



SUBSCRIPTION AGREEMENT

Dated: February 1, 2022

THIS SUBSCRIPTION AGREEMENT GOVERNS CUSTOMER'S ACQUISITION AND USE OF CLOUDNATIX SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

IF CUSTOMER REGISTERS FOR A FREE TRIAL OF CLOUDNATIX SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO AND ACCEPTS THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

This Agreement was last updated on October 20, 2020. It is effective between Customer and CloudNativ as of the date of Customer's accepting this Agreement through the execution of an Order Form.

1. DEFINITIONS

"Agreement" means this Subscription Agreement.

"CloudNativ" means CloudNativ, Inc.

"Content" means information obtained by CloudNativ from publicly available sources or its third party content providers and made available to Customer through the Services or pursuant to an Order Form, as more fully described in the Documentation.

"Customer" means the company or other legal entity identified as "Customer" on an Order Form.

"Customer Data" means electronic data and information submitted by or for Customer to the Services, excluding Content and Non-CloudNativ Applications.

"Derived Data" means data created or derived directly or indirectly from Customer Data, including based on computations, models, analyses, manipulations, or other processes (whether human or machine-generated and whether alone or in conjunction with other data).

"Documentation" means any manuals, instructions or other documents or materials that CloudNativ provides or makes available to Customer that describe the functionality, features or requirements of the Services.

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

"Non-CloudNativ Application" means a Web-based, mobile, offline or other software application functionality that interoperates with a Service, that is provided by Customer or a third party.

"Order Form" means an ordering document specifying the Services to be provided hereunder that is entered into between Customer and CloudNativ, including any addenda and supplements thereto.

"Purchased Services" means Services that Customer purchases under an Order Form, as distinguished from Services provided pursuant to a free trial.

"Services" means the products and services that are ordered by Customer under an Order Form, including those that are provided to Customer under a free trial, and made available online by CloudNativ, including associated CloudNativ offline or mobile components, as described in the Documentation. "Services" exclude Content and Non-CloudNativ Applications.

“Subscription Term” means, for each subscription Service, the period beginning on the “Start Date” and ending on the “End Date”, each as set forth in the applicable Order Form.

“Usage Data” means data regarding the provision or performance of the Services and/or Customer’s and Users’ access to or use thereof (e.g. number and duration of user sessions, page visits, configurations, log data, performance results for the Services, etc.), and data (including metadata) collected or generated in connection therewith, including statistical, operational, navigational, transactional, processing, computer (such as IP address and browser), demographical, and analytical data.

“User” means an individual who is authorized by Customer to use a Service, for whom Customer has purchased a subscription (or in the case of any Services provided by CloudNatix without charge, for whom a Service has been provisioned), and to whom Customer has supplied a user identification and password (for Services utilizing authentication). Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

2. CLOUDNATIX RESPONSIBILITIES

2.1. Provision of Purchased Services. CloudNatix will (a) make the Services and Content available to Customer pursuant to this Agreement, and the applicable Order Forms and Documentation, (b) provide applicable CloudNatix standard support for the Purchased Services to Customer and/or upgraded support if purchased, except for: (i) planned downtime (of which CloudNatix shall make reasonable efforts to give advance electronic notice), and (ii) any unavailability caused by circumstances beyond CloudNatix’s reasonable control, including, for example, Internet or hosting service provider failure or delay, Non-CloudNatix Application, or denial of service attack, and (d) provide the Services in accordance with laws and government regulations applicable to CloudNatix’s provision of its Services to its customers generally (i.e., without regard for Customer’s particular use of the Services), and subject to Customer’s use of the Services in accordance with this Agreement, the Documentation and the applicable Order Form.

2.2. Protection of Customer Data. CloudNatix will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described in Exhibit A hereto. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or Users). Thirty (30) days after the effective date of termination or expiration of this agreement, CloudNatix will have no obligation to maintain or provide any Customer Data and will thereafter delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control, unless prohibited by applicable law or regulation, or by order of a court, or regulatory or governmental agency.

2.3. CloudNatix Personnel. CloudNatix will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with CloudNatix’s obligations under this Agreement, except as otherwise specified in this Agreement.

