



# CloudHPT Terms and Conditions

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## 1. Documentation

Version	Author	Date	Reviewer	Distributed to
1.0	A Wolf – CloudHPT	12.01.2016		
1.1	A Wolf – CloudHPT	18.01.2016		
1.2	A Wolf – CloudHPT	10.03.2016		
1.3	A Wolf - CloudHPT	12.03.2016		

## 2. Contracted Services

### 2.1 Service Types

#### **Infrastructure as a Service (IaaS)**

CloudHPT Infrastructure as a Service (IaaS) provides secure network for customers to host virtualized servers. Cloud resources are provisioned to meet the customer requirement for hosting, onto which the customer hosts their own application and data. Connectivity to CloudHPT will be established using either IPSEC VPN or MPLS. The Provider deploy virtual machines with the desired cloud resources as laid out in this contract. The operating system if stipulated in this contract will be supplied by the provider, if not stipulated however the responsibility for licensing lies solely with the customer, CloudHPT will not be liable for unlicensed operating systems or applications running on a customer's IaaS instance. For large data sets a pre-seed using removable storage will be undertaken to reduce the time to copy data to the cloud. Documentation is shared with the customer along with a guide on how the service works and how to raise support tickets.

Daily Backup will be taken for all production systems and stored on a backup storage appliance in the production cloud infrastructure. The agreed backup retention period will be:

- Daily backup for 7 days
- Weekly backup for 4 weeks

At the end of each backup cycle i.e. the 8<sup>th</sup> daily backup, the 1<sup>st</sup> backup in the cycle will be overwritten. Customer can request for a restore of data at any time from a backup and this will be facilitated by the Assured service desk. Data export can also be performed when written consent from a named contact is provided.

#### **In-Cloud DR as a Service (DRaaS)**

CloudHPT In-Cloud DR as a Service (DRaaS) provides a comprehensive disaster recovery ("DR") solution for virtualized servers running on CloudHPT. Connectivity between the production site

and CloudHPT will be established using either IPSEC VPN. CloudHPT will provision cloud computing resources to match the customer requirement and provide a secure network for the customer to access. The Provider will deploy on the production site a replication technology to synchronize the Customer servers and data to CloudHPT DR site in UAE. For large data sets a pre-emptive using removable storage will be undertaken to reduce the time to copy data to the cloud. Once all data is replicated a recovery plan will be built within the software and documented. Documentation is shared with the customer along with a guide on how the service works and how to raise support tickets. An initial DR test is also performed to demonstrate the service is live.

The service will include an annual full DR test delivered by the provider, in coordination with the customer. Full DR test will require a full shut down of production systems for a full fail-over and testing of use of the systems from the DR site. Period 'soft-tests' for DR will be conducted every 2 months using the 'bubble network' feature of the replication software (Zerto).

The Recovery Point Objective (RPO) of replication data will be less than 30 seconds behind production data. This is due to the continuous data protection (CDP) mechanism by which data is transported from production to DR infrastructure. Failover is automated and the recovery logic is built into the replication tool (allowing for easy one click failover and testing). For under 50 servers Recovery Time Objective (RTO) will be less than 45 minutes.

### **Assured**

Assured is a proactive Information Technology (IT) infrastructure managed service. A customer of Assured agrees to outsource essential maintenance tasks for IT infrastructure so that they can maintain focus on their core business. The framework for services includes installation of proactive system monitoring software at the customer site. The alerts generated by this system automatically raise tickets on the Assured helpdesk which are serviced by Network Operations Centre (NOC) engineers. Customers receive a proactive service tasks list which defines all the system checks we perform and the frequency of the checks. The service also includes reactive support with priority escalation based on severity for any issues that arise on systems supported by Assured.

Each month customers receive a management report that provides insight into the health of your environment and a chronological list of issues and fixes found and provided by. Assured comes with an SLA based on response times for cases raised and the customer is entitled to service credits if the SLA is not met within a given month.

### **Additional Service Description:**

- The backend monitoring solution will be hosted by the Provider in Equinix Datacenter and Customer head offices.
- To onboard the service The Provider requires an administrator account for all infrastructure and servers for the monitoring software. It is recommended that the customer creates an account with limited privileges and does not disclose the password to us at time of set-up. If this password is changed for any reason Assured helpdesk needs to be informed as the monitoring software will cease to operate without it.
- Managed service with support and service levels as set out in Annexure C and the Managed Serviced Handbook with the security practices set out in Annexure D. Provider will provide the Customer with Assured Service strictly following the policies laid out in this contract without deviation.

2.2 Total Contracted Amount – [All pricing in Arab Emirate Dirhams unless otherwise stated]  
Customer agrees to pay the Monthly Recurring Cost (MRC) to the provider in quarterly (3 calendar months) payments in advance for the service. The initial invoice will also include any non-recurring costs (NRC)

2.3 Provider will ensure that each invoice issued by it is fully itemized and includes all information reasonably required in order to enable Customer to establish the accuracy of the invoice including any flex charges or credits.

- Customer shall pay Provider invoices within 15 Days of receipt of the valid invoice except where Customer:
  - a) Exercises its right to withhold, retain or set off as provided for in this clause below; or
  - b) Disputes the invoice in good faith, in which case:
    - i. Customer shall pay the undisputed part of the invoice (if any) and withhold the balance pending resolution of the dispute; and
    - ii. If the resolution of the dispute determines that Customer is to pay an amount to Provider, Customer shall pay that amount within 15 days of resolution of the dispute.
- No interest shall be payable by Customer in respect of any invoice rendered to it by Provider which remains due and unpaid (including any amounts withheld as a result of a dispute).
- Payment of invoices does not affect Customer's right to dispute invoices or to make claims against Provider.

2.4 Contract Term and Start Date – this agreement shall continue to be operative until terminated. Customer agrees the contract start date for services and invoices is:

DATE

2.5 Cancellation - the Customer has a right to terminate the Contract after a initial period of 24 months of the contract provided a 2 months' notice to terminate is served on the Provider prior to the expiry of such anniversary. Should the Customer fail to serve a notice in accordance with the previous clause, customer is liable to pay 3 months MRC as specified in section 5.3 before termination. If the Customer wishes to terminate the service contract prior to the Initial period of 24 Months, Customer will be liable to pay 3 months' worth of MRC as specified in section 5.3 before termination.

