



Last Updated: September 11, 2023

OpSus | Master Terms and Conditions

These OpSus Terms and Conditions (“**Terms**”) are entered into by Park Place International LLC doing business as CloudWave (“**CloudWave**”), of 100 Crowley Drive, Marlborough, Massachusetts 01752 and the Customer that is identified in and has signed CloudWave’s proposal for Services (each a “**Proposal**”). These Terms are incorporated by reference into the Proposal. The Proposal, Terms, and any other documents referenced in these Terms or the Proposal are collectively the “**Agreement**” entered into by the parties. The Agreement effective date is the latest date of signature of the Proposal, unless the Proposal specifies a different date (the “**Effective Date**”).

1 Definitions. Definitions of words with initial capital letters that are not otherwise included in the text of these Terms or in the Proposal are set forth in Exhibit A to these Terms.

2 Services.

2.1 Proposal. Subject to Customer’s payment of the Fees and compliance with the other terms and conditions of the Agreement, CloudWave agrees to provide the Services, Support, Supported Components, and Equipment, if any, set forth in the Proposal (collectively “**Products and Services**”). CloudWave may from time to time modify, discontinue, or add to the Services or Support set forth in the Proposal; however, no such change will materially reduce the functionality of the Services or Support as set forth in the Proposal. If any modification or additional services or support will incur additional costs to Customer, CloudWave will propose a Change Order and will not make such change until the Change Order has been mutually agreed to by the parties. CloudWave will notify Customer of no cost changes by either (i) sending an email to the Customer’s primary point of contact or (ii) posting a notice on CloudWave’s Customer portal webpage. Customer may dispute such change if Customer sends written notice to CloudWave within five (5) business days of the date of notification with details of Customer’s specific objections to the change. CloudWave will promptly respond to Customer and the parties will use reasonable efforts to resolve Customer’s concerns.

2.2 Exclusions. Notwithstanding anything that may be to the contrary in the Agreement, CloudWave has no obligation to perform any of the following unless expressly included in the Proposal or in a Change Order: (i) Third Party applications and operations support, upgrades, or other operations related to or associated with the Services; (ii) Third Party Software license upgrades, payment of fees, or hardware upgrades from any vendor; (iii) support of any kind for any systems, components or services that are not listed as “Supported Components.”

3 Support and Change Orders.

3.1 Support. Subject to Customer’s payment of the Fees and compliance with the other terms and conditions of the Agreement, CloudWave agrees to provide Support as set forth in the SLA purchased through the Proposal or as agreed upon in a Change Order.

3.2 Change Orders. If Customer desires a modification to the Services or Support, Customer must submit a Change Order to CloudWave describing the desired change. CloudWave will provide Customer with CloudWave’s response to the suggested Change Order, including any additional costs associated with the change. CloudWave will perform the Change Order that has been signed by both parties. For any Change Order that reduces Services or Support, in no event will such reduction reduce Customer’s obligation to pay the total value of the Proposal throughout the remainder of the Term as if the Services and Support had not been reduced. CloudWave reserves the right to decline entering into any Change Order if Customer’s account is more than sixty days (60) past due.

4 Customer Obligations.

4.1 Key Administrative Contact. Customer must provide a primary and secondary Administrative Contact who is authorized to make decisions and changes to the Services and Supported Components, including actions required by and through the Change Order process.

4.2 Financial Escalation Contact. Customer must provide, and keep up to date, a high-level Financial Escalation Contact who will be contacted by CloudWave's CEO or CFO in situations where normal collection processes are ineffective.

4.3 Reasonable Security Precautions. Unless otherwise expressly included in the Proposal, Customer is responsible for providing: proper security configuration for use of the Services and for Customer Environment and Tenant Environment, including encryption to protect the security and integrity of the Services, End User accounts, and Customer Data. Customer shall notify CloudWave immediately of any security related incident that may compromise the security of the Customer Environment, Tenant Environment or CloudWave's Services.

