



## CHANNELCLOUD RESELLER PARTNER AGREEMENT

This Reseller Agreement ("Agreement") is a binding legal contract between you (either an individual or a legal entity) ("you" or "Reseller") and ChannelCloud ("ChannelCloud"). PLEASE READ THE TERMS OF THIS AGREEMENT CAREFULLY BEFORE CLICKING ON THE "ACCEPT" BUTTON. BY CLICKING ON THE "ACCEPT" BUTTON YOU ARE ACKNOWLEDGING THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU AGREE TO ABIDE BY THE TERMS OF THIS AGREEMENT INCLUDING ALL APPLICABLE TERMS LOCATED AT THE ADDITIONAL LINKS DESCRIBED THROUGHOUT THIS AGREEMENT ("ENTIRE AGREEMENT"). IF THIS DOCUMENT IS PRINTED, PLEASE SIGN, DATE AND EMAIL TO [PARTNERS@CHANNELCLOUD.COM](mailto:PARTNERS@CHANNELCLOUD.COM).

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT CLICK THE "ACCEPT" BUTTON. IF YOU DO NOT AGREE TO THESE TERMS, CHANNELCLOUD IS NOT WILLING TO WORK WITH YOU AS A RESELLER OF CHANNELCLOUD'S PRODUCTS AND SERVICES. IN WHICH CASE, YOU SHOULD CLICK THE "DO NOT ACCEPT" BUTTON TO REJECT THIS AGREEMENT.

In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

### 1. DEFINITIONS

- a. "Confidential Information" means any information, whether oral, written, electronic, or in any other format, and whether technical or business in nature, regarding this Agreement, ChannelCloud's products or business, including the Product, information regarding a party's products, services, Marks, software, intellectual property, equipment, pricing, marketing and business plans, other information not generally known to the public and any other information received under circumstances reasonably interpreted as imposing an obligation of confidentiality; provided that, "Confidential Information" shall not include any of such information which: (i) was publicly available at the time of disclosure by the disclosing party; (ii) became publicly available after disclosure through no fault of the receiving party; (iii) was known to the receiving party prior to disclosure by the disclosing party; or (iv) was rightfully acquired by the receiving party after disclosure by the disclosing party from a third party who was lawfully in possession of the information and was under no legal duty to the disclosing party to maintain the confidentiality of the information.
- b. "Customer" means any entity or person who purchases a Product through Reseller's marketing efforts. A Customer becomes an End-User of ChannelCloud upon acceptance of the terms of the User License Agreement applicable to a Product.
- c. "ChannelCloud Software" means all intangible information in object code form constituting one or more computer or apparatus programs and the informational content of such programs, together with any Specifications supplied in conjunction with and supplementing such programs.
- d. "ChannelCloud Hosted Cloud Platform" means any private cloud solutions offered by ChannelCloud through its reseller channel.
- e. "End-User" means any user of the Product upon such user's purchase and/or license of the Product through Reseller's marketing efforts and acceptance of the terms of the User License Agreement applicable to a Product.
- f. "Enhancement" means any upgrade, update, enhancement, change, or modification to the Product. ChannelCloud reserves the right to make any Enhancements at any time in its sole discretion.
- g. "Hybrid Server" means any ChannelCloud hardware device to be used with the ChannelCloud Software.
- h. "Intellectual Property Rights" means all intellectual property rights, however arising and in whatever media, whether or not registered, including patents, copyrights, trademarks, service marks, trade names, design rights, database rights, domain names, trade secrets and any applications for the protection or registration of such rights and all renewals and extensions thereof throughout the world.
- i. "Marketing Material" means documents, press releases, marketing materials, and any other items or information in any medium provided by ChannelCloud or its designees that describes ChannelCloud or the Products.
- j. "Marks" means the trademarks, service marks, trade names, domain names, logos and other proprietary indicia (whether or not registered) of a party.
- k. "Product(s)" means ChannelCloud's Services, on any ChannelCloud Hosted Solution, any Hybrid Server, all ChannelCloud Software as well as all Enhancements thereto. Product also includes Specifications and tools with respect to the Product provided by ChannelCloud to Users.
- l. "Reseller Services Agreement" means a written agreement between Reseller and a Customer.
- m. "Services" means the services provided by ChannelCloud. The Services may be provided through the use of a Hybrid Server or any other solution owned by or under the control of the User and/or the Services may be provided through the use of remotely located servers owned by or under the control of ChannelCloud.

