows server and Microsoft Office platform (if applicable). For all other scheduled maintenance, Cloudnine shall provide Client with e-mail notification of when the maintenance shall take place. Client acknowledges that during any scheduled maintenance, Client’s C9 Environment may be unavailable, and thus this time shall not be considered in calculating whether

Client's C9 Environment is "available" per the SLA (see the paragraph titled Service Level Agreement).

**24. Client's Data**— Client will retain ownership of all data Client transfers to and stores on Client's C9 Environment. Client reserves all right, title and interest (including all intellectual property and proprietary rights) to Client's content and data. Cloudnine acknowledges that Client's data stored in Client's C9 Environment contains confidential information. Cloudnine will only access Client's data when necessary to fulfill an obligation related to Client's Cloudnine Realtime Subscription. Cloudnine further warrants that it will take all reasonable efforts to maintain the confidential nature of Client's data and unless required by law will not knowingly disclose the data or its contents to third parties without the Client's express written consent. Cloudnine will provide Client notice of any unauthorized third-party access to Client's data of which Cloudnine becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. To the extent there is any unauthorized third-party access to Client's data, it shall be Client's sole responsibility and expense to notify any individual whose Personal Identifiable Information or other confidential information related to that individual was accessed by an unauthorized third party. To the extent Client provides Cloudnine with data for the purposes of migrating that data to Client's C9 Environment, Client hereby confirms that it has the legal right to have that data migrated to its C9 Environment. Client further acknowledges that if a dispute arises over whether Client has the legal right to possess or control the data prior to Cloudnine performing the migration, Cloudnine will not migrate the data to Client's C9 Environment absent written authorization from the party originally disputing Client's right to the data or a court order. Client will have 30 days as of the date of cancellation or termination of its Cloudnine Realtime Subscription to obtain (at Client's sole cost and expense) all of Client's data from Client's C9 Environment, after which time Client's data will be deleted from Cloudnine's servers permanently. Cloudnine Professional Services may be retained on an hourly fee basis to assist Client with the migration of its data from Client's C9 Environment. If purchased, such services, will be governed by a separate SOW.

**25. C9 Compatible Devices**— Successful use of Client's C9 Environment requires a device (PC, MAC, tablet or smartphone) using an operating system currently being supported by Microsoft, Apple or Android, running the latest version of Remote Desktop, and is malware and spyware free. As used herein, such a device shall be referred to as a "C9 Compatible Device." It is outside Cloudnine's obligations set forth in these Terms and Conditions to supply Client with any C9 Compatible Devices. Where Two Factor Authentication (see Section 29) is activated, each User will need a Registered Phone to facilitate a User logging in to Client's C9 Environment. It is outside Cloudnine's obligations set forth in these Terms and Conditions to supply a user with a smartphone capable of supporting Two Factor Authentication.



**26. Reliable Connection**— Successful use of Client’s C9 Environment requires a properly routed internet connection that can reliably sustain a sub 100 millisecond (ms) response time between the network that Client’s C9 Compatible Device is connected to and Client’s C9 Environment. Where more than one of Client’s Cloudnine Realtime users are trying to connect to Client’s C9 Environment through the same internet connection concurrently, there must be a minimum of 1Mbps/1Mbps dedicated to each one of those users. As used herein, the above stated connectivity requirement shall be referred to as a “Reliable Connection,” and it shall be Client’s sole responsibility to obtain a Reliable Connection. Cloudnine works with multiple upstream providers to ensure that Client has multiple paths through which an internet connection may be routed to Client’s C9 Environment. Cloudnine cannot control how Client’s Internet Service Provider(s) routes its internet traffic. As such, In the event of latency in Client’s internet connection to Client’s C9 Environment, it shall be Client’s sole responsibility to ensure that Client’s Internet Service Provider(s) adequately routes Client’s internet connection. The fact that Client is unable to resolve the latency in Client’s internet connection to Client’s C9 Environment shall not constitute “for cause” for purposes of terminating Client’s Cloudnine Realtime Subscription. It is further recommended that that Client have multiple upstream internet service providers to avoid performance issues caused by a single point of failure. For security reasons, Cloudnine utilizes geo-blocking technology to selectively block access to Client’s C9 Environment from network locations outside of North America. Should Client or Client’s end users need to access Client’s C9 Environment from outside of North America, to avoid delays, it is Client’s responsibility to notify C9 Support at least 48 hours before such access would be required to facilitate access when traveling abroad.