4.4 End Users. Customer is responsible for maintaining Customer Environment, Tenant Environment, and End User accounts with appropriate security controls. All account activity is Customer's responsibility, whether or not authorized by Customer, its Affiliates, its employees, or any Third Party. CloudWave is not responsible or liable for unauthorized access to the Customer Environment, Tenant Environment, or any End User account. Customer will immediately suspend End User's account and access to Tenant Environment for any End User that violates the Agreement. Customer is liable for all activities, directly or indirectly, taken under or through Customer Environment, Tenant Environment, or any End User account.

4.5 Acceptable Use Policy (AUP). For any Services that include CloudWave providing dedicated servers, cloud servers, or cloud storage, Customer shall comply with CloudWave's Acceptable Use Policy located at <https://gocloudwave.com/aup> (as may be modified by CloudWave from time to time and which is incorporated herein by reference) ("**Acceptable Use Policy**" or "**AUP**"). CloudWave will notify Customer of material changes to the AUP by either (i) sending an email to the Customer's primary point of contact or (ii) posting a notice on CloudWave's Customer portal webpage. Customer agrees to cooperate with CloudWave's reasonable investigation of any suspected violation of the AUP by Customer or any End Users.

4.6 Third Party Software and Supported Components. Customer is financially and administratively responsible for installing, maintaining, supporting and upgrading all Third Party Software and is liable for compliance with all licensing terms and conditions associated with the Third Party Software. Customer agrees to comply with all licensing terms and conditions for Supported Components imposed by the Third Party suppliers. CloudWave has no liability for any damages or liabilities resulting from Customer's or End User's acts or omissions relating to any Third Party Software or Supported Software.

4.7 Access and Customer Environment. CloudWave's performance under the Agreement is conditioned on Customer providing timely access to Customer personnel, systems and information and to the Customer Environment required for CloudWave to perform its obligations hereunder and on Customer's performance of Customer's obligations under the Proposal. Customer shall provide CloudWave employees with access to Customer's premises, without charge, a reasonable work environment in compliance with all applicable laws and regulations, including office space, furniture, telephone service, and reproduction, computer, facsimile and other necessary equipment, supplies, and services. Customer agrees to implement the technical requirements necessary for CloudWave to provide the Services. Customer shall maintain the Customer Environment throughout the Agreement, including performing upgrades recommended by Customer's vendors in order to maintain vendor support. If Customer Environment or any component of the Customer Environment becomes end of life and/or end of support, and Customer does not upgrade or replace to a vendor supported model or version, then CloudWave's performance, functionality, and security commitments under this Agreement and any Customer SLA Agreement, including Customer's rights to receive any credits, are not binding or enforceable against CloudWave. CloudWave has no liability for any delays caused by Customer's delay or failure to perform its obligations.

5 Data Processing.

5.1 Compliance with Applicable Laws. CloudWave shall comply with all Applicable Laws required to perform the Proposal. Customer shall comply with all Applicable Laws relating to Customer's collection and transmittal of Customer Data and Customer's use of the Services. Neither party has any obligation to advise the other party of the other party's responsibilities in complying with Applicable Laws pursuant to this Section 5.1. CloudWave is an international company with presence in multiple countries and therefore CloudWave agrees that Customer may indicate in the Proposal the country or countries in which Customer desires its data to be stored. CloudWave will use commercially reasonable efforts to comply with Customer's request.

5.2 Written Information Security Program. CloudWave shall maintain a written information security program appropriate for CloudWave's Services as related to Customer Data ("**Security Program**") and shall

operate in compliance with the Security Program. The Security Program will provide for effective administrative, physical, and technical safeguards to protect Customer Data from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage, and include corresponding policies, procedures, and risk assessments that are reviewed at least annually.

5.3 Third-Party Verification. At Customer's request, no more frequently than once per year, CloudWave shall provide at its expense a then-current SOC2, Type II report, or a reasonable equivalent, prepared by an independent audit firm, relating to CloudWave's Services pursuant to the Proposal.