2.6 Flex Charges – customer retains the right to increase or decrease consumption of cloud resources stated in this contract according to the following Flex Charges. Notification of change to contracted cloud resources must be provided using a Contract Addendum Form (Annexure D) by a named contact (section 6) by email from the customer's corporate email address. Flex charges will be pro-rata charged for the current billing period on the next invoicing cycle. Flex Charges as per Annexure D:

Service	Description	Monthly Recurring Cost (MRC)
Basic	1vCPU, 2GB RAM, 100HDD	
Bronze	2vCPU, 4GB RAM, 250HDD	
Silver	2vCPU, 8GB RAM, 400HDD	
Gold	4vCPU, 16GB RAM, 550HDD	
RAM	Per GB	
vCPU	Per VCPU	
HDD	Per 500GB	
Replicated VM	Per VM	
Veeam Cloud Connect	Per VM	
CloudHPT Online Backup Agent	Per TB	
SDSL Shared Internet Bandwidth	Per 10mbps	

### 3. Cloud Terms of Service

These Cloud Terms of Service are made between CloudHPT (as defined in Section 2 (Defined Terms)) and the customer who orders CloudHPT services (“**you**” or “**Customer**”).

#### 1. THE AGREEMENT.

Your use of the Services is governed by these Cloud Terms of Service which includes the Acceptable Use Policy and the terms of your Order. Your Order may have additional Product Terms and Conditions that apply to the particular services in your Order. When we use the term “**Agreement**” in any of the Order, Cloud Terms of Service, Acceptable Use Policy, and Product Terms and Conditions we are referring collectively to all of them. Your use of the Services includes the ability to enter into agreements and make purchases electronically. You acknowledge that your electronic assent constitutes your acceptance to the Agreement for each electronic purchase or transaction you enter. CloudHPT may accept or reject any Order you submit in its sole discretion. CloudHPT’s provisioning of the Services described in an Order shall be CloudHPT’s acceptance of the Order.

If you are entering into this Agreement on behalf of a legal entity, such as the company you work for, you warrant and represent to us that you have the legal authority to bind that entity to this Agreement. Other than with respect to free, introductory, student, developer or pro bono accounts approved by CloudHPT (the “**Exceptions**”), you acknowledge and agree you will use the Services for commercial purposes only. The individual who submits an Order for Services warrants and represents that they do so on behalf of a business, company or other legal entity and not as a consumer, unless under Sub-section 24.1.2 or one of the Exceptions.

If the individual placing the Order is a consumer, save under Sub-section 24.1.2 or one of the Exceptions, CloudHPT reserves the right to cancel the Order at any time at its sole discretion.

#### 2. DEFINED TERMS.

Some words used in the Agreement have particular meanings:

“**Acceptable Use Policy**” or “**AUP**” means the Acceptable Use Policy as of the date you submit the Order, as it may be amended.

“**Affiliate**” means any and all legal entities which now or hereafter the ultimate parent of a party to this Agreement controls. For the purpose of this definition, “**control**” means an entity, directly or indirectly, holding more than fifty percent (50%) of the issued share capital, or more than fifty percent (50%) of the voting power at general meetings, or which has the power to appoint and to dismiss a majority of the directors or otherwise to direct the activities of such legal entity.

“**API**” means application programming interface.

“**Business Day**” means Sunday to Thursday, excluding public holidays, in the applicable jurisdiction set forth in Section 24.1 below.

“**Business Hour**” means 8:30 a.m. – 6:00 p.m. on a Business Day.

“**Confidential Information**” means all information disclosed by one of us to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential, including: (i) unpublished prices and other terms of service, audit and security reports, product development plans, non-public information of the parties relating to their business activities or financial affairs, data centre designs (including non-graphic information you may observe on a tour of a data centre), server configuration designs, and other proprietary information or technology, and (ii) information that is marked or otherwise conspicuously designated as confidential. Information that is developed by one of us on our own, without reference to the other’s Confidential Information, or that becomes available to one of us other than through breach of the Agreement or applicable law, shall not be “Confidential Information” of the other party.

“**Customer Data**” means all data (including software, text, sound files and Personal Data) and other content that are stored by you or your end-user(s) on the Hosted System or otherwise processed by you or your end-user(s) through your use of the Services.

**“Data Processing Addendum”** means the terms and conditions that are incorporated by reference in these Cloud Terms of Service in Sub-section 19.2 (*Customer Data Privacy*).

**“Hosted System”** means a combination of hardware, software and networking elements that comprise an information technology system.

**“Order”** means (i) the online order that you submit or accept for the Services, (ii) any other written order (either in electronic or paper form) provided to you by CloudHPT for signature that describes the type or types of services you are purchasing, and that is signed by you, either manually or electronically, and (iii) your use or provisioning of the Services through the CloudHPT cloud control panel or through an API.

**“Personal Data”** means any information that is referred to as personal identifiable information, personal data or personal information (or other like term) under applicable data protection or privacy law. It includes information that by itself or combined with other information can be used to identify a person.

**“Product Terms and Conditions”** means the terms and conditions that are incorporated by reference in your Agreement and that state additional terms and conditions for the particular Services you are buying.

**“CloudHPT”** or **“we”** unless otherwise expressly agreed in writing in your Order, means CloudHPT the brand of Business Integrated Operat ME LCC, DUBAI, UAE.

**“Service Level Agreement”** means (i) a service level guarantee or guarantees identified as a “Service Level Guarantee” in the Agreement and/or (ii) any provision which provides a specified credit remedy for an identified failure to deliver or provide the Services.

**“Services”** means the CloudHPT cloud software and services described in the Order, and includes any services which you self-provision through the CloudHPT cloud control panel or which you utilize via an API.

**“Support”** means (i) CloudHPT employees with training and experience relative to the Services will be available ‘live’ by telephone, chat and ticket twenty-four (24) hours per day, seven (7) days per week, year round, and (ii) any additional level of assistance offered by CloudHPT for the specific Services you are purchasing, and described in the applicable Product Terms and Conditions or Order.

### **3. CLOUDHPT'S OBLIGATIONS.**

CloudHPT shall provide to you the Services and Support subject to the terms and conditions of Agreement. CloudHPT's obligation to begin providing the Services and Support is contingent on your satisfaction of CloudHPT's credit approval criteria. CloudHPT will comply with all laws applicable to its provision of the Services.

### **4. CUSTOMER'S OBLIGATIONS.**

**4.1 General.** You agree to do each of the following: (i) comply with applicable law and the terms and conditions of the Agreement, (ii) pay the fees for the Services when due, (iii) ensure that your customer account information as it appears in the online control panel is true, accurate, current and complete; and (iv) cooperate with CloudHPT's reasonable investigation of service outages and any suspected breach of the Agreement.