- n. "Specifications" means the documents, user manuals and any technical publications and specifications, as applicable, made available to Users relating to the Product.
- o. "Territory" means the territory designated by ChannelCloud in writing to you.
- p. "User License Agreement" means ChannelCloud's then-current user license agreement.

## 2. LICENSE GRANTS AND RESTRICTIONS

- a. *Appointment.* ChannelCloud hereby appoints Reseller, for the term of this Agreement, as its non-exclusive reselling partner of the Product to Customers in the Territory.
- b. *License to Software and Hardware.* Subject to the terms and conditions of this Agreement, ChannelCloud hereby grants Reseller, during the term, a limited, non-transferable, non-sublicense able, non-exclusive (i) right to purchase for its own use as an End-User, (ii) right to purchase in order to market, distribute and sell the Product within the Territory, and (iii) license to use the Product and to display and distribute Specifications and Marketing Material, solely for Reseller's internal testing and demonstration purposes, and as necessary to promote, advertise and market the Product in accordance with the terms of this Agreement, and for no other purpose. This Agreement is non-exclusive with respect to ChannelCloud, and ChannelCloud reserves the right to permit other resellers and third parties to market, promote and sell the Product in the Territory. All rights not expressly granted to Reseller are reserved by ChannelCloud and its licensors.
- c. *Hardware-as-a-Service.* The Hybrid Server is sold to Reseller and paid by Reseller in monthly payments as stated in each applicable invoice. Each Hybrid Server can be purchased by reseller at the end of each order term for a fixed fee. Limitations. Except as expressly set forth herein, nothing in this Agreement shall be construed to transfer to Reseller any trademark, trade secret, copyright, patent, or any other Intellectual Property or other rights in or to the Product. Reseller shall not: (i) modify the Product, or any portion thereof, or make derivative works based on the Product; (ii) use any portion of the Product other than as permitted under this Agreement; (iii) remove any product identification or other notices contained in the Product; (iv) access and/or use the Product (1) to send any unsolicited commercial email or invitation, (2) to request, collect, store, or disclose any unencrypted personally identifiable data (such as credit card numbers or social security numbers) or to violate any applicable privacy law, (3) to communicate any message or material that is deemed harmful, abusive, harassing, threatening, indecent, obscene, racially, ethnically, or otherwise objectionable, hateful, tortuous, libelous, defamatory, slanderous, or otherwise unlawful, (4) in a manner which infringes any Intellectual Property Rights of any third party, (5) in a manner which violates any applicable laws, rules, or regulations, or (6) in a manner which constitutes or encourages conduct that could be a criminal or civil offense under any applicable law or regulation; (v) use the Product to upload, post, email, distribute, communicate, transmit, or otherwise make available any viruses or similar malicious software that may damage the operation of a computer or the Product; (vi) use the Product to send materials to individuals under the age of majority in his or her place of residence ("Minors"), or to harm Minors in any way, or that would subject ChannelCloud to any local or international law, rule, or regulation governing children's privacy or otherwise related to protecting Minors; (vii) access and/or use the Product in any manner that could damage, disable, overburden, impair, or otherwise interfere with or disrupt the Product or any networks or security systems, or (viii) reverse engineer the Product, or any portion thereof, for any reason, or access the Product to (1) build a competitive product or service, (2) build a product using similar ideas, features, functions, or graphics of the Product, or (3) copy any ideas, features, functions, or graphics of the Product. As between ChannelCloud and Reseller, Reseller shall be solely responsible for all data, content, files, software, scripts, images, graphics, audio, video, text, music, sound, photographs, or other objects, information, messages or other materials stored, backed-up, or communicated using the Product (the "Content"). Although ChannelCloud is not responsible for any such Content through the use of the Product, ChannelCloud reserves the right to take any action it deems necessary or appropriate in its sole discretion, with respect to any such Content of which ChannelCloud may become aware, at any time and without notice to Reseller. Reseller acknowledges and agrees that the Product is comprised of commercially valuable assets of ChannelCloud or its licensors, the development or acquisition of which required the investment of substantial time, effort and cost by ChannelCloud. Reseller further acknowledges and agrees that the Product contains trade secrets of ChannelCloud and that it (and all portions thereof) are ChannelCloud's Confidential Information and are proprietary to ChannelCloud. Accordingly, Reseller hereby agrees to use the highest degree of care to maintain the confidentiality of the Product. Reseller shall not modify a Hybrid Server, ChannelCloud Hosted Cloud Platform, or ChannelCloud Software without prior written consent from ChannelCloud. A Hybrid Server or ChannelCloud Hosted Cloud Platform will not be supported by ChannelCloud, and all warranties and refund rights thereto shall be void, if it has been modified in any way, including (a) using software that is not recommended or approved by ChannelCloud for Hybrid Servers, or (b) installing a different operating system (OS) on a Hybrid Server. ChannelCloud shall have no obligation to protect, maintain, or troubleshoot any server or workstation, or any Product used in conjunction with any server or workstation, with any Microsoft OS that is not supported by Microsoft itself. Reseller shall cooperate in good faith to implement ChannelCloud's suggestions and solutions, and assist ChannelCloud in maintenance and troubleshooting issues, with respect to any support of the Products. Reseller shall take all actions necessary to comply with the obligations in this Section. Reseller shall immediately notify ChannelCloud of any unauthorized use, copying, or disclosure of the Product, or any portion thereof, of which it becomes aware and agrees to immediately take such actions as are necessary to end and prevent any such use, copying, or disclosure. ChannelCloud, in its sole and exclusive discretion, may immediately terminate this Agreement in the event Reseller, or any of Reseller's employees, officers, agents, subcontractors, or independent contractors, violate any provision of this Section. Each party acknowledges and agrees that any breach of any provision of this Section by Reseller, or its employees, officers, agents, subcontractors, or independent contractors, shall cause immediate and irreparable injury to ChannelCloud, and in the event of such breach, ChannelCloud shall be entitled to seek and obtain injunctive relief, without bond or other security, and all other remedies available at law and in equity.

