

Cloud Services Agreement

BY (A) CLICKING ON AN “ACCEPT” BUTTON, OR (B) EXECUTING AN ORDER THAT REFERENCES THIS CLOUD SERVICES AGREEMENT, OR (C) OTHERWISE USING OR ACCESSING CLOUD SERVICES, YOU (“CUSTOMER”) AGREE TO THE TERMS OF THIS CLOUD SERVICES AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND SUCH COMPANY OR OTHER LEGAL ENTITY TO THESE TERMS IN WHICH CASE THE TERM “CUSTOMER” WILL REFER TO SUCH ENTITY. THIS CLOUD SERVICES AGREEMENT IS EFFECTIVE AS OF THE DATE YOU ACCEPT THESE TERMS AND SHALL REMAIN IN FORCE UNTIL TERMINATED IN ACCORDANCE WITH THE TERMS HEREIN.

IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO THESE TERMS, YOU SHOULD NOT ACCEPT THIS CLOUD SERVICES AGREEMENT OR USE OR ACCESS THE CLOUD SERVICES.

This Cloud Services Agreement (“Agreement”) is by and between **Customer** and **HCL Technologies Limited**, a company incorporated under the laws of India and having its registered offices at 806 Siddharth, 96 Nehru Place, New Delhi-110019 and **HCL America, Inc.**, a California corporation with an office at 2600 Great America Way, Suite 101 and 401, Santa Clara CA 95054 (together referred to as “**HCLSoftware**”) and governs the receipt and use by Customer of the Cloud Services (as defined below) provided by HCLSoftware. HCLSoftware and Customer are hereinafter referred to individually or collectively, as “**Party**” or “**Parties**.”

1. **Definitions.** In addition to the terms defined above and elsewhere in this Agreement, the following terms will have the meaning set forth below:
 - 1.1. “**Affiliate**” means an entity that controls, is controlled by, or shares common control with HCLSoftware or Customer, where such control arises from either (a) a direct or indirect ownership interest of more than fifty percent (50%) of the outstanding voting stock and/or equivalent interest, or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock and/or equivalent interest, by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than fifty percent (50%) of the outstanding voting stock and/or equivalent interest.
 - 1.2. “**Clouds Service(s)**” means the services provided by HCLSoftware under this Agreement and the applicable Order.
 - 1.3. “**Customer Content**” means all data, software, and information that Customer (or any of its End Users) provides, authorizes access to, or inputs to the Cloud Service.
 - 1.4. “**Documentation**” means HCLSoftware’s guides, manuals, Service Descriptions, and other technical information made available by HCLSoftware to Customer.
 - 1.5. “**Enabling Software**” means a specific software component identified in an SD for a particular Cloud Service that a Customer may download for use in conjunction with the Cloud Services for the duration of the subscription.
 - 1.6. “**End User**” means any user who accesses the Cloud Services through Customer’s access credentials.
 - 1.7. “**Feedback**” means (i) Licensee’s input, comments, responses, opinions, and feedback, concerning the definition, design or validation of the Program and Documentation.
 - 1.8. “**Intellectual Property Rights**” or “**IPR**” means any ideas, inventions, discoveries, processes, works of authorship, marks, names, know-how, and any and all rights in such materials whether or not patentable on a worldwide basis, including any rights in patents, inventor’s certificates, utility models, copyrights, moral rights, trade secrets, mask works, and all related, similar or other intellectual property rights recognized in any jurisdiction worldwide, including all applications and registrations with respect thereto.

1.9 **“Order”** An Order is an agreed written or electronic document from HCLSoftware, subject to the terms and conditions of this Agreement that identifies the Cloud Services to be provided, quantity/usage limits of each Cloud Service to be provided, applicable fees, taxes, payment terms and the Support to be purchased, and any other applicable terms.

1.10 **“Service Description” or “SD”**. Means a document that provides a description and other rights, restrictions, obligations, support and other information regarding a specific Cloud Service. Service Descriptions are available at <https://www.hcl-software.com/resources/license-agreements>.

1.11 **“Support”** may mean basic Support or Premium Support. Customer is automatically enrolled in basic Support for the Cloud Service identified in an Order for the entire term of the Order. HCLSoftware may offer, for an additional charge, Premium Support as applicable, via the execution of a separate contract or Order. Any conflicting terms in an Order or SD that override any part of this Agreement will be identified in the Order or SD accepted by the Customer and only apply to that specific transaction. **“Premium Support”** means HCLSoftware assigns a named HCLSoftware support engineer to provide proactive and responsive support to the Customer, beyond the basic Support.

