

BETTERCLOUD Master Subscription Agreement

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES.

IF YOU REGISTER FOR A FREE TRIAL OF OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL, UNLESS OTHERWISE PROVIDED HEREIN.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING THIS AGREEMENT OR AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement is subject to revision. If We make any substantial changes, We will notify You in accordance with Section 13.1. Any changes to this Agreement will be effective upon the earlier of thirty (30) calendar days following dispatch of an email notice to You (if applicable) or Your next use of the Services. These changes are effective immediately to new Users of Our Services. You are responsible for providing Us with Your most current e-mail address. In the event that the last e-mail address that You have provided Us is not valid, or for any reason is not capable of delivering to You the notice described above, Our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice. Continued use of Our Services following notice of such

changes shall indicate Your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes. This Agreement was last updated on September 4, 2015. It is effective between You and Us as of the earlier of: (a) the date You accept this Agreement or (b) the date You first access or otherwise use the Services.

Table of Contents

1. [Definitions](#)
2. [Free Trial](#)
3. [Our Responsibilities](#)
4. [Use of the Services](#)
5. [Non-BetterCloud Providers](#)
6. [Fees and Payment for Purchased Services](#)
7. [Proprietary Rights and Licenses](#)
8. [Confidentiality](#)
9. [Representations, Warranties, Exclusive Remedies and Disclaimers](#)
10. [Mutual Indemnification](#)
11. [Limitation of Liability](#)
12. [Term and Termination](#)
13. [Notices, Governing Law and Jurisdiction](#)
14. [General Provisions](#)

1. DEFINITIONS

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Agreement” means this Master Subscription Agreement.

“Beta Services” means certain features, technologies, and services that are not generally available to customers, as updated from time to time.

“Documentation” means the online documentation and Service feature descriptions, as updated from time to time, located at <https://www.bettercloud.com/documentation/> or such other URL as We may provide from time to time.

“Disruption Event” means either: (a) a User’s use of the Services in violation of this Agreement, which could disrupt: (i) the Services; (ii) other customer’s use of the Services; (iii) Our network or servers used to provide the Services; or (b) unauthorized third party access to the Services.

“End User Account” means an individual user account for a Non-BetterCloud Application, the use of which is managed, monitored and/or secured by the Services.

“Generic Reports” means reports that may include Your Data in an anonymous, generic, de-identified format aggregated with other data not constituting Your Data solely and exclusively for analyzing customer needs, improving Our services, or providing benchmark data of usage and configuration of non-BetterCloud Applications to other customers.

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“Non-BetterCloud Applications” means a web-based or offline software application that is provided by You or a third party and interoperates with one or more of the Services.

“Order Form” means an online confirmation page or an ordering document specifying the Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates or Resellers, including any addenda and supplements thereto.

“Privacy Policy” means Our Privacy Policy, as updated from time-to-time, located at: <https://www.bettercloud.com/privacy-policy/> or such other URL as We may provide from time to time.

“Purchased Services” means Services that You purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

“Reseller” means one of Our preferred partner resellers through whom You purchase the Services.

“Services” means the products and services that are ordered by You under a free trial or an Order Form and made available online by Us as described in the Documentation. “Services” exclude Non-BetterCloud Applications.

“Subscription Term” means the period of time during which Users are permitted to use the Services hereunder, as specified in the applicable Order Form and including all renewals or extensions thereof.

“Suspend” or **“Suspension”** means the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services.

“User” means an individual who is authorized by You to use one or more of the Services, for whom You have ordered the Services, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors and agents.

“We,” “Us” or **“Our”** means BetterCloud, Inc.

“You” or **“Your”** means the person accepting this Agreement, or, if applicable, the company or other legal entity for which you are accepting this Agreement.

“Your Data” means electronic data and information submitted by or for You to the Services or collected and processed by or for You as a result of your use of the Services. Your Data includes “Your Reports”.

“Your Reports” means reports regarding and/or incorporating Your Data generated, transmitted or displayed via the Services, but excluding Generic Reports.

[Back to Top](#)

2. FREE TRIAL

If You register on our website for a free trial, We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which you registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by You for such Service(s). Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

YOUR DATA ON OUR SYSTEMS OR IN OUR POSSESSION OR CONTROL, YOUR REPORTS, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR FREE TRIAL MAY BE PERMANENTLY LOST OR DELETED AT THE END OF THE FREE TRIAL PERIOD UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL OR

PURCHASE UPGRADED SERVICES BEFORE THE END OF THE TRIAL PERIOD.

NOTWITHSTANDING SECTION 9 (REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY.