- d. *Reservation.* Notwithstanding any other provision of this Agreement, nothing in this Agreement in any way limits, impairs, or restricts ChannelCloud's right and ability, and ChannelCloud reserves the right and ability from time to time in its absolute discretion, to directly or indirectly market, distribute, demonstrate, sell, resell, license, maintain and support and otherwise commercially exploit the Product or any other products or services on a worldwide or territorial basis, including in the Territory and through other channels, resellers, referral sources, distributors, or otherwise.
- e. *License to Trademarks.* ChannelCloud hereby grants to Reseller a non-exclusive, non-transferable, royalty free, non-sublicense able license during the term of this Agreement to use, reproduce, and display the ChannelCloud Marks in the Territory subject to the terms of this Agreement and solely for the purposes of marketing and reselling the Product.
- f. *Use of Third Party Technology.* By accepting the terms of this Agreement, Reseller acknowledges and agrees that it shall comply with the third party terms and conditions.
- g. *Additional Policies.* By accepting the terms of this Agreement, Reseller acknowledges that it has reviewed and agrees that it accepts and understands the additional terms and conditions, including, but not limited to, ChannelCloud's warranty, return, and upgrade policies and any additional policies.
- h. *Obligations and Restrictions*
  - i. Reseller acknowledges and agrees that all Intellectual Property Rights in the ChannelCloud Marks and Product belong to and shall continue to belong to ChannelCloud (or its licensors or other third party owners), and Reseller shall have no rights in or to the ChannelCloud Marks or Products other than as specifically set forth in this Agreement.
  - ii. Reseller shall not display ChannelCloud Marks other than in accordance with the provisions of this Agreement. Reseller shall at all times display the ChannelCloud Marks in accordance with ChannelCloud's brand guidelines as may be provided or made available by ChannelCloud to Reseller from time to time. ChannelCloud may amend such brand guidelines at any time and from time to time upon written notice, and any such amendments will be implemented by Reseller promptly.
  - iii. Neither party shall: (1) attack or challenge the validity of the other party's rights and title to its Marks; (2) claim any right, title, or interest in or to the other party's Marks; (3) register or apply for registration of the other party's Marks; or (4) use the other party's Marks anywhere in the world except as specifically permitted under this Agreement.
  - iv. Each party shall have the right to monitor the quality of use of its Marks by the other party, and may immediately terminate the other party's use of its Marks if, in such party's reasonable discretion, the other party's use is not consistent with the requirements of this Agreement.
  - v. Each of the parties shall have the sole and exclusive right to determine how their respective brands, logos and Marks are used. A party's use of the other party's Marks is subject to the full approval of the other party.
- i. *Business Conduct.* Reseller shall (i) conduct business in a manner that reflects favorably on ChannelCloud and the Product, (ii) not engage in any deceptive, misleading, or unethical business practices, (iii) not make any representations or warranties with respect to the Product that have not been approved in writing by ChannelCloud, and (iv) comply with all laws, rules and regulations including those concerning bribery and corruption.

