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## Software Maintenance Agreement

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- 1.1 The term of a Software Maintenance Agreement is twelve months and commences on the date purchased or the date when an Installation Key is issued, whichever is later.
- 1.2 A Software Maintenance Agreement may be renewed annually upon the anniversary of the initial term unless such an offering is no longer available.
- 1.3 A Software Maintenance Agreement must be purchased coincidental with the purchase of the Product.
- 1.4 There are no refunds allowed for cancellation of a Software Maintenance Agreement.
- 1.5 A copy of the Software Maintenance Agreement is available on the Cloud System's corporate website and is subject to change without notice.
- 1.5 Software Maintenance Agreement effective \_\_\_\_\_. To be provided in soft copy to the reseller.

Copy of Software Maintenance Agreement

CLOUD SYSTEMS, INC.  
MASTER MAINTENANCE (ONLY) AGREEMENT

This Maintenance Agreement (the "Agreement") is entered into as of \_\_\_\_\_, 20\_\_, (the "Effective Date") by and between Cloud Systems, Inc. ("Company"), a California corporation with offices at 7220 Edgewater Drive, Oakland, CA 94621, and [NAME OF CUSTOMER], a [\_\_\_\_\_] corporation with offices at [\_\_\_\_\_] ("Customer").

1. Background.

Customer has previously licensed Company's product identified on Exhibit A attached hereto (the "Software") from a Company certified reseller of the Software. Customer now desires to purchase maintenance services related to the Software from Company. Company desires to provide the maintenance services related to the Software to Customer, as set forth in this Agreement. The parties intend that Company may provide to Customer from time to time maintenance services for additional Software previously licensed to Customer as specified in consecutively numbered Exhibits A-1, A-2, A-3, etc. If the parties so desire, the parties will agree upon the additional Software, Licensed Server Location and corresponding applicable Maintenance Fee, which shall be memorialized in an appropriately numbered Exhibit A and Exhibit B to this Agreement that is mutually agreed upon in writing by the parties and attached hereto.

2. Maintenance Services.

(a) Maintenance Services. For such periods as Customer fully pays the Maintenance Fee as described in Section 3(a) below and for such periods as Customer has in effect a maintenance, support or service agreement with a third party for the equipment facility on which the Software is installed, Company will provide the maintenance services to Customer as are described in Exhibit C attached hereto (the "Maintenance Services").

(b) Term; Renewal. The Maintenance Services will commence upon the date specified on Exhibit A ("Commencement") and will expire at the end of business on the date one year from Commencement or upon termination of the license, whichever is earlier (the "Initial Term"). Unless the license to the Software has been terminated, such Maintenance Services will automatically renew on the anniversary of Commencement each year during the term of this Agreement for additional one (1) year periods (each a "Renewal Term"), provided that Customer pays the applicable Maintenance Fee prior to the due date therefor. Reinstatement of lapsed Maintenance Services will be subject to the payment of applicable reinstatement fees equal to the prorated sum of Maintenance Fees which would have been payable during the lapsed period plus 10%.

### 3. Fees; Payment; Taxes.

(a) Fees. In consideration for the Maintenance Services to be performed by Company as described in Exhibit C, Customer will pay to Company a fee in the amount set forth in Exhibit B attached hereto (the "Maintenance Fee").

(b) Payment. The Maintenance Fees shall be paid as follows:

(i) The Maintenance Fees payable with respect to the Initial Term will be paid within thirty (30) days after the date of Commencement of the Maintenance Services.

(ii) The Maintenance Fees payable with respect to each Renewal Term will be invoiced by Company to Customer at least sixty (60) days before the expiration of the prior Term, and must be paid in full within thirty (30) days after the invoice date.

(iii) Company may adjust the Maintenance Fees for any Renewal Term by written notice to Customer prior to the expiration of the immediately prior Term.

(iv) All payments are due in U.S. dollars.

(c) Taxes. Customer shall, in addition to the other amounts payable under this Agreement, pay all applicable customs, duties, sales, use, value added or other taxes, federal, state or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement, excluding only taxes based on Company's net income. Customer agrees to hold Company harmless from all claims and liability arising from Customer's failure to report or pay any such taxes, duties or assessments.

