CLOUDBERRY LAB SAAS SERVICES AGREEMENT

PLEASE READ THIS SAAS SERVICE AGREEMENT CAREFULLY. BY DOWNLOADING, INSTALLING OR USING THE SOFTWARE OR SERVICE YOU INDICATE ACCEPTANCE OF AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE OR SERVICE. THIS AGREEMENT DOES NOT SUPERSEDE ANY OTHER WRITTEN AGREEMENT BETWEEN YOU AND CLOUDBERRY LAB.

This agreement (the "Agreement") is made between CloudBerry Lab, ("Company") and you, the customer ("Customer"). The terms and conditions of this Agreement are intended by the parties as a final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement unless such agreement is signed by both parties. In the absence of such an agreement, this Agreement shall constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced in any judicial proceeding that may involve the Agreement. This Agreement contains, among other things, warranty disclaimers, liability limitations, use limitations and a binding arbitration clause.

This Agreement sets forth the terms under which the Company will provide Customer with access to and use of a certain software-as-a-service SaaS offering known as the CloudBerry Managed Backup Service ("Subscription Service") which provides Customers with managed online backup services under their own brand with access to Cloud Storage Providers ("CSP") of Customer's choosing. With the exception of management and administration data like, but not limited to, usernames, login credentials, email addresses, and computer names created by Customer in order to access the Subscription Service, the Subscription Service has no access to and does not store any of the Customer Data or Customer Content (collectively the "Data") of any kind. Rather, the Subscription Service transfers the Data which is contained in Backup Storage to a ("CSP") of Customer's choosing and / or storage under the control of the customer.

By clicking on this box, the authorized employee executing this agreement on behalf of Customer represents and warrants that he or she has the power and authority to enter into this Agreement and bind Customer to the terms of this Agreement. IF CUSTOMER AGREES TO BE BOUND BY ALL THE TERMS OF THIS AGREEMENT, PLEASE ACCEPT THE AGREEMENT AND PROCEED TO ACCESS THE SUBSCRIPTION SERVICE. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY ALL THE TERMS OF THIS AGREEMENT, COMPANY IS UNWILLING TO GRANT CUSTOMER ANY RIGHTS TO USE THE SUBSCRIPTION SERVICE, AND CUSTOMER MUST STOP ACCESSING THE SUBSCRIPTION SERVICE.

1. Definitions

"**3rd Party**" or **"3rd Parties"** means any person or entity not employed by Company.

"Administrator Users" means the Authorized User(s) designated by Customer who are responsible for administering the Subscription Service and who are issued an Administrator login by Company or Customer.

"Agreement" means these terms and conditions, the Exhibits attached hereto and any other statements of work, exhibits or appendices thereto, whether attached or incorporated by reference.

"Authorized Users" means individuals who are authorized by Customer to use the Subscription Service, for whom subscriptions to a Subscription Service have been purchased and who have been supplied user identifications and passwords by Customer.

"Backup Storage" means any local or cloud storage created by Customer that is not offered by the Company nor maintained or stored by the Subscription Service.

"Customer" means the customer entity that has accepted this Agreement and is authorized to use the Subscription Service.

"Customer Data" or **"Customer Content" (Collectively the "Data")** means all electronic data or information of any kind that Customer (or its authorized users including administrative users, employees, managers, manager users, and 3rd parties regardless of whether or not the Customer Data is owned by Customer during the Term) inputs into Backup Storage that is transferred by the Company via the Subscription Service to a CSP of Customer's choosing and / or storage under the control of the customer. Data includes: (i) Customer records, business documents and files, data files, input materials, reports, forms and other such items that may be transferred by Company, in the performance of the Subscription Service under this Agreement; (ii) Any Data not owned by Customer such as the Data of one of Customer's clients or a 3rd party that Customer is doing business with; or (iii) any information relating to an identified or identifiable natural person including a 3rd party defined as an identifiable person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical,

