KloudGin Application Services Agreement (Terms of Service)

This Application Services Agreement, together with any terms (including payment terms) in one or more Order Forms ("**Order(s)**"), and in any other documents or terms expressly incorporated by reference herein (collectively, the "**Agreement**"), are a legal agreement between, you, as an individual, or your employer with you as the legally authorized representative of your employer ("**Customer**", "**You**" or "**Your**") and KloudGin, Inc. (hereafter "**KloudGin**"), a Delaware corporation located at 440 N Wolfe Road, Sunnyvale, CA 94085, that govern all access to and use of KloudGin's Application Services. **BY CLICKING "AGREE", you agree to be bound by all terms of this Agreement**. You warrant and represent that you have the full right and authority to bind Customer to, and that Customer is bound by, this Agreement. This Agreement is enforceable like any written negotiated agreement. IF YOU DO NOT AGREE TO ALL TERMS OF THIS AGREEMENT, DO NOT USE OR ACCESS THE APPLICATION SERVICES. Customer and all Customer employees are subject to this Agreement. "**Application Services**" means (i) providing Customer with non-exclusive, remote, web-based access to a shared website (the "**Site**") that is under the control of KloudGin for the purpose of enabling Customer's use of selected modules of the KloudGin software application, including (1) the services, software, reports and documentation made available via login to the Site; and (2) KloudGin's API and SDK. Any software or services provided by third parties ("**Add-ons**") are not considered part of the Application Services.

1. Your Account

1.1 <u>Initiating Services.</u> KloudGin will create a Customer account and provide Customer with initial access to the Application Services via the account. Customer will create it's own password for use when accessing the Application Services. Customer agrees that any information provided in creating the login account is complete and accurate, and Customer agrees to keep it up to date. For example, KloudGin provides some notices by email to the Customer login account, and Customer agrees to keep that email address current and valid as a method for providing notices under this Agreement.

1.2 <u>Administering Customer Account.</u> Each individual permitted to access the Application Services through a Customer login account is referred to in these terms as a "**User**." Each User who accesses the Application Services through your login account must have a paid subscription and must be your employee, member, director, partner, affiliate, consultant, contractor or agent accessing the Application Services on your behalf. User subscriptions are for named Users only and cannot be shared or used by more than one User, but may be transferred to new Users from Users who no longer require ongoing use of the Application Services. Customer is responsible for maintaining the confidentiality of passwords and internal management or administration of the Application Services for your Users. Customer agrees that KloudGin has no liability with regard to the use of such passwords by third parties unless such unauthorized use was

the fault of, or a result of the negligence of, KloudGin. Customer agrees to notify KloudGin promptly if you have any reason to believe that the security of your account has been compromised.

1.3 <u>Invoicing and Payment Terms.</u> Except as set forth in an Order Form, KloudGin will invoice annually in advance for a one-year subscription to use the Application Services, along with any applicable taxes. All invoices are due Net 30 days from the date of invoice. Customer is responsible for providing complete and accurate billing and contact information to KloudGin and notifying KloudGin of any changes to such information. If any invoiced amount is not received by the due date, then without limiting KloudGin's rights or remedies, (a) those charges shall 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) KloudGin may condition future subscription renewals and Orders on payment terms shorter than those specified herein.

1.4 <u>Additional Fees.</u> Additional fees for excess Users over the ordered quantity will be accrued from the beginning of the month when the excess use began and will be invoiced prorated for the remainder of the billing cycle. Any additional licensing charges for third party solutions being used by the Customer in conjunction with the Applications Services are the responsibility of Customer. It will be the responsibility of Customer to contract with these third-party solution providers. Any charges or limitations used in

conjunction with KloudGin Application Services will be stated in the Order Form. KloudGin will provide 1 production environment, and up to 3 sandbox environments during the lifecycle of the term, unless stated otherwise in the Order form. Any additional sandbox environments or storage will be invoiced to Customer annually.

1.5 Renewals. The initial Application Services term and any renewals and extensions will automatically renew for terms equal in length to the immediately preceding term. Auto-renewal will not occur if either party notifies the other party of its intention not to renew at least ninety (90) days in advance of the expiration of the then current term. KloudGin may increase the Annual fees for any renewal term, up to five percent (5%) of the previous year fees paid by the Customer for the relevant Application Services.