### 4. Confidential Information.

Customer agrees that the Maintenance Services provided hereunder contain confidential information, including without limitation trade secrets, know-how and other information, that is the exclusive property of Company. During the period this Agreement is in effect and at all times after its termination or expiration, Customer and its employees and agents shall maintain the confidentiality of this information and shall not sell, license, sublicense, publish, display, distribute, disclose or otherwise make available this information to any third party nor use such information except as authorized by this Agreement. Customer agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Company's confidential information in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that Customer utilizes to protect its own confidential information of a similar nature, which shall be no less than reasonable care. Customer shall only disclose confidential information of Company to its employees on a need to know basis and only if such employees have executed written agreements restricting use or disclosure of confidential information that are at least as restrictive as Customer's

obligations under this Section 4. Customer shall not disclose any such information concerning the Maintenance Services to persons not an employee of Customer without Company's prior written consent. Customer agrees that it will take appropriate action by instruction, agreement or otherwise with Customer's employees to satisfy its obligations under this Agreement with respect to use, protection and security of Company's confidential information. Customer agrees to immediately notify Company of the unauthorized disclosure or use of the confidential information of Company and to assist Company in remedying such unauthorized use or disclosure. It is further understood and agreed that money damages would not be a sufficient remedy for any breach of Customer's obligations under this Section 4 by Customer, its employees or agents. In the event of any such breach, Company shall be entitled to seek equitable relief, in addition to any other rights or remedies provided by law.

5. Limited Warranty.

(a) Scope of Limited Warranty. Company warrants to Customer that it will provide the Maintenance Services in a professional and workmanlike manner.

(b) Disclaimer of Any Other Warranties. EXCEPT FOR THE EXPRESS, LIMITED WARRANTY PROVIDED IN THIS SECTION 5, COMPANY MAKES NO WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE MAINTENANCE SERVICES. COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE.

6. Limitation of Liability.

CUSTOMER AGREES THAT IN NO EVENT SHALL COMPANY'S LIABILITY ARISING UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID BY CUSTOMER TO COMPANY HEREUNDER. COMPANY WILL NOT BE LIABLE FOR ANY LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR FOR ANY CLAIM OR DEMAND AGAINST CUSTOMER BY ANY OTHER PARTY. IN NO EVENT WILL COMPANY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, OR EXEMPLARY DAMAGES ARISING OUT OF THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT THE AMOUNTS PAYABLE HEREUNDER ARE BASED IN PART ON THESE LIMITATIONS, AND FURTHER AGREES THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7. Termination.

(a) Termination. Either party shall have the right to terminate this Agreement and the license granted herein in the event the other party fails to comply with any of the terms and conditions of this Agreement and such default has not been cured within thirty (30) days after written notice of such default to the other party. Company may also terminate this Agreement immediately if the Customer (i) terminates or suspends its business, (ii) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute, (iii) becomes insolvent or subject to direct control by a trustee, receiver or similar authority, or (iv) has wound up or liquidated, voluntarily or otherwise.

(b) Effect of Termination. The rights and obligations of Company and Customer in Sections 3, 4, 5, 6, 7(b) and 8 shall survive termination of this Agreement. Nothing contained herein shall limit any other remedies that Company may have for the default of Customer under this Agreement nor relieve Customer of any of its obligations incurred prior to such termination.

8. Miscellaneous.

(a) **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns. Customer shall not assign or otherwise transfer this Agreement or any rights or obligations hereunder, in whole or in part, whether by operation of law or otherwise, without Company's prior written consent. Any purported transfer, assignment or delegation without such prior written consent will be null and void and of no force or effect. Company shall have the right to assign this Agreement to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

(b) **Entire Agreement; Modification; Waiver.** This Agreement represents the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, with respect to the matters covered by this Agreement. Customer agrees that it has not entered in this Agreement based on any representations other than those contained herein. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the party to be charged. If there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any Customer purchase order or other document, the terms and conditions of this Agreement shall prevail and the terms and conditions of such purchase order or other document shall have no effect. The waiver of one breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default.

