

MASTER SUBSCRIPTION AGREEMENT

Effective Date:

THIS CLOUDAWARE MASTER SUBSCRIPTION AGREEMENT is made by and between **Gigware LLC.**, a Delaware corporation with its principal address at 1350 Avenue of the Americas, 2nd Floor, New York, NY 10019 ("**Cloudaware**"), and _____, a _____ corporation with its principal address at _____ ("**You**" or "**Your**"). You hereby agree to the terms and conditions set forth herein governing your use of Cloudaware's online cloud management service, including offline components (collectively, the "**Service**," as defined below).

In the event of any conflict between this Master Subscription Agreement and the Order Form, the Order Form shall govern to the extent of such conflict.

1. **Definitions.** As used in this Agreement and in any Order Forms now or hereafter associated herewith: "**Affiliate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity; "**Control**," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity; the "**Agreement**" means this Cloudaware Master Subscription Agreement (including all exhibits and attachments thereto), any Order Forms, whether written or submitted online (if applicable), and any materials available on the Cloudaware website specifically incorporated by reference herein, as such materials may be updated by Cloudaware from time to time in its sole discretion; "**Customer Data**" means any data, information or material provided or submitted by You to the Service in the course of using the Service; "**Effective Date**" means the contract effective date set forth in the Order Form; "**Administrator(s)**" means those Users designated by You who are authorized to purchase subscriptions by executing written Order Forms and to create User accounts and otherwise administer Your use of the Service; "**Term**" means the period(s) during which a specified number of Users are authorized to use the Service pursuant to the Order Form(s); "**Order Form(s)**" means the form evidencing the initial subscription for the Service and any subsequent order forms submitted in written form or online (if applicable), specifying, among other things, the number of subscriptions and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of the Order Form shall prevail); "**Service(s)**" means Cloudaware's online cloud management or other services and associated content, as identified during the ordering process, developed, operated, and maintained by Cloudaware, and made accessible via <https://www.cloudaware.com> or another web site or IP address designated by Cloudaware from time to time, or ancillary online or offline products and services provided to You by Cloudaware, to which You are being granted access under this Agreement, "**User(s)**" means Your employees, representatives, consultants, contractors, subcontractors, or agents who are authorized to use the Service and have been supplied user identifications and passwords by You (or by Cloudaware at Your request). All such User(s) may be identified within the Cloudaware application system administration area where the User(s) record is stored. All User(s) records in the Cloudaware application with User(s) status flag set to "**active**" are User(s) and You are responsible for all User's compliance with this Agreement.

2. **Service.** (a) *Provision of Service.* Subject to the terms and conditions of this Agreement, Cloudaware will make the Service available to You (only for the number of Users for whom you have paid for subscriptions) pursuant to this Agreement and all Order Forms during a subscription term. You agree that Your purchase of subscriptions is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Cloudaware with respect to future functionality or features. Cloudaware shall: (i) use commercially reasonable efforts to provide to You Silver Support for the Services at no additional charge, and/or Gold or Premium Support if purchased separately, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week,

except for: (a) planned downtime (of which Cloudaware shall give at least 8 hours notice via the Services and which Cloudaware shall schedule to the extent practicable on Friday evenings between 6:00 p.m. Pacific time Friday to 9:00 p.m. Pacific time Friday)), or (b) any unavailability caused by circumstances beyond Cloudaware's reasonable control, including without limitation, acts of government, natural disasters, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Cloudaware's employees), or Internet service provider failures or delays, and (iii) provide the Services only in accordance with applicable laws and government regulations. Upgrades are included as part of Your subscription term. For the purposes of this Agreement, "Upgrade(s)" means a new version of the Services released by Cloudaware that may add new and different functions to or increases the capacity of its Services, and include revisions to documentation and new training as a result of such upgrades. An "Upgrade(s)" does not include products within the Services for which Cloudaware requires a separate charge.

(b) Additional Users. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require use of the Service. Unless otherwise specified in the relevant Order Form, the term of the additional User subscriptions shall be coterminous with the expiration of the subscription term in effect at the time the additional Users are added.

(c) Affiliates. Affiliates may purchase and use User subscriptions subject to the terms of this Agreement by executing Order Forms hereunder.