2.4. Free Services. CloudNatix may make certain Services available at no charge or may offer Services to Customer on a trial basis free of charge (collectively, “Free Services”) up to certain limits as described in the applicable Order Form, including “Unit of Measurement” limitations, until the earlier of (a) the end of the free trial Subscription Term for the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by Customer for such Service(s), or (c) termination by CloudNatix in its sole discretion. Usage over such limits requires Customer’s purchase of additional resources or services. Use of Services during a free trial period is subject to the terms set forth in this section as well as the terms and conditions of this Agreement. In the event of a conflict between this section and any other portion of this Agreement, this section shall control.

2.4.1. ANY DATA CUSTOMER ENTERS INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR CUSTOMER, DURING CUSTOMER’S FREE TRIAL WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASES APPLICABLE UPGRADED SERVICES, OR EXPORTS SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD. CUSTOMER CANNOT TRANSFER DATA ENTERED OR CUSTOMIZATIONS MADE DURING THE FREE TRIAL TO A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL; THEREFORE, IF CUSTOMER PURCHASES A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, CUSTOMER MUST EXPORT CUSTOMER DATA BEFORE THE END OF THE TRIAL PERIOD OR CUSTOMER DATA WILL BE PERMANENTLY LOST.

2.4.2. NOTWITHSTANDING THE “REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS” SECTION AND “INDEMNIFICATION BY CLOUDNATIX” SECTION BELOW, DURING THE FREE TRIAL THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY AND

CLOUDNATIX SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICES FOR THE FREE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE CLOUDNATIX'S LIABILITY WITH RESPECT TO THE SERVICES PROVIDED DURING THE FREE TRIAL SHALL NOT EXCEED \$1,000.00. WITHOUT LIMITING THE FOREGOING, CLOUDNATIX AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL MEET CUSTOMER'S REQUIREMENTS, (B) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED DURING THE FREE TRIAL PERIOD WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION BELOW, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO CLOUDNATIX FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

2.4.3. CUSTOMER SHALL REVIEW THE APPLICABLE SERVICE'S DOCUMENTATION DURING THE TRIAL PERIOD TO BECOME FAMILIAR WITH THE FEATURES AND FUNCTIONS OF THE SERVICES BEFORE MAKING A PURCHASE.

3. USE OF SERVICES AND CONTENT

- 3.1. Subscriptions.** Purchased Services and access to Content are purchased as subscriptions for the applicable Subscription Term. Unless otherwise provided in the applicable Order Form or Documentation, Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by CloudNatix regarding future functionality or features.
- 3.2. Usage Limits.** Services and Content are purchased on and subject to "Unit of Measurement" usage limits specified in Order Forms, as further described below. If Customer exceeds a contractual usage limit, and without limitation to any overage fee set forth herein or in the Order Form, CloudNatix will notify Customer in writing if CloudNatix has a reasonable belief that Customer has exceeded a contractual usage limit, and CloudNatix may work with Customer to seek to reduce Customer's usage so that it conforms to such limit. If Customer is unable or unwilling promptly to abide by the applicable contractual usage limit, Customer will promptly upon CloudNatix's request, execute an Order Form for additional quantities of the applicable Services or Content and pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below.
- 3.3. Customer Responsibilities.** Without limitation to any Customer responsibilities set forth in Exhibit A hereto or elsewhere in this Agreement or the Order Form(s), Customer will (a) be responsible for Users' compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Non-CloudNatix Applications with which Customer uses Services or Content, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify CloudNatix promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with this Agreement, Documentation, Order Forms and applicable laws and government regulations, (e) comply with terms of service of any Non-CloudNatix Applications with which Customer uses Services or Content, and (f) be responsible for maintaining the security and operability of those systems and devices that Customer uses to access the Services and Content and ensuring timely transmission of, and the accuracy, quality, integrity, and reliability of, all Customer Data. Any use of the Services in breach of the foregoing by Customer or Users that in CloudNatix's judgment threatens the security, integrity or availability of CloudNatix's services, may result in CloudNatix's immediate suspension of the Services, however CloudNatix will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.
- 3.4. Usage Restrictions.** Customer will not (a) make any Service or Content available to anyone other than Customer or Users, or use any Service or Content for the benefit of anyone other than Customer, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service or Non-CloudNatix Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Non-CloudNatix Application to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained

therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Services or Content in a way that circumvents a contractual usage limit, or use any Services to access or use any of CloudNatix intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or Content or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent, or (l) access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