2. Agreement Structure.

2.1 HCL America Inc. is the owner and licensor of the intellectual property rights in the VoltMX Cloud Services. HCL Technologies Limited is the owner and licensor of all other Cloud Services and all associated intellectual property rights. HCL America Inc. is a wholly owned subsidiary of HCL Technologies Limited. HCL America Inc. is not a sub-licensor of the HCL Technologies Limited’s IPR. HCL Technologies Limited is not a sub-licensor of HCL America Inc.’s IPR.

2.2 Orders.

2.2.1 Except as set forth herein, Cloud Services and Support shall be provided only under Orders executed by both Parties. Each Order is governed by this Agreement and the applicable SD and shall be deemed a separate and independent contract, separate from other Orders, unless expressly stated otherwise.

2.2.2 For administrative purposes, Customer may issue a purchase order in lieu of executing an HCLSoftware Order form. Such purchase order shall constitute acceptance of the Order and shall be governed solely by this Agreement. Any additional or conflicting terms in such purchase order (including those related to payment, taxes, warranties, liability, or termination) shall be null and void. HCLSoftware’s processing of such purchase order shall not constitute acceptance of any such terms even if HCLSoftware executes, uses or refers to such document for invoicing purpose.

2.2.3 Orders may be entered into by and between (i) HCLSoftware or its Affiliates; (ii) Customer or its Affiliates, and for each Order, references to HCLSoftware and Customer shall refer to the respective executing entity. Customer shall remain fully responsible for its Affiliates and authorized users compliance with this Agreement.

2.2.4 For Orders issued in the US, (i) HCL America Inc. shall be the billing entity for each VoltMX Cloud Services Order; and (ii) HCL Technologies Limited shall be the billing entity for all other Cloud Services Orders. For Orders issued in the rest of the world, the billing entity will be the HCLSoftware entity stated on the applicable Cloud Services Order.

3. Cloud Services

3.1 Cloud Services and related Support are obtained solely in connection with an Order. Subject to Customer’s compliance with the terms of this Agreement, HCLSoftware may provide to Customer the Cloud Services as agreed between the Parties in the applicable Order and as further defined in the relevant Service Description. Neither execution of this Agreement nor anything contained herein will obligate either Party to enter into any Orders. Subject to the terms of this Agreement and the applicable Order, including the applicable SD, HCLSoftware will provide Customer with access to the Cloud Services.

3.2 Customer may access a Cloud Service only to the extent of authorizations acquired by Customer in the applicable Order. Customer is responsible for the use and the compliance with the terms hereof of the Cloud Services by any End User who accesses the Cloud Service through Customer’s account credentials.

- 3.3 HCLSoftware Cloud Services are designed to be available 24/7, subject to maintenance. Customer will be notified of scheduled maintenance. Technical support and service level commitments for each Cloud Service, if applicable, are specified in an SD and are available at <https://www.hcltechsw.com/resources/license-agreements>.
- 3.4 Customer may use the applicable Enabling Software for the sole purpose of facilitating Customer's use of the Cloud Services in accordance with the Agreement and/or the relevant SD.
- 3.5 The Cloud Service may enable access to non-HCLSoftware services such as third party websites, platforms, content, products, services, and information ("**Non-HCLSoftware Services**"). HCLSoftware is not responsible for such Non-HCLSoftware Services. HCLSoftware does not provide any warranties or support with respect to Non-HCLSoftware Services. Customer acknowledge that: (a) the nature, type, quality and availability of Non-HCLSoftware Services may change at any time during the Cloud Services term, and (b) features of the Cloud Services that interoperate with Non-HCLSoftware Services, depend on the continuing availability of such third parties' respective application programming interfaces (APIs). Any change to Non-HCLSoftware Services or APIs, including their unavailability, during the Cloud Services term does not affect Customer's obligations under this Agreement or the applicable Order, and Customer will not be entitled to any refund, credit or other compensation due to any such changes. Any transfer by Customer of Customer Content or third party content from the Cloud Services to a non-HCLSoftware service constitutes a transfer by Customer and not by HCLSoftware.
- 3.6 Customer will provide hardware, software and connectivity to access and use the Cloud Service, including any required Customer-specific URL addresses and associated certificates.
- 3.7 A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent Customer Content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, viruses or harmful code, or violating law or third party rights. In addition, Customer may not use Cloud Services if failure of the Cloud Service could lead to death, bodily injury, property or environmental damage. Customer shall not: i) reverse engineer any portion of a Cloud Service; ii) assign or resell direct access to a Cloud Service to a third party outside Customer's organization or use the Cloud Service for any reason other than Customer's internal business purpose; iii) use or combine Cloud Services with Customer's proprietary solution for the purpose of developing, marketing or distributing any new product intended for resale; (iv) perform or disclose any benchmarking or availability testing of the Cloud Services; (v) perform or disclose any performance or vulnerability testing of the Cloud Services, or perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking or remote access testing of the Cloud Services unless otherwise agreed in advance and in writing by HCLSoftware (the "Acceptable Use Policy").
- 3.8 Customer may not copy or disclose any HCLSoftware IPR and/or information to any third party or use the same for any purpose other than for using the Cloud Services in accordance with the terms of this Agreement.
- 3.9 HCLSoftware reserves the right to monitor the Cloud Services to facilitate HCLSoftware's operation of the Cloud Services; to help resolve Customer Support requests; to detect and address threats to the functionality, security, integrity, and availability of the Cloud Services as well as any content, data, or applications in the Cloud Services; and to detect and address illegal acts or violations of this Agreement and the Acceptable Use Policy.

