

# CLouDBLue CLouD PLATfORM

## TERMS AND CONDITIONS (FOR INDIRECT CUSTOMERS)

THESE CLouDBLue CLouD PLATfORM TERMS AND CONDITIONS (these “**Terms and Conditions**”) GOVERN CUSTOMER’S SUBSCRIPTION TO AND USE OF THE CLouDBLue CLouD PLATfORM. CAPITALIZED TERMS USED HEREIN HAVE THE DEFINITIONS SET FORTH BELOW OR IN THE ORDER FORM (AS DEFINED BELOW).

BY EXECUTING A CLouDBLue CLouD PLATfORM ORDER FORM THAT REFERENCES THESE TERMS AND CONDITIONS (“**Order Form**”), CUSTOMER ACCEPTS AND AGREES TO THESE TERMS AND CONDITIONS. IF THE INDIVIDUAL ACCEPTING THESE TERMS AND CONDITIONS IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT SUCH INDIVIDUAL HAS THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “CUSTOMER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES.

### 1. **Provision of Products.**

#### 1.1 **CloudBlue Obligations.**

During the Term, CloudBlue shall: (i) make the Products available to Customer in accordance with this Agreement and the Documentation; (ii) only use Customer Data in accordance with this Agreement, including, without limitation, to provide the Products, to prevent or address service or technical problems, or in accordance with Customer’s instructions; and; (iii) not disclose Customer Data to any party, other than Customer and Authorized Parties, and otherwise always in accordance with the terms and conditions of this Agreement.

#### 1.2 **Customer Obligations.**

Customer may enable access to the Products for use only by Authorized Parties. Customer shall: (a) have sole responsibility for the accuracy, quality, and legality of all Customer Data; and (b) take commercially reasonable efforts to prevent unauthorized access to, or use of, the Products through login credentials of Authorized Parties, and notify CloudBlue promptly of any such unauthorized access or use. Customer shall not: (i) access or use the Products in violation of applicable laws; (ii) interfere with or disrupt performance of the Products, or the data contained therein; or (iii) attempt to gain access to the Products or its related systems or networks in a manner not explicitly set forth in the Documentation.

Subject to the terms of this Section, Customer may designate its third party customers as Authorized Parties, and provide access to the Products to such Authorized Parties and, provided the same obligations as set forth herein are flowed down to such Authorized Parties, they may also designate their customers as Authorized Parties. As a material obligation of this Agreement, Customer must have an enforceable agreement with all such third parties Customer grants access to, governing their use of the Products that: (i) is at least as restrictive and protective of CloudBlue’s rights as described in this Agreement; (ii) makes no representations or warranties on CloudBlue’s behalf; (iii) does not grant any rights in, or to the Products to third parties beyond the scope of those granted to Customer in this Agreement and Customer’s applicable general terms of service published in the Customer’s environment, which will be at least as restrictive as those set forth in this Agreement; (iv) limits CloudBlue’s liability to at least the same extent as it is limited in this Agreement (“**Third Party Agreements**”).

### 2. **Proprietary Rights; Prohibited Uses; Third Party Use.**

#### 2.1 **Proprietary Rights.**

The Products contain proprietary and trade secret information owned by CloudBlue. Any and all bug fixes, patches, work-arounds, updates, upgrades, enhancements, modification, configurations, and other new versions of the Products CloudBlue makes available to Customer for use under this Agreement, are all considered part of the Products. Except for the limited license that CloudBlue grants to Customer in certain Products or Documentation, CloudBlue and its licensors retain all its ownership and proprietary rights in and to the Products, together with any and all software, code or Documentation associated with the Products.

#### 2.2 **Product and Documentation Rights.**

CloudBlue hereby grants Customer (for itself and those of Authorized Parties for whom Customer enables access to the Products) a limited, non-exclusive, non-transferable, revocable right to use the Products and Documentation, solely for the internal business purposes of Customer and its Affiliates, and solely during the Term, subject to the terms and conditions of this Agreement, and within the scope of use defined in the relevant Order Form.

#### 2.3 **Prohibited Uses.**

Customer shall not: (i) copy all or any portions of the Products or any of its features or functionality or Documentation; (ii) disassemble, reverse engineer, modify, translate, alter or decompile all or any portion of the Products or otherwise discern the software or source code of the Products; (iii) adapt, modify, translate, or create derivative works of the Products; (iv) distribute, copy, rent, lease, sublicense, assign, transmit, sell or otherwise transfer the Products or any of Customer’s contractual right to use thereof, except as expressly permitted in this Agreement; or (v) install, or facilitate the installation by a third party of any service connector on the Products without CloudBlue’s express written approval.