3.5. Removal of Content and Non-CloudNatix Applications. If Customer receives notice that Content or a Non-CloudNatix Application must be removed, modified and/or disabled to avoid violating applicable law, third-party rights, or the Acceptable Use and External Facing Services Policy, Customer will promptly do so. If Customer does not take required action in accordance with the above, or if in CloudNatix's judgment continued violation is likely to reoccur, CloudNatix may disable the applicable Content, Service and/or Non-CloudNatix Application. If requested by CloudNatix, Customer shall confirm such deletion and discontinuance of use in writing and CloudNatix shall be authorized to provide a copy of such confirmation to any such third party claimant or governmental authority, as applicable. In addition, if CloudNatix is required by any third party rights holder to remove Content, or receives information that Content provided to Customer may violate applicable law or third-party rights, CloudNatix may discontinue Customer's access to Content through the Services

4. NON-CLOUDNATIX PRODUCTS AND SERVICES

4.1. Non-CloudNatix Products and Services. CloudNatix or third parties may make available third-party products or services, including, for example, Non-CloudNatix Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Non-CloudNatix provider, product or service is solely between Customer and the applicable Non-CloudNatix provider. CloudNatix does not warrant or support Non-CloudNatix Applications or other Non-CloudNatix products or services, whether or not they are designated by CloudNatix as "certified" or otherwise, unless expressly provided otherwise in an Order Form. CloudNatix is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Non-CloudNatix Application or its provider.

5. FEES AND PAYMENT

5.1. Fees. Customer will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services and Content subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the Subscription Term.

5.2. Invoicing and Payment. Customer will provide CloudNatix with a valid purchase order or alternative document reasonably acceptable to CloudNatix. CloudNatix will invoice Customer in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the applicable Order Form, invoiced fees are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to CloudNatix and notifying CloudNatix of any changes to such information.

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

5.4. Suspension of Service. If any charge owing by Customer under this Agreement is 30 days or more overdue, CloudNatix may, without limiting its other rights and remedies, suspend Services until such amounts are paid in full, provided that CloudNatix will give Customer at least 10 days' prior notice that its account is overdue, in accordance with the "Manner of Giving Notice" section below for billing notices, before suspending Services.

- 5.5. Payment Disputes.** CloudNatix will not exercise its rights under the “Overdue Charges” or “Suspension of Service” section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.
- 5.6. Taxes.** CloudNatix’s fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). Customer is responsible for paying all Taxes associated with its purchases hereunder. If CloudNatix has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, CloudNatix will invoice Customer and Customer will pay that amount unless Customer provides CloudNatix with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, CloudNatix is solely responsible for taxes assessable against it based on its income, property and employees.
- 5.7. Authorized Reseller.** For any Services acquired by Customer through a third party expressly authorized by CloudNatix for such purpose (for purposes hereof, an “**Authorized Reseller**”), Sections 5.1 through 5.6 above shall not apply (except for CloudNatix’s suspension rights under Section 5.4 above). While all other terms of this Agreement shall continue to apply exclusively to CloudNatix and Customer as stated herein, Customer shall contract directly with the applicable Authorized Reseller with respect to payment for the purchase of the Services provided hereunder.