**27. Local Area Network**— The Local Area Network (LAN) within Client’s office or other locations from which Client may try to access Client’s C9 Environment affects the quality and speed of its Cloudnine Realtime service. The quality and configuration of switches, routers, firewalls, network cabling and computers all have an effect on performance. Optimizing Client’s LAN is not part of Cloudnine’ obligations pursuant to these Terms and Conditions. Professional Services can be retained on an hourly basis to assist with assessing and optimizing Client’s LAN. If purchased, such services, will be governed by a separate SOW.

**28. Printing and Scanning**— Although most printers and scanners are compatible with Client’s C9 Environment, Cloudnine cannot guarantee that Client’s printers and scanners will work in Client’s C9 Environment. Cloudnine recommends that Client use TWAIN compliant scanners and cloud ready printers and scanners. Cloudnine discourages the use of non-networked printers and scanners for use in Client’s C9 Environment. In some instances, Client may need third party software for the printers and/or scanners to fully function properly across the remote desktop connection, which can be purchased at Client’s sole expense and there are no guarantees that such software will work. Cloudnine cannot guarantee that all functions (including paper bin selection)

will be fully functional. Cloudnine Professional Services may be retained on an hourly fee basis to assist Client with issues they are having with its printer(s) and scanner(s) the from Client's C9 Environment. If purchased, such services, will be governed by a separate SOW.

**29. Two Factor Authentication**– In any Service Order Form and/or Service Order Addendum (if any) affirmatively accepted by Client and herein, “Two Factor Authentication” refers to a security measure that requires an Cloudnine Realtime User to confirm an attempted log in to Client's C9 Environment by responding to a message sent to an authentication application (“Authentication App”) provided by Cloudnine and installed on the Cloudnine Realtime User's smartphone (“Registered Phone”), which must have a locking mechanism enabled to function. When Two Factor Authentication has been activated, Client acknowledges that for security reasons, in the event that an Cloudnine Realtime User replaces his/her Registered Phone, changes his/or her phone number associated with his/her Registered Phone, or otherwise cannot use his/her Registered Phone, that Cloudnine Realtime User will not be able to access Client's C9 Environment unless Cloudnine receives written confirmation from the Client's designed Principal Point of Contact that the particular Cloudnine Realtime User has obtained a new phone and/or phone number and the Authentication App is subsequently installed on the new phone (or reinstalled in the instance where the Cloudnine Realtime User has only changed his/her phone number associated with his/her Registered Phone).

**31. Sophos Endpoint Antivirus & Malware Protection**– In any Service Order Form and/or Service Order Addendum (if any) affirmatively accepted by Client and herein, “Sophos Endpoint Antivirus & Malware Protection” means a non-transferable license to deploy Sophos Endpoint Antivirus & Malware Protection product on Client's work stations only during the term set forth in the Service Order and/or Service Order Addendum (contingent upon Client timely paying its MRC), and is otherwise governed by all terms and policies set forth by Sophos. For further information on these terms, contact Sophos directly. CLOUDNINE DOES NOT WARRANT THE PERFORMANCE OR FUNCTIONALITY OF SOPHOS ENDPOINT ANTIVIRUS & MALWARE PROTECTION. If purchased, this Sophos Endpoint Antivirus & Malware Protection license will be deemed part of Client's Cloudnine Realtime Subscription. Thus, any suspension or termination of Client's Cloudnine Realtime Subscription will also result in a corresponding suspension or termination of the Sophos Endpoint Antivirus & Malware Protection license.