physiological, mental, economic, cultural or social identity. This includes administrative users, authorized users, and 3rd parties. Data may include name, email addresses, telephone numbers, information related to logging in to the Services, birth dates, social security numbers, and personally identifiable information (PII) including financial information, and protected health information covered under HIPAA. All Data has been designed, created and provided solely by Customer or by 3rd parties on its behalf without the participation or involvement of Company. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and copyright, trademark and patent permissions for all Data entered into a Backup Storage. Customer shall not place nor cause to be placed into any Backup Storage any Content or Data that contains any content or materials which is obscene, threatening, malicious, which infringe on or violate any applicable law or regulation or any proprietary, contract, moral, privacy or other third party right, or which otherwise exposes Company to civil or criminal liability. Company assumes no responsibility for the accuracy, propriety, or usefulness to Customer of the Data. Company shall not be liable to Customer or any third-parties for any loss, damage or expense whatsoever and howsoever arising from any Data inputted or entered into Backup Storage by Customer or by an entity on its behalf. Customer acknowledges that the Company will rely on the accuracy of the Data inputted into Backup Storage by Customer as it performs its requested functions under this Agreement. Customer acknowledges that it owns all of the Data or has all rights to grant such licenses to Company to use the Data in furtherance of providing the Subscription Service without infringement or violation of any third party rights. Company provides no warranties, representations or indemnification to Customer for its access to, and use of the Data.

"Electronic Communications" means any information transmitted in whole or part, electronically received and/or transmitted through the Subscription Service.

 "Term" has the meaning set forth in Section 10.1 below.

"Third Party Integrated Services" means applications or services that are provided and managed by third party providers, and interoperate with the Subscription Service including but not limited to any third party that enables the Subscription Service to act as a conduit to send Customer Data or any type of information to the intended party.

In consideration for Customer's acceptance of and subject to the terms and conditions incorporated herein and the Privacy Policy ("Privacy Policy") located at: https://www.cloudberrylab.com/company/privacy-policy.aspx as may be amended from time to time, and incorporated herein by this reference, Company shall provide access to the Subscription Service to Customer during the term of this Agreement. Customer acknowledges and agrees that Company shall have no responsibility for its inability to use the Subscription Service or access the Subscription Service due to network interruption, communications failure, or server downtime.

2. Limited Rights; Ownership

2.1 Company grants to Customer and Customer accepts from Company, a limited, revocable, non-exclusive, non-transferable right to access and use and permit Authorized Users to access and use the Subscription Service solely for the internal business operations of Customer and its Affiliates during the Term. The Subscription Service shall not be used by Customer or by Authorized Users for, or on behalf of, third parties that are not authorized under this Agreement. Customer shall use its best efforts to ensure that the Authorized Users use the Subscription Service in accordance with the terms and conditions of this Agreement. Customer acknowledges that its right to use the Subscription Service will be web-based only pursuant to the terms of this Agreement and that the Subscription Service will not be installed on any servers owned or controlled by Customer or otherwise provided to Customer without Company's consent.

2.2 Authorized Users: Passwords, Access, and Notification. Customer, through its Administrator, shall authorize access to and assign unique passwords and user names for all employees authorized to access the Subscription Service. Authorized User logins are for designated Authorized Users and cannot be shared or used by more than one Authorized User. Customer will be responsible for the confidentiality and use of Authorized User's passwords and user names. Company will act as though any Electronic Communications it receives under Customer's passwords, user name, and/or account number will have been sent by Customer. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription Service and shall promptly notify Company of any unauthorized access or use of the Subscription Service and any loss or theft or unauthorized use of any Authorized User's password or name and/or Subscription Service account numbers.

2.3 Use of the Subscription Service. Customer is responsible for all activities and Electronic Communications conducted by its Authorized Users and for its Authorized Users' compliance with this Agreement, including the content of all Data. Customer will not: (a) sell, lease, license or sublicense the Subscription Service, except as explicitly provided for in this agreement; (b) introduce

into or transmit through the Subscription Service any virus, worm, trap door, back door, and other harmful or malicious code, files, scripts, agents, or programs; (c) transmit or transfer infringing material in the Subscription Service; (d) send any Electronic Communication from the Subscription Service that is unlawful, harassing, libelous, defamatory or threatening. Except as permitted by this Agreement, no part of the Subscription Service may be copied, republished, displayed in any form or by any means. Customer agrees not to access the Subscription Service by any means other than through the interfaces that are provided by Company.

Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company's standard published policies then in effect (the "Policy") and all applicable laws and regulations. Company has no obligation to monitor Customer's use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

Company shall have the right collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.] No rights or licenses are granted except as expressly set forth herein.

2.4 Third Party Integrated Services.
Company may allow third party vendors, service providers, software developers and information systems companies to provide applications, websites and/or features via the Company Subscription Service Platform ("integrated

Service" or "Integrated Services"). Company may offer Integrated Services by either i) licensing technology from a third party and embedding it in the Subscription Service; or ii) establishing a connection or conduit with a third party's software platform or information system enabling the Subscription Service to send Customer Data or any type of information to the intended party. (i) and (ii) are collectively the "Embedded Technology").

Customer consents to use the Embedded Technology with the Subscription Service. In order to use and subscribe to Embedded Technology, Customer may be required to agree to additional terms and conditions specific to that Embedded Technology.
Integrated Services. Customer acknowledges that: (i) in order to use certain Integrated Services, there may be additionally applicable terms and conditions including those which may establish a direct contractual relationship between Customer and an Integrated Services provider; and (ii); Uptime (as defined in the SLA), availability and support of Integrated Services are excluded from the SLA but may be provided by an Integrated Services provider. If subscribed for Integrated Services, Customer agrees to allow the provider of such Integrated Services to access the Customer's Data as required for the interoperation of that Integrated Service with the Company Subscription Service platform. Customer acknowledges Company is not responsible for any disclosure, modification or deletion of Customer's Data resulting from access by an Integrated Service or its provider. Company does not warrant or support Integrated Services, whether or not they are designated as "certified" or otherwise, unless agreed upon by both parties in writing and incorporated into this agreement as an addendum related to the Integrated Service.

Embedded Technology will be used among other ways to collect data and information ("third party information") from various systems: (i) to identify opportunities in the third party information to be utilized by Customer while using the Subscription Service; (ii) to make improvements to the software underlying the Subscription Service; and (iii) to measure Key Performance Indicators (KPIs). Company has no duty to verify the accuracy or reliability of all such third party information and KPIs and shall not be liable for any loss, damage or expense whatsoever and howsoever arising from any breach or error, loss, damage, or claim caused by Customer or any third party's reliance on any such third party information and KPIs**.**

2.5 Hosting Center Facilities. The hosting center facilities supporting the Subscription Service, all related Applications and the Third Party Integrated Services where

applicable and delivered by Company for usage by the Customer shall be provided for and managed by a third party vendor ("third party vendor") not a party to this Agreement. Company shall not be liable in respect of any breach or error in delivery, loss, damage or interruption to the Subscription Service, Applications or Third Party Integrated Services during the Term of this Agreement caused by the third party vendor. Customer shall immediately notify Company, in writing of any such error, loss, breach, damage or interruption. Company shall not be liable for any loss, damage or expense whatsoever and howsoever arising from any breach or error, loss, damage, defect or interruption to the Subscription Service caused by the third party vendor.

2.6 Security. Each party will use commercially reasonable measures to maintain and enforce physical and logical security procedures to prevent unauthorized access to and/or use of the Subscription Service and the Customer Data. Company will use commercially reasonable measures to secure and defend the Subscription Service against "hackers" and others who may seek to modify or access the Subscription Service or the Customer Data without authorization. Company will use commercially reasonable efforts to remedy any breach of security or unauthorized access. Company shall not be responsible or liable for the disclosure of or unauthorized access to Customer Data caused by Customer, its Authorized Users, Customer's affiliates, or the employees, agents or contractors of any of the foregoing.

2.7 Transmission of Data. The Subscription Service allows Customer to send and receive Electronic Communications and Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to use of the Subscription Service. Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Company. Company is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data across networks not owned and/or operated by Company, including but not limited to, the Internet and Customer's local network.