4. Confidentiality, Use of Content, Privacy and Data Protection

- 4.1 **Confidentiality.** "**Confidential Information**" means non-public or proprietary information or any other information that by its form, nature, content or mode of transmission would to a reasonable recipient be deemed confidential or proprietary as made available by the disclosing Party to the receiving Party including Content and Documentation. Confidential Information does not include information which: (i) is or becomes generally known to the public, through no wrongful act of the disclosing Party; (ii) was known to the receiving Party prior to its disclosure; (iii) is lawfully received from a third party without restriction or a breach of an obligation of confidentiality; or (iv) was independently developed by the receiving Party without reference to or use of the information provided by the disclosing Party hereunder.

4.1.1 Confidential Information may be disclosed to the extent compelled by law to do so, provided 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 and expense, if the disclosing Party wishes to contest the disclosure. The Parties agree that the Documentation will be treated as proprietary trade secrets of HCLSoftware. Neither Party will make Confidential Information available in any form to any person or entity other than to its respective Affiliates and Customer's Authorized Users on a need to know basis and subject to the same restrictions of this Section 4. Recipients of Confidential Information that are not employees of either Party must be subject to confidentiality restrictions no less stringent than those contained herein (in the case of non-employees such restrictions will be contained in a written agreement executed by the applicable contractor/person/entity). Each Party shall maintain a system of confidentiality to protect Confidential Information, including written agreements with employees, that the Confidential Information will be protected by such system using no less than a reasonable degree of care, and that it shall ensure its recipients' compliance with this Section. If the receiving Party at any time becomes aware of any unauthorized use or disclosure of the disclosing Party's Confidential Information, it will promptly notify the disclosing Party of all facts known to it concerning such unauthorized use or disclosure and reasonably cooperate with the disclosing Party in seeking a protective order or other appropriate remedy to limit such disclosure.

4.2 **Feedback.** Customer is not obligated to provide feedback to HCLSoftware. To the extent that Customer provides feedback to HCLSoftware, Customer hereby grants to HCLSoftware a worldwide, non-exclusive, perpetual, irrevocable, royalty-free license, with the right to sublicense, under any Customer IPR in and to the Feedback to make, use, sell, offer to sell, have made, import, reproduce, prepare derivative works, distribute, incorporate or otherwise utilize such feedback.

4.3 **Use of Customer Content.** Use of the Cloud Service will not affect Customer's ownership or license rights in Customer Content. HCLSoftware, its Affiliates, and contractors of either Party, may access and use the Customer Content solely for the purpose of providing and managing the Cloud Service. HCLSoftware will treat all Customer Content as Confidential Information in accordance with Section 4.1 above.

4.4 Customer is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, HCLSoftware, its Affiliates, and contractors of either Party, to use, provide, store and otherwise process Customer Content in the Cloud Service. This includes Customer making necessary disclosures and obtaining consent(s), if required, before providing individuals' information, including personal or other regulated data in such Customer Content. If any Customer Content could be subject to governmental regulation or may require security measures beyond those specified by HCLSoftware for a Cloud Service, Customer will not input, provide, or allow such Customer Content to be used with the Cloud Service unless specifically permitted in the terms of the relevant SD or unless HCLSoftware has otherwise first agreed in writing to implement additional security and other measures.

4.5 **Data Protection and Privacy.**

4.5.1 HCLSoftware's Privacy Statement, available at <https://www.hcltechsw.com/wps/portal/legal/privacy>, applies for generally available Cloud Service offerings where personal data is processed by HCLSoftware as a data controller. Specific security features and functions of a Cloud Service may be provided in an attachment and SDs. Customer is responsible to assess the suitability of each Cloud Service for Customer's intended use and Content and to take necessary actions to order, enable, or use available data protection features appropriate for the Content being used with a Cloud Service. By using the Cloud Service, Customer accepts responsibility for use of the Cloud Service and acknowledges that it meets Customer's requirements and processing instructions to enable compliance with applicable laws.