Please review the Documentation during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.

[Back to Top](#)

3. OUR RESPONSIBILITIES

3.1 Provision of Purchased Services. We will (a) make the Purchased Services available to You pursuant to this Agreement and the applicable Order Forms, (b) provide Our standard support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased. Notwithstanding the foregoing, the Purchased Services may not be available due to: (i) planned downtime (of which We shall give at least 8 hours electronic notice and which We shall schedule to the extent practicable during the weekend hours), and (ii) circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, Non-BetterCloud Application failure or delay, or denial of service attack. We reserve the right to make changes to the Services at any time and from time to time, provided, however, that We will not materially decrease the functionality of the Purchased Services during a Subscription Term. If We make a material change to the Services, we will notify you of such change in accordance with Section 13.1 (Manner of Giving Notice).

3.2 Protection of Your Data. We will maintain industry standard administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 8.3 (Compelled

Disclosure) below, (c) as set forth in our Privacy Policy, or (d) as You expressly permit in writing.

3.3 Beta Services. From time to time, We may invite You to try Beta Services at no charge. You may accept or decline any such trial in Your sole discretion. Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta Services are for evaluation purposes and not for production use, are not considered “Services” under this Agreement, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the date that a version of the Beta Services becomes generally available. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. WE WILL HAVE NO LIABILITY FOR ANY HARM OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH A BETA SERVICE.

[Back to Top](#)

4. USE OF SERVICES; AFFILIATES

4.1 Subscriptions. Unless otherwise provided in the applicable Order Form, (a) Services are purchased as subscriptions, (b) subscriptions may be added during a Subscription Term, with the term for such additional subscriptions to be prorated for the portion of that Subscription Term remaining at the time the mid-term subscriptions are added, and (c) any added subscriptions will terminate on the same date as the Subscription Term.

4.2 Usage Limits. Services are subject to usage limits, including, for example, the quantities specified in Order Forms. Unless otherwise specified, (a) a quantity in an Order Form refers to End User Accounts, and the Service may not be used to administer more than the number of End User Accounts specified in an Order Form, (b) a User’s password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires use of the Service. If You exceed a contractual usage limit, We may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding Our efforts, You are unable or unwilling to abide by a contractual usage limit, You will execute an Order Form for additional quantities of the applicable Services promptly upon Our request, and pay

any invoice for excess usage in accordance with Section 6.2 (Invoicing and Payment)

4.3 Your Responsibilities. You will (a) be responsible for Users' compliance with this Agreement and for all activities that occur through your Users' use of Our Services, (b) be responsible for the accuracy, quality and legality of Your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Us promptly of any such unauthorized access or use, (d) use Services only in accordance with this Agreement and applicable laws and government regulations, (e) comply with terms of service of Non-BetterCloud Applications with which You use Services, and (f) respond to questions and complaints from Users or third parties relating to Your or Your Users' use of the Services and use commercially reasonable efforts to resolve support issues before escalating them to Us.

4.4 Usage Restrictions. You will not (a) make any Service available to, or use any Service for the benefit of, anyone other than You or Your Users, (b) sell, resell, license, sublicense, distribute, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or its related systems or networks, (g) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit, (h) copy a Service or any part, feature, function or user interface thereof, (i) frame or mirror any part of any Service, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in this Agreement, (j) access any Service in order to build a competitive product or service, or (k) reverse engineer any Service (to the extent such restriction is permitted by law).

4.5 Privacy. Our Privacy Policy describes the collection, use, and sharing of certain information that may be provided in connection with Your use of the Services. You acknowledge and agree that all Users will read and understand Our Privacy Policy before accessing or using the Services. By using the Services, You acknowledge that Your Data will be processed in accordance with Our Privacy Policy and this Agreement and may be

processed in a country where it was collected, as well as in countries where privacy laws may be less stringent, including the United States. By using the Services or submitting Your Data through the Services, You expressly consent to such processes. To the extent You provide personal information about a named person or entity that is not a current User of Our Services, You represent that You have that person's or entity's consent to do so.

4.6 Suspension. If We become aware of a User's violation of this Agreement, then We may specifically request that You Suspend that User's use of the Services. If You fail to comply with Our request to Suspend a User's use of the Services, then We may do so. The duration of any Suspension by Us will be until the applicable User has cured the breach that caused the Suspension. Notwithstanding the foregoing, if there is a Disruption Event, then We may automatically Suspend the offending use. Suspension will be to the minimum extent and of the minimum duration required to prevent or terminate the Disruption Event. If We Suspend a User's use of the Services for any reason without prior notice to You, then at Your request, We will provide You with the reason for the Suspension as soon as is reasonably possible.