2.8 SAAS SERVICES AND SUPPORT
Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services [in accordance with the Service Level Terms attached hereto as Exhibit A]. As part of the registration

process, Customer will identify an administrative user name and password for Customer's Company account. Company reserves the right to refuse registration of, or cancel passwords it deems inappropriate.

2.9 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with the terms set forth in Exhibit B.

2.10 Compliance with Laws. Company will comply with all applicable laws and regulations affecting the operation of Company's business, including any applicable export restrictions and data protection laws. Customer will be solely responsible: (i) for compliance by Customer with all laws and governmental regulations affecting Customer's business, (ii) for using the Subscription Services in a manner to assist it in complying with same, and (iii) the content and accuracy of all reports and documents prepared in whole or in part by using the Subscription Services. Customer will review any calculations made by using the Subscription Services and satisfy itself that those calculations are correct. The Subscription Service is not a substitute for the advice of an attorney and does not include any legal, regulatory, accounting or tax advice and Customer and its affiliates will rely solely upon their own advisors with respect to any such advice. Customer agrees and acknowledges that Company is not a law firm, does not provide legal advice or representation, and that no attorney-client relationship exists or will be formed between Company and Customer.

3. Confidentiality
3.1 Confidential Information. For purposes of this Agreement, "Confidential Information" shall include the terms of this Agreement, Customer Data, each party's proprietary technology, software, code, business processes and technical product information, designs, issues, all communication between the Parties regarding the Subscription Service and any information that is clearly identified in writing at the time of disclosure as confidential. Notwithstanding the foregoing, Confidential Information shall not include information which: (1) is known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the Receiving Party; (4) the Receiving Party becomes aware of from a third party not bound by non-disclosure obligations to the Disclosing Party and with the lawful right to disclose such information to the Receiving Party; (5) is independently developed by the Receiving Party without use of or reference to the Confidential Information, or (6) is aggregated, de-identified data that does not contain any personally identifiable or Customer-

specific information. Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Non-Disclosure Obligations. Each party agrees: (a) not to use or disclose Confidential Information except to the extent reasonably necessary to perform its obligations or exercise rights under this Agreement or as directed by the disclosing party; (b) to protect the confidentiality of Confidential Information in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information), and (c) to make Confidential Information available to authorized persons only on a "need to know" basis. Either party may disclose Confidential Information on a need to know basis to its contractors and service providers who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of this Agreement. Notwithstanding the foregoing, this Section will not prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority or a regulation.

4. Ownership
4.1 Ownership of Subscription Service. Customer agrees that all rights, title and interest in and to all intellectual property rights in the Subscription Service including

without limitation the software used to provide the Subscription Service) are retained and owned exclusively by Company or its licensors. In addition, Company shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or incorporate into the Subscription Service and its other product and service offerings any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Authorized Users, relating to the operation of the Subscription Service and associated services. Any rights not expressly granted herein are reserved by Company. Company service marks and trademarks, logos and product and service names are marks of Company (the "Company Marks"). Customer agrees not to display or use the Company Marks in any manner without Company's express prior written permission. The trademarks, logos and service marks of Third Party Application providers ("Marks") are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such third party who may own the Mark. Except the right to use the Subscription Service, as expressly provided herein, this Agreement does not grant to Customer any rights to, or in, patents, copyrights, Personal Database rights, trade secrets, trade names, trademarks (whether registered or unregistered) or any other rights or licenses with respect to the Subscription Service or the software (the "Software") used to provide the Subscription Service. Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Subscription Service or any software, documentation or data related to the ("Software"); modify, or create derivative works based on the Subscription Service or any Software (except to the extent expressly permitted by Company or authorized within the Subscription Service). With respect to any Software that is distributed or provided to Customer for use on Customer's premises or devices, Company hereby grants Customer a non-exclusive, non-transferable, non-sub licensable license to use such Software during the Term only in connection with the Services. The provisions of this paragraph 4.1 shall survive termination of this Agreement.

