

## CLLOUD SUBSCRIPTION AGREEMENT

This Cloud Subscription Agreement applies to Order Forms for Cloud Services (as defined below) from MetricStream, Inc., a Delaware corporation, with its principal place of business at 2479 East Bayshore Road, Suite 260, Palo Alto, California 94303 (“MetricStream” or “Company”). “Customer” refers to the entity listed at the top of the Order Form (as defined below). MetricStream and Customer each may be referred to as a “Party” and collectively the “Parties.”

The Order Form is subject to the terms and conditions set forth in this Agreement and at the URL referenced in the Order Form. All Order Forms are subject to MetricStream’s acceptance. This Agreement shall consist of: (i) Exhibit A, MetricStream Terms and Conditions, (ii) Exhibit B, Service Level Agreements, (iii) Exhibit C, Standard Maintenance and Support Services, (iv) Exhibit D, Acceptable Use Policy, and (v) the applicable Order Form entered into by Customer and MetricStream.

### EXHIBIT A

#### METRICSTREAM TERMS AND CONDITIONS

##### 1.0 DEFINITIONS

1.1 “Affiliates” means with respect to any entity, any other present or future entity controlling, controlled by, or under common control with such entity. “Control”, “Controlling” or “Controlled” means ownership, directly or through one or more Affiliates, of more than fifty percent (50%) of the shares of stock entitled to vote for the election of directors, in the case of a corporation, or more than fifty percent (50%) of the equity interests in the case of any other type of legal entity, status as a general partner in any partnership, or any other arrangement whereby a Party controls or has the right to control the board of directors or equivalent governing body of a corporation or other entity.

1.2 “Cloud Services” means the Software, access to the Cloud Application, network access, monitoring and maintenance of the Software and related services, as described in the Order Form and Service Level Agreements.

1.3 “Cloud Applications” means the MetricStream Software applications to be made available to Customer as part of the Cloud Services.

1.4 “Confidential Information” or “Proprietary Information” means that information of either Party (“Disclosing Party”) which is confidential and disclosed to the other Party (“Receiving Party”) pursuant to this Agreement, in written form and marked as “Confidential” or “Proprietary” or similar designation, or if disclosed orally, or by demonstration or other intangible form, is identified as confidential at the time of disclosure as confidential and reduced to a confidential writing or summary within a reasonable time after initial disclosure. Confidential Information shall include, but not be limited to, trade secrets, know-how, inventions, techniques, processes, algorithms, all training and procedural materials developed by MetricStream in conjunction with the use or installation of the MetricStream Software, source code, schematics, designs, contracts, customer lists, financial information, MetricStream’s pricing, product plans, sales and marketing plans and business information, contents of Customer Materials residing in the Cloud Services other than the Personal Data (if applicable) of Customer, which shall be governed by a data privacy agreement. References to either Party as a Receiving Party or a Disclosing Party shall also include all such Party’s Affiliates, subject to the restrictions contained in this Agreement.

1.5 “Customer Pre-Existing Materials” means all Intellectual Property that is (i) owned or licensed by Customer immediately prior to the subscription begin date in the Order Form, or (ii) developed or acquired by Customer separate from this Agreement and without use of any MetricStream Materials.

1.6 “Customer Materials” means all Intellectual Property owned by Customer including Customer Pre-Existing Materials and includes Customer Data, content, material (including third party materials) and information that Customer derives from its use and stores in the Cloud Services.

1.8 “Initial Term” means the term set forth in the applicable Order Form.

1.9 “Intellectual Property” means all algorithms, application programming interfaces (APIs), apparatus, concepts, Confidential Information, data, databases and data collections, designs, diagrams, documentation, drawings, flow charts, formulae, ideas and inventions (whether or not patentable or reduced to practice), know-how, materials, marketing and development plans, marks (including brand names, product names, logos and slogans), methods, models, procedures, processes, schematics, software code (in any form including source code and executable or object code), specifications, subroutines, techniques, tools, uniform resource identifiers, user interfaces, works of authorship, and other forms of technology.

1.10 “Intellectual Property Rights” means all of the following in any jurisdiction throughout the world and whether existing now or in the future: (a) patents and patent disclosures; (b) copyrights and copyrightable works; (c) trademarks, service marks, trade dress, trade name, logos, and other designations a party uses in connection with its business (whether registered or unregistered); (d) trade secrets and know-how; and (e) any other proprietary or intellectual property rights.