#### 2.4 **Suspension.**

CloudBlue may temporarily suspend Customer’s or Authorized Parties access to any portion or all of the Products, if CloudBlue reasonably determines that: (i) Customer is in breach of any payment obligations in respect of the Products or any associated services; (ii) there is a threat or attack on any of CloudBlue’s intellectual property; (iii) Customer’s, or its customers’, or Authorized Parties use

of CloudBlue's intellectual property disrupts or poses a security risk to CloudBlue's intellectual property or to any other customer, ISV, or vendor of CloudBlue; or, (iv) Customer or Authorized Parties is using the CloudBlue intellectual property for fraudulent or illegal activities.

### 3. **Customer Data.**

#### 3.1 **Protection of Customer Data.**

CloudBlue maintains appropriate administrative, physical, and technical safeguards designed to protect the security, confidentiality, and integrity of the Products. Such safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of electronic data and information submitted by or for Customer to the Products ("**Customer Data**"). The terms and conditions set forth in the Data Processing Agreement located at <https://www.cloudblue.com/dpa> are incorporated herein by reference.

#### 3.2 **Product Usage Information.**

Customer understands and acknowledges that CloudBlue monitors the operation and usage of the Products. CloudBlue has the right to use any and all data related to Customer's use of the Products for any lawful purpose including without limitation statistical analysis, benchmarking, and reporting.

### 4. **Professional Services.**

#### 4.1 **General.**

All Professional Services rendered by CloudBlue shall be governed by the terms and conditions of this Agreement and the applicable SOW.

#### 4.2 **Performance.**

Professional Services will be performed remotely or may, upon agreement of the Parties, be performed at Customer's offices. Customer shall provide CloudBlue with copies of all materials in Customer's possession ("**Customer Materials**") that CloudBlue may reasonably request to assist CloudBlue in performing Professional Services hereunder.

### 5. **Warranties.**

#### 5.1 **CloudBlue Warranties.**

CloudBlue represents and warrants that: (i) it shall provide the Products and perform its obligations in good faith, in a timely manner, exercising reasonable skill, care and diligence, all in accordance with recognized professional and industry standards, and this Agreement; (ii) CloudBlue and its personnel possess the knowledge, skill, qualifications and experience necessary to perform their obligations in accordance with this Agreement; (iii) the Products will function and perform in accordance with the specifications and requirements set out in this Agreement; (iv) it has the necessary authority and capacity to enter into and perform its obligations under this Agreement.

#### 5.2 **Disclaimer.**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CLOUDBLUE AND

ITS LICENSORS, IF ANY, MAKE NO WARRANTY OF ANY KIND, REGARDING THE PRODUCTS OR DOCUMENTATION, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND AGAINST INFRINGEMENT. CLOUDBLUE DOES NOT WARRANT THAT THE PRODUCTS WILL MEET CUSTOMER'S (OR ITS CUSTOMERS') REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, OR (EXCEPT FOR THE SERVICE LEVELS APPLICABLE TO A PRODUCT, IF ANY) BE ERROR FREE OR SECURE. CLOUDBLUE MAKES NO WARRANTIES UNDER THIS AGREEMENT WITH RESPECT TO ANY THIRD-PARTY SOFTWARE or other product embedded in or included with the Products and/or furnished to Customer by CloudBlue, including, but not limited to, open source software and any hardware. Any such third-party software (including open source software) or hardware will be warranted, if at all, only pursuant to CloudBlue's licensors' or vendors' terms as provided by CloudBlue. CloudBlue will have no liability if any alleged defect in the Products is due to causes not within CloudBlue's control, including, but not limited to, any defect caused by: (i) any negligent act or omission by any party other than CloudBlue; (ii) modification or misuse of the Products or its underlying software (including use in an operating environment not specified within the Documentation or otherwise not in accordance with this Agreement); (iii) alteration or abuse of media on which the Products or its underlying software is stored; (iv) failure to follow CloudBlue's instructions for installation, operation or maintenance; or (v) third party products or services (including general Internet connectivity), power failure or surges, fire, flood or other Force Majeure events.

