Cloud Chomp, Inc. Terms of Service / Software License Agreement

Important –Please Read Carefully

1. INTRODUCTION

1.1. This agreement ("Agreement") IS A CONTRACT entered into by and between Cloud Chomp and "you," as defined below. Apart from the exception below, YOU AGREE TO BE BOUND by this Agreement, including (for example) its limitations on authorized use, warranties and liability, and transferability.

1.2. EXCEPTION – IF: (1) You are being presented with this Agreement as part of a Web site sign-up process, or during installation of software on your computer, and (2) you and Cloud Chomp have previously agreed in writing to another agreement that governs your use of the Web site or of the software and excludes the applicability of this Agreement and that remains in effect; THEN: The other agreement, NOT this Agreement, will control your use of that Web site and/or software.

1.3. This Agreement grants you a limited, non-exclusive right to use Cloud Chomp's 'Technology,' subject to the terms and conditions of this Agreement and the relevant 'Order Form,' as defined below. This right is expressly conditioned on your payment of any required fees and on your compliance with the provisions of this Agreement and of the Order Form.

1.4. Asterisks indicate the existence of related additional provisions in the available Platinum Contract Addendum to this Agreement, which applies only if expressly so stated in this Agreement or in the relevant Order Form.

2. Definitions and usages

2.1. "Cloud Chomp" refers to Cloud Chomp, Inc., a Delaware corporation.

2.2. "You" refers to the corporation or other organization whose employee or other representative is either signing a hard copy of this Agreement, or signifying assent to this Agreement by clicking on "I agree" or taking comparable action.

2.3. "License unit" has the meaning set forth in Section 3.1.

2.4. "Order Form" refers to an order form from you that is accepted by Cloud Chomp. • An order form may take the form of (for example) a purchase order; a quotation signed by you to place an order; or an on-line sign-up form for obtaining access to the Service or for downloading a copy of the Software. • An Order Form may refer to one or more usage

plans, service plans, maintenance plans, or similar documents, in which case the provisions of the referenced plan(s) or other document(s) are deemed part of the Order Form.

2.5. "Service" refers to a Cloud Chomp online service; if you are attempting to obtain access to such a service as you read this, then the term specifically includes (for example) that service.

2.6. "Software" refers to one or more items of software provided by Cloud Chomp; if you are in the process of installing such an item of software on your computer as you read this, then the term specifically includes (for example) that software.

2.7. "Technology" refers to the Service or the Software, as the case may be.

2.8. "Usage plan" refers to a specific offering by Cloud Chomp, such as for example an authorized-usage package or a maintenance plan,

2.9. "Includes" (and its derivatives, e.g., including), "for example," and similar language are used by way of example and not of limitation unless expressly stated otherwise.

3. Provisions applicable to both the Service and the Software

3.1. You may not use the Technology in connection with more, in the aggregate, than the number of distinct corresponding "license units" (for example, workstations, servers, users, etc.) for which you are licensed as set forth in the applicable Order Form, except as otherwise provided in this Agreement. HYPOTHETICAL EXAMPLE: Suppose you are licensed to use the Software for 1,000 users. That means you may use the Software for an aggregate of 1,000 individual users in total; it does NOT mean that you may use it for an unlimited of total users as long as only 1,000 users are using the Software at any given time.

3.2. From time to time you may make use of the Technology for reasonable disaster-recovery testing and disaster-recovery operations, even if such use technically exceeds the use authorized by the Order Form, so long as such excess use does not amount to regular business use.

3.3. If you permanently replace one license unit with another one and delete any and all data maintained by the Software and the Service in respect of that license unit, then you may use the Technology in connection with the replacement license unit in lieu of the replaced one. HYPOTHETICAL EXAMPLE: Suppose you are licensed to use the Service, and in fact you do use the Service, for 1,000 users; also suppose that 10 of those users leave your company, and that you completely delete all data maintained by the Service for those 10 users. In that case, you may use the Software for an additional 10 users (bringing your total users back up to 1,000) without paying additional license fees.

3.4. You may not use the Technology in providing services to third parties where those services consist substantially of functions performed by the Technology unless other-wise provided in the applicable Order Form.

3.5. You are exclusively responsible for the supervision, management and control of your use of the Technology, and for the provision and proper maintenance of your hardware and supporting software (such as, for example, operating-system updates and virus-protection software).