(d) Restrictions. You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute, disclose, or otherwise commercially exploit or make available to any third party in any manner the Service in any way; (ii) modify or make derivative works based upon the Service; (iii) create Internet "links" to the Service or "frame" or "mirror" the Service on any other server or wireless or Internet-based device; (iv) access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes, or (v) decompile, disassemble, reverse engineer or attempt to discover any source code or underlying ideas or algorithms of the Service (except to the extent that applicable law prohibits reverse engineering restrictions), or (except as expressly permitted herein) access the Service, or copy any ideas, features, functions or graphics of the Service. You may not access the Service if You are a direct competitor of Cloudaware, except if You disclose such to Cloudaware and thereafter obtain Cloudaware's prior written consent.

You shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, or other harmful computer code, files, scripts, agents or programs; (iv) modify, interfere with or disrupt the integrity or performance of the Service (including the data contained therein); or (v) attempt to gain or permit unauthorized access to the Service or its related systems or networks.

The Service offers integration capabilities via an application programming interface, or API. The average number of API calls made by Customers is less than 10,000 calls/day. The number of API calls You can make is limited to an aggregate maximum of 50,000 calls/day. (API calls do not include printing, faxing, and emails.) We may limit and/or modify Your API access from time to time in order to protect or preserve the integrity of the Service and we will provide You with prompt notice when we take such action. Cloudaware will use reasonable efforts to notify You when the average calls per day reaches approximately 90% of the maximum.

(e) Remedies. In the event of service outages that result in a failure to meet the Provision of Service goal of 99.90% uptime availability during the measurement period. Your sole and exclusive remedy shall be a refund equal to ten percent (10%) of the subscription fees for that measurement period. The measurement period is defined as three consecutive months. Cloudaware will credit the refund to You during the next billing cycle unless the refund is reasonably disputed by Cloudaware, in which case You and Cloudaware will work together in good faith to resolve such dispute in a timely manner. Remedies do not apply to service outages caused by Your negligence or acts, Your user(s), Your service / telco carrier providers, or their agent(s). Remedies do not apply to service outages caused by: (i) failure or malfunction of equipment

or systems not belonging to or controlled by Cloudaware, its agents or affiliates; or (ii) acts of God, acts of government, natural disasters, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Cloudaware's employees).

If there are Chronic Service Outages (as defined below) of the Service then You may terminate this Agreement including any Order Form prior to the end of the Term without any liability and shall receive a pro-rated refund of the unused portion of the annual access fee for such Service applicable to the period from the date of termination to the end of the Term. The Service shall be deemed to undergo "Chronic Service Outages" upon the occurrence of any of the following: (i) three (3) failures to meet the Service Availability Target of 90.0% Uptime within any six (6) consecutive calendar months, or (ii) four (4) failures to meet the Service Availability Target of 90.0% Uptime within any nine (9) consecutive calendar months.

3. *Your Responsibilities.* You are responsible for all activity occurring under Your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify Cloudaware immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Cloudaware immediately and use reasonable efforts to stop immediately any use, copying, or distribution of the Service that is known or suspected by You or Your Users; and (iii) not impersonate another Cloudaware user or provide false identity information to gain access to or use the Service. If You purchase Cloudaware Integration Technology, Your use of the product may be subject to additional terms specified in an Exhibit Attached hereto. If You purchase Spend Optimizer, Your use of the product is subject to the additional terms specified in Exhibit B, attached hereto.

4. *Account Information and Data.* As between Cloudaware and You, You exclusively own all rights, title and interest in and to all Customer Data. Customer Data is deemed Confidential Information under this Agreement. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of and right to use all Customer Data.

5. *Privacy Disclosure.* Cloudaware's privacy policy may be viewed at <https://www.cloudaware.com>. Cloudaware reserves the right to modify its privacy policy in its reasonable discretion from time to time. Cloudaware will provide notification of the material changes to this Privacy Statement through the Company's Web site at least thirty (30) business days prior to the change taking effect. Notwithstanding the foregoing, Cloudaware will not materially diminish Your privacy. Cloudaware may occasionally notify all users of the Service of important announcements regarding the operation of the Service and other announcements related to the Service and You agree to receive such notices. You will not have the option of opting out of receiving such notices unless You terminate Your account with Cloudaware.