#### **4.2 Customer Data Security.**

4.2.1 We do not have knowledge of the Customer Data you, or your end-user, store on the Hosted System, including the content, quantity, value or use of the data. Customer Data is and at all times shall remain your exclusive property and shall remain in your exclusive care, custody and control. You are solely responsible for:

4.2.1.1 determining the suitability of the Services in light of the type of Customer Data stored by you or your end-user(s) on the Hosted System or otherwise processed by you or your enduser(s) through your use of the Services;

4.2.1.2 use of the Hosted System and the Services by any of your employees, Affiliates, or other user(s) which you authorize or who gains access to the Hosted System or Services as the result of your failure to utilize reasonable security precautions in light of your use of the Services; and



4.2.1.3 taking all reasonable steps to mitigate the risks inherent in transmitting Customer Data to and from and while stored on the Hosted System using the Services, including any Customer Data loss or corruption.

4.2.2 Reasonable steps under Sub-Section 4.2.1.3 shall include:

4.2.2.1 encrypting any Personal Data; any "non-public personal information" as that term is defined in the Gramm-Leach-Bliley Act found at 15 USC Subchapter 1, § 6809(4); "protected health information" as defined in the Health Insurance Portability and Accountability Act found at 45 CFR §160.103; and other regulated financial, health or sensitive data, transmitted to and from and while stored on the Hosted System,

4.2.2.2 maintaining a backup of Customer Data,

4.2.2.3 designating authorized users under your account and limiting access of login credentials associated with your account.

4.2.3 You agree to immediately notify CloudHPT of any unauthorized use of your Services or account or of any other breach of security. You also agree to cooperate with CloudHPT's reasonable investigation of security-related breaches.

**4.3 Customer Data Backup.** Although the Service may be used as a backup service, you agree that you will maintain at least one (1) additional current copy of your Customer Data and programs stored on the Hosted System somewhere other than on the Hosted System. If you utilize CloudHPT cloud backup services, you are responsible for performing and testing restores as well as testing your systems and monitoring the integrity of your Customer Data. You have the option to create a snapshot or backup of your cloud servers or databases, respectively, however it is your responsibility to initiate the snapshot backup and test your backup to determine the quality and success of your backups.

## **5. ACCESS TO THE SERVICES.**

5.1 You may access the Services via the online CloudHPT cloud control panel, the CloudHPT mobile application or via a CloudHPT-provided API. CloudHPT may modify its online control panel or API at any time, or may transition to a new API. By using the Services, you agree that we may establish new procedures for your use of the Services, including as we deem necessary for the optimal performance of the Services. Your use of any API, code or SDK (software development kit) you download from the CloudHPT website is governed by the terms and conditions included with the code in the file named "COPYING" or "LICENSE" or like caption.

5.2 You do not acquire any ownership interest in or right to possess the Hosted System, and you have no right of physical access to the Hosted System. You agree that we may migrate the Hosted System or your Customer Data within or between data centers, including if we determine in our reasonable judgment that migration is required to remediate service degradation or shared resource constraints. Where such migration involves an inter country migration of your Customer Data then notwithstanding Sub-section 6.4.2.1 we will give you reasonable advance notice of at least thirty (30) days.

## **6. SERVICE LEVEL AGREEMENTS.**

**6.1 Incident Priority:** Incidents are prioritized from Priority 1 to Priority 4, each priority is defined below:

Priority 1 – System or Service Failure with Critical Business Impact

Priority 2 – System or Service Failure with Significant Business Impact

Priority 3 – System or Service Impaired with No Business Impact

Priority 4 – General Questions/Advice or Planned Maintenance Activities

### 6.2.1 Incident Response, Escalation and Target Resolution

Priority	Response SLA	Specialist Review	Escalation Manager	Escalation Director	Email Frequency	Target Resolution
P1	30 Minutes	2 Hours	Immediate	2 Hours	Hourly	4 hours
P2	1 Hour	4 Hours	4 Hours	4 Hours	4 Hours	1 Day
P3	4 Hours	8 Hours	2 Days	Never	Daily	5 Days
P4	4 Days	4 Days	10 Days	Never	Daily	10 Days
RFC	1 Day	1 Day	2 Days	Daily	Daily	2 Days

6.2.2 For an Incident, "Response" is the time from when the Customer first logs a request via telephone for assistance to the time that the Provider responds with a suitably qualified Employed person whether via an email, telephone call or in person. For detailed process flow see the current Managed Services Handbook. Support to provide a resolution shall be provided from the time of Response until such time as the Incident has been resolved.

6.2.3 For an Incident, "Escalation" shall take place if a resolution to the Incident has not been achieved within the timeframe set out in the table above, and will continue to be escalated until details of the Incident is given to the Escalation Director.

6.2.4 From the time of Response until resolution, updates shall be provided to the Named Contacts and/or Escalation Contacts by email at such frequencies as set out in the table above.

6.2.5 Requests for Change (RFC) – All RFC's will be treated as Priority 4 and therefore will be subject to the RFC SLA. Should the customer require an urgent RFC to be undertaken, then an Urgent RFC can be requested. Acceptance of an Urgent RFC will be at the discretion of the Provider and will therefore be classified as Priority 2 subject to Priority 2 SLA. RFC can only be initiated by named contacts stipulated in section 6 of this agreement.

**6.3 Service Credits** – Service Credits will be applied in the form of discounts on the next available billing cycle should the target SLA not be met by the provider.

Category	Service Level Target	Minimum Service Level	Service Credit
P1 Incident Response	100% Incidents responded to within 30 minutes	90% Incidents responded to within 30 minutes	10% of monthly fee if SLA not met
P2 Incident Response	100% Incidents responded to within 1 hour	90% Incidents responded to within 1 hour	10% of monthly fee if SLA not met
Downtime on provider infrastructure*	99.9% Uptime within a calendar month	95% uptime within a calendar month	15% of monthly fee if SLA not met

\*defined as CloudHPT resources including ISP line provided under this contract. Does not include issues with Operating System or customer application.

### 6.4 Limitations on Credits.

6.4.1 Notwithstanding anything in this Agreement to the contrary, the maximum total credit for any calendar month for failure to meet Service Level Guarantees under the Agreement,

including all guarantees, shall not exceed one hundred per cent (100%) of your monthly recurring fee for the affected cloud Services. Credits that would be available but for any limitation on credits will not be carried forward to future months.

6.4.2 You are not entitled to a credit under any Service Level Agreement for downtime or outages resulting from Maintenance. For purposes of the Agreement, Maintenance shall mean:

6.4.2.1 Scheduled maintenance – repairs, modifications, or upgrades announced at least seventy two (72) hours in advance;

6.4.2.2 Scheduled customer maintenance – maintenance of your configuration that you request and that we schedule with you in advance (either on a case by case basis, or based on standing instructions), such as hardware or software upgrades;

6.4.2.3 Emergency maintenance – critical unforeseen maintenance needed for the security or performance of your configuration or CloudHPT's network.