6. PROPRIETARY RIGHTS AND LICENSES

- 6.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, CloudNatix, its licensors and Content Providers reserve all of their right, title and interest in and to the Services, Content, Documentation, Derived Data, and Usage Data, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
- 6.2. Access to and Use of Content.** As part of the Services, CloudNatix may provide Customer with access to Content. The third party owner, author or provider of any such Content retains all ownership and intellectual property rights in and to that content, and Customer’s rights to use such Third Party Content are subject to, and governed by, the terms applicable to such Content as specified by such third party owner, author or provider. All Content is provided on a “as is” and “as available” basis without any warranty of any kind. CloudNatix is not responsible for, and under no obligation to control, monitor, or correct, Content, and may remove any Content in its discretion
- 6.3. License by Customer to Use Feedback.** Customer grants to CloudNatix a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of CloudNatix’s services.
- 6.4. Usage Data and Derived Data.** Notwithstanding anything to the contrary in this Agreement, CloudNatix may collect and use Usage Data and Derived Data for purposes including developing, operating, supporting, improving CloudNatix’s products and services, provided, however, that CloudNatix shall not disclose any Usage Data or Derived Data to a third party except to the extent such data is aggregated and anonymized such that neither Customer nor Users can be identified therefrom.

7. CONFIDENTIALITY

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

any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the non-disclosure obligations set forth in this “Confidentiality” section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional CloudNatix services.

7.2. Protection of Confidential Information. As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its legal counsel or accountants will remain responsible for such legal counsel’s or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing, CloudNatix may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Non-CloudNatix Application Provider to the extent necessary to perform CloudNatix’s obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

7.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

8.1. Representations. Each party represents that (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization, (b) it has the full corporate right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement and the Order Form(s), (c) the execution of the Order Form(s) by its representative whose signature is set forth thereon has been duly authorized by all necessary corporate or organizational action of such party, and (d) when executed and delivered by both parties, the Order Form(s) and this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

8.2. CloudNatix Warranties. CloudNatix warrants that during an applicable Subscription Term (a) this Agreement, the Order Forms and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (b) CloudNatix will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation, and (d) subject to the “Integration with Non-CloudNatix Applications” section above, CloudNatix will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Customer’s exclusive remedies are those described in the “Termination” and “Refund or Payment upon Termination” sections below.

8.3. Customer Warranties. Customer represents, warrants and covenants to CloudNatix that Customer owns or otherwise has and will have the necessary rights and consents in and relating to Customer Data so that, as received by CloudNatix and used in accordance with this Agreement and the applicable Order Form(s), it does not and will not infringe, misappropriate, or otherwise violate any intellectual property rights or privacy rights of any third party or violate any applicable laws.

8.4. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT IS PROVIDED “AS IS,” AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

9. MUTUAL INDEMNIFICATION

- 9.1. Indemnification by CloudNatix.** CloudNatix will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Purchased Service infringes or misappropriates such third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by CloudNatix in writing of, a Claim Against Customer, provided Customer (a) promptly gives CloudNatix written notice of the Claim Against Customer, (b) gives CloudNatix sole control of the defense and settlement of the Claim Against Customer (except that CloudNatix may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives CloudNatix all reasonable assistance, at CloudNatix's expense. If CloudNatix receives information about an infringement or misappropriation claim related to a Service, CloudNatix may in its discretion and at no cost to Customer (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching CloudNatix's warranties under "CloudNatix Warranties" above, (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that Service upon 30 days' written notice and refund Customer any prepaid fees covering the remainder of the Subscription Term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (1) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer; (2) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by CloudNatix, if the Services or use thereof would not infringe without such combination; (3) a Claim Against Customer arises from Free Services; or (4) a Claim against Customer arises from Content, a Non-CloudNatix Application or Customer's breach of this Agreement, the Documentation or applicable Order Forms.
- 9.2. Indemnification by Customer.** Customer will defend CloudNatix against any claim, demand, suit or proceeding made or brought against CloudNatix by a third party alleging (a) that any Customer Data or Customer's use of Customer Data with the Services, (b) a Non-CloudNatix Application provided by Customer, or (c) the combination of a Non-CloudNatix Application provided by Customer and used with the Services, infringes or misappropriates such third party's intellectual property rights, or arising from Customer's use of the Services or Content in an unlawful manner or in violation of the Agreement, the Documentation, or Order Form (each a "Claim Against CloudNatix"), and will indemnify CloudNatix from any damages, attorney fees and costs finally awarded against CloudNatix as a result of, or for any amounts paid by CloudNatix under a settlement approved by Customer in writing of, a Claim Against CloudNatix, provided CloudNatix (a) promptly gives Customer written notice of the Claim Against CloudNatix, (b) gives Customer sole control of the defense and settlement of the Claim Against CloudNatix (except that Customer may not settle any Claim Against CloudNatix unless it unconditionally releases CloudNatix of all liability), and (c) gives Customer all reasonable assistance, at Customer's expense. The above defense and indemnification obligations do not apply if a Claim Against CloudNatix arises from CloudNatix's breach of this Agreement, the Documentation or applicable Order Forms.
- 9.3. Exclusive Remedy.** This "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third party claim described in this section.