### 6. **Indemnification.**

#### 6.1 **CloudBlue IP Indemnity.**

Subject to the terms and conditions of this Agreement, CloudBlue will defend, indemnify and hold harmless Customer against any claim alleging that a Product or part thereof infringes any United States patent, copyright or trademark in the Territory. The foregoing obligations are contingent upon Customer being in material compliance with the Agreement, promptly notifying CloudBlue in writing of any claims or threatened claims, CloudBlue having sole control over the defense, and all negotiations for settlement of any such claim, and Customer giving all reasonable assistance to CloudBlue in the defense and settlement of the claim.

#### 6.2 **Limitations of CloudBlue's IP Indemnity.**

CloudBlue's obligations under Section 6.1 do not apply to any claims, damages or liabilities arising out of or relating to any of the following ("**Excluded Claims**"): (i) any product, service or component thereof that is not supplied by CloudBlue to Customer under this Agreement; (ii) the combination of any Product with any process or material in a manner not authorized in the Documentation; (iii) any modification to a Product (unless made by CloudBlue) if the alleged infringement arises from or relates to such modification; (iv) use of a Product in a manner not permitted by or in breach of this Agreement; (v) failure to use replacement or modified Products that provide substantially

similar functionality as the original Products and the replacement or modified Product would have rendered the Product non-infringing; or, (vi) CloudBlue's compliance with Customer's instructions, specifications or requirements. Customer will indemnify and hold harmless CloudBlue with respect to any and all Excluded Claims. No indemnification for any third party product is provided under this Agreement unless and to the extent such indemnification is provided to Customer under the terms of CloudBlue's agreement with the applicable vendor.

If the Products or their underlying software (excluding third party products) become, or in CloudBlue's opinion are likely to become the subject of an infringement claim, CloudBlue may, at its option and sole discretion: (i) obtain for Customer the right to continue to use the Product as provided in this Agreement; (ii) replace the software underlying the Product with another software that provides similar functionality; or, (iii) if CloudBlue determines that neither of the foregoing options are reasonably available, CloudBlue may require that Customer cease use of the Product, and will refund to Customer any Fees that Customer paid CloudBlue in advance for the use of the Product under this Agreement, less a reasonable deduction for use based on a three (3) year amortization of the applicable Fees.

### **6.3 Mutual Indemnification.**

Each Party (the "Indemnifying Party") will defend, indemnify and hold harmless the other Party from and against all costs, expenses (including reasonable attorneys' fees), damages, and liabilities resulting from any claim arising from or related to: (i) the Indemnifying Party's gross negligence or willful misconduct; or (ii) the Indemnifying Party's violation of applicable law.

## **7. Limitation of Liability.**

OTHER THAN A PARTY'S LIABILITY FOR BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING LIABILITY UNDER ANY WARRANTY OR REMEDY IN THIS AGREEMENT).

EXCEPT FOR BREACHES OF CONFIDENTIALITY OR FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 6, IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE, EXCEED THE FEES PAID (OR IN THE CASE OF CUSTOMER, PAYABLE) BY CUSTOMER FOR THE PRODUCTS AND/OR PROFESSIONAL SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF SUCH CLAIM.

## **8. Confidentiality.**

### **8.1 Confidentiality Obligations.**

Each Party agrees to keep confidential and not disclose to any third party, and to use only for purposes of performing or as otherwise permitted under this Agreement, all proprietary or confidential information disclosed or made available by the other Party pursuant to this Agreement

that, if disclosed in written or tangible form, is labeled confidential or proprietary, or if disclosed in oral or intangible form, is identified as confidential or proprietary at the time of disclosure or should be understood to be confidential by a reasonable person under the circumstances ("**Confidential Information**"). In the case of CloudBlue, all proprietary or confidential information relating to the Products disclosed or made available by CloudBlue, including without limitation the Products and technical information about the Products, and the terms of this Agreement, will be deemed Confidential Information of CloudBlue, whether or not so labeled or identified. The receiving Party will protect the Confidential Information using measures similar to those it takes to protect its own confidential and proprietary information of a similar nature but not less than reasonable measures. The Confidential Information will only be disclosed to the receiving Party's employees and contractors who are bound by obligations of confidentiality and non-use no less restrictive than described in this Agreement.

### **8.2 Exceptions.**

These obligations will not apply to information which is publicly available other than through unauthorized disclosure by the receiving Party, is known by the receiving Party at the time of disclosure as evidenced in writing, is rightfully obtained by the receiving Party from a third party who has the right to disclose it, or which is required by law, government order or request to be disclosed by the receiving Party (in which case such Party must use its best efforts to give the disclosing Party notice of the requirement so that disclosure can be contested by the disclosing Party and receiving Party agrees to seek to obtain (or to cooperate with disclosing Party in obtaining) confidential treatment of such Confidential Information.