3.6. You may not disable or work around any usage-control mechanism that may be built into the Technology.

3.7. You may not decompile, disassemble, or reverse engineer any part of the Technology, nor permit or assist others to do so. If applicable law permits you to engage in such activity notwithstanding this Agreement, you agree to provide Cloud Chomp with advance notice and reasonably detailed information concerning your intended activities.

3.8. You may not rent, lease, sell, or sublicense any part of the Technology except to the extent, if any, permitted by the applicable usage plan. (See also the Assignments provisions in the General Provisions section of this Agreement.)

4. Specific provisions applicable to the Service

4.1. You represent that all registration information you have provided to us is complete and accurate in all material respects. If we ever have grounds to suspect otherwise, we may in our discretion suspend your access to the Service until the issue is cleared up.

4.2. You will not knowingly permit an unauthorized individual to access or use the Service.

4.3. For the avoidance of doubt, as between you and Cloud Chomp, you are solely responsible for the content of any information you send to, or store on, the Service. You will defend and indemnify Cloud Chomp and its officers, directors, and employees from any third-party claim of any nature concerning such content.

4.4. Without limiting your other obligations under this Agreement, you may not use the Service in a manner that unreasonably interferes with the Service or with others' use of it.

5. Specific provisions applicable to Software

5.1. For the avoidance of doubt, if you are provided with a new or different version of an item of Software, that will not in itself increase the number of license units for which you are licensed even if the new or different version has a different license code. You may not use both the new or different version and another version if such use would exceed the use permitted by the Order Form.

5.2. The Software is licensed, not sold. Cloud Chomp or its supplier(s), as applicable, retain title and all ownership rights, of whatever nature, to the Software and to any tangible copy or copies of the Software provided to you by Cloud Chomp.

5.3. All rights not expressly granted herein are reserved by and to Cloud Chomp or its suppliers, as applicable.

5.4. The Software and its documentation remain the confidential property of Cloud Chomp or its suppliers.

5.5. You may not provide copies of the Software, nor disclose any license keys or license codes needed to operate it, to third parties except as permitted by this Agreement or with Cloud Chomp's prior written consent.

5.6. You may make a reasonable number of copies of the Software for backup purposes.

5.7. Upon Cloud Chomp's request with at least 10 days' notice, you will provide Cloud Chomp with information about your installation and usage of the Software sufficient to confirm compliance with the license-unit restrictions of this Agreement. • This information must include a report stating the numbers of each type of license unit in connection with which you are using the Software, determined using one or more software utilities that Cloud Chomp may provide to you as part of the Software or otherwise. • The report must include electronic and/or hard-copies of any output of such utilities. • Cloud Chomp may audit such information upon reasonable notice to you. • Cloud Chomp will not disclose or use any such information except to help ensure your compliance with this Agreement.

5.8. U.S. Government customers: The Software and its accompanying documentation are "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying documentation by the United States Government shall be governed solely by the terms of this Agreement and is prohibited except to the extent expressly permitted by the terms of this Agreement. The Manufacturer / Contractor is Cloud Chomp, Inc., 5161 San Felipe, Suite 320, Houston, Texas 77056-3640.

5.9. While you are on maintenance for an item of Software, Cloud Chomp will provide you with general telephone support services for the item of Software during its normal business hours (currently Monday through Friday, 8:00 AM - 5:00 PM EST).

5.10. While you are on maintenance for an item of Software, Cloud Chomp will respond to your reports of errors in the Software in the same manner as provided in the Performance Warranty section of this Agreement.

5.11. Maintenance support for 'outdated' Software versions (that is, any version more than six months after release of a subsequent major- or minor version) may require a separate contract and/or additional fees.

5.12. Cloud Chomp has the option of renewing your maintenance automatically as follows. If Cloud Chomp wishes to do so, it must first send you a written renewal reminder, including the renewal price, at least 60 days before the renewal (expiration) date. You may cancel the renewal by so advising Cloud Chomp in writing no later than the renewal date.

6. Non-infringement warranty

6.1. Cloud Chomp warrants to you that (i) it owns the Technology or is otherwise authorized to provide it pursuant to the Order Form; and (ii) neither the Technology nor your use of it in accordance with this Agreement and the applicable Cloud Chomp-provided user documentation, in and of themselves, will infringe any valid copyright or trade secret right, nor so far as Cloud Chomp knows any patent right, of any third party. YOUR EXCLUSIVE REMEDY for any breach of this warranty shall be to invoke the defense- and indemnity provisions of this section.