6.4.3 You are not entitled to a credit under any Service Level Agreement for downtime or outages resulting from:

6.4.3.1 external factors or circumstances outside of our control, including denial of service attacks, virus attacks, hacking attempts and spikes in network traffic or application utilization;

6.4.3.2 a change which you effect or request which results in downtime or outages or interferes with our ability to provide the Services;

6.4.3.3 deficiencies, bugs or errors in your application, application code, data structures, system software, operating system, or any vendor supplied patches;

6.4.3.4 any unsupported third party products or third party services (or their interaction with the Services);

6.4.3.5 any action we take which we reasonably believe is necessary to protect you, the CloudHPT network or our other customers.

6.4.4 You are not entitled to a credit under any Service Level Agreement if you are in breach of your Agreement with CloudHPT (including your payment obligations to CloudHPT) at the time of the occurrence of the event giving rise to the credit until you have cured the breach. You are not entitled to a credit if event giving rise to the credit would not have occurred but for your breach of your Agreement with CloudHPT or your misuse of the Services.

6.4.5 You must request a credit via support ticket in the CloudHPT portal within thirty (30) days following the occurrence of the event giving rise to the credit. If the claim is approved, the credit will be applied during the next billing cycle following approval. You must show that your use of the Service to which the applicable Service Level Guarantee applies was adversely affected in some way as a result of the downtime or outage to be eligible for the credit.

6.4.6 For the purpose of determining whether a credit is due, time periods will be measured from the time stamp generated by our ticket system, the time an interruption is recorded in our monitoring system, until network availability is restored or the affected device is powered back on, as applicable. You may open a support ticket to document the start time for a support request or other incident, or if you contact us by telephone to request support, we will open a ticket. If you contact us by phone, there may be a delay between the time of the call and the time we open a ticket.

## **7. TERM AND RENEWAL.**

**7.1 Term.** The initial term for each Order begins on the date that we make the Services available for your use and continues for the period stated in the Order. If no period is stated in the Order, then the initial term shall be twenty four (24) months. Upon expiration of the initial term, the Order will automatically renew for successive renewal terms of twelve (12) months each, unless and until one of us gives the other a written notice of non-renewal prior to the expiration of the initial term (or then-current renewal term, as applicable) following the process in Subsection 7.2 (*Non-renewal Process*).

**7.2 Non-renewal Process.** You must follow CloudHPT's non-renewal process accessible from the CloudHPT cloud control panel to give effective notice of non-renewal. All notices of non-renewal you may give that are outside of that process, including, but not limited to, notices

given by telephone, email, or ticket, shall be deemed invalid. Before the effective date of the termination of the Agreement, you should retrieve a copy of the Customer Data and delete Customer Data from the Hosted System. Upon the effective date of termination you will no longer have access to the Hosted System.

For avoidance of doubt these Cloud Terms of Service, excluding the Service Level Agreement, shall continue to apply following your notice of non-renewal until the effective date of termination. You will not have access to your data stored on the Services during a suspension or following termination or expiration. You acknowledge that if you terminate the Services or delete instances through your Control Panel, API or other means, that the data contained thereon will no longer be recoverable.

Additional fees may apply to customers under Cloud Commitment or similar arrangements.

## **8. FEES AND PAYMENT TERMS.**

8.2 CloudHPT will charge you and you agree to pay when due the fees for the Services in accordance with your Order. Unless you have made other arrangements, CloudHPT will charge you monthly, with invoice, beginning on the date that CloudHPT first makes the Services available to you. CloudHPT may suspend all Services (including services provided pursuant to any unrelated Order or other agreement we may have with you) if our charges to you are rejected for any reason. If any amount is overdue by more than thirty (30) days, and CloudHPT brings a legal action to collect, or engages a collection agency, you must also pay CloudHPT's reasonable costs of collection, including legal fees (including legal fees) and court costs. Unless stated otherwise, fees are stated and will be charged in the same currency as per your Order. Any "credit" that we may owe you, such as a credit for failure to meet a Service Level Agreement, will be applied to fees due from you for Services, and will not be paid to you as a refund. If there is a dispute with respect to any portion of an invoice, you shall pay the undisputed portion of the fees promptly and provide written details specifying the basis of any dispute. Each of us agrees to work together to promptly resolve any disputes. Charges that are not disputed within sixty (60) days of the date charged are conclusively deemed accurate. You authorize

CloudHPT to obtain a credit report at any time during the term of the Agreement.

8.3 For those Services provided on a month-to-month term, we may increase fees at any time on thirty (30) days' advance written notice. If your Order contains Services with a specified term longer than one (1) month, then we may increase your fees effective as of the first day of the renewal term following thirty (30) days from the day of our written notice of such fee increase.

## **9. TAXES ON SERVICES.**

**9.1 Sales Taxes.** Unless otherwise expressly provided in the Agreement or included in the invoice for the Services, all amounts due to CloudHPT under the Agreement are exclusive of any value added, goods and services, sales, use, property, excise and like taxes, import duties and/or applicable levies (collectively, "**Tax**"). If CloudHPT is required by law to collect Taxes on the provision of the Service, CloudHPT will invoice you for such Tax and you must pay CloudHPT the amount of the Tax that is due or provide CloudHPT with satisfactory evidence of your exemption from the Tax. The obligation to pay any Taxes that Customer may be required to pay in connection with Customer's use of Services or Customer's payment of amounts due to CloudHPT under the Agreement shall be borne exclusively by Customer. You must provide CloudHPT with accurate factual and adequate information and documentation (as determined by CloudHPT), to help CloudHPT determine if any Tax is due with respect to the provision of the Services.

**9.2 Withholding Taxes.** All payments to CloudHPT shall be made without any withholding or deduction for any Taxes, except for any withholding (or similar) taxes imposed on income that may be attributed to CloudHPT in connection with its provision of the Services that you are legally required to withhold from such payment and remit to the applicable governmental or taxing authority (such taxes, "**Local Withholding Taxes**"). You agree to timely provide CloudHPT with adequate and accurate factual information and documentation (as determined by CloudHPT), including tax receipts, of your payment of any such Local Withholding

Taxes. CloudHPT shall remit such cost to you in the form of a credit on your outstanding account balance following receipt of sufficient evidence of payment of any such Local Withholding Taxes as set forth above.