1.6 Suspension of Service and Acceleration. If any amount owed under this or any other agreement for KloudGin services is thirty (30) or more days overdue, KloudGin may, without limiting other rights and remedies, accelerate your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Application Services until such amounts are paid in full. We will send weekly reminders once the invoice is overdue and will give you at least fifteen (15) days' prior written notice that your account is due for suspension before suspending services to you.

2.   Data Privacy and Confidentiality

2.1 Privacy Policy. KloudGin will comply with the privacy policy   available   at www.KloudGin.com/PrivacyPolicy/web/privacy_policy.htm l ("**Privacy Policy**") in handling and using your User Data, and will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of your User Data as required by law. . You too shall comply with the Privacy Policy and shall not disclose to third parties or use KloudGin Data except as expressly permitted under these terms. "**User Data**" means the information submitted by Users into the Application Services. "**KloudGin Data**" means the information on the Order, data about the configuration and use of the Application Services, and information provided to you only via login at the Site, in each case, other than User Data or information derived from User Data.

2.2 Confidentiality. "**Confidential Information**" means any and all information disclosed by either party (the "**Discloser**") to the other (the "**Recipient**"), which is marked "confidential" or "proprietary" or which should reasonably be understood

by the Recipient to be confidential or proprietary, and shall include, but not be limited to, all User Data, the terms and conditions of this agreement, and any information that relates to business plans, services, marketing, finances, ownership structure (including, without limitation, the ownership interests of each holder of an interest in Discloser), research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, and algorithms of the Discloser. The Recipient hereby agrees that it will not use or disclose any Confidential Information received from the Discloser other than as expressly permitted under the terms of this agreement or as expressly authorized in writing by the Discloser. The Recipient will use the same degree of care to protect the Discloser's Confidential Information as it uses to protect its own confidential information, but in no circumstances less than reasonable care. The Recipient will not disclose the Discloser's Confidential Information to any person or entity other than its officers, principals, members, directors, partners, employees, advisors, accountants and subcontractors who need access to such Confidential Information and who are bound by confidentiality obligations no less restrictive than those in this agreement. The restrictions set forth in this paragraph will not apply to any Confidential Information that the Recipient can demonstrate (a) was known to it prior to its disclosure by the Discloser; (b) is or becomes publicly known through no act of the Recipient in violation of this agreement; (c) has been rightfully received from a third party that is permitted to make such disclosure without restriction; (d) is independently developed by the Recipient without use or reference to any Confidential Information; (e) has been approved for release by the Discloser's prior written authorization; or (f) has been disclosed by court order or as otherwise required by law or regulation, provided that the party required to disclose the information provides prompt advance notice thereof, to the extent practicable, to enable the Discloser to seek a protective order or otherwise prevent such disclosure.

2.3 Anonymous Data. KloudGin may collect Anonymous Data with respect to the use of the Application Services, such as performance metrics and usage trends. "**Anonymous Data**" means data aggregated from use of the Application Services that does not identify or otherwise permit the identification of Customer or any Users or identify Customer in conjunction with any financial information or results of operations.   Customer grants KloudGin a perpetual, irrevocable, worldwide, royalty-free license to use and disclose Anonymous Data solely for internal business

purposes, including product improvement, statistical analysis, market analysis, financial analysis, benchmarking, and anonymized promotion, provided such use and disclosure complies with all applicable data protection laws (including GDPR and CCPA, as applicable). KloudGin may not use Anonymous Data for any other purpose without Customer's prior written consent.

3. Accessing and Using the Site and Application Services

3.1 <u>License Grant.</u> Subject to all of the terms and conditions of this agreement, including your payment of any required fees, KloudGin grants you a nonexclusive, nontransferable, non-sublicensable, limited, license to access the Site and use the Application Services during the term and for the scope of use specified in your Order. You and your authorized Users may use the Application Services solely for your internal business purposes or as otherwise specified in the Order.