## **9. Term: Termination.**

### **9.1 Term.**

This Agreement may be modified only in writing and signed by an authorized representative of each Party. This Agreement is effective as of the Effective Date and will remain in effect for the Initial Term and thereafter will renew automatically for a successive Renewal Term, as described on the Order Form (the Renewal Term together with the Initial Term, the "**Term**"), subject to the Parties' respective rights to terminate this Agreement in accordance with the terms and conditions. Either Party may terminate this Agreement by providing the other Party with written notice of its intent not to renew the Agreement as set forth in the CloudBlue SaaS Order Form.

### **9.2 Termination.**

Either Party may terminate this Agreement: (i) upon thirty (30) days prior written notice to the other Party upon the non-terminating Party's material breach of this Agreement, if such breach remains uncured at the expiration of such notice period; or (ii) immediately if the non-terminating Party makes any assignment for the benefit of creditors, is unable to pay its debts as they mature in the ordinary course of business, or any proceedings are instituted by or against the other Party under any insolvency laws or for reorganization, receivership or dissolution. Notwithstanding the foregoing, termination by either Party

will not relieve Customer of its obligations to pay Fees that accrued or that thereafter may accrue through the effective date of termination.

### 9.3 **Effect of Expiry or Termination.**

Unless otherwise specified in this Section 9.33, upon any expiry or termination of this Agreement: (i) Customer must immediately cease any and all use of the Products; (ii) within thirty (30) days of a request, a Party will deliver to the requesting Party or destroy all copies of Confidential Information it may have received from the other Party; and, (iii) CloudBlue will have no further obligation to provide any license or access to Products or other services of any kind to Customer. Expiry or termination of this Agreement will not limit CloudBlue from pursuing any other remedies available to it, including injunctive relief, nor will any such termination or expiration relieve Customer's obligation to pay all amounts and Fees that have accrued or are otherwise owed by Customer under this Agreement. Upon any termination or expiration of this Agreement, provisions contained in this Agreement that by their nature and context are intended to survive completion of performance, expiration, termination or cancellation of this Agreement, including without limitation, the terms on the signature page and Sections 2, 4.5, 6.3, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, and 19, will survive.

### 9.4 **Certain Continuing Rights.**

Upon termination of this Agreement by CloudBlue for cause, CloudBlue may, in its sole discretion, allow Customer, to continue to provide Product access to Customer's existing customers for the remaining term of Customer's agreement with such customers for a period as agreed to by CloudBlue, but in any event not to exceed one (1) year from the effective date of termination of this Agreement ("**Permitted Post Termination Period**"), subject to Customer's timely payment to CloudBlue of all applicable Fees. Within ten (10) days of termination, or, if applicable, within ten (10) days of expiration of the Permitted Post Termination Period, Customer will destroy or deliver to CloudBlue all copies of the Documentation or any portion thereof and Confidential Information of CloudBlue, and an officer of Customer will certify to CloudBlue such destruction or delivery. If Customer fails to settle its account by the effective date of termination, CloudBlue will continue to charge Customer for payment of any outstanding sums including late payment fee, in accordance with the terms of this Agreement.

## 10. **Availability Service Level**

### 10.1 **General.**

CloudBlue will provide the Products with a minimum Monthly Uptime Percentage of 99.50% ("**Availability Service Level**"). Customer will promptly report all outages, including performance degradation, by opening a support ticket with CloudBlue. Any non-scheduled or emergency maintenance that materially impacts the Products, will be communicated to Customer as soon as commercially practicable.

### 10.2 **Exception Downtime.**

The Availability Service Level does not apply to any Downtime of the Product which is caused by any of the following ("**Exception Downtime**"):

- a) Scheduled or planned maintenance. For planned maintenance, Customer will be informed one (1) week in advance:

Day	Maintenance Window
Monday to Friday	23:00 – 06:00 (CET time zone)
Saturday, Sunday	00:00 – 23:59 (CET time zone)