(c) **Delays.** In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement (other than a payment obligation) due to any Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, material unavailability, or any other cause beyond the reasonable control of the party invoking this section, and if such party shall have used its reasonable best efforts to mitigate its effects, such party shall give prompt written notice to the other party, its performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences.

(d) **Governing Law.** This Agreement shall in all respects be governed by the laws of the State of California without reference to its principles of conflicts of laws. The parties hereby agree that all disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of and venue in the federal and state courts within the County of Alameda, California. Customer hereby consents to the personal and exclusive jurisdiction and venue of these courts.

(e) **Severability.** If one or more provisions of this Agreement are held by a court of competent jurisdiction to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as closely as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded, and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(f) **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.

(g) **Notices.** All notices permitted or required under this Agreement shall be in writing and shall be delivered in person or mailed by first class, registered or certified mail, postage prepaid, to the address of the party specified in this Agreement or such other address as either party may specify in writing. Such notice shall be deemed to have been given upon receipt.

(h) U.S. Government Restricted Rights. If this Software is being licensed by the U.S. Government, the Licensed Materials are commercial computer software and documentation developed exclusively at private expense, and (a) if acquired by or on behalf of a civilian agency, shall be subject to the terms of this computer software license as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; and (b) if acquired by or on behalf of units of the Department of Defense ("DOD") shall be subject to the terms of this commercial computer software license as specified in 48 C.F.R. 227.7202-2, DOD FAR Supplement and its successors.

(i) Export Law Assurances. Customer understands that the Software and Maintenance Services are subject to export control laws and regulations. CUSTOMER MAY NOT DOWNLOAD OR OTHERWISE EXPORT OR RE-EXPORT THE SOFTWARE OR MAINTENANCE SERVICES OR ANY UNDERLYING INFORMATION OR TECHNOLOGY EXCEPT IN FULL COMPLIANCE WITH ALL UNITED STATES AND OTHER APPLICABLE LAWS AND REGULATIONS, IN PARTICULAR, BUT WITHOUT LIMITATION, UNITED STATES EXPORT CONTROL LAWS.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(k) Press Release. At a mutually agreed to time, the parties will issue a mutually agreed to joint press release, and will make appropriate representatives available to talk to the press to publicize the benefit of the relationship to the parties and customers. The parties will cooperate to create additional public announcements of the relationship set forth in this Agreement, provided that neither party will make any separate public announcement without first delivering the announcement to the other party and obtaining the other party's prior consent, which will not be unreasonably withheld or delayed.

(l) 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

**CLOUD SYSTEMS, INC.**

**RESELLER**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A-1**

**I. DESCRIPTION OF SOFTWARE**

<b>Item</b>	<b>Product Description</b>	<b>Quantity</b>
atmospherics server	One (1) License Control System Server Software	
Devices:	Additional Devices	

This includes the Software previously licensed to Customer by Company and installed at the Customer location described below on [\_\_\_\_\_].

The Software is installed at the following location, which location may be changed by Customer upon prior written notice to Company:

[\_\_\_\_\_]

IN WITNESS WHEREOF, the parties have caused this Exhibit A-1 to be executed by their duly authorized representatives.

**CLOUD SYSTEMS, INC.**

**[NAME OF CUSTOMER]**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B-1**

**I. MAINTENANCE FEE**

The Maintenance Fee for the Software for the Initial Term is  
\$[\_\_\_\_\_].

IN WITNESS WHEREOF, the parties have caused this Exhibit B-1 to be executed  
by their duly authorized representatives.

**CLOUD SYSTEMS, INC.**

**[NAME OF CUSTOMER]**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT C**

### **MAINTENANCE SERVICES**

#### 1. Maintenance Services.

As part of the Maintenance Services, Company will provide Customer all bug fixes and New Releases of the Software that are made generally available to Company's customers during the Initial Term and any Renewal Term. "New Releases" means and includes:

(a) "Minor Releases" which consist of bug fixes, minor new features or improvements and enhancements within the framework of an existing specification of the Software; and

(b) "Major Releases" which consist of major new features, improvements and enhancements within the framework of the existing specification of the Software or architectural changes in or additions to the specification of the Software. However, a Major Release does not include the release of a new product or added features for which there may be a separate charge.