6.2. If a third party (other than your affiliate) claims that the Technology or your authorized use of it infringes the third party's patent rights, copyright, or trade secret rights, then Cloud Chomp will defend you and your officers, directors, and employees (each a "protected person") against the claim, at its own expense, and indemnify each protected person against any resulting court costs and damage awards, if any, subject to the conditions below.

6.3. For a protected person to be entitled to the above defense and indemnity, either you or the protected person must: (1) promptly notify Cloud Chomp of the claim, in writing; (2) not make any non-factual admissions in respect of the claim; (3) give Cloud Chomp sole control of the defense; (4) not settle the claim without Cloud Chomp's consent; and (5) assist Cloud Chomp in the defense if it so requests, at its expense.

6.4. x.4 Cloud Chomp will take action as described below if any of the following events occurs: (i) a court of competent jurisdiction orders you to stop using the Technology as a result of a third-party infringement claim covered by this section, and Cloud Chomp is unable to have the order stayed or overturned on appeal before you do stop; or (ii) Cloud Chomp settles the claim on terms that require you to cease using the Technology; or (iii) if Cloud Chomp reasonably determines that you should stop using the Technology. In any of these cases, Cloud Chomp will, at its option and expense, do one or more of the following: (x) replace or modify the Technology to make it non-infringing while still performing the same or substantially the same functions; and/or (y) procure the right for you to continue using the Technology; and/or (z) if in Cloud Chomp's judgment neither of options (x) or (y) is commercially feasible, recommend to you (by notice in accordance with this Agreement) that you stop using the Technology and refund a prorated amount of the fee(s) that you paid for the usage period in question, prorated monthly as of the date you stop using the Technology, at which time your right to use the Technology will automatically be terminated.

6.5. Except for a reasonable transition period, Cloud Chomp will not be responsible for any infringing use that you may make of the Technology after Cloud Chomp recommends that you stop using the Technology.

7. Performance warranty

7.1. Except as stated in this section, the Technology is provided AS-IS, WITH ALL FAULTS AND WITH NO WARRANTY, EXPRESS OR IMPLIED.

7.2. Cloud Chomp will use commercially reasonable efforts to supply you with a correction or workaround for errors in the Technology that you report to Cloud Chomp during the periods set forth below. If for any reason Cloud Chomp does not do so, at your request it will give you a refund as stated below. This commitment is referred to as the "Performance Warranty." You acknowledge that, depending on the circumstances, commercially reasonable efforts may consist of supplying a correction or workaround in the next regular release of the Technology. You must provide Cloud Chomp with such information about the failure as Cloud Chomp reasonably requests.

7.3. The reporting periods and refund amounts for errors in the Technology are as follows: (a) For errors in an item of Software reported on or before 90 days after your initial li-cense purchase, your refund amount is 100% of the initial license fee and the initial maintenance fee, if any. (b) For errors in an item of Software reported after 90 days after your initial license purchase, your refund amount is 100% of a prorated portion of the maintenance fee for the then-current maintenance period, if any. (c) For an error in the Service reported while you are a subscriber, your refund amount is 100% of a prorated portion of the subscription fee for your then-current usage period. All pro-rata portions will be determined as of the date you first reported the error. Your right to use the Technology will automatically be terminated as of the date your refund request.

7.4. The foregoing is the EXCLUSIVE REMEDY for any failure by Cloud Chomp to comply with the Performance Warranty and for any errors or malfunctions in the Technology. 7.5. Unless Cloud Chomp agrees otherwise in writing, you must make any such refund request by notice to Cloud Chomp no later than 90 days after the end of the Performance Warranty Period or 120 days after your notice to Cloud Chomp of the failure, whichever is later.

8. Disclaimer of other warranties

8.1. CLOUD CHOMP DOES NOT WARRANT that the Technology will be error free, will meet your needs, or will operate without interruption.

8.2. CLOUD CHOMP DOES NOT WARRANT that the Software will perform as documented in cases of hardware malfunction, misuse of the Software, modification of the Software by any party other than Cloud Chomp (the foregoing shall not be construed as granting you the right to make or have made any such modification), use of the Software with other software not described in the documentation, or bugs in other software (for example, operating systems, instant-messaging clients, or add-ons to any of them) with which the Software interacts.

8.3. Except to the extent (if any) explicitly stated otherwise in this Agreement, THE TECH-NOLOGY IS NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, including but not limited to any application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage. 8.4. On behalf of Cloud Chomp and its suppliers, to the maximum extent permitted by law, CLOUD CHOMP DISCLAIMS ANY AND ALL WARRANTIES, DUTIES, CONDITIONS, OR REPRE-SENTATIONS (express or implied, oral or written), with respect to the Technology or any part thereof, that are not expressly stated in this Agreement or in a document expressly incorporated by reference herein.