4.5.2 HCLSoftware's Data Processing Addendum ("DPA") available at <https://www.hcltechsw.com/resources/master-agreements> - applies and prevails over any conflicting terms of the Agreement and the referenced documents where personal data is processed by HCLSoftware as a processor, if and to the extent the European General Data Protection Regulation (EU/2016/679) (GDPR) applies to personal data contained in the Content. At Customer's written request, within thirty (30) days of termination or expiration of the applicable Agreement and fulfillment of the purposes agreed in the context of the Services (or as otherwise agreed by the Parties) HCLSoftware shall either delete, destroy or return all personal data to Customer and destroy or return any existing copies.

Consideration shall be taken at such time as to whether there is any legitimate need to retain the personal data so as not to disrupt any operations or otherwise interfere with the Services provided hereunder. Notwithstanding the above, personal data shall not be retained for longer than permitted under any applicable law or regulation.

- 4.5.3 HCLSoftware may charge for certain activities performed at Customer's request (such as delivering Customer Content in a specific format). HCLSoftware does not archive Customer Content, however some Customer Content may remain in Cloud Service backup files until expiration of such files as governed by HCLSoftware 's backup retention practices.
- 4.6 HCLSoftware will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Content, as described in HCLSoftware's Technical and Organizational Measures found here: <https://www.hcltechsw.com/resources/sw-toms>.
- 4.7 HCLSoftware, its Affiliates, and contractors of either, may, wherever they do business, store and otherwise process business contact information ("BCI") of Customer, its personnel and authorized users, for example, name, business telephone, address, email, and user ID for business dealings with them. Where notice or consent by the individual is required for such processing, Customer will notify and obtain such consent.
- 4.8 Account Data is information, other than Customer Content and BCI, that Customer provides to HCLSoftware to enable Customer's use of a Cloud Service or that HCLSoftware collects using tracking technologies, such as cookies and web beacons, regarding Customers use of a Cloud Service. HCLSoftware, its Affiliates, and contractors of either, may use Account Data for example to enable product features, administer use, personalize experience, and otherwise support or improve use of the Cloud Service.

5. Changes

- 5.1 Customer acknowledges that HCLSoftware may modify SDs, from time to time at HCLSoftware 's sole discretion and such modifications will replace prior versions as of the effective date of the modification. The intent of any modification is to: i) improve or clarify existing commitments; ii) maintain alignment to current adopted standards and applicable laws; or iii) provide additional features and functionality. Modifications to the SDs will not result in a material reduction of the Cloud Service.
- 5.2 HCLSoftware may withdraw a Cloud Service upon 12 months written notice and, in such instance, HCLSoftware will continue to provide the Cloud Service for the remainder of Customer's unexpired term in case of a fixed term and for all other cases work with Customer to migrate to another HCLSoftware offering. Access to Non-HCLSoftware Services may be withdrawn by HCLSoftware at any time.

6. Trial, Beta Cloud Services and Other Preview Services

- 6.1 A Cloud Service or feature of a Cloud Service is considered "Preview" when HCLSoftware makes such services or features available at no charge, with limited or pre-release functionality, or for a limited time to try available functionality such as beta, trial, no-charge, or preview designated Cloud Services ("**Preview Services**"). If Customer chooses to use any Preview Services, Customer may do so only to evaluate functionality, performance, compatibility and reliability during the period that HCLSoftware specifies and in accordance with testing guidelines provided by HCLSoftware.
- 6.2 Preview Services are provided "AS-IS" and without support and any security, compliance, service level, and privacy commitments stated in this Agreement are not applicable to Preview Services. Preview Services may be experimental, provided for testing purposes only and may not be used in a Customer's production environment. Customer agrees to make reasonable efforts to provide Feedback on the Preview Services at the request of HCLSoftware. HCLSoftware may change or discontinue Preview Services at any time and makes no commitment to make them generally available. Preview Services are Confidential Information of HCLSoftware.

7. Warranties

- 7.1 HCLSoftware warrants that it provides Cloud Services using commercially reasonable care and skill and in accordance with the applicable SD. The warranty for a Cloud Service shall end upon the termination or expiration of the Cloud Service term under the applicable Order.

7.2 THE FOREGOING IS A LIMITED WARRANTY, AND EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, THE SERVICES ARE PROVIDED WITHOUT EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HCLSOFTWARE DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THOSE ARISING BY LAW, STATUTE USAGE OF TRADE OR COURSE OF DEALING. HCLSOFTWARE DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION. CUSTOMER ASSUMES THE RESPONSIBILITY TO TAKE ADEQUATE PRECAUTIONS AGAINST DAMAGE TO CUSTOMER CONTENT OR OPERATIONS THAT COULD BE CAUSED BY SERVICES DEFECTS, INTERRUPTIONS, OR MALFUNCTIONS.

