

CLLOUDIAN EVALUATION AGREEMENT

This Cloudian Evaluation Agreement (“**Agreement**”) is being presented to you by Cloudian, Inc., a Delaware corporation (“**Cloudian**”) in response to a request for a license to the Cloudian Product (as defined below) that you have submitted, or will submit, to Cloudian, whether on a webpage, in a physical document or in any other format (“**License Request**”). This Agreement is an agreement between Cloudian and the company identified in the License Request (“**Evaluator**”). Evaluator wishes to evaluate the Cloudian Product, and Cloudian wishes to obtain the benefit of the results of such testing and any other feedback from Evaluator about the Cloudian Product.

IT IS IMPORTANT THAT YOU READ THIS AGREEMENT CAREFULLY AND COMPLETELY. THIS AGREEMENT IS A LEGALLY BINDING AGREEMENT BETWEEN CLOUDIAN AND EVALUATOR. BY CHECKING THE “I HAVE READ AND AGREE TO THE AGREEMENT” BOX AND/OR CLICKING THE “SUBMIT” BUTTON ON THIS PAGE, BY DOWNLOADING OR INSTALLING ANY PORTION OF THE CLOUDIAN PRODUCT (IF IT IS A SOFTWARE-ONLY PRODUCT), OR BY USING THE CLOUDIAN PRODUCT IN ANY MANNER, YOU ARE REPRESENTING TO CLOUDIAN THAT EVALUATOR IS A CORPORATION OR OTHER BUSINESS ENTITY, YOU ARE BINDING EVALUATOR TO THE TERMS OF THIS AGREEMENT, AND YOU ARE REPRESENTING TO CLOUDIAN THAT YOU ARE DULY AUTHORIZED BY EVALUATOR TO DO SO. IF EVALUATOR IS NOT A CORPORATION OR OTHER BUSINESS ENTITY, IF YOU ARE NOT AUTHORIZED TO BIND EVALUATOR TO THE TERMS OF THIS AGREEMENT, OR IF EVALUATOR DOES NOT AGREE TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT, DO NOT CHECK THE “I HAVE READ AND AGREE TO THE AGREEMENT” BOX, DO NOT CLICK THE “SUBMIT” BUTTON, DO NOT DOWNLOAD OR INSTALL THE CLOUDIAN PRODUCT (IF IT IS A SOFTWARE-ONLY PRODUCT), AND DO NOT USE THE CLOUDIAN PRODUCT IN ANY MANNER.

1. DEFINITIONS

1.1 “**Cloudian Product**” means, collectively, (a) the Cloudian product identified in the License Request, (b) if the foregoing product is an appliance product (i.e., it consists of computer hardware and software preloaded by Cloudian on such hardware), any software that Cloudian may provide to Evaluator for use with such appliance product, which software is not provided by Cloudian to Evaluator preloaded on such appliance product, (c) any bug fixes, updates and upgrades to any of the foregoing that Cloudian may provide to Evaluator, and (d) Cloudian’s standard end-user manuals for the Cloudian Product and any updates thereto that Cloudian may provide to Evaluator.

1.2 “**Licensed Software**” means either: (a) the Cloudian Product, if the Cloudian Product is a software-only product; or (b) all software that is part of the Cloudian Product (including all software provided by Cloudian to Evaluator preloaded on the hardware of the Cloudian Product, and all software that is otherwise provided by Cloudian to Evaluator for use with such hardware), if the Cloudian Product is an appliance product.

2. USE OF CLOUDIAN PRODUCT

2.1 License Grant. Subject to the terms and conditions of this Agreement, Cloudian hereby grants to Evaluator a non-exclusive, personal, non-transferable, non-sublicensable license during the period in which this Agreement is in effect (“**Evaluation Period**”) to do the following: (a) if the Cloudian Product is a software-only product, install a single copy of the Cloudian Product; (b) if the Cloudian Product is an appliance product, install onto the hardware of the Cloudian Product any Licensed Software that is provided to Evaluator and is not provided by Cloudian to Evaluator preloaded on such hardware; and (c) use the Cloudian Product in a non-production capacity to perform testing and evaluation of the Cloudian Product.

3. RESTRICTIONS

3.1 License Restrictions. Evaluator will not, and will have no right to, do any of the following: (a) install or copy any Licensed Software except as expressly set forth in Section 2.1; (b) if the Cloudian Product is an appliance product, operate any Licensed Software on any computer, system or other device other than the hardware of the Cloudian Product, or otherwise remove any Licensed Software from such hardware; (c) distribute, disclose or otherwise provide any portion of the Cloudian Product to any third party; (d) grant to any third party any license, sublicense or other rights in or to, or otherwise permit any third party to use, any portion of the Cloudian Product; (e) use the Cloudian Product except as expressly set forth in Section 2.1; (f) without limitation of the foregoing, use the Cloudian Product in connection with the development, marketing, distribution or exploitation of any products or services that are competitive with the Cloudian Product; (g) create derivative works of, translate, adapt or otherwise modify any portion of the Cloudian Product (including any Licensed Software if the Cloudian Product is an appliance product); (h) decompile, disassemble or reverse engineer any portion of the Cloudian Product (including any Licensed Software if the Cloudian Product is an appliance product), or otherwise attempt to derive or extract any source code, ideas, algorithms, procedures, workflows or hierarchies from the Cloudian Product (including any Licensed Software if the Cloudian Product is an appliance product); or (i) authorize, instruct or assist any third party to perform any of the foregoing activities. Evaluator will comply with all applicable laws (including consumer, privacy, telecommunications and export laws) in connection with its use of the Cloudian Product.