8.5. The above disclaimers extends, without limitation, to any implied warranties, duties, conditions, or representations (as opposed to those expressly stated in this Agreement) of title, non-infringement, quiet enjoyment, merchantability, fitness or suitability for any purpose (whether or not Cloud Chomp or any of its suppliers have reason to know, have been advised, or are otherwise in fact aware of any such purpose), absence of viruses, results, workmanlike effort, or implied term of quality, whether alleged to arise by law, by reason of custom or usage in the trade, or by course of dealing. CLOUD CHOMP ALSO DISCLAIMS, for itself and its suppliers, any warranty, duty, condition, or representation to any person other than you with respect to the Technology.

9. Limitation of remedies

9.1. You agree to the remedy limitations of this Agreement as part of its overall allocation of risk between the parties. You agree that each remedy limitation is to be enforced: (1) to the maximum extent permitted by applicable law; (2) independently of any other applicable remedy limitation, even if a particular remedy is held to have failed of its essential purpose; and (3) independently of any warranty-disclaimer provisions of this Agreement. You acknowledge that otherwise Cloud Chomp would not have accepted the Order Form on the economic terms stated in it, and agree not to seek remedies in excess of such limitations.

9.2. Except as expressly provided otherwise in this Agreement, NEITHER CLOUD CHOMP NOR ITS SUBSIDIARIES, PARENT COMPANY, EMPLOYEES, OFFICERS, DIRECTORS OR AFFILI-ATES, IF ANY, WILL BE LIABLE TO LICENSEE OR ANY PERSON CLAIMING THROUGH LICENSEE IN CONTRACT, TORT, OR OTHERWISE, FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR SIMILAR DAMAGES, arising from or relating to any alleged or actual breach of this Agreement or from the use of, the results of the use of, or the inability to use the Technology, including, as examples but not limitations, lost profits or other economic loss, loss of privacy, loss of confidential information, arising from the use of, the results of the use of, or the inability to use the Technology, even if Cloud Chomp has been advised of the possibility of such damages.

9.3. Except as expressly provided otherwise in this Agreement, to the greatest extent permitted by law, THE MAXIMUM AGGREGATE LIABILITY OF CLOUD CHOMP and its

suppliers, subsidiaries, parent company, or affiliates, if any, to you, or to any person claiming rights through you, in respect of any and all claims arising from or related to this Agreement, in contract, tort, or otherwise, WILL BE (a) THE AGGREGATE AMOUNT OF THE APPLICABLE FEES PAID BY YOU FOR THE THEN-CURRENT SUBSCRIPTION PERIOD (FOR THE SERVICE) OR FOR THE LICENSE FEE, OR (b) THE AGGREGATE AMOUNT OF YOUR INITIAL LICENSE FEE AND THE MAINTENANCE FEE FOR YOUR THEN-CURRENT MAINTENANCE PERIOD (FOR THE SOFTWARE).

9.4. EXCEPTION: The maximum-aggregate-liability limitation of this clause does not apply to any provision of this Agreement that requires one party to defend and/or indemnify another party against third-party claims.

9.5. No remedy limitation of this Agreement will apply in any case where enforcement of the limitation would be contrary to law, including for example in cases of injury (including death) to persons or tangible property that proximately result from breach of this Agreement.

9.6. Some jurisdictions do not permit limitation or exclusion of remedies under some circumstances, so some or all of the foregoing limitations may not apply to you.

10. Data privacy protection

10.1. You represent that, to the best of your knowledge, applicable law does not prohibit you from using the Technology.

10.2. You undertake to comply at all times with all applicable laws, regulations, and requirements concerning the protection of privacy and personal information including without limitation, EU Privacy Directives 95/46/EU and 2002/58/EC (collectively, "Privacy Law"). You acknowledge that Privacy Law may require, for example, that you register as a data controller with a local privacy data office and obtain the consent of the licensed user of the Software before you install and use it.

10.3. You acknowledge and agree that Cloud Chomp has not made any representations or warranties on any of the matters that are the subjects of this Data Privacy Protection section.

10.4. Cloud Chomp has the right to use your company name and logo on its Website and in other marketing materials; it will stop doing so promptly upon your request at any time.