### 3. CUSTOMERS

All Customers that receive or purchase the Product are required to agree to ChannelCloud's User License Agreement and distribution of such Products shall be made only pursuant to such User License Agreement. ChannelCloud may terminate access to the Product and data stored by ChannelCloud for any reason consistent with the requirements of the User License Agreement. All User License Agreements shall be between ChannelCloud and each End-User only.

### 4. MARKETING PROMOTION

- a. *Promotion.* Reseller agrees that it shall commit substantial efforts and resources to professionally and effectively market, promote and sell the Product to Customers during the term, including listing ChannelCloud in literature and on web sites that list Reseller's third party service providers, and cooperating with ChannelCloud in creating sales leads and marketing opportunities. Reseller shall maintain a professional and appropriately trained sales and marketing force with respect to marketing, promoting and selling the Product.
- b. *Responsibilities of Reseller.* Reseller agrees (i) not to make any reference or claim about ChannelCloud or the Product other than presenting current information that has been published by ChannelCloud or pre-approved by ChannelCloud in writing, (ii) not to use deceptive, misleading, illegal, or unethical practices in marketing and promoting the Product to Customers, (iii) to keep ChannelCloud informed as to any problems encountered with the Product, (iv) not to make any representations, claims, or warranties regarding the Product without ChannelCloud's prior written authorization, and (v) to only use Marketing Material approved in advance and in writing by ChannelCloud. ChannelCloud may, in its sole and exclusive discretion, modify, replace, or add to the Product at any time, including revisions to any and all Specifications, terms and conditions associated with the Product.

### 5. MAINTENANCE AND SUPPORT; TRAINING

*Maintenance and Support.* ChannelCloud shall provide Reseller with reasonable support for the Product in accordance with ChannelCloud's then-current maintenance and support program. Unless otherwise agreed by the parties, ChannelCloud support shall be limited to 3rd level support to Reseller personnel or its designee. Unless otherwise agreed by the parties, on an on-demand basis, Reseller shall be solely responsible for providing 1st level and 2nd level support to End-Users.

## 6. PAYMENT

- a. *Price and Payment.* Reseller shall pay ChannelCloud the fees for each Product sold as described in, and on the terms provided on the applicable invoice. It is your obligation to check the ChannelCloud website for the fees applicable to the Product, as such fees may change at any time and from time to time without notice to you. If there are any additions or changes to the Product, Reseller will have the right to purchase these Products and prices will be established and posted to ChannelCloud's website.
- b. *Costs and Expenses.* Except as expressly set forth in this Agreement, each party will bear all costs and expenses incurred in performing its obligations under this Agreement, including expenses related to marketing of the Product, and Reseller is not entitled to receive any fees, commissions, or other remuneration for the performance of Reseller's obligations under this Agreement.
- c. *Taxes.* Reseller shall pay and be solely liable for all taxes including sales, use, duties, excise and any other taxes with respect to the sale by ChannelCloud to Reseller of the Product, but excluding taxes based on ChannelCloud's net income or gross receipts and taxes from which Reseller is exempt by law as shown by a valid tax exemption certificate, when such certificate is required.
- d. *Audit.* Reseller shall retain all notes, records, materials and all other documentation with regard to its performance hereunder for 3 years after the termination or expiration of this Agreement. At all reasonable times during the term and such subsequent 3 year period, ChannelCloud, or its duly authorized representative, shall be permitted access to such documents, notes and records for purposes of auditing and verifying compliance with this Agreement, upon 5 business days prior written notice, during Reseller's regular business hours.