5.1 Ownership of Customer Data. The information or Customer Data collected by Customer's use of the Subscription Service shall remain the sole and exclusive property of the Customer unless Company is requested by a government agency or authority, subpoena or court order to produce the Customer Data. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and copyright permissions for all Customer Data. Company will not use

the Customer Data for any purpose other than to provide the Services to Customer and to improve the Subscription Service.

5.2 Limited License to Data. Subject to the terms and conditions of this Agreement, Customer grants Company the limited, non-exclusive, non-transferable terminable license to transfer the Data contained in Backup Storage, but only to the extent reasonably necessary to provide the Subscription Service to Customer and to improve the Subscription Service.

6. Payment Terms

6.1 Fees. Customer will pay Company the then applicable fees for the Services and Implementation Services in accordance with the terms therein (the "Fees"). Company reserves the right to change the Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer. If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 30 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department. Company may choose to bill Customer through an invoice, in which case, full payment for invoices issued in any given month must be received by Company no more than thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service.

6.2 Taxes. All Fees payable under this agreement are net amounts and do not include taxes or duties of any kind. Customer will be responsible for, and will promptly pay, any applicable duties, sales tax, use tax, and value added taxes (VAT) or other similar taxes, if any, associated with this Agreement or Customer's receipt or use of the Subscription Service, excluding taxes based on Company's gross or net income or franchise taxes. In the event that Company is required to collect or pay any tax for which Customer is responsible, Customer will pay such tax directly to Company. If Customer is a tax-exempt organization and is not obligated to pay taxes arising out of this Agreement, Customer will provide Company with any required documentation to verify its tax-exempt status with the applicable taxing authorities.

7. Warranties

7.1 *EXCEPT AS STATED IN THE ATTACHED SERVICE LEVEL AGREEMENT, THE SUBSCRIPTION SERVICE IS PROVIDED "AS IS" AND THE COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. COMPANY DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SUBSCRIPTION SERVICE, EMBEDDED TECHNOLOGY OR INTEGRATED SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SUBSCRIPTION SERVICE, EMBEDDED TECHNOLOGY OR INTEGRATED SERVICES WILL MEET ALL OF CUSTOMER'S REQUIREMENTS. THE SUBSCRIPTION SERVICE MAY BE TEMPORARILY UNAVAILABLE FOR SCHEDULED MAINTENANCE FOR UNSCHEDULED EMERGENCY MAINTENANCE EITHER BY COMPANY OR THIRD PARTY PROVIDERS, OR BECAUSE OF OTHER CAUSES BEYOND COMPANY'S REASONABLE CONTROL BUT COMPANY SHALL USE REASONABLE EFFORTS TO PROVIDE ADVANCE NOTICE IN WRITING OR BY E-MAIL OF ANY SCHEDULED MAINTENANCE INTERRUPTION.*

TO THE EXTENT PERMITTED BY LAW THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES, OR SOME OR ALL OF THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION MAY NOT APPLY TO YOU.

8. Limitations of Liability.

8.1 CUSTOMER ASSUMES THE ENTIRE COST OF ANY DAMAGES RESULTING FROM CUSTOMER'S USE OF THE SUBSCRIPTION SERVICE, EMBEDDED TECHNOLOGY OR INTEGRATED SERVICES (THE "SERVICES"), THE INFORMATION CONTAINED IN OR COMPILED IN THE SERVICES, THE INTERACTION (OR FAILURE TO INTERACT PROPERLY) WITH ANY OTHER HARDWARE OR SOFTWARE WHETHER PROVIDED BY *COMPANY* OR A THIRD PARTY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN NO EVENT WILL THE *COMPANY* OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, SPECIAL, DIRECT, EXEMPLARY, INDIRECT, RELIANCE, INCIDENTAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, REVENUE OR SAVINGS, BUSINESS INTERRUPTION, BUSINESS OPPORTUNITIES, LOSS OR CORRUPTION OF BUSINESS INFORMATION OR ANY PERSONAL OR CUSTOMER DATA, LOSS OF GOODWILL, WORK STOPPAGE, HARDWARE OR SOFTWARE DISRUPTION, IMPAIRMENT OR FAILURE, REPAIR COSTS, TIME VALUE OR OTHER PECUNIARY LOSS, OR LOSS OF LIFE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE USE