6. *Ownership.* Cloudaware alone (and its licensors, where applicable) shall own all right, title and interest in and to the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or any other party relating to the Service. This Agreement is not a sale and does not convey to You any rights of ownership in or related to the Service. The Cloudaware name, the Cloudaware logo, and the product names associated with the Service are trademarks of Cloudaware or third parties, and no right or license is granted to use them. All rights not expressly granted to You are reserved by Cloudaware and its licensors.

7. *Third Party Interactions.* During use of the Service, You may enter into correspondence with, purchase goods and/or services from, or participate in promotions of suppliers, advertisers or sponsors showing or otherwise making available their goods and/or services on or through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between You and the applicable third party. You agree that Cloudaware and its licensors shall have no liability, obligation

or responsibility for any such correspondence, purchase or promotion between You and any such third-party. Cloudaware provides the Service to You pursuant to the terms and conditions of this Agreement.

8. *Charges and Payment of Fees.* You shall pay all fees or charges to Your account not subject to a good faith dispute in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. Payments shall be made when and as set forth in the original Order Form. All payment obligations are non-cancellable and all amounts paid are nonrefundable. You are responsible for paying for all User licenses ordered, whether or not such User licenses are used. An authorized Administrator may add licenses by executing an additional written Order Form. Added licenses will be coterminous with the then-current license term as set forth in the Order Form. Cloudaware will not modify its fees for the same level of service or for products and users that are currently under contract.

9. *Billing and Renewal.* Cloudaware charges and collects in advance for use of the Service. Cloudaware will issue one or more invoices to You as specified in the Order Form and You agree to pay such amounts not subject to a good faith dispute when and as specified in the Order Form. Fees for other services will be charged on an as-quoted basis.

You agree to pay Cloudaware in the currency specified on the order form. Cloudaware's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and You shall be responsible for payment of all such taxes, levies, or duties, excluding only U.S. (federal or state) taxes based solely on Cloudaware's income.

You agree to provide Cloudaware with complete and accurate billing and contact information. This information includes Your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and Administrator. You agree to update this information promptly upon any change to it. If the contact information You have provided is fraudulent, Cloudaware reserves the right to terminate Your access to the Service in addition to any other legal remedies.

If You believe Your bill is incorrect, You must contact us in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit; otherwise such dispute shall be waived.

10. *Confidentiality.* As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed 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, including the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder), the Customer Data, the Service, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for Customer Data) shall 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) was independently developed by the Receiving Party without either use of the Confidential Information or breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).

If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest

the disclosure, and any information so disclosed shall continue to be treated as Confidential Information for all other purposes.

Except as expressly provided in this Agreement, if the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

Notwithstanding the foregoing, Cloudaware may use and report on Customer Data and other data and metrics related to Your use of the Services in an aggregate and anonymous manner to support benchmarking or similar features of the Service ("Authorized Use") provided such Authorized Use does not result in disclosure of Your Confidential Information.

11. Term; Termination, Survival. The Agreement commences on the Effective Date and continues until all subscriptions granted in accordance with this Agreement have expired or been terminated. User subscriptions commence on the start date specified in the relevant Order Form and continue for the subscription term specified therein. User subscriptions shall automatically renew for additional periods of one (1) year at the list price in effect at the time of renewal unless either party gives the other notice of non-renewal at least 30 days prior to the end of the relevant subscription term. A party may terminate this Agreement for cause: (i) upon 30 days written notice of a material breach to the other party 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. Upon any termination for cause by You, Cloudaware shall refund any prepaid fees covering the remainder of the subscription term after the date of termination. Termination shall not relieve You of the obligation to pay any fees accrued or payable to Cloudaware prior to the effective date of termination. Upon Your request within 30 days after the effective date of termination, Cloudaware will make available for download a file of Customer Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, Cloudaware shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control. Upon expiration or termination of the Agreement, Sections 2(d), and 4 through 21 of this Agreement shall survive.

12. Representations and Warranties. Each party represents and warrants that it has the legal power and authority to enter into this Agreement and to bind the entity named below. During the Term of the Agreement, Cloudaware represents and warrants that (i) it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) the Service shall perform materially in accordance with the documentation found, and updated, from time to time, at <https://www.cloudaware.com>; and (iii) the functionality of the Service will not be materially decreased during a subscription term. You represent and warrant that You have not falsely identified yourself nor provided any false information to gain access to the Service, that Your billing information is correct, that You are a business and not a consumer, and that You have all necessary rights to provide all information provided hereunder.