1.11 “MetricStream Materials” means all Intellectual Property owned by MetricStream, including but not limited to: (i) MetricStream Pre-Existing Materials; and (ii) any Retained IP Rights.

1.12 “MetricStream’s Pre-Existing Materials” means all Intellectual Property Rights owned or licensed by MetricStream prior to the commencement of this Agreement.

1.13 “Order Form” means MetricStream’s then-current standard form for ordering Cloud Applications and Cloud Services. Each Order Form shall be consecutively numbered and shall reference this Agreement.

1.14 “Personal Data” or “Personal Identifiable Information” means any information relating to an identified or identifiable natural person; an identifiable person is the person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, psychological, mental, economic, cultural or social identity and has the meaning given to it in under the applicable Data Protection Law.

1.15 “Retained IP Rights” means the MetricStream materials and IP rights defined in Section 9.1.

1.16 “Software” means the computer programs and applications, in machine readable (object code) form as described in the Order Form, related documentation and supporting materials in either machine readable or hard copy form (the “Documentation”).

## **2.0 CLOUD SERVICES**

2.1 Cloud Services. MetricStream will provide Cloud Services in accordance with this Agreement and the applicable Order Form and Service Level Agreement, subject to MetricStream's Acceptable Use Policy, as such policy may be updated by MetricStream from time-to-time of this Agreement.

2.2 Access to the Cloud Applications. MetricStream hereby permits Customer access to and use of the Cloud Applications as described in the applicable Order Form. Customer may not use the Cloud Applications to process information owned by or for the benefit of any third party unless such use is specifically in connection with Customer's authorized use of the Cloud Applications as specified in the applicable Order Form. In consideration of the access and permissions granted herein, Customer shall pay the fees in the amount and in accordance with the payment terms set forth in the applicable Order Form.

2.3 Limitation of Rights. Customer acknowledges that Customer's rights in and to the Cloud Applications are solely as set forth in Section 2.2 hereto and do not include any rights of ownership. Customer agrees that MetricStream owns all right, title and interest, including but not limited to copyright, patent, trade secret and all other Intellectual Property Rights, in and to the Cloud Applications, and any changes, modifications or corrections thereof. Customer hereby irrevocably assigns to MetricStream any and all rights Customer may be deemed to have in any changes, modifications or corrections to the Cloud Applications, including but not limited to copyrights, and agrees to execute all documents necessary to implement such assignment. Customer shall not, and shall not permit any third party to, (a) modify or use the Cloud Applications except to the extent permitted in Section 2.2 and the applicable Order Form; nor (b) decompile, reverse engineer, disassemble or otherwise determine or attempt to determine the source code (or the underlying ideas, algorithms, structure or organization) of any object code contained in the Cloud Applications. Except as expressly set forth herein, Customer will not market, distribute, reproduce, rent, lease or offer for timesharing the Cloud Applications. Except as set forth in Section 10.2 hereto, this Agreement may not be assigned or otherwise transferred by Customer without the prior written consent of MetricStream.

2.4 Third Party Services. MetricStream's business partners and other third parties, including any third parties with which the Cloud Services have integrations or that are retained by Customer to provide consulting services, implementation services or applications that interact with the Cloud Services, are independent of MetricStream and are not MetricStream's agents. MetricStream is not liable for, bound by, or responsible for any problems with the Cloud Services or Customer's data arising due to any acts or omissions of any such business partner or third party, unless the business partner or third party is providing Cloud Services as MetricStream's subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as MetricStream would be responsible for our resources under this Agreement.

2.5 Incidental Expenses. For any onsite support services requested by Customer, Customer shall reimburse MetricStream for actual, reasonable, pre-approved travel and out-of-pocket expenses incurred. Airfare expenses, which will be at coach fares, and hotel and all other expenses will be reimbursed in accordance with Customer's travel policy.

### **3.0 TERM AND TERMINATION**

3.1 Term. The Term of this Agreement shall begin upon the Order Form effective date and shall remain in effect until terminated pursuant to Section 3.3, below. The term for each Order Form shall be as set forth in each applicable document, respectively.