OR INABILITY TO USE THE SERVICES, OR THE INCOMPATIBILITY OF THE SERVICES WITH ANY HARDWARE, SOFTWARE OR USAGE, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS. TO THE EXTENT PERMITTED BY LAW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, OR SOME OR ALL OF THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION MAY NOT APPLY TO YOU. IF ANY EXCLUSION, DISCLAIMER OR OTHER PROVISION CONTAINED IN THIS AGREEMENT IS HELD TO BE INVALID FOR ANY REASON BY A COURT OF COMPETENT JURISDICTION OR ARBITRATOR AND THE COMPANY BECOMES LIABLE THEREBY FOR LOSS OR DAMAGE THAT COULD OTHERWISE BE LIMITED THE COMPANY'S TOTAL LIABILITY TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO THE TOTAL AMOUNT PAID IN SUBSCRIPTION FEES TO THE COMPANY UNDER THIS AGREEMENT FOR THE THREE MONTHS PRIOR TO A CLAIM OF DAMAGES BEING BROUGHT BY CUSTOMER WHETHER IN CONTRACT, TORT OR OTHERWISE.

9. Indemnification

9.1 Company's Indemnity. Company shall, at its own expense, defend Customer from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "Claims") alleging that the Subscription Service, as used in accordance with the terms and conditions of this Agreement, infringes the copyrights, trade secrets, patents or trademarks of such third party and shall hold Customer harmless from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "**Losses**") to the extent based upon such a Claim. Excluded from these indemnification obligations are Claims to the extent arising from: (a) use of the Subscription Service in violation of this Agreement or applicable law, (b) use of the Subscription Service after Company notifies Customer to discontinue use because of an infringement claim, (c) modifications to the Subscription Service not made by Company, or (d) use of the Subscription Service in combination with any software, application or service not provided by Company. If a Claim is brought or threatened, Company shall, at its sole option and expense, use commercially reasonable efforts either: (a) to procure for Customer the right to continue using the Subscription Service without cost to Customer; (b) to modify or replace all or portions of the Subscription Service as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (c) if the remedies described in (a) and (b) above are not commercially feasible, terminate the Agreement and provide to the Customer any pro-rata

refund of the Subscription Service subscription fees pre-paid under the Agreement for the remaining terminated portion of the Term. The rights and remedies granted to Customer under this Section 9.1 state Company's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of any third party.

9.2 Customer's Indemnity. Customer shall, at its own expense, defend and hold harmless Company from and against any and all Claims, Damages, Losses or Lawsuits alleging: (i) the Customer Data, Customer Content or any Customer trademarks or service marks, or any use thereof, infringes the intellectual property rights or other rights, or has caused harm to a third party; (ii) Customer's or Authorized User's use and misuse of the Subscription Service and failure to comply with all of the Company's policies and Documentation; and (iii) Customer's failure to pay all applicable taxes associated with Customer's use of the Subscription Service. Customer shall defend and hold Company harmless from and against liability for any Losses to the extent based upon such Claims.

9.3 Indemnification Procedures and Survival. In the event of a potential indemnity obligation under this Section 9, the indemnified party shall: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's expense, with the indemnifying party in the investigation and defense of such Claim. The indemnification obligations under this Section 9 are expressly conditioned upon the indemnified party's compliance with this Section 9.3.

10. Term and Termination.

10.1 Subject to earlier termination as provided below, this Agreement is for the Initial Billing Service Term, and shall be automatically renewed for additional periods of the same duration as the Initial Billing Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then current billing term.

10.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. [Upon any termination, Company will make all Customer Data available to Customer for

electronic retrieval <u>in an agreed upon format</u> for a period of thirty (30) days, but thereafter Company may, but is not obligated to, delete stored Customer Data <u>unless required by law</u>.] All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

10.3 Survival. Sections 3, 4, 7, 8, 9 and 12 and any other provisions necessary to interpret the respective rights and obligations of the parties hereunder will survive any termination or expiration of this Agreement, regardless of the cause of such termination or expiration.

Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11. General Provisions.
11.1 Notices. Notices between the parties will be by personal delivery, courier, facsimile transmission, email, or certified or registered mail, return receipt requested, and will be deemed given upon receipt at the address of the recipient party or ten (10) days after deposit in the mail. Addresses used will be the ones set forth above or such other address as a party hereto will notify the other in writing.

11.2 Severability. In the event of any invalidity of any provision of this Agreement, the parties agree that such invalidity will not affect the validity of the remaining portions of this Agreement, and further agree to substitute for the invalid provision a mutually agreeable valid provision that most closely approximates the intent of the invalid provision.

11.3 Headings. The headings in this Agreement are for convenience of reference only and have no legal effect.

11.4 No Third Party Beneficiaries. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

11.5 Assignment. Customer shall not be permitted to assign any of its rights under this Agreement to any other entity (except the right to receive money) without the written consent of Company. Company shall be permitted to assign its rights under this Agreement to any successor entity of any kind.

11.6 Relationship. Each party hereto is an independent contractor, and neither party is, nor will claim to be, a legal representative, partner, franchisee, agent or employee of the other.

11.7 Publicity. Company will not make other use of Customer's name, logo or trademarks or issue any public announcements or press releases regarding this Agreement without Customer's prior written consent.

11.8 Force Majeure. Neither party will be liable to the other for a failure or delay in its performance of any of its obligations under this Agreement (except for the payment of amounts due hereunder) to the extent that such failure or delay is caused by circumstances beyond its reasonable control or by events such as fire, riot, flood, labor disputes, natural disaster, regulatory action, internet or telecommunications failures, terrorist acts, or other causes beyond such party's reasonable control, provided that the non-performing party gives notice of such condition and continues or resumes its performance of such affected obligation to the maximum extent and as soon as reasonably possible.

11.9 Counterparts and Electronic Signatures. This Agreement may be executed in counterparts. A signature transmitted via facsimile, scanned original or third party e-signature system will be deemed an enforceable signature for the purpose of demonstrating the signing party's assent to the Agreement.

11.10 Entire Agreement. This Agreement (including the Exhibits hereto) constitutes the entire understanding and agreement between the parties with respect to the subject matter addressed herein and supersedes any and all prior or contemporaneous oral or written communications with respect to such subject matter. In the event of a conflict

between the foregoing terms and conditions and any Exhibits to this Agreement, the foregoing terms and conditions will control. The parties agree that in the event Customer utilizes a purchase order, any term therein which purports to modify or supplement the terms of this Agreement will be void with no force or effect. No modification, termination or waiver of any provisions of this Agreement shall be binding upon a Party unless in writing signed by an authorized officer of the relevant Party(ies).

12 Governing Law
12.1 Governing Law/Arbitration. By using the Services, you agree that the laws of the State of California, without regard to principles of conflict of laws, will govern this Agreement and any dispute of any sort that might arise between you and the Company.

12.2 Disputes
ANY DISPUTE RELATING IN ANY WAY TO YOUR USE OF THE SUBSCRIPTION SERVICE SHALL BE SUBMITTED TO CONFIDENTIAL BINDING ARBITRATION IN ORANGE COUNTY, CALIFORNIA EXCEPT FOR INTELLECTUAL PROPERTY CLAIMS BROUGHT BY EITHER PARTY (WHICH FOR PURPOSES OF THIS SECTION DO NOT INCLUDE PRIVACY AND PUBLICITY CLAIMS) AND CLAIMS THAT MAY BE BROUGHT IN SMALL-CLAIMS COURT.

CONFIDENTIAL ARBITRATION UNDER THIS AGREEMENT SHALL BE RESOLVED EXCLUSIVELY UNDER THE CONSUMER ARBITRATION RULES THEN PREVAILING OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA'S CONSUMER RULES"),

EXCLUDING ANY RULES AND PROCEDURES GOVERNING OR PERMITTING CLASS OR REPRESENTATIVE ACTIONS. THE RULES ARE AVAILABLE AT THE AMERICAN ARBITRATION ASSOCIATION'S WEBSITE.