10.5 You agree that Cloud Chomp may collect, store, and use information you provide to Cloud Chomp, including for example personal financial information. Cloud Chomp will not use such information, nor disclose it to third parties, except in one or more of the following cases: (i) with your consent; (ii) as necessary to provide the Service; (iii) to improve the Service or develop new products and/or services; (iv) as provided by law or required by compulsory legal process; (v) as part of a sale or other disposition of substantially all of the assets of the business to which this Agreement relates; and/or (vi) in aggregated- and/or anonymized form that does not disclose information that personally

identifiable to you or your users. As part of item (i) in the previous sentence: You might have signed up to use the Cloud Chomp Technology via a reseller or other third party, and that third party is providing you with technical support for your use of the Technology; if that is the case, then you agree that Cloud Chomp may provide that third party with access to your information for support purposes or for other purposes of (x) this Agreement or (y) your agreement with that third party.

10.6. You agree to notify Cloud Chomp promptly if you suspect · that someone else has obtained access to your user ID or password, or · that a breach of security has occurred, is about to occur, or is being planned, where the breach concerns the Technology.

11. Payment; taxes

11.1. If you have not paid by credit card, then unless otherwise agreed in writing, for example in the Order Form, all invoices are due in U.S. dollars net 30 days from the date of your order.

11.2. Unless otherwise agreed in writing, Cloud Chomp will (1) separately itemize any applicable sales taxes on the relevant invoice(s); and (2) timely report and remit those sales taxes to the proper authorities. For purposes of this Agreement, "sales tax" refers to any sales, excise, use, or similar tax, but not to any tax imposed on Cloud Chomp's net income.

11.3. If any amount due under the applicable Order Form or otherwise under this Agreement is not timely paid, Cloud Chomp may suspend or terminate your access to the Service, including permanently deleting stored information after the end of any applicable grace period.

11.4. Cloud Chomp reserves the right to charge interest on amounts remaining unpaid 30 days after the due date, beginning on that date, at 1.5% per month or the maximum amount permitted by law, whichever is less. Any interest charged in excess of that maximum amount will be deemed the result of a mistake and refunded with interest at the maximum legal rate.

12. Export controls

12.1. Cloud Chomp's IM Policy Manager™ software has been classified for United States export control purposes with an Export Control Classification Number (ECCN) 5D002.c.1, and has been qualified for export under authority of license exception ENC, in accordance with sections 740.17(d) and 740.17(b)(3) of the U.S. Export Administration Regulations (EAR), 15 C.F.R. Part 730 et seq. (the "EAR"). It may not be downloaded or otherwise exported or re-exported into (or to a national or resident of) Afghanistan, Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria or any other country to which the United States has

embargoed goods; or any organization or company on the United States Commerce Department's "Denied Parties List."

12.2. You will not transfer the Software, or any other software or documentation provided by Cloud Chomp, except in compliance with U.S. export-control regulations or other applicable export laws. For example, you will not export or re-export any of the foregoing (i) to any person on a government-promulgated export restriction list, nor (ii) to any U.S.-embargoed countries. NOTE: Under U.S. law, unauthorized exports of the Software can occur, among other ways, by physical shipment; by electronic transmission of the Software; or by transfer or disclosure to a non-U.S. citizen within the U.S.

12.3. It is your responsibility to assure that any export, re-export or other transfer (including, but not limited to, any electronic transfer) of the Software: (1) satisfies the requirements of section 740.17(b)(3) of the EAR for export under license exception ENC; or (2) is otherwise authorized, in accordance with the applicable EAR provisions.

12.4. You represent and warrant that: (a) you are not listed in any export restriction list; (b) you are not a citizen or resident of any U.S.-embargoed country; (3) you have not had your export privileges suspended, revoked, or denied by a governmental authority having jurisdiction.

12.5. If Cloud Chomp so requests, you will sign written assurances and other export-related documents as may be required to comply with applicable export laws.

12.6. The information on export laws provided in this Agreement is not necessarily complete. For more information on export laws, please refer to the United States Commerce Department Bureau of Export Administration at (202) 482-2440, or (202) 482-4811.

13. Beta testing

13.1. This section applies if the parties agree that you will be a beta tester of a new version of the Technology or some portion thereof ("Beta Technology").