## 7. TESTING; OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

- a. *Testing.* Reseller agrees that ChannelCloud may, at any time and from time to time, interact with any deployed Product in order to test and remotely troubleshoot such Product without notice to Reseller or to any End-User. ChannelCloud may, but is not obligated to, share with each applicable Reseller the results of any such testing and troubleshooting. Reseller or End-Users may provide suggestions, comments, or other feedback (collectively, "Feedback") to Reseller or ChannelCloud with respect to the Product. Feedback is encouraged, but voluntary. Reseller will promptly provide any such Feedback received to ChannelCloud and ChannelCloud may use Feedback for any purpose without obligation of any kind. To the extent ChannelCloud requires a license under Reseller's Intellectual Property Rights to make use of the Feedback, Reseller grants ChannelCloud an irrevocable, exclusive, perpetual, fully-paid-up, royalty-free license to use the Feedback for any purpose whatsoever, including the enhancement of the Product and other of ChannelCloud's products and services.
- b. *Intellectual Property Rights.* All Intellectual Property Rights in the Product and ChannelCloud Marks, excluding any Reseller Marks, are and will remain the sole and exclusive property of, as applicable, ChannelCloud, and its suppliers and licensors. The Product contains material that is protected by United States copyright, patent and trade secret law, and by international treaty provisions. All rights not expressly granted to Reseller under this Agreement are expressly reserved by ChannelCloud and its suppliers and licensors. Reseller may not remove or modify any product identification or proprietary notice of ChannelCloud or its suppliers or licensors from any materials or Specifications provided with or in connection with the Product. Except as provided herein, neither party will use the company name or Marks of the other party without the other party's prior written consent.
- c. *Beta Products.* ChannelCloud may designate certain Enhancements or new releases of Product as "Beta ChannelCloud Product" Such Beta ChannelCloud Product will not be ready for use in a production environment and operation of the Beta ChannelCloud Product may be unpredictable and lead to erroneous results. You acknowledge and agree that: (a) the Beta ChannelCloud Product is experimental and has not been fully tested; (b) the Beta ChannelCloud Product may not meet your requirements; (c) the use or operation of the Beta ChannelCloud Product may not be uninterrupted or error free; (d) your use of the Beta ChannelCloud Product is for purposes of evaluating and testing the product and providing feedback to ChannelCloud; (e) you shall inform your employees, staff members and other users regarding the nature of the Beta ChannelCloud Product; and (f) you will hold all information relating to the Beta ChannelCloud Product and your use of the Beta ChannelCloud Product, including any performance measurements and other data relating to the Beta ChannelCloud Product, in strict confidence and shall not disclose such information to any unauthorized third parties. Your use of the Beta ChannelCloud Product shall be subject to all of the terms and conditions set forth herein relating to the ChannelCloud Product. You shall promptly report any errors, defects, or other deficiencies in the Beta ChannelCloud Product to ChannelCloud. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, ALL BETA PRODUCT IS PROVIDED "AS-IS" AND "AS-AVAILABLE," WITHOUT WARRANTIES OF ANY KIND. You hereby waive any and all claims, now known or later discovered, that you may have against ChannelCloud and its suppliers and licensors arising out of your use of the Beta ChannelCloud Product.

## 8. CONFIDENTIALITY

- a. *Protection of Confidential Information.* Each party shall: (i) maintain the confidentiality of the Confidential Information of the other party; (ii) take steps to minimize the dissemination or copying of the Confidential Information of the other party except to the extent necessary to perform its obligations under this Agreement; (iii) use the same care to prevent disclosure of the Confidential Information of the other party to third parties as it employs to avoid disclosure of its own information of a similar nature, but in no event less than a reasonable standard of care; (iv) use the Confidential Information of the other party solely for the purpose of performing its obligations under this Agreement; (v) not acquire any express or implied right or license under any patent, copyright, trade secret, or other right or assert any lien against Confidential Information of the other party; (vi) promptly return, or provide a copy of, as the requesting party directs, Confidential Information upon the request of the other party; and (vii) use its best efforts to inform its employees, officers, agents, subcontractors and independent contractors who perform duties with respect to this Agreement about these restrictions.