3.2 <u>Restrictions and Assurances.</u> You will not, and will not enable or knowingly allow any third party to modify, copy, or otherwise reproduce the Application Services in whole or in part; reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the software used in the Application Services; attempt to gain unauthorized access to the Application Services, or perform any penetration testing or security scans of the Application Services; or, use the Application Services as a competitor or use the Application Services for competitive analysis. You will not provide, lease or lend the Application Services to any third party except as expressly authorized in this agreement; remove any proprietary notices or labels displayed on the Application Services; modify or create a derivative work of any part of the Application Services; or use the Application Services for any unlawful purpose. You will (1) be liable for any failure of your Users to comply with the applicable terms of this agreement; (2) use commercially reasonable efforts to prevent unauthorized access to or use of the Application Services through your login account; and (3) use the Application Services only in accordance with the Documentation and applicable laws and government regulations.

4. Our Provision of the Application Services

4.1 <u>Availability; KloudGin Service Level Agreement.</u> KloudGin provides a support and service level commitment as described in Exhibit A, entitled support Service Level Agreement (the "**SLA Support Agreement**"). KloudGin shall provide the Application Services in

accordance with this Agreement and the SLA Support Agreement.

4.2 <u>Emergency Suspension of Access.</u> In the event that your use of the Application Services disrupts, or threatens to disrupt, use by other Customer users, KloudGin reserves the right to modify or temporarily restrict or suspend your use of the Application Services without liability.

4.3 <u>Documentation.</u> The main functions of the Application Services are described in the instructions and manuals made available via login at the Site or otherwise provided by KloudGin (our "**Documentation**").

4.4 <u>Technical Support.</u> Should you require technical support, your initial support will be provided by KloudGin or a partner, if you purchased access to the Services through such partner. Should a partner require assistance, KloudGin will provide it to them. Response times to technical support requests vary by the nature and severity of the issue, and are detailed in the SLA Support Agreement.

4.5 <u>Other Services from KloudGin.</u> KloudGin may also provide other services, such as implementation and training services. Any such other services not expressly stated in this agreement are outside the scope of this agreement and only will be provided by KloudGin subject to the terms of a separate written agreement executed by the parties.

4.6 <u>Beta Application Services.</u> From time to time, KloudGin may invite you to try Beta Application Services at no charge. You may accept or decline any such trial in your sole discretion. Beta Application Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta Application Services are for evaluation purposes and not for production use, are not considered "Application Services" under this Agreement, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Application Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Application Services becomes generally available. We may discontinue Beta Application 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.

5. SDK and API License.

5.1 <u>License.</u> The terms in this section titled "*SDK and API License*" govern any use of the SDK or API, whether by a User,

a party contracted by a User, or by a third-party developer of software or service that uses the SDK or accesses the API. Subject to your compliance in all material respects with all of the terms and conditions of this agreement, KloudGin grants you limited, revocable, nonexclusive, royalty-free, non-transferable, non-sublicensable licenses, during the term of this agreement, to: (1) use the SDK only to develop and test software for use with the Application Services ("**Your Software**"); and (2) to access the API to process, analyze or display User Data.

5.2 Restrictions. The restrictions of this paragraph 5.2 apply to your use of the SDK and API. You agree to use commercially reasonable efforts to protect the privacy and legal rights of Users, including without limitation by abiding by the Privacy Policy. You further represent and warrant that your use of the SDK and API and Your Software: (1) will comply with all applicable laws (including export laws) and regulations; (2) to your knowledge, will not contain any virus, malware, or spyware; (3) will not violate the terms of this agreement; (4) to your knowledge, will not adversely impact the speed, security or integrity of the Application Services; (5) will not access or use User Data without the prior agreement of the User to the scope and nature of that access or use, for example, Customer will not use the API or SDK for any business intelligence or data warehouse purposes; (6) will not circumvent or render ineffective KloudGin's technological and other measures to protect and control the Site and User Data; (7) will not use any FOSS in a way that would cause the non-FOSS portions of the Application Services subject to any FOSS licensing terms or obligations. "**FOSS**" (Free and Open Source Software) means any software that is subject to terms that, as a condition of use, copying modification or redistribution, require such software or derivative works thereof to be disclosed and/or distributed in source code form, to be licensed for purposes of making derivative works, or to be redistributed free of charge, including without limitation software distributed under the GNU General Public License or GNU Lesser/Library GPL.