YOU AND COMPANY AGREE TO EXPRESSLY WAIVE ANY RIGHTS TO FILE CLASS OR REPRESENTATIVE ACTIONS OR SEEK RELIEF ON A CLASS OR REPRESENTATIVE BASIS IN ANY JURISDICTION OR FORUM.

THE ARBITRATOR SHALL APPLY CALIFORNIA LAW, AND THE ARBITRATOR'S AWARD SHALL BE BINDING AND MAY BE ENTERED AS A JUDGMENT IN ANY COURT OF COMPETENT JURISDICTION. THERE SHALL BE NO APPEAL FROM ANY AWARD OF THE ARBITRATOR. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NO ARBITRATION UNDER THIS AGREEMENT SHALL BE JOINED TO AN ARBITRATION INVOLVING ANY OTHER PARTY SUBJECT TO THIS AGREEMENT, WHETHER THROUGH CLASS ARBITRATION PROCEEDINGS OR OTHERWISE. IF ANY PART OF THIS ARBITRATION PROVISION IS FOUND TO BE INVALID, UNENFORCEABLE OR ILLEGAL, THE REST OF THIS PROVISION SHALL REMAIN IN EFFECT.

IF THE ENTIRE ARBITRATION PROVISION IS FOUND TO BE INVALID OR UNENFORCEABLE, THEN THE PARTIES CONSENT TO PERSONAL JURISDICTION AND EXCLUSIVE VENUE IN THE STATE AND FEDERAL COURTS IN ORANGE COUNTY, CALIFORNIA.

EXHIBIT A
Service Level Agreement

The Company agrees to provide the Customer the Service for any computers the Customer has licensed using the CSPs of the Customer's choice and / or any storage under the control of Customer. The Company will use all reasonable commercial efforts to make sure that the Service is available 24 hours per day, 7 days a week, as subject to the conditions of this Service Level Agreement ("SLA"), further described below.

Service Level Conditions:
- Backups are based upon the configuration schedules Customer has selected. However, certain issues with Customer's computers, internet connectivity, network, or other technical issues outside the Company's control may cause a scheduled backup to not complete or fail to run. It is the Customer's sole responsibility to ensure that a backup has completed. The Company is not responsible for failed backups.
- Restore of backup files is at the Customer's discretion. Restore times are not guaranteed and may depend on many factors, including, but not limited to, internet bandwidth, network bandwidth, computer resources, and size of backup files to be restored.
- Some CSPs may provide a service to send a hard drive with backup data directly to Customer. The Company will not assist Customer with this process.
- The Company may perform scheduled maintenance at times determined at Company's sole discretion. Maintenance will be completed in as short a time as reasonably possible. The Service may be unavailable or operate with reduced performance during such maintenance. This maintenance is necessary to insure the reliability and managed features of the Service. The Company may post notices through the Service letting Customer know when maintenance is planned. However, there may be times when emergency maintenance is required and notification by Company to Customer in these cases may not be possible. When possible, the Company will post a notice through the web site or email indicating when the Service will be restored.
- The Company cannot account for issues affecting the Service outside of Company's control. As such, Company makes no warranties or guarantees with regards to the availability of the Service or Customer's ability to connect to and use the Service.

EXHIBIT B

Support Terms

- All Support services are performed remotely. As such, the Company will not send technicians to Customer's home or place of business to address any issues that you may have.
- The Company offers phone, email, and remote diagnostic support according to the following schedule:
- **Monday through Friday:** 2 am – 8 pm Eastern Time (UTC-05:00)
- **Saturday and Sunday:** 8 am – 2 pm Eastern Time (UTC-05:00)
- **Holidays:** Support times during major international holidays is available the same times as Saturday and Sunday
- The Company offers phone and remote diagnostic support by customer request only. These services should be scheduled by Customer in advance. Customer may initiate a support call by calling +1 212-863-9918 during open support hours or by emailing support@cloudberrylab.com at any time. Company will use commercially reasonable efforts to respond to all support inquiries within one (1) business day.