## **10. SUSPENSION OF SERVICES.**

**10.1 Grounds for Suspension.** We may suspend the Services without liability if:

10.1.1 we reasonably believe that the Services are being used (or have been or will be used) in breach of the Agreement;

10.1.2 we discover that you are, or are affiliated in any manner with, a person who has used similar services abusively in the past;

10.1.3 you don't cooperate with our reasonable investigation of any suspected breach of the AUP;

10.1.4 we reasonably believe that the Services have been accessed or manipulated by a third party without your consent;

10.1.5 we reasonably believe the suspension of the Services is necessary to protect our network or our customers;

10.1.6 a payment of any invoiced amount is overdue; or

10.1.7 we are required by law or a regulatory or government body to suspend your Services.

**10.2 Notice of Suspension.** We will give you reasonable advance notice of a suspension under this Sub-section and a chance to cure the grounds on which the suspension are based, unless we determine in our reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect CloudHPT or our other customers from imminent and significant operational, legal, or security risk.

**10.3 Fees and Remedies.** If the suspension was based on your breach of your obligations under the Agreement, then we may continue to charge you the fees for the Services during the suspension, and may charge you a reasonable reinstatement fee (at our discretion) upon reinstatement of the Services. If your Services are compromised, then you must address the vulnerability prior to CloudHPT placing the Services back in service or, at your request, we may be able to perform this work for you at our standard hourly rates as a supplementary service.

## **11. TERMINATION FOR BREACH.**

**11.1 Your right to terminate.** You may terminate the Agreement for breach on written notice if we:

11.1.1 materially fail to provide the Services as agreed and do not remedy that failure within ten (10) days of your written notice describing the failure; or

11.1.2 materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within thirty (30) days of your written notice describing the failure.

**11.2 Our right to terminate.** We may terminate the Agreement for breach on written notice if:

11.2.1 we discover that the information you provided for the purpose of establishing the Services is materially inaccurate or incomplete;

11.2.2 you did not have the legal right or authority to enter into the Agreement on behalf of the person represented to be the customer;

11.2.3 your payment of any invoiced amount is overdue and you do not pay the overdue amount within four (4) Business Days of our written notice;

11.2.4 you have made payment arrangements via credit card or other third party, and the third party refuses to honor or reverses our charges, or you initiate a charge-back;

11.2.5 you fail to comply with any other obligation stated in the Agreement and do not remedy the failure within thirty (30) days of our written notice to you describing the failure;

11.2.6 you breach the AUP more than once even if you remedy each breach;

11.2.7 a credit report indicates that you no longer meet our reasonable credit criteria, provided that we will give you a reasonable opportunity to migrate your environment out of CloudHPT in an orderly fashion before we terminate on these grounds;

11.2.8 you use the Services in violation of the AUP and fail to remedy the breach within ten (10) days of our written notice; or

11.2.9 your agreement for any other CloudHPT service is terminated for breach of the AUP applicable to that service.

**11.3 Termination for insolvency.** Either of us may terminate the Agreement with immediate effect on written notice if the other party (or we reasonably believe that the other party) (i) is unable to pay its debts; (ii) enters into compulsory or voluntary liquidation; (iii) compounds with or contravenes a meeting of its creditors; (iv) has a receiver or manager or an administrator appointed (or an application is made to the court for the same); or (v) ceases for any reason to carry on business or takes or suffers any similar action which means that it may be unable to pay its debts (each an "**Insolvency Event**"). Notwithstanding anything to the contrary in the Agreement, the fees for the Services shall become due immediately upon the occurrence of an Insolvency Event.

## **12. DISCLAIMERS.**

**12.1 We disclaim any and all warranties or terms or conditions not expressly stated in the Agreement to the maximum extent permitted by law including the implied terms, conditions or warranties relating to satisfactory quality or fitness for a particular purpose, and non-infringement.**

**12.2 Any services that we are not contractually obligated to provide but that we may perform for you at your request and without any additional charge are provided on an AS IS basis.**

12.3 CloudHPT has no obligation to provide security other than as expressly stated in the Agreement.

12.4 Some of the Services are designed to help you comply with various regulatory requirements that may be applicable to you. However, you are responsible for understanding the legal and regulatory requirements applicable to you and your use of the Services, and for selecting and using those Services in a manner that complies with your obligations under the Agreement and the applicable legal and regulatory requirements.

12.5 CloudHPT personnel may from time to time recommend third-party software or other products and services for your consideration and may also make available to you third-party products or services, including third-party applications through deployment or implementation tools. **CloudHPT makes no representation or warranty whatsoever regarding products and services that are not purchased from CloudHPT or produced/manufactured by CloudHPT.** Your use of any such products and services is governed by the terms of your agreement with the provider of those products and services.

## **13. EXPORT MATTERS.**

You represent and warrant that you are not located in or a national of any country that is embargoed or highly restricted under export regulations or are otherwise a person to whom CloudHPT is legally prohibited to provide the Services. You represent and warrant and undertake that you will not possess, use, import, export or resell (and shall not permit the possession, use, importation, exportation, or resale of) the Services or any information or technical data provided by CloudHPT to you under the Agreement in any manner which would cause CloudHPT or its Affiliates to breach any applicable export control laws, rules, or regulations of any jurisdiction (including those under UAE law). Without limitation, you represent and warrant and undertake that you will not provide or facilitate administrative access to or permit use of the Services by any persons (including any natural person, government or private entity or other form of body corporate) that is located in or is a national of any country that is embargoed or highly restricted under applicable export laws, rules or regulations (including but not limited to UK and US export regulations).

## **14. CONFIDENTIAL INFORMATION.**

14.1 Each of us agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights

under the Agreement, or as may be required by law. Each of us may disclose the other's Confidential Information as follows:

14.1.1 to a law enforcement or government agency if requested or if either of us reasonably believes, in good faith, that the other's conduct may violate applicable criminal law;

14.1.2 as required by law;

14.1.3 in response to a subpoena or court order or other compulsory legal process, provided that each of us agrees to give the other written notice of at least seven (7) days prior to disclosing Confidential Information under this Sub-section (or prompt notice in advance of disclosure, if seven (7) days' advance notice is not reasonably feasible), unless the law forbids such notice; or

14.1.4 to our respective employees, service providers, Affiliates, suppliers, agents and representatives ("Representatives"), provided such Representatives agree to confidentiality measures that are at least as stringent as those stated in this Agreement.