8. Payment.

8.1 Fees. Customer will pay all fees due and owing. Except as provided therein, all amounts in the Order are in United States Dollars (USD). Fees for any Renewal Term shall be at the then current HCLSoftware list price unless otherwise agreed to in writing by the Parties in a new Order. HCLSoftware will invoice Customer annually in advance. Customer will pay HCLSoftware for the amounts due, owing, and duly invoiced under the Order within thirty (30) days of the date of invoice. Customer shall make all payments through electronic transfer of funds to the designated bank accounts as nominated by HCLSoftware in writing. Overdue amounts payable under the Order will bear interest from the original payment due date at the rate of one percent (1%) per month or the maximum legal rate, whichever is less. Except as provided in this Agreement, all fees are non-refundable and non-cancelable. If the Customer has a bona fide dispute in respect of the whole or any part of any invoice, Customer shall notify HCLSoftware in writing within ten (10) days of receipt of an invoice and, if a dispute remains unresolved within ten (10) days of receipt of notification, Customer may withhold payment of the amount in dispute but shall pay the undisputed amount in accordance with this Agreement. If HCLSoftware subsequently determines any disputed amount is due from Customer, or if the Parties resolve the payment dispute, the amount due shall be paid within seven (7) days after such determination or resolution.

8.2 Taxes. All fees quoted are exclusive of taxes. Customer is responsible for payment of any sales, use, value added, GST, and any other similar taxes or governmental fees associated with the Order, except for taxes based on HCLSoftware's net income, gross revenue or employment obligations. If HCLSoftware is obligated by applicable law to collect and remit any taxes or fees, the appropriate tax or fee amount will be charged and set forth in the applicable invoice. Customer agrees to bear any withholding tax liability as may be required by law and would increase payment due under the Order by such an amount so that the net payment made to HCLSoftware after deduction of applicable withholding tax is the same, had there been no withholding tax applicable. Customer is solely responsible for timely and accurate payment of applicable taxes and fees, irrespective of what HCLSoftware's invoice may state. Subject to applicable laws and presentation of a valid tax exemption certificate provided within the payment terms, HCLSoftware will make relevant adjustments in the invoice. Customer shall remain liable for any incorrect claims of tax exemptions.

9. Infringement Indemnity

9.1. HCLSoftware will settle or defend, at its election any unaffiliated third party claim brought in any suit or proceeding against Customer based upon an allegation that the Cloud Services furnished hereunder constitutes an infringement of any patent, trade secret or copyright, and HCLSoftware will pay all damages and costs: i) finally awarded against Customer for such unaffiliated third party claim or 2) agreed to be paid in settlement between HCLSoftware and the unaffiliated third party. In the event of any claim, allegation, or suit, HCLSoftware, in its sole discretion, may (i) reengineer the Cloud Service(s) in a manner that removes the infringing material; (ii) replace the Cloud Service(s) with non-infringing software, provided such non-infringing software provides substantially the same functionality; or (iii) in the event that (i) or (ii) is not reasonable, terminate the Agreement or applicable Order and HCLSoftware will provide a pro rata refund of any prepaid, unused amounts. HCLSoftware will not be liable for any costs or damages and will not indemnify or defend Customer to the extent such action is based upon a claim arising from:

9.1.1. modification of the Cloud Service(s) by a party other than HCLSoftware after access has been provided by HCLSoftware;

- 9.1.2. use of the Cloud Service(s) in combination with hardware or software not provided by HCLSoftware, unless the Documentation refers to the combination with such hardware or software (without directing Customer not to perform such a combination);
 - 9.1.3. any failure to use the Cloud Services in accordance with the applicable Documentation;
 - 9.1.4. any unauthorized use of the Cloud Service(s); or
 - 9.1.5 any violation of law or third-party rights caused by Customer's Content, materials, designs, or specifications, or
 - 9.1.6 for any act or omission of Customer or its representatives, or any non-HCLSoftware person or entity.
- 9.2. The foregoing obligations are HCLSoftware's entire liability and Customer's sole and exclusive remedy for any infringement claims and are conditioned on the following: (i) HCLSoftware is notified promptly in writing of such claim; (ii) HCLSoftware controls the defense or settlement of the claim provided that HCLSoftware may not, without Customer's prior written consent, settle any claim or consent to entry of any judgment that: (a) does not unconditionally release Customer of all liability and/or (b) contains terms requiring Customer to incur any liabilities, pay any amounts or take any action(s) that are not covered by HCLSoftware's indemnification obligations to Customer as set forth herein; and (iii) Customer cooperates reasonably and gives all necessary authority, information and assistance.
- 9.3 Except to the extent that Section 9.1 applies, Customer will settle or defend, at its election, any unaffiliated third party claim brought in any suit or proceeding against HCLSoftware based upon an allegation that Customer's Content infringes or misappropriates such third party's intellectual property rights, and Customer will pay all damages and costs finally awarded against HCLSoftware for the claim or agreed in settlement by Customer provided that Customer may not, without HCLSoftware's prior written consent, settle any claim or consent to entry of any judgment that: (a) does not unconditionally release HCLSoftware of all liability and/or (b) contains terms requiring HCLSoftware to incur any liabilities, pay any amounts or take any action(s) that are not covered by Customer's indemnification obligations to HCLSoftware as set forth herein.