4.7 Affiliates. By entering into an Order Form, an Affiliate agrees to be bound by the terms of this Agreement as if such Affiliate were an original party hereto.

[Back to Top](#)

5. NON-BETTERCLOUD PROVIDERS

5.1 Acquisition of Non-BetterCloud Products and Services. We or third parties may make available third-party products or services, including, for example, Non-BetterCloud Applications and implementation and other consulting services. Any acquisition by You of such non-BetterCloud Applications, and any exchange of data between You and any non-BetterCloud provider, is solely between You and the applicable non-BetterCloud provider. We do not warrant or support Non-BetterCloud Applications or other non-BetterCloud products or services, whether or not they are designated by Us.

5.2 Non-BetterCloud Applications and Your Data. If You install or enable a Non-BetterCloud Application for use with a Service, You grant Us permission to allow the provider of that Non-BetterCloud Application to

access Your Data as required for the interoperation of that Non-BetterCloud Application with the Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by a Non-BetterCloud Application.

5.3 Integration with Non-BetterCloud Applications. The Services may contain features designed to interoperate with Non-BetterCloud Applications. To use such features, You may be required to obtain access to Non-BetterCloud Applications from their providers, and may be required to grant Us access to Your account(s) on the Non-BetterCloud Applications. If the provider of a Non-BetterCloud Application ceases to make the Non-BetterCloud Application available for interoperation with the corresponding Service features on reasonable terms, We may cease providing those Service features without entitling You to any refund, credit, or other compensation.

[Back to Top](#)

6. FEES AND PAYMENT FOR PURCHASED SERVICES

6.1 Fees. You will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on the Service purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant Subscription Term. You will be responsible for any payments owed but not paid by any of your Affiliates ordering Services hereunder.

6.2 Invoicing and Payment. You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all Purchased Services listed in the Order Form for the initial Subscription Term and any renewal Subscription Term(s) as set forth in Section 12.2 (Term of Purchased Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net thirty (30) days from the invoice date. You are responsible for providing

complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

6.3 Overdue Charges. If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 6.2 (Invoicing and Payment).

6.4 Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for Our services is thirty (30) or more days overdue (or ten (10) or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and Suspend Our Services to You until such amounts are paid in full. We will give You at least 10 days' prior notice, in accordance with Section 13.1 (Manner of Giving Notice), before Suspending Services to You pursuant to the foregoing.

6.5 Payment Disputes. We will not exercise Our rights under Section 6.3 (Overdue Charges) or 6.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

6.6 Taxes. Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 6.6, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

6.7 Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

6.8 Reseller Purchases. If You purchased the Services through a Reseller, all payment-related terms (including, but not limited to, pricing, invoicing, billing, payment methods, and late payment charges) will be set forth in Your agreement directly with such Reseller and such payment-related terms will supersede any conflicting terms set forth in this Section 6.

[Back to Top](#)

7. PROPRIETARY RIGHTS AND LICENSES

7.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, We reserve all of Our right, title and interest in and to the Services, including all of Our related intellectual property rights. You reserve all of Your right, title and interest in Your Data, provided that We may use Your Data to create Generic Reports and as provided in Section 7.2 below. No rights are granted to You hereunder other than as expressly set forth herein.

7.2 Our Rights to Use Your Data. You grant Us and Our Affiliates the right to use Your Data in order to: (a) provide the Services in accordance with this Agreement and the Privacy Policy, (b) prevent or address service or technical problems, or (c) as may be required by law. We may also use Your Data in an aggregate, de-identified and generic manner for marketing, survey purposes, setting benchmarks, feature suggestions, Services utilization analyses and related purposes, provided that (i) it is used only for internal administrative purposes and general usage statistics; (ii) does not identify You or your agents, representatives, customers or employees and is not attributable to such persons or entities in any way; and (iii) where Your Data is used in this manner to create publicly disclosed general usage statistics, such statistics are used to report only the total aggregate use among Our customers. Subject to the rights and licenses granted in this Agreement, We acquire no right, title, or interest from You under this Agreement in or to Your Data.

7.3 License by You to Use Feedback. You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of the Services.

[Back to Top](#)

8. CONFIDENTIALITY

8.1 Definition of Confidential Information. “**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

8.2 Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, disclose Confidential Information of the Disclosing Party only to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this Section 8.2.

8.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law or by the

order of a court or similar judicial or administrative body to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

[Back to Top](#)

9. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

9.1 Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.