## **15. LIMITATION ON DAMAGES.**

**15.1 Subject to Sub-section 15.5, the maximum aggregate liability of CloudHPT and any of its Representatives for loss or damages in connection with the Services or the Agreement under any theory of law shall not exceed the greater of (i) the amount of fees you paid for the Services for the six (6) months prior to the occurrence of the event giving rise to the claim, or the equivalent sum in the currency applicable to your Order.**

**15.2 Subject to Sub-section 15.5 and notwithstanding the foregoing, neither of us (nor any of our Representatives) shall be liable to the other for:**

**15.2.1 any indirect, special, incidental, exemplary, or consequential loss or damages of any kind;**

**15.2.2 any loss of profit or income;**

**15.2.3 any loss of business or business opportunity;**

**15.2.4 any loss or corruption of data;**

**15.2.5 any anticipated savings or revenue;**

**15.2.6 any punitive damages;**

**15.2.7 any loss of goodwill or reputation; or**

**15.2.8 any loss that could have been avoided by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages.**

**15.3 Subject to Sub-section 15.5, the service credits stated in the Service Level Agreement are your sole and exclusive remedy for CloudHPT's failure to meet the guarantees for which service credits apply.**

15.4 The parties agree that the limitations on damages set out in the Agreement are agreed allocations of risk constituting in part the consideration for CloudHPT's provision of the Services, and such limitations will apply notwithstanding the failure of essential purpose of any limited remedy.

15.5 Nothing in this Agreement limits or excludes either party's liability for (i) death or personal injury caused by its negligence; (ii) any fraud or fraudulent misrepresentation; and (iii) any loss or damages where such limitation or exclusion is expressly prohibited by applicable law.

15.6 Neither of us will be in breach of the Agreement if the failure to perform the obligation is due to an event beyond our control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.

## **16. INDEMNIFICATION.**

16.1 If we, our Affiliates, or any of our or their respective employees, agents, or suppliers (the "Indemnitees") are faced with a legal claim by a third party arising out of your actual or alleged negligence, breach of law, failure to meet the security obligations required by the Agreement, failure to meet your privacy or data protection obligations under applicable law, breach of the AUP, breach of your agreement with your customers or end users, or breach of

Section 13 (*Export Matters*) or Sub-section 17.2 (*Software*) of these Cloud Terms of Service, then you will pay the cost of defending the claim (including reasonable legal fees) and any damages award, fine, or other amount that is imposed on the Indemnitees as a result of the claim. Your obligations under this Sub-section include claims arising out of the acts or omissions of your employees or agents, any other person to whom you have given access to the Services, and any person who gains access to the Services as a result of your failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by you. If you resell the Services, the grounds for indemnification stated above also include any claim brought by your customers or end users arising out of your resale of the Services.

16.2 We will choose legal counsel to defend the claim, provided that these decisions must be reasonable and must be promptly communicated to you. You must comply with our reasonable requests for assistance and cooperation in the defense of the claim. We may not settle the claim without your consent, although such consent may not be unreasonably withheld, delayed or conditioned.

16.3 You must pay reasonable legal fees, and expenses, due under this Section as we incur them. You must also pay reasonable legal fees and other expenses we incur in connection with any dispute between persons having a conflicting claim to control your account with CloudHPT, or any claim by your customer or end user arising from an actual or alleged breach of your obligations to them.

## **17. INTELLECTUAL PROPERTY.**

**17.1 Ownership of Intellectual Property.** Each of us retains all right, title and interest in and to our respective trade secrets, inventions, trademarks, copyrights, and other intellectual property. Any intellectual property developed by CloudHPT during the performance of the Services shall belong to CloudHPT unless we have agreed with you in advance in writing that you shall have an interest in the intellectual property. We do not acquire any ownership interest in or right to the Customer Data.

**17.2 Software.** All software that we provide for your use is subject to the terms of the Agreement, including software that we may authorize you to install on devices located outside of our data center. You may not use any software we provide after the expiration or termination of the Agreement, or the particular service for which it was provided, and you may not copy the software unless expressly permitted by the Agreement. You may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any software we provide you. Unless permitted by the terms of an open source software license, you may not reverse engineer, decompile or disassemble any software we provide for your use except and to the extent that you are expressly permitted by applicable law to do this, and then following at least ten (10) days' advance written notice to us. Any additional restrictions which may apply to software we utilize in the performance of the

Services will be specified in the applicable Order. In addition to the terms of the Agreement:

17.2.1 Your use of any Microsoft® software is governed by: (i) Microsoft's license terms that appear at <http://www.microsoft.com>, for client or redistributable software, (ii) Microsoft's license terms at <http://www.microsoft.com> for use of Microsoft software on the CloudHPT cloud under the license mobility program, and (iii) any use restrictions on your use of the Microsoft software as indicated in your Order, such as a limitation on the number of users (a "SAL" license).

17.2.2 In the event that we distribute any open source software to you as part of the Services (including for example Linux based software, OpenStack software, and software licensed under the Apache, GPL, MIT or other open source licenses) then such open source software is subject to the terms of the applicable open source license. There are no warranties provided with respect to any open source software and all implied warranties are disclaimed. In the event of any conflict between the terms herein and the applicable open source license with respect to any open source software, the terms of the applicable open source license shall control.

**17.3 Customer Provided Licenses.** If you use any non-CloudHPT provided software on your Hosted System you represent and warrant to CloudHPT that you have the legal right to use the



software in that manner. If CloudHPT has agreed to install, patch or otherwise manage software in reliance on your license with a software vendor (rather than CloudHPT's license with the software vendor), then you represent and warrant that you have a written license agreement with the software vendor that permits CloudHPT to perform these activities. On CloudHPT's request you will certify in writing that you are in compliance with the requirements of this Sub-section and any other software license restrictions that are part of the Agreement, and will provide evidence of your compliance as we may reasonably request. If you fail to provide the required evidence of licensing, CloudHPT may, at its option, either: (i) charge you its standard fee for the use of the software in reliance on CloudHPT's licensing agreement with the vendor until such time as the required evidence is provided; or (ii) suspend or terminate the Agreement.

**17.4 Intellectual Property Infringement.** If CloudHPT or any of its customers is faced with a credible claim that the Services infringe the intellectual property rights of a third party, and CloudHPT is not reasonably able to obtain the right to use the infringing element or modify the Services such that they do not infringe, then CloudHPT may terminate the Services on reasonable notice of at least ninety (90) days, and will not have any liability on account of such termination except to refund amounts paid for Services not used as of the time of termination.

**17.5 Publicity.** You agree that we may publicly disclose that we are providing Services to you and may use your name and logo to identify you as our customer in promotional materials, including press releases. We will not use your name or logo in a manner that suggests an endorsement or affiliation.

## **18. WHO MAY USE THE SERVICES.**

**18.1 Resale.** You may resell the Services, except as provided below or otherwise restricted by CloudHPT. If you resell Services you are responsible for use of the Services by any third party to the same extent as if you were using the Services yourself. If you resell any part of the Services that includes Microsoft software, then you must include those Microsoft terms described in Sub-section 17.2.1 in a written agreement with your customers as well as the content of the High Risk Use section of the Acceptable Use Policy. You may not resell the use of our Role Based Access Control services.