10. Limitation of Liability.

- 10.1 IN NO EVENT WILL EITHER PARTY (OR HCLSOFTWARE'S AFFILIATES) BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF OPPORTUNITIES, LOSS OF REPUTATION/GOODWILL, BUSINESS INTERRUPTION OR LOSS OF CONFIDENTIAL OR OTHER INFORMATION AND LOSS OR CORRUPTION OF DATA, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE CLOUD SERVICES, OR OTHERWISE IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 10.2. EXCEPT FOR CUSTOMER'S BREACH OF THE USE AUTHORIZATIONS IN THE APPLICABLE ORDER, CUSTOMER'S CONFIDENTIALITY OBLIGATIONS IN SECTION 4.1, CUSTOMER'S INDEMNITY OBLIGATIONS IN SECTION 9, AND CUSTOMER'S PAYMENT OBLIGATIONS (INCLUDING, BUT NOT LIMITED TO, PAYMENTS ARISING FROM HCLSOFTWARE'S AUDIT RIGHTS), IN NO EVENT WILL CUSTOMER'S TOTAL CUMULATIVE LIABILITY HEREUNDER FOR DIRECT DAMAGES (REGARDLESS OF BASIS FOR CLAIMS) EXCEED THE VALUE OF THE APPLICABLE ORDER.
- 10.3 EXCEPT FOR HCLSOFTWARE'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS IN SECTION 4.1, ITS INDEMNITY OBLIGATIONS IN SECTION 9, DEATH OR PERSONAL INJURY, FRAUD, OR ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED BY APPLICABLE LAW, IN NO EVENT WILL HCLSOFTWARE'S (AND ITS AFFILIATES' AND SUPPLIERS') TOTAL CUMULATIVE LIABILITY HEREUNDER FOR DIRECT DAMAGES (REGARDLESS OF BASIS FOR CLAIMS) EXCEED THE SUM PAID BY CUSTOMER TO HCLSOFTWARE UNDER THE APPLICABLE ORDER FOR THE AFFECTED CLOUD SERVICE, DURING THE PRECEDING TWELVE (12) MONTH PERIOD.
- 10.4. IN NO EVENT WILL HCLSOFTWARE BE LIABLE TO CUSTOMER OR TO ANY OTHER PARTY UNDER SECTION 6 (TRIAL, BETA CLOUD SERVICES AND OTHER PREVIEW SERVICES) FOR ANY DAMAGES, LOSS OR LIABILITY, INCLUDING WITHOUT LIMITATION, DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGE, LOSS OR LIABILITY, TIME, MONEY OR GOODWILL WHICH MAY ARISE DIRECTLY OR INDIRECTLY FROM OR RELATED TO CUSTOMER'S OR ANY OTHER PERSON'S USE OF THE PRODUCTS WHETHER IN CONTRACT, TORT, FOR BREACH OF STATUTORY DUTY OR OTHERWISE TO THE EXTENT PERMITTED BY LAW.

10.5 IN NO EVENT SHALL HCLSOFTWARE BE RESPONSIBLE TO CUSTOMER OR ANY OTHER PARTY FOR CLAIMS BASED ON NON-HCLSOFTWARE PRODUCTS AND SERVICES, ITEMS NOT PROVIDED BY HCLSOFTWARE, ANY VIOLATION OF LAW OR THIRD-PARTY RIGHTS CAUSED BY CUSTOMER'S CONTENT, MATERIALS, DESIGNS, OR SPECIFICATIONS, OR FOR ANY ACT OR OMISSION OF ANY NON-HCLSOFTWARE PERSON OR ENTITY.

11. Term and Termination

11.1 **Term.** This Agreement shall enter into force as of the Effective Date and shall remain in force until terminated in accordance with the terms contained herein.

11.2 The Cloud Services term ("**Subscription Period**") is as set forth in the applicable Order. At the end of the Subscription Period the Cloud Services will automatically renew for additional twelve (12) month periods (each a "**Renewal Term**") until and unless either Party gives written notice to the other Party at least thirty (30) days prior to the start of the applicable Renewal Term, of its intention not to renew.

