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12. General Provisions

12.1 Force Majeure. Neither party will be responsible or have any liability for any delay or failure to perform any of its obligations under this Agreement (excluding payment obligations) to the extent such failure is due to unforeseen circumstances or to causes beyond such party's reasonable control, including acts of God, earthquake, fire, flood, embargoes, labor disputes and strikes, riots, acts of terrorism, war, and acts of civil and military authorities.

12.2 Severability. If any provision of this Agreement is declared or found by a court or arbitral panel of competent jurisdiction to be invalid, illegal or otherwise unenforceable, (a) the parties will negotiate, in good faith, a substitute, valid and enforceable provision which most nearly effects the parties' intent in entering into this Agreement, and (b) the remainder of this Agreement will remain in full force and effect.

12.3 Assignment. Neither party may assign, delegate or otherwise transfer this Agreement or any of its rights or obligations under this Agreement, whether voluntarily, by operation of law or otherwise, without the prior written consent of the other party. Notwithstanding the foregoing, either party may, with written notice to the other party (but without any requirement to obtain the other party's consent), assign this Agreement, together with all of its rights and obligations hereunder, to a third party that acquires (whether by asset purchase, merger or other transaction or series of transactions) all or substantially all of its business to which this Agreement relates; provided that if Licensee assigns this Agreement pursuant to this sentence, all Evaluation Licenses then in effect will immediately terminate. Any attempted assignment, delegation or other transfer prohibited by the foregoing will be null and void. Subject to the foregoing, this Agreement will inure to the benefit of and bind each party's successors and assigns.

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Notwithstanding the foregoing, each party will have the right to seek injunctive or other equitable relief at any time from any court of competent jurisdiction.

12.6 No Waiver. No waiver of any provision of this Agreement will be effective unless it is specified in a writing signed by an authorized representative of each party. No course of dealing, course of performance or failure of either party to enforce any provision of this Agreement in a strict or timely manner will be construed as a waiver of such provision or any other provision. No waiver or breach of any provision of this Agreement will be construed to be a waiver of any subsequent breach of the same or any other provision.

12.7 Relationship of the Parties. This Agreement will not be construed as creating an agency, partnership, joint venture or any other form of association between the parties, and the parties will at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party will have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

12.8 Notices. Unless otherwise set forth in this Agreement, any notice required or permitted hereunder will be deemed to be a valid notice for the purposes of this Agreement only if it (a) is in writing, (b) makes reference to this Agreement, and (c) is delivered in person, by reputable courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, in each case to the address of the intended recipient specified on the first page of this Agreement (or to such other address as may be designated by the intended recipient to the other party in accordance with this Section 12.8). Each such notice will be deemed given when received by the intended recipient.

12.9 Interpretation. The captions and headings used in this Agreement are inserted for convenience only, do not form a part of this Agreement and will not be used in any way to construe or interpret this Agreement. This Agreement will be deemed to have been drafted by all parties; no provision will be construed against either party by reason of the fact that it was drafted by such party. The words “include” and “including” will not be construed as terms of limitation and will therefore mean “including but not limited to” and “including without limitation.”

12.10 Entire Agreement; Amendment. This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and merge and supersede any and all prior and contemporaneous agreements, understandings and communications between the parties, whether oral or written, with respect to such subject matter. This Agreement cannot be modified or amended except in a writing signed by both parties. No terms or conditions that are contained in any purchase order or other document submitted by Licensee will in any way modify or add to the terms of this Agreement, and any such terms or conditions that are in any way inconsistent with or additional to the terms of this Agreement are hereby rejected by Cloudian and will have no force or effect.

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