5.3 Security. KloudGin may monitor use of the API and Your Software (on the Site) for any valid business reason, including quality assurance, improvement of the Application Services, and verification of compliance with this agreement. While KloudGin periodically conducts security reviews of items on the Site, it is important that you understand the security and architectural implications of installing applications with access to data. KloudGin is not responsible for any use or misuse by you or a third party of your User Data obtained through the API. You should consider carefully whether you wish to give a third-party developer access to your User Data through the API. If you wish to revoke access to your User Data through the API, please contact KloudGin for assistance.

6. **Third Party Providers**

6.1 Third-Party Providers. "**Third-Party Providers**" are third parties (other than KloudGin) that offer products or services complimentary to the Application Services. For example, Third Party Providers might (1) offer complementary products for integrated use with the Application Services; (2) provide integrations with other products and services; (3) provide assistance with evaluating, deploying, customizing, integrating, acquiring and/or supporting the Application Services (such as resellers, implementers and integrators). KloudGin makes no representation, warranty or promise regarding Third-Party Providers or the products or services they may offer, whether or not such products or services are presented within the Application Services or on the Site. KloudGin includes such items and information only as a convenience and without implying any endorsement of the Third-Party Provider. You should review applicable terms and policies, including privacy and data gathering practices, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any Third-Party Provider.

6.2 Add-ons. If you wish to acquire and use Add-ons from Third Party Providers, you do so at your own risk.   Any purchase by you from a Third Party Provider is subject to the terms and conditions established by the Third-Party Provider and presented in connection with that purchase (typically this is an "End-User License Agreement," so it is referred to in this agreement as a "**EULA**"). You agree that any Add-on that you purchase will be purchased from the Third-Party Provider, and that the Third-Party Provider, and not KloudGin, is solely responsible for the Add-on and any promises in the EULA. You also agree that KloudGin is a third-party beneficiary of the EULA. If you agree to provide an Add-on or Third-Party Provider with access to your User Data, KloudGin will permit that access to the extent you have agreed. Absent negligence, bad faith or willful misconduct of KloudGin, KloudGin shall not be responsible for any disclosure, modification or deletion of User Data resulting from any such use of Add-ons or access by Third-Party Providers.

7. **Intellectual Property Rights.** Except as expressly stated, this agreement does not grant either party any rights, implied or otherwise, to the other's intellectual property. You own all IP Rights in your User Data and, as between us, KloudGin owns all IP Rights in the Site, Application Services, KloudGin's trademarks and KloudGin Data. Subject to KloudGin's IP Rights in the preceding sentence, as between

us, you own all IP Rights in anything you develop using the API or SDK, including Your Software. "**IP Rights**" means all current and future worldwide intellectual property rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights. KloudGin welcomes your suggestions and feedback on how to improve the Application Services. If you provide any suggestions, feedback, or improvements to the Site, and Application Services, KloudGin will have the right to use and have others use such suggestions, feedback, and improvements for any purpose. Each party hereby agrees that it will make any assignments necessary to accomplish the ownership provisions in this paragraph and will provide reasonable assistance to the other party for such purposes. The Site, Application Services, and KloudGin Data are commercial items. If they are being used by or on behalf of the U.S. Government, then the U.S. Government's rights in them will be only those specified in this agreement, consistent with FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable.

8.   Term and Termination

8.1 Term. This agreement will terminate when (1) all of your User subscriptions under any Order have expired or been terminated, or (2) either party terminates this agreement for cause as described below.

8.2 Termination for Cause.   Either party may terminate this Agreement for cause if the other party is in breach of this Agreement and fails to cure such breach within 30 days of receipt of written notice thereof.   Non-payment of any service or other fees when due to KloudGin is a material breach. If you materially breach this agreement, KloudGin may, without limitation of its other rights and remedies and upon fifteen days' prior written notice, temporarily suspend your access to the Application Services or withhold further performance of obligations under this agreement until such breach is cured.

8.3 Effect of Termination. Upon termination or expiration of this agreement or an Order for any reason, all applicable licenses and other rights granted to you will immediately terminate. Termination will not relieve you of the obligation to pay any fees due or payable to KloudGin prior to the effective date of termination, including annual fees, implementation fees, training fees, User subscription fees, or any other fees or payments that you have committed to under the agreement. Sections 2, 7, 9.2, 10, 11 and 12 will survive any termination or expiration of this agreement, along with any other term that by its nature is intended to survive.