11.3 **Termination by Customer.** Customer may terminate the applicable Cloud Services in an Order upon written notice to HCLSoftware if HCLSoftware commits any material breach hereunder and fails to cure such breach within thirty (30) days after Customer notifies HCLSoftware in writing providing details of the breach.

11.4 **Termination (or Suspension) by HCLSoftware.** HCLSoftware may terminate or suspend this Agreement and/or any Order(s), in whole or in part, and at any time upon written notice if:

11.4.1. If HCLSoftware does not receive payment against HCLSoftware's invoices in accordance with the payment terms under this Agreement or an applicable Order (i) within a further fifteen (15) days after the relevant due date, or (ii) on more than one occasion in any 12-month period;

11.4.2. Customer infringes the IPR of HCLSoftware, its Affiliates, or its licensors or uses the Cloud Services outside the scope of its access and authorization rights;

11.4.3. Customer commits any material breach of this Agreement or any Order and (i) fails to cure such breach within thirty (30) days after HCLSoftware notifies Customer in writing of the breach.

11.4.4. HCLSoftware determines there is a security breach, violation of law, or breach of the terms set forth in Section 3.7. If the cause of the suspension can reasonably be remedied, HCLSoftware will provide notice of the actions Customer must take to reinstate the Cloud Service. If Customer fails to take such actions within a reasonable time, HCLSoftware may terminate the Cloud Service.

11.4.5. Customer (i) files, or has filed against it, a petition in bankruptcy, (ii) has a receiver appointed to handle its assets or affairs, (iii) makes or attempts to make an assignment for benefit of creditors.

For avoidance of doubt, HCLSoftware's rights to terminate or suspend are in addition to any other rights HCLSoftware may have.

11.5 Effect of Termination and/or Expiration.

11.5.1 Termination of the Agreement does not terminate existing Orders, and provisions of the Agreement as they relate to such Orders remain in effect until fulfilled or otherwise terminated in accordance with their terms, unless the Agreement has been terminated for cause or in accordance with Section 11.4.

11.5.2 Customer shall pay to HCLSoftware, on the date of termination or expiration, the total amounts due per the Agreement and/or the Order, and, unless Customer terminated for HCLSoftware's uncured material breach, Customer shall pay all fees that would have been paid over the term of the Order and/or Agreement had the Agreement or Order (as the case may be) not terminated.

11.5.3 All affected obligations under the Agreement, or an Order will terminate, and Customer will no longer have access to the Cloud Services.

11.6 **Effect of Suspension.** In the event of suspension of an Agreement and/or an Order, in whole or in part, by HCLSoftware:

11.6.1 Access to the Cloud Services will be suspended during the suspension period;

11.6.2 HCLSoftware's obligations (except for confidentiality) will be suspended during the suspension period;

11.6.3 Customer's obligations continue to be in force during the suspension period;

11.6.4 Suspension will not be withdrawn until HCLSoftware is reasonably satisfied that Customer has cured the conditions that led to the suspension.

12. **Compliance with Laws.** Each Party is responsible for complying with: i) laws and regulations applicable to its business; ii) import, export and economic sanction laws and regulations, including defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, transfer (in-country) or re-transfer (in-country) of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users; and (iii) all laws prohibiting corruption and bribery, as amended from time to time, (such as, if applicable, the U.S. Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010).

13. **Governing Law.** For purchases in the U.S., any claims arising under or relating to this Agreement will be governed by the internal substantive laws of the State of California or federal courts located in California, without reference to (i) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the Parties' rights or duties; (ii) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (iii) other international laws. For purchases in the U.S., each Party (i) hereby irrevocably agrees to submit to the jurisdiction and venue in the courts of the State of California for all disputes and litigation arising under or relating to this Agreement and (ii) waives any right to a jury trial in any proceeding arising out of or related to this Agreement. For purchases in the Middle East and African countries, any claims arising under or relating to this Agreement will be governed by English laws, without reference to (i) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the Parties' rights or duties; (ii) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (iii) other international laws and each Party hereby irrevocably agrees to submit to the jurisdiction and venue in the courts of England for all disputes and litigation arising under or relating to this Agreement. For purchasing outside the U.S., except Middle East and African countries, both Parties agree to the application of the laws of the country in which Customer obtained the Cloud Services to govern, interpret, and enforce all of Customer's and HCLSoftware's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without reference to (i) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the Parties' rights or duties; (ii) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (iii) other international laws. Furthermore, all rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, are subject to the jurisdiction of the courts of the country in which Customer obtained the Cloud Service.