3.2 **Renewals.** Unless as otherwise as set forth therein, Order Forms shall automatically renew for successive one (1) year terms (each a “Term”) (or as specified in the applicable Order Form) unless either Party sends the other Party a notice of non-renewal at least ninety (90) days before the end of the then current Term for such Order Form. As used in this Agreement, “Term” may refer to the initial term of an Order Form or any subsequent Renewal Term of an Order Form. The Fees for each subsequent Term shall be increased by 6% from the preceding Term’s Fees.

3.3 **Termination.**

3.3.1 **By MetricStream.** MetricStream may terminate this Agreement, any Order Form upon written notice as set forth in Section 10.5 (Notices) below to Customer: (a) in the event of the insolvency, bankruptcy or voluntary dissolution of Customer; or (b) if Customer materially defaults in the performance of any material provision hereunder, and if such default continues and is not cured by Customer within thirty (30) days after written notice thereof. Such termination right is in addition to, and not in limitation of, any other remedies available to MetricStream.

3.3.2 **By Customer.** Customer may terminate an Order Form upon written notice to MetricStream: (a) in the event of the insolvency, bankruptcy or voluntary dissolution of MetricStream; or (b) if MetricStream materially defaults in the performance of any material provision hereunder, and if such default continues and is not cured by MetricStream within thirty (30) days after written notice thereof. Such termination right is in addition to, and not in limitation of, any other remedies available to Customer. For avoidance of doubt, Customer’s termination for cause extends solely to the applicable Order Form being terminated.

3.3.3 Either Party may terminate this Agreement upon thirty (30) days’ prior written notice to the other Party if there are no active Order Forms then in existence. If there are no active Order Forms for a period of one (1) year, this Agreement shall automatically terminate.

3.4 **Effects of Termination.** Upon expiration or termination of this Agreement; (a) Customer shall: (i) cease using the Cloud Services; and (ii) certify to MetricStream within one (1) month after expiration or termination that Customer has destroyed or has returned to MetricStream all related documentation and copies thereof; and (b) MetricStream shall return to Customer all data furnished by Customer in connection with this Agreement, however any MetricStream services required to migrate Customer’s data to other systems will be charged at MetricStream’s then current services rates. Termination of this Agreement shall not relieve Customer’s obligation to pay all fees that have accrued or are otherwise owed by Customer under this Agreement for Cloud Services performed by MetricStream prior to termination. All such payments shall be made by Customer within thirty (30) days of any termination of this Agreement. In the event of termination, within twenty (20) business days of Customer’s delivery of a hard drive (or other backup medium) to MetricStream, MetricStream shall provide a backup copy of Customer’s production data and application files on an encrypted hard drive provided by Customer.

#### **4.0 INDEMNITY**

4.1 **By MetricStream.** MetricStream will defend any suit against Customer and indemnify and hold Customer harmless against any final judgement against Customer resulting from a suit for any costs (including reasonable legal costs), expenses or damages suffered or incurred by Customer arising out of any claim by a third party that the normal operation or use of the Software by Customer infringes a valid United States patent or copyright, existing as of the subscription begin date set forth in the Order Form,

of such third party, provided: (a) Customer notifies MetricStream promptly in writing of any such claim; (b) Customer does not enter into any settlement or compromise of any claim without the MetricStream's prior written consent; and (c) MetricStream has sole control of any such action and settlement negotiations and Customer provides MetricStream with information and assistance, at MetricStream's expense, necessary to settle or defend such claim.

MetricStream assumes no liability hereunder for, and shall have no obligation to indemnify, defend, hold Customer harmless or pay costs, damages or attorney's fees for any claim based upon: (a) the combination, operation or use of any Cloud Services furnished under this Agreement with software, hardware or other materials not provided by MetricStream if such infringement would have been avoided in the absence of such combination, operation, or use; or (b) use of altered Cloud Services not authorized by MetricStream, (i.e., alterations to the Cloud Services by a party other than MetricStream or not authorized by MetricStream), if the infringement would have been avoided by the use of unaltered Cloud Services that MetricStream provides to Customer; (c) use or incorporation in the Cloud Services of any design, drawings, technique or specification furnished by Customer, if the infringement would not have occurred but for such incorporation or use; or (d) alteration of the Cloud Services by a party other than MetricStream; or (e) Customer's use of the Cloud Services other than as authorized under this Agreement.