3.2 Confidentiality of Test Results. Evaluator will not, and will have no right to, disclose to any third party any information regarding the features, specifications or performance of the Cloudian Product, or any other results of its testing or evaluation of the Cloudian Product. Without limitation of the foregoing, Evaluator will not perform, or disclose to any third party the results of, any benchmark tests or other comparisons of the Cloudian Product with any other software, hardware or other products.

4. PROPRIETARY RIGHTS

Evaluator acknowledges and agrees that, as between Cloudian and Evaluator, Cloudian and/or its licensors own and will retain all right, title and interest (including all intellectual property rights) in and to the Cloudian Product (including any Licensed Software if the Cloudian Product is an appliance product). All rights not expressly granted to Evaluator in this Agreement are retained by Cloudian and its licensors. If Evaluator provides Cloudian with any feedback (including any ideas or suggestions for new features or other improvements) regarding the Cloudian Product, Cloudian will be free to implement and otherwise use such feedback for any purpose, without restriction and without compensation or attribution to Evaluator.

5. LIMITATIONS OF LIABILITY

5.1 No warranties. CLOUDIAN MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE CLOUDIAN PRODUCT OR ANY OTHER PRODUCTS, SERVICES OR MATERIALS PROVIDED BY OR FOR CLOUDIAN HEREUNDER, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, ACCURACY OR NONINFRINGEMENT, OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

5.2 Liability limitations. IN NO EVENT WILL CLOUDIAN BE LIABLE UNDER ANY LEGAL THEORY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, DATA OR BUSINESS, IN CONNECTION WITH THIS AGREEMENT, EVEN IF CLOUDIAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLOUDIAN'S AGGREGATE LIABILITY TO EVALUATOR

ARISING OUT OF OR IN CONNECTION WITH THE CLOUDIAN PRODUCT AND ALL OTHER ASPECTS OF THIS AGREEMENT WILL NOT EXCEED FIVE HUNDRED UNITED STATES DOLLARS (US\$500). THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

6. TERM AND TERMINATION

6.1 Term and Termination. This Agreement will commence in effect on the date on which Cloudian provides to Evaluator a license key for the Cloudian Product (“**Effective Date**”) and will remain in effect until the Evaluation Termination Date, except that either party may terminate this Agreement (a) any time at its sole discretion upon five (5) days' written notice to the other party, or (b) immediately upon written notice to the other party if the other party commits a material breach of this Agreement.

6.2 Effect of Termination. Upon any expiration or termination of this Agreement: (a) all licenses and obligations of the parties under this Agreement will immediately terminate, except that the provisions of Sections 3.2, 4, 5, 6.2, 6.3, 7 and 8 will survive such expiration or termination; and (b) Evaluator will promptly (i) remove, delete and purge all copies of the Cloudian Product (if the Cloudian Product is a software-only product) from all computer systems and storage media in or under the possession or control of Evaluator, and (ii) either destroy or deliver to Cloudian, at Cloudian’s option, all Licensed Software in tangible form in or under the possession or control of Evaluator.

6.3 Return of Appliance. If the Cloudian Product is an appliance product, then within ten (10) days of any expiration or termination of this Agreement, Evaluator will, at its own expense, return the Cloudian Product to Cloudian (to an address specified by Cloudian) undamaged (excluding ordinary wear and tear) and free and clear of all Liens. If Evaluator does not return the Cloudian Product within such ten (10) day period, Evaluator will be deemed to have purchased the Cloudian Product at Cloudian’s then-current list price, and Evaluator will promptly pay such list price to Cloudian. If the Cloudian Product is damaged (excluding ordinary wear and tear) when returned, Evaluator will promptly pay for the repair of such damage at Cloudian’s then-current list prices.

7. GOVERNING LAW; DISPUTE RESOLUTION

This Agreement is to be construed in accordance with and governed by the internal laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. Any disputes relating to this Agreement will be resolved in state courts located in San Mateo County, California or federal courts located in Santa Clara County, California, and the parties hereby expressly consent and submit to personal and exclusive jurisdiction of, and exclusive venue in, such courts. Notwithstanding the foregoing, each party will have the right to seek injunctive or other equitable relief at any time from any court of competent jurisdiction.

8. GENERAL PROVISIONS

Evaluator will not, and will have no right to, assign, delegate or otherwise transfer this Agreement or any of its rights or obligations under this Agreement, whether voluntarily, by operation of law or otherwise, without Cloudian’s prior written consent. Any attempted assignment, delegation or other transfer prohibited by the foregoing will be null and void. Subject to the foregoing, this Agreement will inure to the benefit of and bind each party’s successors and assigns. If any provision of this Agreement is found to be unenforceable, the remainder of this Agreement will remain in full force and effect. No waiver of any provision of this Agreement will be effective unless it is specified in a writing signed by an authorized representative of each party. No course of dealing, course of performance or failure of either party to enforce any provision of this Agreement in a strict or timely manner will be construed as a waiver of such provision or any other provision. No waiver or breach of any provision of this Agreement will be

construed to be a waiver of any subsequent breach of the same or any other provision. This Agreement will be deemed to have been drafted by all parties; no provision will be construed against either party by reason of the fact that it was drafted by such party. The words "include" and "including" will not be construed as terms of limitation and will therefore mean "including but not limited to" and "including without limitation." This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and merge and supersede any and all prior and contemporaneous agreements, understandings and communications between the parties, whether oral or written, with respect to such subject matter. This Agreement cannot be modified or amended except in a writing signed by both parties. No terms or conditions contained in any purchase order or other document submitted by Evaluator will in any way modify or add to the terms of this Agreement, and any such terms or conditions that are in any way inconsistent with or additional to the terms of this Agreement are hereby rejected by Cloudian and will have no force or effect.