13.2. You will advise Cloud Chomp of any problems that you encounter in using the Beta Technology. Cloud Chomp will have the right to adopt, adapt, and/or use any ideas or suggestions that you make or give to Cloud Chomp relating to the Beta Technology, permanently and throughout the world, without compensation to you. You will provide Cloud Chomp with reasonable information about the performance of the Beta Technology upon request;

13.3. You may not, without Cloud Chomp's prior written consent, disclose any information about the Beta Technology, its design and performance specifications, its code, or the existence of the beta test and its results to anyone other than your employees who are performing the testing; and

13.4. The test period will last from the date Cloud Chomp delivers the Software to you until Cloud Chomp gives you notice that the testing period is ending. Your right to use the Beta

Technology Software will terminate at the end of the test period or when Cloud Chomp asks you to cease using the Beta Technology, whichever occurs first. Upon the conclusion of the testing period or at Cloud Chomp's request, you will promptly destroy the original and all copies of any software provided to you as part of the Beta Technology.

14. Amendments & modifications

14.1. Cloud Chomp reserves the right, at any time it deems appropriate, to modify the Technology; to offer new service plans and discontinue existing ones (subject to your existing rights under your then-current subscription); and to modify its pricing on a going-forward basis.

14.2. This Agreement will govern any new features or enhancements to the Technology that Cloud Chomp may release from time to time (in our sole discretion) unless Cloud Chomp elects to release them under a separate agreement.

14.3. Any subsequent version of Cloud Chomp's license agreement to which you agree will supersede this Agreement in respect of the applicable Software.

14.4. Otherwise, this Agreement may be amended only by a writing that so states and is signed by the parties; each party agrees not to assert otherwise in any forum.

14.5. If you provide Cloud Chomp (or previously provided Cloud Chomp) or an authorized Cloud Chomp reseller with a purchase order or similar document, any terms, conditions, or provisions appearing therein will be given effect if and only if the purchase order meets the conditions of this "Amendments & modifications" section.

15. Breach

15.1. **Notice of breach:** The non-breaching party will inform the breaching party in writing of any breach promptly after learning of circumstances alleged to constitute a breach of this Agreement.

15.2. **Cure periods for specific breaches**: The breaching party will have a cure period as follows: • Failure to pay an undisputed amount when due: 10 business days. • Curable failure to meet an agreed written deadline without a specified cure period: 5 business days. • Curable breach of a confidentiality obligation: 3 business days. • Curable breaches not otherwise specified: 30 days. • Non-curable breaches: no cure period.

15.3. **Suspension:** If you materially breach this Agreement, Cloud Chomp reserves the right to immediately suspend your right to use the Service by notice to you. By way of example and not of limitation, pursuant to the safe-harbor provisions of the Digital Millennium Copyright Act (DMCA), if we conclude that you have infringed the intellectual property rights (for example, copyrights, trademarks, patents, rights in confidential information) of Cloud Chomp or its providers, or that you are inducing, permitting, or knowingly assisting others to do so, we have the right to suspend your right to use the Service.

16. Relationship maintenance

16.1. **Status review conferences:** Each party will participate in conferences, by phone or in person, to review status and assumptions and to plan future actions, as reasonably requested by either party. The parties anticipate that the standard agenda for such conferences will include, as appropriate: · progress made; · problems encountered or anticipated; · plans for future action; and · assumptions being made.

16.2. **Early neutral evaluation (non-binding):** In any dispute, at either party's request the parties will jointly consult an experienced, knowledgeable, neutral individual, informally and in confidence, for non-binding advice as to what would constitute a responsible resolution of the dispute. Any procedural disagreement concerning the consultation will be resolved by reference to the Early Neutral Evaluation Procedures of the American Arbitration Association, to the extent not inconsistent with this Agreement.

17. Termination

17.1. **Termination for material breach:** If a material breach of this Agreement is not timely cured (see Breach), then the non-breaching party may terminate this Agreement by written notice of termination to the breaching party.

17.2. **Survival after termination:** Termination of this Agreement will not affect already-accrued rights and obligations. The rights and obligations set forth in herein (if any) concerning the following subjects will survive termination, no matter how caused: · confidentiality · indemnification and defense against third-party claims · intellectual-property ownership · warranty rights and -disclaimers · remedy limitations.

17.3. **Post-termination actions:** Upon any termination of this Agreement, the parties will take such action as may be reasonably necessary to wind up their relevant business together in a responsible manner, each at its own expense unless otherwise agreed in writing.

18. Arbitration

18.1. All disputes arising out of this Agreement will be resolved by binding English-language arbitration, under the (U.S.) Federal Arbitration Act and (to the extent not inconsistent with the FAA) the law governing this Agreement. Any resulting award will be enforceable in any court of competent jurisdiction. EXCEPTION: A party seeking temporary, interim, or preliminary injunctive relief in respect of a dispute may do so in any court of competent jurisdiction without waiving its right to arbitration of the dispute or of other disputes.