If any of the Cloud Services become, or in the reasonable opinion of MetricStream may become, the subject of a third party claim of infringement, MetricStream may, at its option: (a) modify the Service to be non-infringing; (b) obtain the rights necessary to continue providing the Service; or (c) terminate the applicable Order Form or portion thereof related to use of the infringing Service and decrease the Cloud Services Fees pertaining to the portion or component of the infringing Cloud Services.

4.2 **By Customer.** Customer will indemnify, defend and hold harmless MetricStream, its Affiliates and their respective officers, directors, employees, agents and representatives (collectively, "MetricStream Indemnitees"), from any and all losses and/or action brought against MetricStream arising from, in connection with, or based on allegation of any of the following: (a) alleging Customer's use of the Cloud Services in an unlawful manner or in a manner inconsistent with the terms of this Agreement; or (b) arising from or involving content, data or information provided by Customer; provided that: (i) MetricStream notifies Customer promptly in writing of any such claim; (ii) MetricStream does not enter into any settlement or compromise of any claim without Customer's prior written consent; and (iii) Customer has sole control of any such action and settlement negotiations. MetricStream shall provide Customer with reasonable information and assistance, at Customer's expense, necessary to settle or defend such claim.

4.3 THIS SECTION 4 STATES METRICSTREAM'S ENTIRE LIABILITY AND CUSTOMER'S SOLE RECOURSE AND EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT. ALL WARRANTIES AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, WHETHER STATUTORY, EXPRESS OR IMPLIED, ARE DISCLAIMED.

## **5.0 LIMITED WARRANTY**

5.1 **Mutual Representations.** Each Party represents that it has validly entered into this Agreement and that it has the power and authority to do so.

5.2 **Cloud Services.** MetricStream warrants that the Cloud Services will be performed in a good and workmanlike manner using commercially reasonable care and skill and in all material respects in

accordance with the defined Service Level Agreements. Customer's sole and exclusive remedy (excluding Customer's right to terminate this Agreement), and MetricStream's entire liability for any breach of this warranty shall be the service credits set forth in the Service Level Agreement of the applicable Order Form. MetricStream shall not responsible for any issues related to the performance, operation or security of the Services that arise from:

- (i) Customer's Materials or third-party content or services provided by third parties;
- (ii) For failures or defects caused due to reliance on information, material and specifications provided by Customer;
- (iii) Any defect arising from any modification to the deliverables by persons other than MetricStream after delivery by MetricStream;
- (iv) Use by the Customer of the Cloud Services or portion thereof in combination with any other services/deliverables not provided by MetricStream; or
- (v) Improper usage and maintenance by Customer.

5.3 Third party warranties, if any, are transferred to Customer to the extent MetricStream has the right to transfer.

5.4 Disclaimers. EXCEPT AS SET FORTH IN SECTION 5.1, AND TO THE EXTENT PERMITTED BY LAW, NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO ANY CLOUD SERVICES TO BE SUPPLIED HEREUNDER, AND METRICSTREAM EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE.

## **6.0 PAYMENT AND TAXES; REPORTING**

6.1 Fees. MetricStream will invoice Customer the fees set forth in the applicable Order Form. MetricStream will send invoices to the address set forth in the applicable Order Form. Customer will pay MetricStream in U.S. dollars unless agreed to otherwise in writing by the Parties, within thirty days (net 30 terms) from invoice date. Receipt of a correct invoice all undisputed charges and promptly notify MetricStream in writing of any disputed amount. MetricStream shall supply Customer with documentation to support the validity of any disputed charge. If Customer fails to pay any invoice when due, MetricStream shall be entitled, at its sole discretion, to: (i) suspend provision of the Cloud Services until Customer fulfill its pending obligations; (ii) charge Customer an interest rate pursuant to Section 6.3, below at the time of invoice; and/or (iii) terminate this Agreement.

6.2 Suspension of Cloud Services and Acceleration. If any invoiced amount owed by Customer under an Order Form or any other agreement for the Cloud Services is thirty (30) days or more overdue, MetricStream may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and/or suspend the Cloud Services until such amounts are paid in full. MetricStream will give Customer

at least ten (10) days' prior notice that its account is overdue, in accordance with Section 10.5 (Notices) below before suspending the Cloud Services to Customer.

6.3 Late Fees. MetricStream may (i) charge Customer a one and one-half percent (1 ½%) finance charge to be calculated monthly with respect to all outstanding amounts not paid within thirty (30) days following the due date on an invoice, but in no event shall any finance charge exceed the maximum allowed by law; and/or (ii) condition future subscription renewals and Order Forms on payment terms shorter than those specified in applicable Order Form section below.