**33. TS Scan**– In any Service Order Form and/or Service Order Addendum (if any) affirmatively accepted by Client and herein, “TS Scan” refers to a scanning solution produced by TerminalWorks that can enable Client's to use scanners attached to a local workstation to scan to Client's C9 Environment in certain instances where Client is not otherwise able to scan directly to Client's C9 Environment. The fee paid for TS Scan is a one-time fee, however, if Client has previously purchased TS Scan and needs to add users, bringing the total of users into a higher tier than

originally purchased, additional fees will apply. ABACUS DOES NOT WARRANT THE PERFORMANCE OR FUNCTIONALITY OF TS SCAN.

**34. TS Print**— In any Service Order Form and/or Service Order Addendum (if any) affirmatively accepted by Client and herein, “TS Print” refers to a printing solution produced by TerminalWorks that enables Client’s to use printers attached to a local workstation to print from Client’s C9 Environment in certain instances where Client is not otherwise able to print directly from Client’s C9 Environment. The fee paid for TS Print is a one-time fee, however, if Client has previously purchased TS Print and needs to add users, bringing the total of users into a higher tier than originally purchased, additional fees will apply. ABACUS DOES NOT WARRANT THE PERFORMANCE OR FUNCTIONALITY OF TS PRINT.

**35. Service Suspension**— Cloudnine may, at its own discretion, suspend Client’s Cloudnine Realtime Subscription if Client’s account is 15 days past due. During any suspension, Client will not have access to Client’s C9 Environment. Once suspended, if Client wishes to reinstate Client’s Cloudnine Realtime Subscription, Client must make its account current and pay a re-activation fee of \$250.

**36. Termination** – Client may not terminate its Cloudnine Realtime Subscription for any reason other than a material breach of these Terms which remains uncured for thirty (30) days from Cloudnine’s receipt of Notice of the alleged breach (the “Cure Period”). In order for a Notice of material breach to be deemed sufficient, Client must identify the specific contractual obligation that was breached by Cloudnine, provide particular facts to support the allegation of breach, and must cooperate with and provide access to Cloudnine in order for Cloudnine to observe, replicate, and troubleshoot the reported issue throughout the Cure Period. If after giving the requisite notice of an alleged material breach, Client refuses to allow Cloudnine to access Client’s C9 Environment or data to evaluate the nature of the alleged breach or otherwise fails to cooperate with Cloudnine’s efforts to cure the alleged breach, Cloudnine shall be relieved of any obligation to cure the alleged breach and will eliminate Client’s ability to terminate Client’s Cloudnine Realtime Subscription for cause (with respect to that alleged breach). For termination of Client’s Cloudnine Realtime Subscription (or any part thereof) for any reason other than for cause, Client shall pay the Early Termination Fee, which shall be equal to any remaining unpaid portion of the Payment. Abacus may terminate Client’s Cloudnine Realtime Subscription for any reason by providing thirty (30) days’ Notice of termination. In the event of Termination by Cloudnine under this section, Cloudnine shall refund any unused portion of fees pre-paid by Client for Client’s Cloudnine Realtime Subscription.

**37. Non-Solicitation of Cloudnine’ Employees**— During the term of Client’s Cloudnine Realtime Subscription, and for 12 months thereafter, Client agrees that it will not directly or indirectly recruit, solicit or otherwise induce or attempt to induce any

employee of Cloudnine or its Affiliates that had direct contact with Client while that employee was acting in the course and scope of the employee's duties with Cloudnine to terminate his or her employment with Cloudnine (or its Affiliates). Client acknowledges that if it breached this paragraph and the relevant employee left his or her employment with Cloudnine, it would be difficult to determine actual damages. Based on what the Parties presently know, they agree that an amount equal to 100% of the relevant employee's Cloudnine annual salary is a reasonable estimate of the damages that would accrue if a breach of this provision occurred in the future and the relevant employee terminated his or her employment with Cloudnine as a result. Client agrees that the amount of liquidated damages is fair and reasonable and would not act as a penalty in such an instance. This paragraph shall not preclude Client from hiring an Cloudnine employee where that employee independently responded to a job posting made available to the general public.