18.2. The arbitration will be conducted before an arbitration panel consisting of a single arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration

Association ("AAA"). Unless otherwise agreed, the arbitration will be administered by the AAA.

18.3. The arbitration panel is specifically authorized and directed to take all reasonable measures to streamline and expedite the proceedings.

18.4. YOU ACKNOWLEDGE THAT BY ENTERING INTO THIS AGREEMENT YOU ARE WAIVING YOUR RIGHT TO TRIAL BY JURY.

19. General provisions

19.1. **Applicability**: For the avoidance of doubt, this Agreement governs your use of any updates, supplements or add-on components of the Technology that Cloud Chomp may provide or make available to you, unless accompanied by separate standalone terms that exclude the applicability of this Agreement.

19.2. **Assignment restrictions**: In the context of assignments of this Agreement, the term "restricted party" refers to each party. • A restricted party may not assign this Agreement without the prior written consent of the other party except to the extent (if any) expressly authorized by this Agreement. Any other purported assignment of this Agreement by a restricted party will be void.

19.3. **Assignment with business assets**: Either party may assign this Agreement without consent in conjunction with assignment of substantially all the assets of its business related specifically to this Agreement.

19.4. **Assignment – prompt notice afterwards**: Any party assigning this Agreement will notify the other party promptly thereafter.

19.5. **Assignment – any prior notice is confidential**: IF: a party elects to give another party prior notice of an impending assignment in connection with a transaction that has not been publicly announced; THEN: At the assigning party's request the other party will keep all information disclosed to it about the transaction (including for example the existence or the pending negotiation of the transaction) in strict confidence, including compliance with any applicable insider-trading laws, until the disclosed information be-comes publicly known.

19.6. **Authorized signatures**: Each person signing this Agreement on behalf of a party other than himself or herself (whether by signing a hard copy, clicking on "I agree" or comparable language, or in any other manner) represents that he or she has been duly authorized to do so.

19.7. **Change of address**: You agree to notify Cloud Chomp promptly if your email address or other contact information changes.

19.8. **Effective date – when signed or clicked**: This Agreement is effective as follows: • IF: This Agreement is being signed in hard copy, or if it is incorporated by reference in a signed hard-copy agreement (such as, for example, a Cloud Chomp sales quotation signed by you); THEN: This Agreement is effective when signed by the last party to do so. • IF: You

are presented with this Agreement on-screen as part of a Web site sign-up process or during installation of software on your computer; THEN: This Agreement is effective when you click on "I agree" or take comparable action.

19.9. **Email and FAX communications**: You authorize Cloud Chomp to communicate with you by email and FAX as well as postal and delivery services.

19.10. **English language**: By express agreement of the parties, this Agreement and certain of its appendixes, exhibits, and attachments, if any, are written in and shall be interpreted for all purposes in accordance with the English language as used in the United States of America. [French translation: Les parties conviennent expresssément que le présent Accord ainsi que toutes ses annexes seront rédigés en langue Anglaise et interprétés par référence à la terminologie utilisée aux Etats-Unis.] In the event of a disparity between the English version and any non-English version of this Agreement, the English version will govern.

19.11. **Entire agreement**: This Agreement, including any exhibits, attachments, riders, or appendices as well as any other document expressly incorporated by reference, is the parties' final, complete, exclusive, and binding statement of the terms and conditions of their agreement concerning its subject matter. · For the avoidance of doubt, in entering into this Agreement, neither party is relying on any promise or representation by the other party that is not stated in (or expressly incorporated by reference into) this Agreement. · Other or additional terms and conditions may apply to specific portions or features of the Technology; in case of a conflict between them and this Agreement, the former will control, but only as to your use of the relevant portion or feature.

19.12. **Force majeure**: (a) Except as expressly provided otherwise in this Agreement: (1) Neither party (the 'nonperforming party') will be liable for failure of timely performance if: · the failure resulted from one or more events beyond the reasonable control of the nonperforming party, and · the failure-causing effect of the event(s) could not reasonably have been avoided by the nonperforming party. (2) As one specific but non-limiting example, Cloud Chomp will not be liable for any failure to log instant messages from a network it has represented it is currently capable of logging if the failure is due to a change by the network provider, where the effect of the change on Cloud Chomp's ability to log is beyond Cloud Chomp's reasonable control. (b) In any such case: · the nonperforming party will keep the other party reasonably informed about any such failure; and · any deadlines for performance will be equitably extended. (c) Failure to pay money due is excused by this clause only if the failure resulted from a failure in third-party payment systems.