6.4 Taxes. Any charges and fees due hereunder are exclusive of any sales, use, or value added taxes and any other similar taxes and governmental charges, however designated, arising out of this Agreement (except taxes based on MetricStream's income), and Customer shall pay all such taxes and charges.

6.5 Reporting. From time to time, MetricStream may request a certificate from Customer, executed by an officer of Customer, which certifies that Customer's use of the Cloud Services, including the number of authorized end users, conforms with the terms and conditions of this Agreement. Customer will deliver such certificate to MetricStream within thirty (30) days of such request by MetricStream.

## **7.0 CONFIDENTIAL INFORMATION**

7.1 Each Party acknowledges that during the performance of this Agreement, it may obtain the Confidential Information of the other Party. The Receiving Party shall, for five (5) years from the date of disclosure, keep in confidence and trust all the Disclosing Party's Confidential Information received by it (except for any source code, Personal Data (if applicable) which shall be kept in confidence and trust in perpetuity). The Receiving Party shall not use the Confidential Information of the Disclosing Party other than as expressly permitted under this Agreement. The Receiving Party shall take all necessary steps to comply with applicable laws and regulations to prevent unauthorized disclosure or use of the Disclosing Party's Confidential Information and to prevent it from falling into the public domain or into the possession of unauthorized persons. The Receiving Party shall not disclose Confidential Information of the Disclosing Party to any person or entity other than its officers, employees, contractors, Affiliates and consultants who need access to such Confidential Information in order to affect the intent of this Agreement and who have entered into confidentiality agreements which protect the Confidential Information of the Disclosing Party sufficient to enable the Receiving Party to comply with this [Section 7](#). The Receiving Party shall immediately give notice to the Disclosing Party of any unauthorized use or disclosure of Disclosing Party's Confidential Information. The Receiving Party agrees to assist the Disclosing Party to remedy such unauthorized use or disclosure of its Confidential Information. Receiving Party will protect Confidential Information using the same degree of care, but no less than reasonable care, as it uses to protect its own confidential information.

7.2 Each Party agrees that the Confidential Information obligations hereunder are necessary and reasonable to protect the other Party and the other Party's business, and expressly agrees that monetary damages would be inadequate to compensate the other Party for any breach by either Party of any covenants and agreements set forth herein. Accordingly, each Party agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the other Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the other Party shall be

entitled to seek injunctive relief against the breach or threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

7.3 The obligations set forth in this Section 7 shall not apply to the extent that Confidential Information includes information which is: (a) now or hereafter, through no unauthorized act or failure to act on the Receiving Party's part, in the public domain; (b) known to the Receiving Party without an obligation of confidentiality at the time the Receiving Party receives the same from the Disclosing Party, as evidenced by written records; (c) hereafter furnished to the Receiving Party by a third party as a matter of right and without restriction on disclosure; (d) furnished to others by the Disclosing Party without restriction on disclosure; or (e) independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information.

7.4 Nothing in this Agreement shall prevent the Receiving Party from disclosing Confidential Information to the extent the Receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the Receiving Party shall: (a) assert the confidential nature of the Confidential Information to the agency; (b) immediately notify the Disclosing Party in writing of the agency's order or request to disclose; and (c) cooperate with the Disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

7.5 Receiving Party shall immediately give notice to Disclosing party of any unauthorized use or disclosure of Confidential Information, upon learning of the same. Promptly upon termination of this Agreement or Disclosing Party's request, Receiving Party agrees to return or destroy all documents and property belonging to Disclosing Party, including but not necessarily limited to: drawings, blueprints, reports, manuals, correspondence, customer lists, computer programs, and all other materials and all copies thereof relating in any way to Disclosing Party's business, or in any way obtained by Receiving Party during the term of this Agreement. Receiving Party shall not retain any copies, notes, or abstracts of the foregoing.

7.6 Receiving Party agrees that, only if required, it will receive / process Personal Data for the Purpose of Disclosure and in accordance with the instructions of the Disclosing Party. If the Receiving Party cannot meet with the requirement for whatever reason, it will promptly inform the Disclosing Party and the Disclosing Party will be entitled to suspend the transfer of Personal Data or terminate this Agreement. The Receiving Party further agrees that it will promptly notify the Disclosing Party about (a) any legally binding request for disclosure of the Personal Data by a law enforcement authority (unless otherwise prohibited), (b) any accidental or authorized processing of Personal Data; and (c) any request received from an individual to whom the Personal Data relates without responding to that request , unless it has been otherwise authorized to do so. The Receiving Party will take appropriate technical and organizational security measures as required by the Disclosing Party to protect Personal Data.