10. LIMITATION OF LIABILITY

- 10.1. Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.
- 10.2. Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11. TERM AND TERMINATION

11.1. Term of Agreement. This Agreement commences on the earliest “Start Date” set forth in an Order Form and continues until all Subscription Terms have expired or have been terminated, unless terminated earlier in accordance with the terms set forth below.

11.2. Term of Purchased Service Subscriptions. Except as otherwise specified in an Order Form, the Subscription Term for each Purchased Service will automatically renew for additional periods equal to the expiring Subscription Term or one year (whichever is shorter), unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant Subscription Term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at CloudNatix’s applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term’s per-unit pricing.

11.3. Termination. A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Any termination of this Agreement under this section will automatically affect a termination of all Order Forms and Subscription Terms thereunder.

11.4. Refund or Payment upon Termination. If this Agreement is terminated by Customer in accordance with the “Termination” section above, CloudNatix will refund Customer any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by CloudNatix in accordance with the “Termination” section above, Customer will pay any unpaid fees covering the remainder of the term of all Order Forms to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to CloudNatix for the period prior to the effective date of termination.

11.5. Surviving Provisions. The sections titled “Definitions,” “Free Services,” “Fees and Payment,” “Proprietary Rights and Licenses,” “Confidentiality,” “Disclaimers,” “Mutual Indemnification,” “Limitation of Liability,” “Refund or Payment upon Termination,” “Removal of Content and Non-CloudNatix Applications,” “Surviving Provisions” and “General Provisions” will survive any termination or expiration of this Agreement, and the section titled “Protection of Customer Data” will survive any termination or expiration of this Agreement for so long as CloudNatix retains possession of Customer Data.

12. GENERAL PROVISIONS

12.1. Changes. CloudNatix may make changes or updates to the Services during the Subscription Term, including to reflect changes in technology, industry practices, patterns of system use, and availability of Content; however any such changes will not result in a material reduction in the level of performance or availability of the applicable Services provided to Customer during the Subscription Term.

12.2. Export Compliance. The Services, Content, other CloudNatix technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. CloudNatix and Customer each represents that it is not named on any U.S. government denied-party list. Customer will not permit any User to access or use any Service or Content in a U.S.-embargoed country or region or in violation of any U.S. export law or regulation and will comply with all applicable export control laws and regulations related to its use of the Services and Content.

12.3. Anti-Corruption. Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

12.4. Entire Agreement; Order of Precedence; Headings; Interpretation. This Agreement is the entire agreement between CloudNatix and Customer regarding Customer’s use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement. As used

in the Agreement, (a) “include” and “including” mean “including, without limitation,” and (b) “will,” “shall,” and “must” are deemed to be equivalent and denote a mandatory obligation or prohibition, as applicable