19.13. **Forum selection**: The court(s) having subject-matter jurisdiction in Houston, Texas, USA will have non-exclusive jurisdiction of any action or proceeding arising out of this Agreement.

19.14. **Governing law**: All disputes arising out of this Agreement are to be decided in accordance with the law of the United States of America and the State of Texas that would be applied, by the courts having jurisdiction there, to contracts made and performed entirely there by residents thereof. 19.15. Governing law - exclusion of UN CISG

Convention: The parties exclude application of the United Nations Convention on Contracts for the International Sale of Goods.

19.16. **Governing law – exclusion of UCITA**: The Uniform Computer Information Transactions Act will not govern this Agreement.

19.17. **Headings**: The headings in this Agreement are used for convenience only and are not to be deemed as expanding or limiting any right or obligation herein.

19.18. **Independent contractors**: Except as may be expressly provided otherwise in this Agreement, the parties intend for their relationship defined by this Agreement to be strictly that of independent contractors; each party will conduct itself accordingly.

19.19. **Independent contractors – specific requirements**: · Neither party will hold itself out as an employee, agent, partner, joint venture, division, subsidiary, or branch of the other party. · Neither party has, nor will it hold itself out as having, authority to make commitments or representations on behalf of the other party except to the extent, if any, that this Agreement expressly states otherwise.

19.20. **Invalidity of provision**: If any provision of this Agreement is held to be invalid, void, unenforceable, or otherwise defective by a court or other tribunal of competent juris-diction, then: · all other provisions will remain enforceable, and · the provision will be deemed modified, solely in the jurisdiction in question, to the minimum extent necessary to cure the defect.

19.21. **Legal challenges**: If a court or other authority issues a ruling or order, or a legislative or administrative body enacts a statute, regulation, or interpretation, and Cloud Chomp concludes that an aspect of the Service or of this Agreement may be in conflict therewith, then Cloud Chomp reserves the right to suspend or terminate all or any relevant aspect of the Service.

19.22. **Limitation period**: Any action for breach of this Agreement, in any judicial or other forum, must be commenced within one year following the accrual of the right of action.

19.23. **Mitigation of damages**: In the event of a breach of this Agreement, the non-breaching party will use reasonable efforts to mitigate its damages arising from or relating to the breach.

19.24. **Notices**: We may give any notice under this Agreement (i) by making it available on our Web site and displaying a suitable advisory on the site while you are accessing it, or (ii) sending you an email to the address you have listed in our records. All other notices required or permitted by this Agreement: (i) must be in writing; (ii) must be marked for the attention of a specific individual or position; and (iii) are effective when received or refused by that individual or position as shown for example by delivery– service confirmation or an email "delivered" or "read" confirmation message.

19.25. **Notices – additional provisions**: (1) Notices may be sent to the parties' respective addresses shown in this Agreement, or to such other address as a party designates by notice or by other reasonable written communication. (2) Any party sending notice of breach or termination is encouraged (but not required) to separately send a courtesy copy,

by any reasonable method, to the attention of the general counsel of the party being notified.

19.26. **Prohibitions**: Wherever this Agreement prohibits or restricts a party from doing something, that party is also prohibited or restricted from attempting to do so and from inducing, soliciting, permitting, or knowingly assisting anyone else to do so, whether for its own benefit or otherwise.

19.27. **Redlining**: Each party represents that it has "redlined" or otherwise flagged its revisions (if any) of drafts of this Agreement and associated documents that it has sent to the other party.

19.28. **Signature & delivery of this Agreement**: This Agreement may be signed and delivered (including by FAXing signature pages or electronic delivery of copies in PDF format) in separate counterpart originals. All signed counterparts constitute one and the same instrument. Any counterpart may comprise one or more duplicates, any of which may be signed by less than all of the parties provided that each party whose execution is required signs at least one of the same.

19.29. **Third-party beneficiaries disclaimed**: For the avoidance of doubt, no individual or organization is entitled to claim any right, remedy, or benefit, of any kind, under this Agreement except for: · the signatories to this Agreement and their respective successors and permitted assigns; and · to the extent, if any, that this Agreement expressly states otherwise.

19.30. **Waivers**: A waiver by either party of a particular condition, right, or obligation arising under this Agreement (A) is to be given effect only if it is expressly stated in a document signed by that party, and (B) is to be strictly construed.