## **8.0 LIMITATION OF LIABILITY**

IN NO EVENT SHALL METRICSTREAM OR ITS AFFILIATES BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF PROFITS, OR FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, STATUTORY, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES AND LOSS OF ANY PROPERTY OR CAPITAL, GOODWILL,

WORK STOPPAGE HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, BREACH OF CONTRACT, REPUDIATION OF CONTRACT, NEGLIGENCE OR OTHERWISE.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM LIABILITY OF METRICSTREAM AND ITS AFFILIATES UNDER THIS AGREEMENT OR FOR BREACH OF THIS AGREEMENT SHALL BE LIMITED TO THE LESSER OF: (1) ACTUAL DIRECT DAMAGES UNDER THE SPECIFIC ORDER FORM FROM WHICH THE LIABILITY IS CLAIMED TO ARISE; OR, (2) THE AMOUNT OF ALL THE FEES PAID BY CUSTOMER TO METRICSTREAM HEREUNDER DURING THE PREVIOUS TWELVE (12) MONTHS UNDER THIS AGREEMENT.

## **9.0 OWNERSHIP**

9.1 Retained IP Rights. MetricStream has developed, and may during the course of providing access to Cloud Services, develop, certain proprietary reusable methodologies, tools, models, algorithms, software, procedures, documentation, know-how, processes, techniques, reports, plans, charts, forms, dialogues, scripts, training materials, and templates, including such analytic, diagnostic, testing, pricing, consumer-behavior, strategic, measurement, and assessment tools tailored to the Cloud Services, which MetricStream may modify or improve upon while providing access to the Cloud Services, all of which are MetricStream's Confidential Information, Intellectual Property and may constitute a trade secret ("Retained Materials"). MetricStream shall: (i) be free to use the ideas, concepts and know-how which are used, developed, or created in performing the Cloud Services in any technology developed to facilitate delivery of the Cloud Services ("Residual Technology"); and (ii) own and retain all right, title, and interest, including all Intellectual Property Rights, in or to: (a) the Cloud Services or tangible components thereof, (b) all know-how, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Cloud Services ("Tools"), and (c) all repeatable processes and reusable reports, designs, charts, plans, specifications, documentations, forms, dialogues, scripts, templates, or output which are developed, created, or used by or on behalf of MetricStream in performing the Cloud Services which do not specifically incorporate any of Customer's Confidential Information ("Generic Components"). Retained Materials, Residual Technology, Tool and Generic Components are collectively defined as "Retained IP Rights" and are MetricStream's Confidential Information and Intellectual Property.

9.2 Customer Ownership. Customer retains all rights in and related to the Customer Materials. MetricStream may use Customer Materials solely to provide and support Cloud Services.

9.3 Non-Assertion of Rights. Customer covenant, on behalf of itself and its successors and assigns, not to assert against MetricStream, their Affiliates, any rights, or any claims of any rights, in any Cloud Services, Cloud Applications, Documentation or MetricStream Materials.

## **10. GENERAL TERMS**

10.1 Modification of the Agreement. Except for the Acceptable Use Policy, Service Level Agreements and Standard Support and Maintenance Addendum, neither Party may modify or amend this Agreement except on upon written agreement by the Parties. Subject to the requirements of applicable law, any such modifications will become effective at the time stated in such notice. Use of the Cloud Services after the effective date of the modification constitutes Customer's acceptance of the modification. Customer does not have the right to unilaterally modify this Agreement. This Agreement may also be modified by a written agreement duly signed by both Parties. Variance from the terms and conditions of this Agreement in any Customer purchase order or other written notification sent by Customer will be of no effect.

10.2 Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that such consent shall not be required for the assignment of this Agreement by either Party to a wholly-owned subsidiary of either Party or to a successor corporation or entity in connection with a merger, consolidation or transfer of all or substantially all of the assets of either Party by such successor corporation or entity. In such event, the assigning Party shall provide prior written notice of such assignment to the other Party.