- 12.5. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.
- 12.6. Publicity.** Customer grants CloudNatix permission to use Customer’s name and logos in CloudNatix’s public customer lists (including in CloudNatix’s website, social media, and marketing and promotional materials) similar to its use of the names of other customers. CloudNatix agrees that any such use will be subject to CloudNatix’s compliance with any written guidelines that Customer may deliver to CloudNatix regarding the use of Customer’s name and logo.
- 12.7. Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 12.8. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- 12.9. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party’s prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party’s consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. This Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns. There are no third-party beneficiaries under this Agreement.
- 12.10. Governing Law and Venue.** This Agreement shall be governed by and construed under the laws of the United States and the State of California, excluding its conflict of law rules and without application of the United Nations Convention on Contracts for the International Sale of Goods. Customer and CloudNatix hereby submit to the exclusive jurisdiction of, and waive any venue objections against, the courts of Santa Clara County, in any litigation arising out of this Agreement.
- 12.11. Arbitration.** The Parties agree to use all reasonable efforts to settle any dispute directly through consultation with each other before initiating a lawsuit or arbitration. If, after good faith negotiations the Parties are unable to resolve the dispute, the Parties agree that, except as expressly stated herein, any dispute or claim arising out of or in connection with this Agreement or the performance, breach or termination thereof, shall be finally settled by binding arbitration in Santa Clara County before a single arbitrator with the Judicial Arbitration and Mediation Service (JAMS) and pursuant to the then existing arbitration rules at JAMS. If the Parties cannot agree upon selection of an arbitrator, then JAMS shall appoint an arbitrator experienced in the enterprise software industry. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for injunctive relief without breach of this arbitration provision. The prevailing party in any arbitration or other legal action related to this Agreement is entitled to recover its reasonable attorneys’ fees and costs from the other party.
- 12.12. Government End User.** If Customer or any User is a U.S. government entity or if this Agreement otherwise becomes subject to the Federal Acquisition Regulations (“FAR”), Customer acknowledges that elements of the Services constitute software and documentation and are provided as “Commercial Items” as defined in 48 C.F.R. 2.101 and are being licensed to U.S. government User as commercial computer software subject to restricted rights described in 48 C.F.R. 2.101, 12.211 and 12.212. If acquired by or on behalf of any agency within the Department of Defense (“DOD”), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement (“DFARS”) and its successors. This U.S. Government End User Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in computer software or technical data. The Services were developed fully at private expense. All other use is prohibited
- 12.13. Force Majeure.** Neither Party will be liable for delayed, inadequate, or failed performance of its obligations

hereunder (other than for non-payment of amounts due) if such delay or failure arises from any cause or condition beyond the reasonable control of the affected Party, including but not limited to natural disasters, fire, flood, epidemic, pandemic, act of God, civil disturbance, act of a public enemy or terrorist, act of any military, civil, regulatory, or governmental authority, change in law or regulation, labor conditions, interruption or failure of the Internet or any utility service, denial of service or ransomware attacks, unavailability of supplies, or any other cause, whether similar or dissimilar to any of the foregoing that could not have been prevented by such Party with reasonable care (each a “**Force Majeure Event**”). The Party affected shall be relieved from its obligations hereunder (or applicable part thereof) as long as the Force Majeure Event lasts and hinders the performance of said obligations

12.14. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the fifth business day after mailing, (c) the second business day after sending by nationally recognized courier service, or (d), except for notices of termination or an indemnifiable claim (“Legal Notices”), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be sent to the Customer address set forth in the applicable Order Form. All notices to CloudNativ will be sent to: CloudNativ, Inc., 13085 Ten Oak Way, Saratoga, CA 95070.

12.15. Press Release. Upon CloudNativ’s request, Customer agrees that it will participate in a joint and mutually agreed upon press release regarding Customer’s purchase and/or use of the Services.

Exhibit A
CLOUDNATIX SECURITY POLICY

Overview

CloudNatix takes the protection of Customer Data extremely seriously. This CloudNatix Security Policy describes the organizational and technical measures CloudNatix implements platform-wide, which measures are designed to prevent unauthorized access to or disclosure of Customer Data. The Services operate on Amazon Web Services (“AWS”); this CloudNatix Security Policy describes the activities of CloudNatix within its instance on AWS unless otherwise specified.

Security Team

The CloudNatix infrastructure and security team includes individuals who have played lead roles in designing, building, and operating highly secure Internet facing systems at companies ranging from startups to large public companies. CloudNatix abides by Industry standard best practices in securing and protecting the Services.