9.2 Our Warranties. We warrant that the Purchased Services will perform materially in accordance with the specifications set forth in the Documentation. For any breach of the above warranty, Your exclusive remedy and Our sole obligation is those described in Sections 12.3 (Termination) and 12.4 (Refund or Payment upon Termination).

9.3 Mutual Warranties. Each party warrants that it will comply with all laws and regulations applicable to its provision or use of the Services, as applicable (including applicable security breach notification law).

9.4 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. BETA SERVICES ARE PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

[Back to Top](#)

10. MUTUAL INDEMNIFICATION

10.1 Indemnification by Us. We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of a Purchased Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a **"Claim Against You"**), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, without breaching Our warranties under Section 9.2 (Our Warranties), (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon thirty (30) days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from a Non-BetterCloud Application or Your breach of this Agreement.

10.2 Indemnification by You. You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of any Service in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a **"Claim Against Us"**), and will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense

10.3 Exclusive Remedy. This Section 10 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 10.

[Back to Top](#)

11. LIMITATION OF LIABILITY

11.1 Limitation of Liability. NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT OR SERIES OF RELATED INCIDENTS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT OR SERIES OF RELATED INCIDENTS, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

11.2 Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11.3 Collective Liability. The provisions and limitations of this Section 11 will apply to You and all of your Affiliates purchasing Services hereunder in the aggregate, meaning Our liability to You and/or one or more of your Affiliates for an incident or series of related incidents, collectively, will be limited to the aggregate amount paid by You and Your Affiliates as set forth in this Section 11.

[Back to Top](#)

12. TERM AND TERMINATION

12.1 Term of Agreement. This Agreement commences on the date You first accept it and continues until all Subscription Terms hereunder have expired or have been terminated.

12.2 Term of Purchased Subscriptions. The Subscription Term shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring Subscription Term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant Subscription Term. The pricing during any automatic renewal term will be the same as that during the immediately prior term unless We have given You written notice of a pricing increase at least sixty (60) days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter.

12.3 Termination. A party may terminate this Agreement (i) thirty (30) days after providing written notice to the other party of a material breach of its obligations under this Agreement if such breach remains uncured at the expiration of such 30-day period, (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, or (iii) upon ten (10) days' written notice to the other party if the other party is in material breach of this Agreement more than two (2) times notwithstanding any cure of such breaches.

12.4 Refund or Payment upon Termination. If this Agreement is terminated by You in accordance with Section 12.3 (Termination), We will refund You any prepaid fees covering the remainder of the Subscription Term of all Order Forms after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 12.3, You will pay any unpaid fees covering the remainder of the Subscription Term of all Order Forms. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

12.5 Your Data Portability and Deletion. After the effective date of termination or expiration of this Agreement, We will have no obligation to maintain or provide Your Data, and may, in Our sole discretion, delete or destroy all copies of Your Data in Our systems or otherwise in Our possession or control, unless legally prohibited.

12.6 Surviving Provisions. The Sections titled “Fees and Payment for Purchase Services,” “Proprietary Rights and Licenses,” “Confidentiality,” “Disclaimers,” “Mutual Indemnification,” “Limitation of Liability,” “Refund or Payment upon Termination,” “Your Data Portability and Deletion,” “Notices, Governing Law and Jurisdiction,” and “General Provisions” will survive any termination or expiration of this Agreement.

[Back to Top](#)

13. NOTICES, GOVERNING LAW AND JURISDICTION

13.1 Manner of Giving Notice. All notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You, in writing, by like notice

13.2 Agreement to Governing Law and Jurisdiction. Each party agrees that this Agreement is governed by and shall be construed in accordance with the laws of the State of New York, in all respects, without regard to choice or conflicts of law rules, and that all disputes arising out of or relating to this Agreement are limited to the exclusive jurisdiction and venue of the state and federal courts located within New York County, New York. Each party hereby consents to and waives any objections with respect to such jurisdiction and venue.

[Back to Top](#)

14. GENERAL PROVISIONS

14.1 Export Compliance. The Services, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

14.2 Entire Agreement and Order of Precedence. This Agreement, including any Order Forms, is the entire agreement between You and Us regarding Your use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the waiver is to be asserted. No modification or amendment of any provision of an Order Form will be effective unless in writing and signed by the party against whom the waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation.

14.3 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets or equity securities. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice.

14.4 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

14.5 Third-Party Beneficiaries. Our licensors shall have the benefit of Our rights and protections hereunder with respect to the applicable content. There are no other third-party beneficiaries under this Agreement.

14.6 Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

14.7 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

14.8 Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.

14.9 Force Majeure. Except for payment obligations, neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.

14.10 Jury Trial Waiver. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.