**18.2 Support.** CloudHPT will only provide Support to you and the authorized contacts identified in your CloudHPT control panel. You agree that you will be the first line of support for your end users, including basic troubleshooting for the Services, and you agree that you will not refer your end users to CloudHPT for direct support.

**18.3 Third Party Beneficiaries.** There are no third party beneficiaries to the Agreement, meaning that third parties (including your customers, subsidiaries, and Affiliates) do not have any rights against either of us under the Agreement.

## **19. SECURITY OF HOSTED SYSTEM AND PRIVACY**

**19.1 Security of Hosted System.** Subject to Sections 4 (*Customer's Obligations*) and 15 (*Limitation on Damages*), and as further described in this Section 19.1, CloudHPT shall implement reasonable and appropriate technical and organizational measures to protect your Hosted System against unauthorized access. CloudHPT's security obligations with respect to Customer Data are limited to those obligations described in this Sub-section 19.1. CloudHPT makes no other representation regarding the security of Customer Data. CloudHPT is not responsible to you for unauthorized access to your Customer Data or the unauthorized use of the Services that does not directly result from CloudHPT's failure to meet its security obligations stated in the Agreement.

**19.2 Customer Data Privacy.** You warrant that you shall process any Personal Data in compliance with all applicable data protection or privacy law. You shall, or you shall require your end user(s) to, implement those technical and organizational measures required by the applicable data protection and privacy laws relative to your use of the Services and the nature

and the volume of the Personal Data stored on the Hosted System or processed through your use of the Services. You are responsible for providing any necessary notices to individuals and for obtaining any legally required consent from individuals in relation to our provision of any Services to you or your processing of any Personal Data. You are responsible for any losses or other consequences arising from your failure to implement reasonable security measures as set forth in Sub-section 4.2.2 above. The way in which CloudHPT can help you to meet your obligations under applicable data protection or privacy law is addressed in the Data Processing Addendum. The Data Processing Addendum is incorporated into these Cloud Terms of Service by reference.

## **20. IP ADDRESSES.**

Upon expiration or termination of the Agreement, you must discontinue use of the Services and relinquish use of the IP addresses and server names assigned to you by CloudHPT in connection with Services, including pointing the DNS for your domain name(s) away from CloudHPT Services. You agree that CloudHPT may, as it determines necessary, make modifications to DNS records and zones on CloudHPT managed or operated DNS servers and services.

## **21. SERVICES MANAGEMENT AGENT.**

You agree that you will not interfere with any services management software agent(s) that CloudHPT installs on your Services. CloudHPT agrees that its agents will use only a minimal amount of computing resources, and will not interfere with your use of the Services. CloudHPT will use the agents to track system information so that it can more efficiently manage various service issues. CloudHPT may also use the agents to identify security vulnerabilities. Your Services will become "Unsupported", as described below, if you disable or interfere with our services management software agent(s). You agree that CloudHPT may access your Services to reinstall services management software agents if you disable them or interfere with their performance.

## **22. ADDITIONAL TERMS FOR ELECTED ADDITIONAL SERVICES.**

**22.2 Cloud Server Images.** If you provision a CloudHPT Cloud Server or other Service using a non-standard or non-CloudHPT image or installation (even if such image is made available to you by CloudHPT during configuration, provided that it is identified as such), then CloudHPT shall have no obligation to provide Support for that Service, and any Support provided shall be on an AS IS basis. You agree that if you use our Services to share or receive an image, then such image sharing or receipt is at your sole risk. Notwithstanding

Sub-sections 16.1 and 16.2 above, you agree to indemnify and hold harmless the Indemnitees for any loss (whether direct or indirect/consequential), damage, injury or other costs or expense (including reasonable legal fees) suffered by the Indemnitees arising from your unlawful or unlicensed sharing or receipt of the image, including in respect of unlawful or unlicensed sharing or receipt of software, Customer Data or PII. You may not import or export images containing Microsoft products.

**22.3 Domain Name Registration Services.** If you register, renew or transfer a domain name through CloudHPT, CloudHPT will submit the request to its domain name services provider (the "**Registrar**") on your behalf. CloudHPT's sole responsibility is to submit the request to the Registrar. CloudHPT is not responsible for any errors, omissions or failures of the Registrar. Your use of domain name services is subject to the Registrar's applicable legal terms and conditions. You are responsible for closing any account with any prior reseller of or registrar for the requested domain name, and you are responsible for responding to any enquiries sent to you by the Registrar.

**22.4. Role-Based Access Control.** Your designated account administrator is responsible for role administration. You may self-manage role administration via the CloudHPT cloud control panel or API. When making permission changes with role-based access control services, there may be

a delay before the implementation of changes, including self-managed changes. CloudHPT is not responsible for any loss that may occur due to the delayed implementation of changes.

**22.5. Unsupported Configuration Elements or Services.** If you ask us to implement a configuration element (hardware or software) or cloud-related service in a manner that is not customary at CloudHPT, or that is in "end of life" or "end of support" status we may designate the element or service as "unsupported", "non-standard", "best efforts", "reasonable endeavors", "reasonable endeavours", "one-off", "EOL", "End of Support", "as is", or with like term (referred to in this Section as an "**Unsupported Service**"). CloudHPT makes no representation or warranty whatsoever regarding the Unsupported Service, and you agree that CloudHPT shall not be liable to you for any loss or damage arising from the provision of the Unsupported Service. Service Level Guarantees shall not apply to the Unsupported Service, or to any other aspect of the Services that is adversely affected by the Unsupported Service. You acknowledge that Unsupported Services may not interoperate with CloudHPT's other services, including backup or monitoring.

### **23. NOTICES.**

Your routine communications to CloudHPT regarding the Services, including any notice of non-renewal, should be sent to your CloudHPT cloud account team using your CloudHPT cloud control panel. If you want to give a notice regarding termination of the Agreement for breach, indemnification, or other non-routine legal matter, you should send it by electronic mail and first-class post to:

[legalnotice@CloudHPT.com](mailto:legalnotice@CloudHPT.com)

General Counsel

CloudHPT.

1603 Emaar Boulevard Plaza Tower 1

Dubai

PO Box 74069

CloudHPT's routine communications regarding the Services and legal notices will be sent to the individual(s) you designate as your contact(s) on your account either by electronic mail, first class post, or overnight courier, except that CloudHPT may give notice of an amendment to the AUP by posting the notice on the CloudHPT cloud control panel. Notices are deemed received as of the time delivered, or if that time does not fall within a Business Day as of the beginning of the first Business Day following the time delivered, except that notices of AUP amendments are deemed delivered as of the first time that you log on to the CloudHPT cloud control panel after the time that the notice is posted. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day. Notices must be given in the English language.