8.4 Access to your Data after Termination. KloudGin will make your User Data available to you (either from KloudGin or through your partner) for up to 90 days after termination. After that 90 day period, you will lose access to any data and KloudGin will have no obligation to maintain any, and will have the right to delete, all data related to the expired or terminated agreement or Order and KloudGin will have no further obligation to make such data available to you. Except for any copies required to be retained by KloudGin pursuant to applicable law, upon termination of this agreement, your data will be deleted according to KloudGin's data retention policies and procedures. Should you desire longer term storage of your data, archival services are available.

9.   Warranties

9.1 Each party represents and warrants that it has the power and authority to enter into this Agreement. You represent and warrant that, to the best of your knowledge and belief: (i) User Data does not and will not violate the terms or conditions of this Agreement, applicable law, or any third party's privacy rights; and (ii) any and all contact information that You provide to KloudGin, including email addresses sent to or via the Application Services, will not include any inaccurate information.

9.2 DISCLAIMER. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED HEREIN, KLOUDGIN DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SERVICES, THIRD-PARTY SERVICES, OR MATERIALS PROVIDED BY KLOUDGIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW, REPRESENTATION STATEMENTS, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. YOU ACKNOWLEDGE AND AGREE THAT NEITHER KLOUDGIN NOR ANY SERVICES, THIRD-PARTY SERVICES, OR MATERIALS PROVIDED BY KLOUDGIN WILL BE CONSTRUED AS KLOUDGIN   PROVIDING   ACCOUNTING,   TAXATION, FINANCIAL, INVESTMENT, LEGAL OR OTHER ADVICE TO YOU, USERS, OR ANY THIRD PARTY. EACH PARTY WILL BE SOLELY AND INDIVIDUALLY RESPONSIBLE TO COMPLY WITH ALL LAWS AND REGULATIONS RELATING TO ITS RESPECTIVE BUSINESS OPERATIONS.

10.   Indemnification.   Customer will defend, indemnify and hold KloudGin harmless against any liabilities, expenses, or damages arising from or relating to a third party claim arising out of the User Data or alleging that your User Data, Your Software, modifications to the Application Services made by or on your behalf, or your use of the Application

Services in breach of this agreement infringes or misappropriates any U.S. patent, copyright, trade secret or common law intellectual property right of such third party or violates any applicable law or regulation.

11. Limitation of Liability.

11.1 Exclusion of Damages. IN NO EVENT WILL KLOUDGIN OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUPPLIERS BE LIABLE TO CUSTOMER OR ANY USER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR OTHER COMMERCIAL DAMAGES OR LOSSES HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE APPLICATION SERVICES, HOWEVER CAUSED, EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE.

11.2 Limitation on Damages. IN NO EVENT SHALL KLOUDGIN'S TOTAL LIABILITY TO CUSTOMER OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUPPLIERS FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO KLOUDGIN FOR THE APPLICATION SERVICES GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

12. Miscellaneous

12.1 Counterparts. The agreement may be accepted as set forth in the preamble above. Any amendment or Order may be executed in any number of counterparts, each of which will be deemed an original, but all of which together constitute one and the same agreement. The parties agree that electronic signatures are valid signatures for enforcement of this agreement.

12.2 Governing Law. The validity, construction and interpretation of this agreement will be governed by the internal laws of the State of Delaware, excluding its conflict of laws provisions.

12.3 Assignment. This agreement may not be assigned by either party by operation of law or otherwise, without the prior written consent of the other party, which consent will not be unreasonably withheld. Such consent is not required in connection with the assignment of this agreement pursuant to a merger, acquisition or sale of all or substantially all of the assigning party's assets.

12.4 Force Majeure. Neither party shall be liable or responsible to the other, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for payment obligations) to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, epidemic, pandemic, governmental actions, war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, civil unrest, labor strikes or other labor difficulties (not involving the workforce of the affected party), embargoes, telecommunications breakdowns, power outages, failure of the Internet or hosting services, or other similar events beyond the reasonable control of the affected party (each, a "Force Majeure Event"). The affected party shall (i) give prompt written notice of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue, and (ii) use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event. If a Force Majeure Event continues for a period exceeding thirty (30) consecutive days, either party may terminate this Agreement upon written notice to the other party without liability, except that any payment obligations accrued prior to the Force Majeure Event shall remain due and payable.