**38. Acceptable Use**— Within Client's C9 Environment, Client is specifically prohibited from doing the following: using Client's C9 Environment for an unlawful purpose; violating any local, state, national, foreign, or international statute, regulation, rule, order, treaty or other law; transmitting, distributing, retrieving or storing of data or other material in violation of any applicable law or regulation; advertising, transmitting, storing, posting, displaying, or otherwise making available child pornography or obscene speech or material (outside the lawful school of Client's duties as an attorney to represent a client); transmitting or posting defamatory, harassing, or threatening language; engaging in activities that Cloudnine determines in its sole discretion to be harmful to Cloudnine' infrastructure, customers, reputation or customer relations; and, engaging in activities designed to assist an Cloudnine competitor learn about Cloudnine' operations and practices. Cloudnine may at its sole discretion suspend or terminate Client's Cloudnine Realtime Subscription if Client violates any aspect of this paragraph. By agreeing to Cloudnine' Acceptable Use Policy, Client also agrees that Cloudnine shall maintain the right to audit Client's use of the products and services included in Client's C9 Subscription. Client warrants that it will maintain a unique user license for each distinct individual or device accessing Client's C9 Environment. Client acknowledges and agrees that any improperly licensed or unlicensed use of Client's C9 Environment, or of any services, applications or utilities deployed therein, should result in Cloudnine retroactively assessing the associated Monthly Recurring Charge, at Cloudnine' then current rates, plus any applicable fees, for any products or services included within Client's C9 Subscription, backdated to the earliest known violation, or the beginning of the Term of Client's C9 Subscription, whichever is earlier.

**39. Relation of Parties**— The performance by Cloudnine of its duties and obligations under the Terms and Conditions will be that of a service provider, and nothing herein will create or imply an agency relationship between Cloudnine and Client, nor will the Terms and Conditions be deemed to create a partnership or joint venture between Cloudnine and Client.

**40. Warranty**– Client acknowledges that no computer system or software can be made completely stable or secure, and that Cloudnine cannot guarantee the stability, safety or security of Client’s data. Cloudnine warrants that Client’s C9 Environment will be maintained in a professional manner, and in conformity with generally prevailing best practices and industry standards.

THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE EFFECTIVE DATE OF ANY AGREEMENT BETWEEN CLIENT AND ABACUS.

**41. Limitation of Liability**– NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, LOSS OF BUSINESS OPPORTUNITY, BUSINESS INTERRUPTION, LOSS OF GOOD WILL, DAMAGE TO BUSINESS REPUTATION, LOSS OF BUSINESS INFORMATION, WORK STOPPAGE, LOSS OF DATA, COMPUTER FAILURE OR MALFUNCTION, OR OTHER SUCH PECUNIARY LOSS), WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT, OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL ABACUS’ TOTAL AGGREGATE AND CUMULATIVE LIABILITY TO CLIENT FOR ANY AND ALL CLAIMS OF ANY KIND ARISING AS A RESULT OF OR RELATED TO THE SERVICES COVERED BY THESE TERMS AND CONDITIONS, OR TO ANY ACT OR OMISSION OF ABACUS, EXCEED THE AMOUNT OF SUBSCRIPTION FEES ACTUALLY PAID (IF ANY) BY CLIENT FOR THE SERVICE GIVING RISE TO THE CLAIM IN THE SIX MONTHS PRECEDING THE CLAIM. WHERE CLIENT HAS PAID THE TOTAL CONTRACTUAL VALUE UPFRONT, ABACUS’ TOTAL LIABILITY FOR ANY AND ALL CLAIMS WILL NOT EXCEED THE EQUIVALENT OF SIX-MONTHLY RECURRING CHARGES (MRC). WHERE CLIENT PAYS AN ANNUAL RECURRING CHARGE, ABACUS’ TOTAL LIABILITY FOR ANY AND ALL CLAIMS WILL NOT EXCEED THE EQUIVALENT OF SIX MONTHLY RECURRING CHARGES (MRC). LIKEWISE, EXCEPT AS ADDRESSED IN THE PARAGRAPH TITLED TERMINATION, CLIENT’S TOTAL AGGREGATE AND CUMULATIVE LIABILITY TO ABACUS FOR CLAIMS ARISING OUT OF THE SERVICES COVERED BY THESE TERMS AND CONDITIONS SHALL NOT EXCEED THE EARLY TERMINATION FEE (AS DEFINED IN THE PARAGRAPH TITLED TERMINATION). THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF THE PARTIES ARISING FROM THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS PARAGRAPH ARE INTEGRAL TO THE AMOUNT OF FEES CHARGED IN CONNECTION WITH MAKING THE SERVICE AVAILABLE TO CLIENT AND THAT, WERE ABACUS TO ASSUME ANY FURTHER LIABILITY OTHER THAN SET FORTH HEREIN, SUCH FEES WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER.