- b. *Disclosure of Confidential Information.* Each party may disclose Confidential Information of the other party to its employees, officers, agents, subcontractors and independent contractors who have: (i) a need to know such Confidential Information in order to perform their duties; and (ii) a legal duty to protect the Confidential Information. A party receiving Confidential Information of the other party assumes full responsibility for the acts and omissions of its employees, officers, agents, subcontractors and independent contractors with respect to such Confidential Information.
- c. *Required Disclosures.* Either party may disclose Confidential Information to the extent disclosure is based on the good faith written opinion of such party's legal counsel that disclosure is required by law or by order of a court or governmental agency; provided that, the party that is the recipient of such Confidential Information shall use all commercially reasonable efforts to maintain the confidentiality of the Confidential Information by means of a protective order or other similar protection and shall give the owner of such Confidential Information prompt notice in order that it have every opportunity to intercede in such process to contest such disclosure and shall use all commercially reasonable efforts to cooperate with the owner of such Confidential Information to protect the confidentiality of such Confidential Information. The owner of such Confidential Information reserves the right to obtain a protective order or otherwise protect the confidentiality of such Confidential Information.
- d. *Notification.* Except for any disclosure permitted under section 8(b) above, in the event of any disclosure or loss of Confidential Information, the receiving party shall notify the disclosing party as soon as possible.
- e. *Injunctive Relief.* Each party acknowledges that any breach of any provision of this Section 8 (Confidentiality) by either party, or its employees, officers, agents, subcontractors, or independent contractors, may cause immediate and irreparable injury to the other party, and in the event of such breach, the injured party shall be entitled to seek and obtain injunctive relief to the extent provided by the court of applicable jurisdiction, without bond or other security, and to any and all other remedies available at law or in equity.
- f. *Return of Confidential Information.* Unless it is expressly authorized by this Agreement to retain the other party's Confidential Information, a party shall promptly return or destroy, at the other party's option, the other party's Confidential Information.
- g. *Duration.* The obligations of confidentiality set forth herein shall: (i) take effect upon your acceptance and continue in full force and effect throughout the term; and (ii) continue beyond the term (1) with respect to any Confidential Information that constitutes a trade secret under applicable law, for so long as such trade secret status is maintained, and (2) with respect to any other Confidential Information, indefinitely or for so long as permitted under applicable law.

## 9. TERM AND TERMINATION

- a. *Term.* The initial term of this Agreement shall commence upon your acceptance of the Agreement and shall continue for 12 calendar months thereafter. Thereafter this Agreement shall be automatically extended for additional periods of 1 year, unless either party notifies the other party of non-renewal at least 60 calendar days prior to the then-current term. This agreement cannot be terminated if any End User Products, services and/or agreements are in effect.
- b. *Termination for Convenience.* ChannelCloud may terminate this Agreement, at any time, without cause, upon 60 calendar day's prior written notice.
- c. *Termination for Breach.* Either party may terminate this Agreement with 30 calendar day's prior written notice if the other party has failed to comply with any material term, condition, or obligation of this Agreement, and such party subsequently has failed to undertake substantial efforts to remedy the default within 30 calendar days after such notice by the non-defaulting party.
- d. *Effect of Termination.* Following termination of this Agreement, Reseller shall (i) immediately cease use, marketing and distribution of the Product and use of the ChannelCloud Marks and immediately cease representing itself as a reseller of or affiliated with ChannelCloud in any manner, and (ii) immediately cease production of any new marketing materials and collateral relating to ChannelCloud or the Product. Following termination of this Agreement, both parties shall immediately cease use of all Confidential Information belonging to the other party and shall irretrievably delete or remove such items from all computer hardware and storage media, including backups. Termination of this Agreement shall not affect any of ChannelCloud's rights with respect to an End-User's license to the Product. ChannelCloud may continue to provide the Product, and any other of ChannelCloud's products and services, to such End-Users and ChannelCloud's relationship with such End-Users shall not be affected by any termination of this Agreement. In addition, ChannelCloud may assign any End-User to an alternative ChannelCloud reseller.
- e. *Survival.* Notwithstanding any provisions contained in this Agreement to the contrary, in addition to any provisions that by their express terms survive termination of this Agreement, or by their nature may be reasonably inferred to have been intended to survive termination of this Agreement, the following provisions shall survive termination of this Agreement: 1 (Definitions), 6 (Payment), 7(b) (Intellectual Property Rights), 8 (Confidentiality), 9(d) (Effect of Termination), 9(e) (Survival), 11 (Indemnification), 12 (Limitation of Liability) and 13 (Additional Provisions).

## 10. WARRANTIES

- a. *Limited Warranty.* All warranties for the Product are contained in the additional product policies. If ChannelCloud sells and distributes products developed by third parties, ChannelCloud shall have no warranty obligations with respect to such products, and the warranty shall be limited to the warranty provided by the developer of the product. ChannelCloud's sole and exclusive obligation, and

Reseller's and each End-User's sole and exclusive remedy, in the event of a breach of any warranty are any remedy as described in the User License Agreement.