14. **Export.** Unless otherwise agreed by the Parties, the rights and obligations of the Customer are valid only in the country of Customer's business address or the locations identified in the applicable Order. If Customer or any End User exports or imports Content or use of any portion of the Cloud Service outside the country of Customer's business address or the location identified in the applicable Order, HCLSoftware will not serve as the exporter or importer.

15. General

15.1 **Audit.** Customer agrees that HCLSoftware may, no more than one time per twelve (12) month period, audit the Cloud Services and Support usage hereunder in order to verify Customer's use in compliance with this Agreement and/or Orders. HCLSoftware may conduct the audit itself or at its option engage an independent third party to do such audit, provided that such third party is subject to confidentiality obligation consistent with the Agreement. Customer will provide all assistance reasonably necessary for HCLSoftware to carry out such audit. If the audit reveals underpayment, Customer will promptly make such payments. If the audit reveals under-reporting of usage, Customer will promptly pay the difference. As with all provisions of the Agreement, HCLSoftware's rights and remedies in this paragraph will be without prejudice to other rights and remedies HCLSoftware has under this Agreement or in any Order, a law or in equity. HCLSoftware's audit rights under this paragraph shall survive any termination or expiration of an Order or this Agreement for two years.

15.2 **No Joint Venture.** HCLSoftware is an independent contractor, not Customer's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Customer's regulatory obligations or assume any responsibility for Customer's business or operations. HCLSoftware is an information technology provider only. Any directions, suggested usage, or guidance provided by HCLSoftware or a Cloud Service does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Customer and its End Users are responsible for the

use of the Cloud Service within any professional practice and should obtain their own expert advice. Customer is responsible for its and its End Users' use of HCLSoftware and Non-HCLSoftware products and services. Each Party is responsible for determining the assignment of its and its Affiliates personnel, and their respective contractors, and for their direction, control, and compensation.

- 15.3 Customer's relationship with HCLSoftware business partners and resellers is governed by the agreement between Customer and any such HCLSoftware business partner and reseller. HCLSoftware shall not be responsible for the acts or omissions of its business partners and resellers in their specific interactions with the Customer.
- 15.4 **Assignment.** HCLSoftware may assign, delegate, subcontract or transfer this Agreement or any Order, in whole or in part, including but not limited to, its payment rights hereunder. Customer shall not assign or transfer this Agreement or an Order without the prior written consent of HCLSoftware. Except as mentioned herein, any attempted assignment or transfer by Customer of this Agreement or Order is null and void.
- 15.5 HCLSoftware is a division of HCL Technologies Limited a company duly organized and existing under the laws of India and having its registered offices at 806 Siddharth, 96 Nehru Place, New Delhi-110019.
- 15.6 **Notices.** Except as provided herein, all legal or privacy related notices under the Agreement must be in writing, marked as for the attention of the legal department and sent to the business address specified for the Agreement, unless a Party designates in writing a different address. The Parties consent to the use of electronic means for all other communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the Parties with respect to the subject matter hereof.
- 15.7 **Force Majeure.** Neither Party will be liable for any failure to perform (except Customer's monetary obligations and each Party's confidentiality obligations) due to circumstances that it could not have been reasonably foreseen or causes beyond its reasonable control, including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, epidemic, pandemic, delay in delivery by vendors, fire, flood, accident, strikes, inability to secure transportation, facilities, fuel, energy, labor, or materials. In the event of force majeure, time for delivery or other performance will be extended for a period equal to the duration of the delay caused thereby.
- 15.8 **Resources.** HCLSoftware may use personnel and resources in locations worldwide, including contractors, to support the delivery of the Cloud Services. HCLSoftware is responsible for its obligations under the Agreement even if HCLSoftware uses a contractor and will have appropriate agreements in place to enable HCLSoftware to meet its obligations for a Cloud Service.
- 15.9 **Limitation of Actions.** Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: (i) neither Party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two (2) years after the cause of action arose; and (ii) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.
- 15.10 **Waiver and Severability.** All rights and remedies whether conferred hereunder, or by any other instrument or law will be cumulative and may be exercised singularly or concurrently. The failure of any Party to enforce any of the provisions hereof will not be construed to be a waiver of the right of such Party thereafter to enforce such provisions. The terms and conditions stated herein are declared to be severable. If any provision or provisions of this Agreement will be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.
- 15.11 **Artificial Intelligence.** The Parties agree that the terms contained in <https://www.hcltechsw.com/resources/master-agreements> will apply to HCLSoftware AI (as defined in the AI Addendum).
- 15.12 **Entire Agreement.** This Agreement and applicable Orders, Documentation and Service Descriptions are the complete agreement regarding transactions under this Agreement under which Customer may order Cloud Services, and it supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Cloud Services.