- b) Factors outside CloudBlue's reasonable control (for example, Force Majeure events, natural disaster, or a network or device failure, power failure or surges, including at Customer site or between Customer site and the data center where the Product is hosted);
- c) That result from the use of services, hardware, or software and/or other resources not provided by CloudBlue, including, but not limited to, issues resulting from inadequate bandwidth or related to third-party hardware, software or services;
- d) Incidents caused by Customer's use of a Product or feature after being advised to modify Customer's use and Customer failed to modify its use accordingly;
- e) Customer's use of preview, pre-release, beta or trial versions of a Product, feature or software (as determined by CloudBlue);
- f) Incidents resulting from Customer's unauthorized action or lack of action when required, or from Customer's employees, agents, contractors, or vendors, or anyone gaining access to the Product by means of Customers passwords or equipment, or otherwise resulting from Customers failure to follow appropriate security practices;
- g) Incidents resulting from Customers failure to adhere to any required configurations, use supported equipment, follow any policies for acceptable use, or Customers use of the Product in a manner inconsistent with the features and functionality of the Product (for example, attempts to perform operations that are not supported) or inconsistent with CloudBlue's published guidance, or the Documentation;
- h) Negligence or other acts or omissions by Customer, or Authorized Parties;
- i) Incidents resulting from faulty input, instructions, or arguments;
- j) Network intrusions, denial-of-service attacks, or other unlawful attacks; or

- k) Incidents that result from Customer's attempts to perform operations that resulted from CloudBlue's throttling (or regulating) of suspected abusive behavior.

11. **Force Majeure.**

A Party may be excused from any delays in performance of its obligations under this Agreement if such a delay results from certain events, including compliance with any requirement of applicable law, acts of God, pandemic, fire, flood, strike, embargo, terrorist attack, war, insurrection or riot, acts or omissions of the other Party or any unaffiliated third parties, or other causes beyond the reasonable control of such Party (a "**Force Majeure**"). Any delay resulting from Force Majeure will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

12. **Assignment; Change of Control.**

**12.1 Assignment.**

This Agreement is binding upon and is for the benefit of the Parties, their permitted successors and permitted assigns. Customer may not transfer, sublicense or otherwise assign this Agreement or any of its rights or obligations under this Agreement, by operation of law or otherwise, without CloudBlue's prior written consent. Notwithstanding the foregoing, either Party may assign or transfer this Agreement without the consent of the other Party, whether by contract or by operation of law in the event of a merger or sale of that Party's equity, consolidation, amalgamation or total asset sale. Any attempted transfer, sublicense or assignment by Customer in violation of this Section 12.1 will be null and void. Provided that, in the case of CloudBlue, CloudBlue may : (i) delegate or subcontract the obligations hereunder to third parties; provided, however, any such delegation shall not relieve CloudBlue of its obligations hereunder, and CloudBlue shall remain responsible for all acts and omissions of such third party as for its own; and/or (ii) assign its rights and delegate its obligations under the Agreement to its Affiliates upon not less than thirty (30) days prior written notice to Customer, without the consent of Customer.

**12.2 Change of Control.**

If the Customer experiences a Change of Control (i) which has a significant impact on its financial solvency and credit-worthiness; or (ii) if a competitor of CloudBlue or Ingram Micro Inc. obtains any equity ownership in the Customer, then; (i) Customer will provide written notice to CloudBlue within thirty (30) days after such Change of Control; and (ii) CloudBlue may terminate this Agreement for its convenience, and with no liability to Customer at any time following receipt of such written notice. The Permitted Post Termination Period will not apply in the event of such competitor obtaining any equity ownership in the Customer.

13. **Compliance with Laws.**

Each Party must ensure that its performance of its obligations hereunder in all respects and at all times complies with all applicable laws, statutes, regulations, ordinances or other rules promulgated by governing authorities that such Party or Product is subject to, including, without limitation, by means of obtaining any

permits, licenses and/or approvals required with respect to export regulations promulgated by the Bureau of Industry and Security or any other agency or department of the federal government of the United States of America. In particular, Customer acknowledges and agrees that the Products and other materials provided by CloudBlue are subject to regulation by U.S. and EU Government agencies and other governmental authorities, and Customer agrees not to directly or indirectly export, re-export or import any such materials without first obtaining all required licenses, permits and permissions.

14. **Notices.**

All notices required by or relating to this Agreement must be in writing and sent by registered mail, return receipt requested, or via an internationally recognized express mail carrier (postage prepaid, return receipt requested) to the Parties and addressed, if to Customer, as set forth on the signature page, or if to CloudBlue, as follows:

CloudBlue LLC  
3351 Michelson Drive,  
Suite 100, Irvine, CA 92612-0697  
United States of America  
Attn: Legal Department

or addressed to such other address as that Party may have given by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by electronic mail, if the sender also mails a hard copy of such notice to the designated address of the other Party.