13. Indemnification. Subject to this Agreement, Cloudaware shall defend, indemnify and hold You harmless against any expense, liability, loss, damage or costs (including reasonable attorneys' fees), each to the extent payable to a third party, incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against You by a third party alleging that the Service as provided hereunder infringes any issued U.S. patent or U.S. copyright of such third party. Notwithstanding the foregoing if Cloudaware reasonably believes that Your use of any portion of the Services is likely to be enjoined by reason of any Claims then Cloudaware may, at its expense and in its sole discretion: (i) procure for You the right to continue using the Services; (ii) replace the same with other services of equivalent functions and efficiency

that is not subject to any Claims of infringement; or (iii) modify the applicable Services so that there is no longer any infringement or breach, provided that such modification does not adversely affect the functional capabilities of the Services as set out herein or the applicable Order Form. If, in Cloudaware's opinion, (i), (ii), and (iii) above are infeasible or commercially impracticable, Cloudaware may, in its sole discretion, terminate the applicable Services and refund to You the fees paid by You for the portion of the Services period that was paid by You but not rendered by Cloudaware. The foregoing indemnification obligation of Cloudaware shall not apply: (1) if the Cloudaware Services are modified by any party other than Cloudaware, but solely to the extent the alleged infringement is caused by such modification; (2) the Cloudaware Services are combined with other non-cloudaware products, applications, or processes not authorized by Cloudaware, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Cloudaware Services; (4) to any third party deliverables or components contained within the Cloudaware Services that are not provided by Cloudaware; or (5) to any action arising as a result of the Customer Data. THIS SECTION 14 SETS FORTH Cloudaware's SOLE LIABILITY AND your SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

You shall defend, indemnify and hold Cloudaware harmless against any expense, liability, loss, damage or costs (including reasonable attorneys' fees), each to the extent payable to a third party, incurred in connection with Claims made or brought against Cloudaware by a third party arising from or relating to Your use of the Customer Data or Your use of the Services in violation of this Agreement, including but not limited to any third party claims associated with Section 7.

Each party's indemnity obligations are subject to the following: (i) the indemnified party shall promptly notify the indemnifier in writing of any Claims; (ii) the indemnifier shall have sole control of the defense and all related settlement negotiations with respect to any Claims (provided that the indemnifier may not settle any Claims that requires the indemnified party to admit any civil or criminal liability or incur any financial obligation without the indemnified party's consent, which consent shall not be unreasonably withheld); and (iii) the indemnified party shall cooperate fully to the extent necessary at the indemnifier's cost in such defense and settlement.

14. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, CLOUDAWARE AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICE AND ALL ASSOCIATED CONTENT ARE PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS AND ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY CLOUDAWARE AND ITS LICENSORS.

15. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL CLOUDAWARE AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL CLOUDAWARE AND/OR ITS LICENSORS BE LIABLE UNDER THE AGREEMENT FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE), REGARDLESS OF THE CAUSE, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SERVICE, INCLUDING THE USE OF OR INABILITY TO USE THE SERVICE, OR ANY INTERRUPTION, INACCURACY, ERROR, OR OMISSION, IN THE SERVICE, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAS

BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL, CONSEQUENTIAL OR CERTAIN OTHER TYPES OF DAMAGES, SO THE EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO YOU. THE LIMITATIONS IN THIS SECTION SHALL NOT APPLY TO LIABILITY ARISING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

16. *Local Laws and Export Control.* Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.

17. *Notice.* Cloudaware may give notice by means of a notice on the Service, electronic mail to Your email address on record in Cloudaware's account information, or by written communication sent by first class mail or pre-paid post to Your address on record in Cloudaware's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or prepaid post) or 12 hours after sending (if sent by email) or posting a notice on the Services. You may give notice to Cloudaware (such notice shall be deemed given when received by Cloudaware) at any time by any of the following: letter delivered by nationally recognized delivery service or first class postage prepaid mail to Cloudaware at the following address: 1350 Avenue of Americas, 2nd Floor, New York, NY 10019, in either case, addressed to the attention of: Legal.

18. *Assignment; Change in Control.* Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination by You, Cloudaware shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of such termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

Cloudaware

<name of the company>

Name: _____

Name: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