10.3 Survival. The provisions of Sections 7, 8, 9 and 10 shall survive any termination of this Agreement, as will such other terms that by their nature should survive the termination of this Agreement.

10.4 Governing Law. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California and the United States of America without regard to conflicts of law principles. Application of the Uniform Computer Information Transactions Act (where enacted) and United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor law to either, is specifically excluded. The Parties waive any right to a trial by jury for dispute. Any legal action or proceeding arising out of, or connected or relating to this Agreement or any right or obligation created by this Agreement, irrespective of the legal theory or claims underlying any such dispute (including tort and statutory claims), shall be resolved exclusively in a state or federal court in Santa Clara, California; MetricStream and Customer agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding. Customer will not bring a legal action more than two years after the cause of action arose unless a shorter period is provided by applicable law.

10.5 Notices. Any notice or report required or permitted by this Agreement, except as otherwise set forth in this Agreement, shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the Party to be notified at such Party's address or facsimile number as set forth below or as subsequently modified by written notice. It shall also be valid for MetricStream to send any notice to Customer electronically (e.g., by email or through the Cloud Services).

Copy of legal notices to MSI shall be addressed to:  
Chief Legal Officer,  
2479 East Bayshore Rd,  
Suite 260, Palo Alto, California 94303

10.6 Severability; Waiver. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, to maintain the economic position enjoyed by each Party as close as possible to that under the provision rendered unenforceable. If the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then: (a) such provision shall be excluded from this Agreement; (b) the balance of the Agreement shall be interpreted as if such provision were so excluded; and (c) the balance of the Agreement shall be enforceable in accordance with its terms. No failure of either Party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights or of any other rights hereunder.

10.7 Relationship of the Parties. Nothing in this Agreement is to be construed as creating an agency, partnership, or joint venture relationship between the Parties hereto.

10.8 Costs. If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such Party may be entitled.

10.9 Non-solicitation. Customer acknowledges and agrees that the employees and consultants of MetricStream are an asset to MetricStream and are difficult to replace. Accordingly, Customer agrees that, for the term of this Agreement and for a period of twelve months thereafter, Customer will not offer to employ or hire (whether as an employee, independent contractor, or consultant) any MetricStream employee, independent contractor, or consultant. In the event Customer breaches this Section 10.9, the parties agree that it would be difficult to determine the amount of actual damages to MetricStream that would result from such breach. The parties further agree that in the event Customer breaches this Section 10.9, Customer shall pay MetricStream liquidated damages of twenty-five thousand dollars (\$25,000) for each such breach, which is the parties' good faith estimate of the amount of damages to MetricStream from such breach.

10.10 Force Majeure. Except payment obligations, if either Party is prevented from complying, either totally or in part, with any of the terms or provisions of this Agreement by reasons of fire, flood, storm, earthquake, strike, lockout or other labor trouble, riot, war, rebellion, communications or utility failures, accident, pandemic or other acts of God, electrical, internet or telecommunication outage that is not caused by the obligated party, government restrictions or conditions beyond the reasonable control of the performing party, then upon written notice to the other Party, the requirements of this Agreement, or the affected provisions hereof to the extent affected, shall be suspended during the period of such disability. The Parties will use reasonable efforts to mitigate the effect of a force majeure event. If performance is so delayed longer than ninety (90) days, either Party can terminate the unperformed part of Order Form with notice. If Customer causes delay, MetricStream is entitled to adjust price, schedule and other affected terms.

10.11 Undisclosed Interests. Each Party represents and warrants that it has no financial, business property or personal interest(s) with the other Party which would adversely affect its ability to exercise its professional judgment on behalf of, and in the best interest of, such Party. Each Party further represents and warrants that it has not paid a fee nor given any compensation to an employee of the other Party or any third party, to secure the award of this Agreement.

10.12 Laws. MetricStream and Customer shall comply with all applicable laws and regulations of Federal, State, or local governments in connection with this Agreement.

10.13 Customer Requirements. MetricStream will provide that its employees, agents, or designees, when in or upon Customer's premises, shall obey all reasonable ethics and business conduct, workplace health, safety and security rules and regulations established and communicated by Customer regarding the conduct of its own employees.