15. **Headings.**

The headings in this Agreement are inserted merely for the purpose of convenience and will not affect the meaning or interpretation of this Agreement.

16. **No Third Party Beneficiaries.**

Except for those third parties that have licensed software or other intellectual property to CloudBlue that is included as part of the Products, no person or entity will be a third-party beneficiary of this Agreement or have any right or cause of action hereunder.

17. **Governing Law.**

This Agreement is governed by and construed in accordance with the laws of the State of California, U.S.A., not including its conflict of law principles. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of the State of California, U.S.A, and the Parties waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise. The Parties disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement.

18. **General.**

Any failure by either Party to strictly enforce any provision of this Agreement will not be a waiver of that provision or any further default. If any provision of this Agreement is held to be illegal or unenforceable, that provision will be

reformed only to the extent necessary to make the provision legal and enforceable; all remaining provisions continue in full force and effect. The Parties are independent contractors, and except for the express rights and obligations set forth in this Agreement, no other relationship, joint venture, partnership, employment relationship or franchise is intended by this Agreement. This Agreement is the entire agreement of the Parties and replaces any other understandings or agreements (whether oral or written) between the Parties, regarding the provision by CloudBlue of the Products set forth in this Agreement.

## 19. **Definitions.**

In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 19:

**"Agreement"** shall mean these Terms and Conditions, the Order Form, and any Statement of Work, exhibit, and/or attachments.

**"Affiliates"** shall mean any entity which directly or indirectly controls, is controlled by, or is under common control by either Party.

**"Authorized Parties"** means Customer's or its Affiliate's employees and, as appropriate, Customer's customers as Customer designates.

**"Change of Control"** means the occurrence of any of the following events: (i) an acquisition of Customer by another entity by means of any transaction or series of related transactions, or (ii) a sale of all or substantially all of the assets of Customer.

**"Cloud Offerings"** means cloud services and/or goods offered through any Vendor and made available to resellers and end users to offer, order, manage.

**"Documentation"** means CloudBlue's electronic guides, support documents, and other materials designed to inform the Customer and Authorized Parties on use of the Products.

**"Downtime"** is the total accumulated minutes by Customer in a given month during which the Product is unavailable. A minute is considered unavailable if either all attempts to process user sign-up, sign-in, or all attempts to access API's to create, read, write and delete, fails to return valid Error Codes, or do not return responses within (2) two minutes.

**"End-Customer"** means a person or legal entity who purchases a product in the Marketplace.

**"Error"** means a defect in the Product that prevents it from substantially performing according to the Product Description.

**"Error Code"** means an indication that an operation has failed, such as an HTTP status code in the 4xx and 5xx range.

**"Fees"** shall mean all amounts payable by Customer for the Products and/or any services.

**"Incident"** means (i) any single event; or (ii) any series of events, that result in Downtime.

**"Initial Term"** shall mean the term as described on the Order Form.

**"Maximum Available Minutes"** is the total number of minutes the Product is available, if the Product had one hundred percent (100%) uptime, during the applicable billing month.

**"Marketplace"** means the module to allow users to browse, search and shop configured Cloud Offerings via an ordering wizard. Each Marketplace is bound to a selling entity and can be branded (logo, colors) optionally.

**"Monthly Uptime Percentage"** is represented by the following formula:

$$\text{Monthly Uptime \%} = (\text{Maximum Available Minutes} - \text{Downtime}) / \text{Maximum Available Minutes}.$$

**"Products"** shall mean the software-as-a-service (SaaS) platform identified on the Order Form.

**"Professional Services"** means any professional services provided by CloudBlue to Customer under a SOW, which may include, but is not limited to, any configuring, implementation, data conversion, set-up, consulting, training, interface, and advisory services.

**"Renewal Term"** shall mean the term as described on the Order Form.

**"SLA"** shall mean one or more service level commitments for applicable Products, each of which is attached hereto as Exhibit A. Each SLA shall reference the applicable Product.

**"Statement of Work"** or **"SOW"** shall mean a written agreement between the Parties to provide certain services, which shall be governed by the terms and conditions set forth in the Agreement.

**"Support Site"** shall mean the website located at <https://www.cloudblue.com/support/>

**"Territory"** shall mean the geographic location identified on an Order Form.

**"Vendor"** is an entity with which the Customer is trading, independently whether the commercial terms and conditions of the trade are: (i) Customer's own, (ii) through a direct vendor contract or (ii) a third party through its affiliates.