Best Practices

Incident Response Plan

- CloudNatix has implemented a formal procedure for security events and has educated applicable CloudNatix staff on relevant internal policies.
- Detected security events are escalated to CloudNatix’s security alias, and appropriate CloudNatix teams are paged, notified and assembled to address the event.
- After a confirmed security event is addressed, a post-mortem analysis, including action items designed to make the detection and prevention of a similar event easier in the future, is prepared.
- Each post-mortem analysis is distributed to appropriate CloudNatix personnel for review.
- CloudNatix will promptly notify Customer in writing following verification of a security breach of the Services that results in unauthorized access to or disclosure of Customer Data. To the extent permissible, such notification will describe the security breach and the status of CloudNatix’s investigation.

Build Process Automation

- CloudNatix has functioning, frequently used automation in place so that it can safely and reliably rollout changes to both the CloudNatix application and operating platform within minutes using Continuous Delivery (CD) techniques.
- CloudNatix typically deploys code dozens of times a day, so we have high confidence that we can get a security fix out quickly when required.

Data

- Customer data is stored in multi-tenant datastores; we do not have individual datastores for each customer. However strict privacy controls exist in our application code that are designed to ensure data privacy and to prevent one customer from accessing another customer’s data (i.e., logical separation). We have many unit and integration tests in place to ensure these privacy controls work as expected. These tests are run every time our codebase is updated and even one single test failing will prevent new code being shipped to production.
- Each CloudNatix system used to process customer data is adequately configured and patched using commercially-reasonable methods according to industry-recognized system-hardening standards.
- Customer Data portability and Deletion: Upon request by Customer made within 30 days after the effective date of termination or expiration of this Agreement, CloudNatix has the capability to make Customer Data available to Customer in the then current format in which it was stored. After such a 30-day period, CloudNatix will have no obligation to maintain or provide Customer any of Customer Data, and CloudNatix will thereafter delete or destroy all copies thereof in CloudNatix’s systems or otherwise in CloudNatix’s possession or control, unless legally prohibited.

Data Transfer

- All data sent to or from CloudNatix service is encrypted in transit using 256-bit encryption.
- Our API and application endpoints are TLS/SSL only and score an "A+" rating on SSL Labs' tests.

Authentication

- CloudNatix is served 100% over https. CloudNatix runs a secure, zero-trust corporate network.
- There are no corporate resources or additional privileges from being on CloudNatix's network.
- We have two-factor authentication (2FA) and strong password policies on GitHub, Google, AWS MongoDB and CloudNatix to ensure access to cloud services are protected.

Permissions and Admin Controls

- CloudNatix enables varying permission levels to be set for any employees with access to CloudNatix.

Application Monitoring

- On an application level, we produce audit logs for all activity, ship logs to our service providers for analysis, and use S3/Glacier for archival purposes.
- All access to CloudNatix applications is logged and audited.
- All actions taken on production Cluster controllers or in the CloudNatix Global Controller are logged.

Security Audits and Certifications

- We use technologies to provide an audit trail over our infrastructure, CloudNatix Global Controller and the CloudNatix Cluster Controller. Auditing allows us to do ad-hoc security analysis, track changes made to our setup and audit access to every layer of our stack.
- Information about AWS security certifications and obtaining copies of security reports from AWS is available at <http://aws.amazon.com/compliance/pci-data-privacy-protection-hipaa-soc-fedramp-faqs/>.
- We are currently in the process of achieving Cloud Security Alliance (CSA) star compliance, SOC 2 Type I and SOC 2 Type II certifications as well as NIST-800 and ISO-27001 certifications. Once we have achieved each certification, we will make copies of the applicable SOC 2 report available upon reasonable request.

Customer Responsibilities

- Managing your own user accounts and roles from within the CloudNatix service.
- Connecting and integrating your own Enterprise Identity Provider with CloudNatix
- Protecting your own account and user credentials by using two-factor authentication for all of your employees accessing the CloudNatix services.
- Compliance with the terms of your services agreement with CloudNatix, including with respect to compliance with laws.
- Notifying CloudNatix in a reasonable time period if a user credential has been compromised or if you suspect possible suspicious activities that could negatively impact security of the CloudNatix services or your account.