10.14 Marketing Rights. MetricStream may, upon Customer's prior consent, approvals and as per internal policies of Customer, (a) list Customer on its customer list, issue a press release announcing MetricStream's selection by Customer and issue press testimonials as part of MetricStream's marketing efforts; and (b) seek Customer's participation in additional marketing activities and business engagements

from time to time. Examples of such activities and engagements include reference calls from prospects, media interviews, video testimonials, case studies, webinars, period calls with investors, analyst surveys and presentations. This section shall not however, prevent MetricStream from using Customer name and/or logo on MetricStream's website.

10.15 Export Restrictions. Customer acknowledges and agrees to comply with all applicable export and re-export restrictions and regulations of relevant countries including the Department of Commerce or other United States agency or authority which apply to Cloud Services. Without limiting the foregoing or any other provision of this Agreement, Customer agrees not to download or transfer MetricStream's Confidential Information, data, software programs or materials resulting from the Services (or authorize anyone to download or transfer) the Customer Materials: (i) into (or to a national or resident of) any country to which the U.S. has embargoed goods; (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Denied Person List, or (iii) export MetricStream's materials resulting from Services to countries, persons or entities prohibited by local export laws.

10.16 Foreign Corrupt Practices Act. Customer will comply fully with all statutes, laws, regulations, ordinances, executive orders and the like of any country, state, municipality, or the like applicable to the MetricStream Materials, Cloud Services and Customer's business activities, including but not limited to the Foreign Corrupt Practices Act, the UK Bribery Act, Prevention of Corruptions Act, 1988 (PC Act), privacy and data protection laws, tax laws and regulations, export and any environmental laws. Customer (including its employees, agents, or consultants) will not make, authorize, offer or promise to make or give any money or anything of value to any official or agent of a public international organization, government official, political party, political official, candidate for political office, or any other individual holding legislative, administrative or judicial posts or carrying out a public function for a foreign country or a country's public agency ("Foreign Official"), or to any other natural or legal person (collectively "Bribery Recipient"), while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly: (a) to any Foreign Official that is not legitimately due; (b) in violation of any law; or (c) to "improperly" induce or reward a Bribery Recipient to perform, or as a reward for performing: (i) any function of a public nature; (ii) any activity connected with a business, trade or profession; (iii) any activity performed in the course of a person's employment; or (iv) any activity performed by or on behalf of a body of persons whether corporate or unincorporated. Customers will indemnify, defend and hold harmless MetricStream and its directors, officers, agents and employees from and against: (a) any and all claims, demands, actions, litigation, investigations and proceedings arising out of or related to any non-compliance by Customer of this Section 10.16 ("Noncompliance Claims"); and (b) any and all liens, liabilities, fines, penalties, costs and expenses (including reasonable attorneys' fees) arising out of or related to any Noncompliance Claims.

10.17 Affiliate Use. An Affiliate of Customer may not be a party to this Agreement and may not access or use the Cloud Services and Cloud Applications unless such Affiliate executes a separate Order Form. Such Order Form, along with the terms and conditions of this Agreement, which shall be incorporated by reference therein, shall constitute a separate agreement between MetricStream and the Customer Affiliate for the Cloud Services and Cloud Application.

10.18 Entire Agreement; Amendment. These terms and conditions, including any exhibits referred to herein and attached hereto, and any Order Forms executed in accordance with this Agreement, constitute

the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersede all prior agreements, whether written or oral, with respect to such subject matter. In the event of any conflict between this Agreement and an Order Form, the terms of the Order Form shall control, but only with respect to Cloud Services provided pursuant to this Agreement. No modification, waiver, or discharge hereof will be valid unless in writing and signed by an authorized representative of the Party against which such modification, waiver or discharge is sought to be enforced.

**EXHIBIT B**

**SERVICE LEVEL AGREEMENTS**

The Service Level Agreement at <https://assets.metricstream.com/pdf/contracts/Service-Level-Agreement.pdf> is incorporated into this Agreement by reference.

**EXHIBIT C**

**STANDARD MAINTENANCE AND SUPPORT SERVICES ADDENDUM**

The Support and Maintenance Offerings Addendum at <https://assets.metricstream.com/pdf/contracts/Support-and-Maintenance-Services-Addendum.pdf> is incorporated into this Agreement by reference.

**EXHIBIT D**

**ACCEPTABLE USE POLICY**

The Acceptable Use Policy at <https://assets.metricstream.com/pdf/contracts/Acceptable-Use-Policy.pdf> is incorporated into this Agreement by reference.