12.5 Independent Contractors. The parties are and will remain independent contractors. Neither party has any authority to act on behalf of the other party or to bind it, and in no event will the parties be construed to be partners, employer-employee, or agents of each other.

12.6 Interpretation. Headings in this agreement are for reference purposes only and will not affect the interpretation or meaning of this agreement. If any provision of this agreement is held by an arbitrator or a court of competent jurisdiction to be contrary to law, then the remaining provisions of this agreement will remain in full force and effect. No delay or omission by either party to exercise any right or power it has under this agreement will be construed as a waiver of such right or power. A waiver by either party of any breach by the other party will not be construed to be a waiver of any succeeding breach or any other covenant by the other party. All waivers must be in writing and signed by the party waiving its rights.

12.7 Notices. Except as otherwise specified in this agreement, all notices under this agreement will be in

writing and will be delivered or sent by (1) first class U.S. mail, registered or certified, return receipt requested, postage pre-paid; (2) U.S. express mail, or national express courier with a tracking system, to the address specified in the applicable Order; or (3) by electronic mail with confirmation of receipt. Notices will be deemed given on the day actually received by the party to whom the notice is addressed.

12.8 <u>Entire Agreement; Order of Precedence.</u> These terms are part of an agreement with KloudGin that may include an Order. If an Order directly agreed in writing by KloudGin conflicts with these terms, the terms that Order will prevail, but only with respect to the subject matter of the conflicting Order. Subject to the foregoing, this agreement constitutes the entire agreement between KloudGin and you with respect to the subject matter hereof; it supersedes all prior negotiations, agreements, and undertakings between the parties with respect to such subject matter; and the parties acknowledge that they have not relied on any representations outside of this agreement in deciding to enter into this agreement.

12.9 <u>Amendments.</u> Except as expressly provided herein, no modification of the agreement will be effective unless contained in writing and signed by an authorized representative of each party.

12.10 <u>Export Controls.</u> By using the Application Services, you agree to comply with all export and re-export restrictions and regulations of the Department of Commerce and any other United States or foreign agencies and authorities in connection with your use of the Application Services. In particular, but without limitation, the Application Services may not, in violation of any Laws, be exported or re-exported (1) into any U.S. embargoed country or (2) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. You represent and warrant that you are not located

in, under the control of, or a national or resident of any such country or on any such list.

12.11 <u>Anticorruption Laws.</u> You acknowledge that you are familiar with and understand the provisions of the U.S. Foreign Corrupt Practices Act (the "FCPA") and the U.K. Bribery Act of 2010 ("UKBA") and agree to comply with its terms as well as any provisions of local law. You further understand the provisions relating to the FCPA and UKBA's prohibitions regarding the payment or giving of anything of value, including but not limited to payments, gifts, travel, entertainment and meals, either directly or indirectly, to an official of a foreign government or political party for the purpose of influencing an act or decision in his or her official capacity or inducing the official to use his or her party's influence with that government, to obtain or retain business involving the Application Services. You agree to not violate or knowingly let anyone violate the FCPA or UKBA, and You agree that no payment you make will constitute a bribe, influence payment, kickback, rebate, or other payment that violates the FCPA, the UKBA, or any other applicable anticorruption or antibribery law.

12.12 <u>Marketing.</u> Customer agrees that KloudGin may use Customer's name and logo in accordance with Customer's trademark guidelines (i) in sales presentations, marketing materials, and customer lists, (ii) in any public announcements regarding the project award and contract finalization, and (iii) in case studies and marketing materials. Customer may revoke these rights with thirty (30) days' written notice.

12.13 <u>Third Party Rights.</u> Other than as expressly set out in this Agreement, this Agreement does not create any rights for any person who is not a party to it and no person who is not a party to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.

Exhibit A - Support Service Level Agreement (SLA)

1.   Purpose. This Support and Service Level Agreement (SLA) set the target level of support provided by KloudGin Inc. ("KloudGin") in conjunction with KloudGin's Software-as- a- Service offerings purchased by Client (the "Purchased Services").

2.   Hours of operation/exclusive remedy for service unavailability. KloudGin operates the services 24x7x365 with a monthly uptime target of 99.5%, excluding any Scheduled Downtime or Third Party Unavailability.