### **24. GOVERNING LAW AND JURISDICTION.**

24.1 Unless otherwise agreed in writing, this Agreement is governed by the law and jurisdiction according to the following:

24.1.1 If you are contracting with CloudHPT., and your primary address is located in the United Arab Emirates or GCC, then the Agreement is governed by the laws of the United Arab Emirates, exclusive of any choice of law principle that would require the application of the law of a different jurisdiction, and the laws of the United States of America, as applicable. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. Each of us agrees that any dispute or claim, including, statutory, contract or tort claims, relating to or arising out of the Agreement or the alleged breach of the Agreement, shall, upon timely written request of either of us, be submitted to binding arbitration. The party asserting the claim may elect to have the arbitration be in-person, telephonic or decided based on written submissions. The arbitration shall be conducted in the State and county (or equivalent geographic location) of the nonasserting party's principal business offices and shall be conducted in the English language. The arbitration shall proceed in accordance with the The UAE Civil Procedure Code (**UAE CPC**), Federal Law No. (11) of 1992 Chapter Three in effect at the time the claim or dispute arose. The arbitration shall be conducted by one arbitrator from

the UAE CPC or a comparable arbitration service, and who is selected pursuant to the applicable rules of the UAE CPC. The arbitrator shall issue a reasoned award with findings of fact and conclusions of law and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Either you or we may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement, or to enforce or vacate an arbitration award. We will pay the fee for the arbitrator and your filing fee, to the extent that it is more than a court filing fee. We agree that we will not seek reimbursement of our fees and expenses if the arbitrator rules in our favor. Each of us waives any right to a trial by jury, and agrees that disputes will be resolved through arbitration. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

24.2 No claim may be brought as a class or collective action, nor may you assert such a claim as a member of a class or collective action that is brought by another claimant.

24.3 CloudHPT reserves the right to terminate your Services in the event you assert, or authorize or encourage any third party to assert or assist any third party in asserting, any claim for intellectual property infringement (including patent infringement) against CloudHPT or any of our Affiliates regarding any of the Services or any open source software contained or utilized therein.

24.4 Each of us agrees that we will not bring a claim under the Agreement more than two years after the time that the claim accrued.

24.5 In the event of a dispute between us regarding the interpretation of applicable law or the AUP, CloudHPT's reasonable determination shall control.

## **25. SOME AGREEMENT MECHANICS.**

**25.1 Assignment and Subcontracting.** Neither party may assign the Agreement in whole or in part without the prior written consent of the other party except that CloudHPT may assign the Agreement in whole or in part to an Affiliate with sufficient financial standing in order to meet its obligations under the Agreement or as part of a bona fide corporate reorganization or a sale of its business, and we may transfer your Confidential Information as part of any such transaction. CloudHPT may use Affiliates and third party service providers to perform all or any part of the Services, but CloudHPT remains responsible to you under the Agreement for Services performed by its Affiliates and third party service providers to the same extent as if CloudHPT performed the Services itself.

**25.2 Changes Not Made Known.** If you have made any change to the Agreement that you did not bring to our attention in a way that is reasonably calculated to put us on notice of the change, the change shall not become part of the Agreement.

**25.3 Changes to Terms on Website.** These Cloud Terms of Service may have been incorporated in your Order by reference to a page on the CloudHPT website. In the event that we revise the Cloud Terms of Service posted on our website, those revisions will not be effective as to an Order that we accepted prior to the date we posted the revision, and your Order will continue to be governed by the Cloud Terms of Service posted on the effective date of the Order until the earlier of: (i) your acceptance of any amended Cloud Terms of Service or (ii) thirty days after the date CloudHPT posts amended Terms of Service on the CloudHPT website. In addition, if over time you sign multiple Orders for a single account, then the Cloud Terms of Service incorporated into the latest Order posted on the effective date of the latest Order will govern the entire account.

**25.4 Complete Agreement.** The Agreement constitutes the complete and exclusive agreement between the parties regarding the subject matter and supersedes and replaces any prior understanding or communication, written or oral. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of CloudHPT which is not set out in the Agreement.

**25.5 Execution.** Your acceptance of these Cloud Terms of Service via the online clickthrough shall constitute your agreement thereto. If physically signed, the Agreement may be signed in multiple counterparts, which, taken together, will be considered one original.

Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures.

**25.6 Interpretation.** The headings or captions in the Agreement are for convenience only and are not part of the Agreement. The use of the word “including” in the Agreement shall be read to mean “including without limitation”.

**25.7 Modifications.** An Order may be amended by a formal written agreement signed by both parties, or by an exchange of correspondence, including electronic mail, which includes the express consent of an authorized individual for each of us. Any such correspondence that adds or modifies Services in connection with an account established by an Order shall be deemed to be an amendment to that Order, notwithstanding the fact that the correspondence does not expressly refer to the Order. Other than as stated herein, the Agreement may be modified only by a formal document signed by both parties.

**25.8 No Partnership.** The relationship between the parties is that of independent contractors and not business partners. Neither party is the agent for the other, and neither party has the right to bind the other to any agreement with a third party.

**25.9 No Waiver.** Each party may enforce its respective rights under the Agreement even if it has waived the right or failed to enforce the same or other rights in the past.

**25.10 Order of Precedence.** If there is a conflict between the terms of any of the documents that comprise the Agreement, the documents will govern in the following order: Order, Product Terms and Conditions, Cloud Terms of Service, Data Processing Agreement, and the Acceptable Use Policy.

**25.11 Survival.** Sections 1 (*The Agreement*), 2 (*Defined Terms*), 8 (*Fees and Payment Terms*), 9 (*Taxes on Services*), 12 (*Disclaimers*), 14 (*Confidential Information*), 15 (*Limitation on Damages*), 16 (*Indemnification*), 17.1 (*Ownership of Intellectual Property*), 20 (*IP Addresses*), 23 (*Notices*), and 24 (*Governing Law and Jurisdiction*) and all other provisions of the Agreement that by their nature are intended to survive expiration or termination of the Agreement shall survive expiration or termination of the Agreement.

**25.12 Unenforceable Provisions.** If any part of the Agreement is found unenforceable by a court or other tribunal, the rest of the Agreement will nonetheless continue in effect, and the unenforceable part shall be reformed to the extent possible to make it enforceable but still consistent with the business and financial objectives of the parties underlying the Agreement.