- b. Each party represents and warrants that (i) it has the authority to enter into this Agreement and to grant the rights and licenses provided herein, and that by entering into this Agreement such party is not in violation of any previous agreement between such party and any third party, and (ii) it will comply with all laws and regulations applicable to the obligations assumed under this Agreement.
- c. *No Other Warranties.* EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 10 (WARRANTIES), CHANNELCLOUD DOES NOT MAKE ANY GUARANTEE, WARRANTY, OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE CHANNELCLOUD MARKS OR PRODUCT (INCLUDING ANY WARRANTY AS TO TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE), NOR WITH RESPECT TO ANY OTHER MATTER SET FORTH IN THIS AGREEMENT.

## 11. INDEMNIFICATION

- a. *Indemnification by ChannelCloud.* ChannelCloud shall defend, indemnify and hold harmless Reseller from and against all damages and costs incurred as a result of a third party claim that the ChannelCloud Marks in the form supplied to Reseller under this Agreement, infringe or misappropriate the third party's Intellectual Property Rights. Such indemnification shall not apply to (i) any claims of infringement or alleged infringement of a third party's Intellectual Property Rights to the extent that such claims are based on Reseller's combination of the ChannelCloud Marks with other products if the infringement could have been avoided by the use of such ChannelCloud Marks not in such combination, (ii) any modifications to the ChannelCloud Marks not made by ChannelCloud, or (iii) any damages incurred as a result of Reseller's failure to use any update to the ChannelCloud Marks provided by ChannelCloud. In the event of any claim being made or action brought against Reseller with respect to which ChannelCloud is liable to indemnify Reseller under this Section 11(a) (Indemnification by ChannelCloud), Reseller shall promptly notify ChannelCloud thereof and ChannelCloud shall be entitled to assume control and conduct the defense of such claim, including the settlement or compromise of the same; provided that, ChannelCloud shall not enter into a stipulated judgment or settlement that purports to bind Reseller without Reseller's express written authorization. If ChannelCloud determines that a ChannelCloud Mark is or may be subject to an infringement claim, ChannelCloud may, at its option (1) procure for Reseller the right to continue using the ChannelCloud Mark in accordance with this Agreement, or (2) replace or modify the ChannelCloud Mark so it becomes non-infringing. If ChannelCloud determines that neither of the remedies in this Section 11(a) (Indemnification by ChannelCloud) are commercially practicable, ChannelCloud may terminate this Agreement upon written notice to Reseller.
- b. *Indemnification by Reseller.* Reseller shall defend, indemnify and hold harmless ChannelCloud, its licensors and affiliates, and the officers, directors, employees and representatives of each of them, from and against all damages and costs incurred as a result of a third party claim to the extent the claim arises out of (i) Reseller's combination of the ChannelCloud Marks or Product with other products or Reseller's modifications or alterations of the ChannelCloud Marks or Product, (ii) Reseller's failure to follow ChannelCloud's policies and procedures including, but not limited to, support and maintenance, (iii) a claim that Reseller's products, materials, or Marks infringe or misappropriate a third party's Intellectual Property Rights, (iv) representations or warranties made by Reseller that have not been approved in writing by ChannelCloud, (v) Reseller's breach of this Agreement, negligence, or other acts or omissions of Reseller resulting, in whole or in part, in a third party claim being asserted against ChannelCloud; (vi) Reseller's failure to have each Customer agree to the User License Agreement; and (vii) Reseller's failure to secure an End-User's or Customer's personally identifiable or other confidential information in accordance with this Agreement, any applicable Reseller Services Agreement, any applicable Business Associate Agreement, and applicable law. In the event of any claim being made or action being brought to which Reseller is liable to indemnify ChannelCloud under this Section 11(b) (Indemnification by Reseller), ChannelCloud shall promptly notify Reseller and Reseller shall be entitled to assume control and conduct the defense of such claim, including the settlement or compromise of the same; provided that, Reseller shall not enter into a stipulated judgment or settlement that purports to bind ChannelCloud without ChannelCloud's express written authorization.