"Third Party Unavailability" shall mean (i) any loss of the availability of Services outside of the control of KloudGin, including but not limited to any loss of service to a User due to a force majeure event (as defined in KloudGin's Terms of Service) or the performance of that User's Internet browser, Internet Connection, or any other Internet-related performance issue, (ii) any technical issue originating at Client or at a Client vendor (other than KloudGin or KloudGin's third party hosted data center) and not caused in any way by KloudGin, or (iii) any downtime due to failures in Client provided software or Client back-end data sources which cause the hosted software functionality being rendered unavailable or operating with degraded performance.

"Scheduled Downtime" shall mean: (a) the period of time which KloudGin and its third party hosted data center conduct periodic scheduled system maintenance during the planned published windows of time; and (b) other scheduled maintenance for which KloudGin provides advance notice, which will be at least 48 hours' notice unless repair of a Severity 1 or Severity 2 Issue (see below) requires scheduling downtime less than 48 hours in advance. KloudGin will take commercially reasonable measures to ensure that Scheduled Downtime is conducted during the specific maintenance windows noted below. Scheduled downtime occurring outside of these windows will be calculated as Unavailability. The maximum Scheduled Downtime in a month will not exceed three (3) hours.

The general maintenance window for Scheduled Downtime will be 12:00 a.m. to 3:00 a.m. EST on a Saturday or Sunday morning.

3.   Severity Classifications: The following table defines the standard severity classifications that are used for incidents. KloudGin shall use commercially reasonable efforts to respond within the Target Response Time and the Target Resolution Time identified for each level below. The Target Response Time shall mean the time that KloudGin will log the issue in the incident reporting system and deliver the incident number to the reporter. The Target Resolution Time shall mean the time within which the support/development issue will have been resolved and the reporter notified the ticket is closed, starting from when the problem is logged into the system.

Support Service Level Agreement (SLA)

SEVERITY	DESCRIPTION	Support (Response Time)	Response Level
1	Critical production issue affecting all users, including system unavailability and data integrity issues with no workaround available.	2 Hours	Initial response within the timeframe based on support level. The designated customer contact will be updated every 2 hours. Action to resolve will commence within 1 business hour.
2	Major functionality is impacted or significant performance degradation is experienced. Issue is persistent and affects many users and/or major functionality. No reasonable workaround available.	4 Hours	Initial response within the timeframe based on support level. The designated Customer contact will be updated daily during business hours. Action to resolve will commence within 4 business hours.
3	One function or feature is not fully operable. The problem affects non-essential functions, has minimal impact to business operations, or a workaround is available; the problem is localized or has isolated impact.	1 Business Day	Initial response within the timeframe based on support level. The designated customer contact will be updated weekly regarding the progress. Action to resolve will commence within a week.
4	Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation or configuration; bug affecting a small number of users. Reasonable workaround available.	2 Business Day	Initial response within the timeframe based on support level. The designated customer contact will be updated weekly regarding the progress. Action to resolve will commence within two weeks.
5	Enhancement Requests. Request for a new feature that does not currently exist in the Hosted services	5 Business Day	Initial response within the timeframe based on support level. Requests will be logged and reported to Product Management and at their sole discretion will be included in the future release. If customer is willing to pay for customization, then a signed Change Order will be required prior to starting the work

- Enhanced 24×7 Email & toll-free phone support and Online support
- Online documentation, Release notes for major releases
- Access user group portal and connect with a network of users of KloudGin
- Part of Customer Advisory Board
- Uptake for all automatic features for major releases and any patches for product bug fixes.
- KloudGin Success Manager
- Bi-weekly touch point meetings

Case Submission

Customer users can contact KloudGin support in any of the following ways:

Case Submission	Premium Support
Online	Case submission is available through the Support in KloudGin Application via Case Management
Phone	Telephone support in English is available 24x7 by dialing +1-877-256-8303
Email	Case submission is available 24x7 by sending an email to support@kloudgin.com

Post Critical Incident (Severity 1) Communications

Post Critical Incident Meetings: Following any critical incident, upon Customer's request, the parties will meet to debrief regarding the incident response. To the extent possible the parties will collaborate to perform a root cause analysis and evaluate strategies designed to prevent a recurrence of such critical incidents.