- 42. Indemnification**– Client shall fully indemnify, hold harmless and defend (collectively “indemnify” and “indemnification”) Cloudnine and its directors, officers, employees, agents, stockholders, subsidiaries and affiliates (collectively, “Indemnified Parties) from and against all claims demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to reasonable attorney’s fees and costs), whether or not involving a third-party claim, which arises out of or relate to (1) any breach of any representation or warranty of Client contained in these Terms and Conditions, and (2) any breach or violation of any covenant or other obligation or duty of Client under these Terms and Conditions or under applicable law.
- 43. Assignment**– Neither party may assign the rights and obligations arising out of these Terms and Conditions and/or corresponding Service Orders and Service Order Addendums (if any) affirmatively accepted by Client for Cloudnine Realtime, in whole or in part, at any time, without the prior written consent of the other, which shall not be unreasonably withheld. Provided, however, Cloudnine may assign its rights and obligations under this Agreement without the consent of Client in the event of a change in control transaction. In the event of the sale or transfer by Cloudnine of all or substantially all of its assets to an affiliate or to a third party, whether by sale, merger or change of control, Cloudnine would have the right to assign any and all rights and obligations contained herein and the Agreement to such Affiliate or third party without the consent of Client and the Agreement shall be binding upon such acquirer and would remain in full force and effect, at least until the expiration of the then current term. Subject to the preceding, the rights and obligations arising out of these Terms and Conditions and/or corresponding Service Orders and Service Order Addendums (if any) affirmatively accepted by Client for Cloudnine Realtime will inure to the benefit of and be binding on the parties and their respective successors, heirs and permitted assigns.
- 44. Transfer of Assets or Business**– In the event that Cloudnine is involved in a bankruptcy, merger, acquisition, reorganization, dissolution or sale of assets, your information may be disclosed, sold or transferred as part of that transaction.
- 45. Severability**– If any part or parts of these Terms and Conditions, or corresponding Service Orders and/or Service Order Addendum (if any) affirmatively accepted by Client for Cloudnine Realtime are held invalid by a court of competent jurisdiction, the remaining parts of these Terms and Conditions, or corresponding Service Orders and Service Order Addendum (if any) affirmatively accepted by Client for Cloudnine Realtime will continue to be valid and enforceable.
- 46. Waiver**– The waiver by either party of a breach or default in any of the provisions of Terms and Conditions, or corresponding Service Orders and Service Order Addendum (if any) affirmatively accepted by Client for Cloudnine Realtime shall not be construed as a waiver of any succeeding breach of the same or other provisions;

nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

**47. Integration**– These Terms and Conditions and the corresponding Service Orders and Service Order Addendum (if any) affirmatively accepted by Client for Cloudnine Realtime (which are incorporated by reference) set forth the entire agreement relating to the subject matter hereof and supersedes all prior agreements, discussions and understandings between them, whether oral or written, relating to the subject matter hereof.

**48. Notices**– All notices to Client under these Terms and Conditions will be deemed given when delivered via e-mail to the address set forth in the Service Order. All notices to Cloudnine under this Agreement will be deemed given when delivered via certified mail to:

*Legal Department  
RTB Global Inc.  
4850 Eastgate Mall  
San Diego, CA 92121*

*And a copy sent to [notices@abacusnext.com](mailto:notices@abacusnext.com)*

**49. Governing Law**– These Terms and Conditions and/or any corresponding Service Orders and Service Order Addendum (if any) affirmatively accepted by Client for Cloudnine Realtime shall be construed under the laws of the State of California regardless of conflict of law provisions. Client and Cloudnine irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in San Diego County, California for all disputes arising out of or relating to these Terms and Conditions, Service Orders and Service Order Addendum (if any) affirmatively accepted by Client for Cloudnine Realtime and/or Client's Cloudnine Realtime Subscription, or the services contemplated therein. Neither party will bring a legal action arising out of or related to these Terms and Conditions, any corresponding Service Orders and Service Order Addendum (if any) affirmatively accepted by Client for Cloudnine Realtime and/or Client's Cloudnine Realtime Subscription or the services contemplated therein more than two years after the cause of action arose. Client and Cloudnine further agree that as a condition precedent to instituting any legal action, the parties must participate in a non-binding mediation in San Diego, California before a neutral from JAMS, with the parties equally splitting the costs of that mediation. If the parties cannot agree on a JAMS neutral, the neutral shall be selected by JAMS at its sole discretion. The mediation process shall be initiated by the aggrieved party submitting the case for mediation to JAMS directly, after providing the other party with notice of its intent to institute mediation.

WHERE PERMITTED UNDER THE APPLICABLE LAW, CLIENT AND CLOUDNINE AGREE THAT EACH PARTY MAY ONLY BRING CLAIMS AGAINST THE OTHER PARTY IN AN INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION. NO ARBITER OR JUDGE MAY CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS UNDER THESE TERMS AGAINST EITHER PARTY TO THIS AGREEMENT WITHOUT THE WRITTEN CONSENT OF BOTH PARTIES.

**50. Prevailing Party**– In the event of any litigation arising out of or related to these Terms and Conditions, any corresponding Service Orders and Service Order Addendum (if any) affirmatively accepted by Client for Cloudnine Realtime and/or Client's CloudnineRealtime Subscription, the prevailing party shall be entitled to recover from the non- prevailing party all costs and expenses associated with such proceedings, including reasonable attorney's fees. For purposes of this provision, if a matter is filed in any venue other than the state or federal courts in San Diego County, California and the matter is dismissed for improper venue, the party that did not file the action shall be deemed the prevailing party in that action.

**51. Updates to Terms and Conditions**– Cloudnine reserves the right to routinely update, amend or change the Terms and Conditions of Services. At least 30 days prior to the effective date, Cloudnine will notify client by e-mail of such changes, and a new Terms and Conditions document will be posted at [www.abacusnext.com/terms](http://www.abacusnext.com/terms). Client's continued use of its C9 Environment after the 30th day will serve as consent to the changed terms.

**52. Acceptance of Microsoft Customer Agreement** –By signing a Service Order Form or Service Order Addendum for an C9 Subscription, and as a condition of Client's license to use its C9 Environment and any Microsoft components included therein,

Client must review and accept the Microsoft Customer Agreement found at <https://www.microsoft.com/licensing/docs/customeragreement>(the version that is applicable to Client is herein incorporated by reference). In order for Cloudnine to satisfy its reporting requirements to Microsoft, as a Cloud Solution Provider (CSP), Client authorizes Cloudnine to provide information to Microsoft. This information includes the following personal information about the authorized representative who signed the Service Order Form or Service Order Addendum, and thereby accepted the Microsoft Customer Agreement on Client's behalf: name, e-mail address, and phone number.

**53. Data Processing Addendum** – The Data Processing Addendum set forth at [www.abacusnext.com/dataprocessingaddendum](http://www.abacusnext.com/dataprocessingaddendum) is expressly incorporated into these Terms and Conditions by reference.

**54. AbacusNext Offered Software** – Where AbacusNext Software products are purchased by Client, in addition to the Terms and Conditions governing Client's



C9 Subscription, Client's use of AbacusNext Software shall be governed by the [AbacusNext Software Terms](#) (which is incorporated by reference where applicable).

**55. Subcontracting.** Cloudnine may subcontract any work under this Agreement to any third party or Affiliate, include but not limited to its parent company Abacus Data Systems, Inc., without Customer's prior written consent. Cloudnine shall remain responsible for the performance acts, and omissions of any subcontractors or Affiliates.