## 12. LIMITATION OF LIABILITY

- a. *Disclaimer of Consequential Damages.* ChannelCloud shall not be liable to reseller for any incidental, consequential, exemplary, indirect, or special damages or costs (including lost profits, lost revenues, lost data, costs of recreating lost data, or loss of use) resulting from any claim or cause of action based on breach of warranty, breach of contract, negligence (including strict liability), or any other legal theory, even if ChannelCloud knew, or should have known, of the possibility thereof.
- b. *Cap on Direct Damages.* ChannelCloud shall not be liable to reseller or to any other person or entity for an amount of damages in excess of the fees paid by reseller to ChannelCloud for the client which incurred damages in the 6 full calendar months immediately preceding the month in which the event giving rise to the claim occurred for the individual client.
- c. *Combination with Other Systems.* Reseller acknowledges and agrees that the product may be one part of a suite of products or system that reseller sells or implements to a customer. Reseller acknowledges and agrees that ChannelCloud shall have no liability for damages arising as a result of any combination of the products with non-ChannelCloud loud products, applications, systems or any other components (whether hardware, software, or otherwise) not provided by ChannelCloud or approved by ChannelCloud for use with the products.

### 13. ADDITIONAL PROVISIONS

- a. *Nature of Relationship.* In entering this Agreement, Reseller does so as an independent contractor and not as an agent, partner, or joint venture of ChannelCloud.
- b. *Compliance with Laws.* The parties shall comply with all applicable local, state and federal laws and regulations, including all export laws and regulations of the United States. Reseller agrees that it will not ship, transmit, or otherwise distribute the Product to another country in violation of any (i) export controls imposed by U.S. laws or regulations, including laws and regulations governing the export of encryption technology, or (ii) import controls imposed by any other country.
- c. *Construction.* The section headings in this Agreement are for convenience of reference only, will not be deemed to be a part of this Agreement and will not be referred to in connection with the construction or interpretation of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including," and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation."
- d. *Arbitration.* Except as provided below, any and all disputes arising from or relating to the subject matter of the terms of this Agreement shall be settled by binding arbitration in accordance with the rules then in effect of the American Arbitration Association. Judgment upon the award rendered by way of such arbitration may be entered in any court having jurisdiction thereof. Costs of arbitration (including reasonable attorneys' fees) shall be made a part of the arbitrator's award. The arbitration shall take place in San Diego, California. Notwithstanding the foregoing, the parties retain the right to obtain injunctive relief from a court specified in Section 13(e).
- e. *Governing Law; Venue; Severability.* This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California without reference to conflicts of law principles. The parties agree that the exclusive jurisdiction of any actions arising out of, relating to, or in any way connected with this Agreement, shall be in the Superior Courts of San Diego County, California or the United States District Court for the District of California. In the event that one or more of the provisions herein shall be invalid, illegal, or unenforceable in any respect, the validity, legality and enforcement of the remaining provisions shall not be affected or impaired.
- f. *Assignment.* Reseller shall not assign this Agreement or any rights or obligations hereunder, without the express written consent of ChannelCloud. Any assignment or transfer in violation of the foregoing will be null and void. ChannelCloud reserves the right to assign this Agreement to any affiliate or any entity in connection with the sale, combination, or transfer of all or substantially all of the assets or capital stock or from any other corporate form of reorganization by or of ChannelCloud. Subject to all of the terms and conditions hereof, this Agreement inures to the benefit of and is binding upon the parties hereto and their successors and assigns.
- g. *Waiver.* The failure to enforce or the waiver by either party of one default or breach of the other party shall not be considered to be a waiver of any subsequent default or breach.
- h. *Notices.* All notices required or permitted hereunder shall be in writing, delivered personally, by certified or registered mail, or by nationally recognized overnight courier (e.g., FedEx) at the parties' respective corporate addresses. All notices shall be deemed effective upon personal delivery; or when received if sent by certified or registered mail or by overnight courier.
- i. *Remedy.* The rights and remedies of the parties will be cumulative (and not alternative). In the event of any litigation between the parties relating to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, expert witness fees and court costs from the other party.
- j. *Entire Agreement.* This Agreement, and all of the terms together constitute the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written and oral agreements with respect to the subject matter. No modification of this Agreement shall be binding on either party unless it is in writing and signed by both parties. In the event of any conflict or inconsistency between this Agreement and any exhibit, the terms and conditions of this Agreement shall prevail.