5.4 Subcontractors. CloudWave may engage subcontractors to perform the Services, which may include subcontracting cloud based infrastructure or cloud storage to a Third Party such as, by way of example, through Azure or AWS.

5.5 Customer Data. Customer is solely responsible for creating, acquiring, developing and using its own data and maintaining or deleting its data in accordance with its own recordkeeping policies. Customer consents to CloudWave accessing, storing, transmitting and using Customer Data for performance under the Agreement. Customer shall not take any action or install any software which may interfere with CloudWave's ability to (i) access or administer CloudWave's servers or (ii) perform the Services or Support.

5.6 Business Associate Agreement. To the extent required by Applicable Law, CloudWave shall comply with all HIPAA Privacy and Security regulations as outlined in 45 C.F.R. Section 164.504(e) of the Privacy Rule and 45 C.F.R. § 164.308, 164.310 and 164.312 of the Security Rule ("HIPAA"). Upon Customer's request, CloudWave will execute a mutually agreed upon Business Associate Agreement, provided by the Customer, and negotiated between the parties.

5.7 Security Breach.

5.7.1 Contact and Notification. Each party shall: (i) provide the other party with the name and contact information for an employee who shall serve as such party's primary security contact and shall be available to assist the other party for any Security Breach; and (ii) notify the other party of a Security Breach as soon as practicable upon becoming aware of a Security Breach but in any event within five (5) business days, both by telephone and by email to such other party's primary security contact. Such notice shall summarize in reasonable detail the impact of such Security Breach and the categories and approximate number of individuals and categories of Customer Data subject to the Security Breach. The parties will reasonably and promptly cooperate with each other with respect to such Security Breach, including gathering necessary information to provide notifications required by Applicable Laws. Neither party shall make any notifications to individuals or engage in any communications with respect to the Security Breach without first providing written notice to the other party, unless otherwise required by Applicable Laws.

5.7.2 Investigation and Mitigation. Each party shall take all actions required by law relating to the Security Breach and shall take all reasonable actions within its control, at its own expense, to mitigate damages from such Security Breach. Each party will bear liability for all costs, expenses, fines, penalties, and remediation in proportion to such party's fault for the occurrence of the Security Breach, subject to all of the other provisions of this Agreement.

5.7.3 Preservation. Each party shall maintain and preserve all documents, records, and other data related to any Security Breach to the extent required by Applicable Law.

5.7.4 Cyber Security Incidents or Exploits. If any Services are interrupted as a result of any cybersecurity exploit, including any Security Breach, or any ransomware attack and any such event is introduced through the Customer Environment, through any other Customer owned or contracted services, accounts, infrastructure, or physical environments, or through systems or methods not within CloudWave's control, and the Service provided to Customer is not exclusively dedicated to Recovery Services, then CloudWave will invoice Customer for CloudWave's professional services, on a time and materials basis at CloudWave's professional services rates, for restoration and/or management of restoration of the Services, and Customer shall pay such invoices within thirty (30) days of invoice date.

6 Payment

6.1 Fees. Customer shall pay the Fees set forth in the Proposal, as may be modified by Change Order or otherwise pursuant to the Agreement. The Proposal will set forth any upfront fees or other initial fees to be paid, as well as recurring charges and other payments due for the Services and Support. In addition, CloudWave will invoice separately for its reasonable expenses, including, without limitation, (i) transportation, (ii) lodging, (iii) parking, and (iv) shipping. Invoices are due within thirty (30) days of invoice date. The first invoice will be sent on the "Service Start Date", as defined in the Proposal. Unless otherwise set forth in the Proposal, Monthly Recurring Charges are due monthly in advance on the dates set forth in the Proposal. Billing pursuant to Change Orders for new Services or new Services features begins when CloudWave sends email notification of amounts due to

the Customer's primary point of contact. All payments due under this Agreement will be paid to CloudWave without counterclaim, reduction, or withholding. Fees for professional services may be invoiced separately. CloudWave reserves the right to modify the Fees up to 5% for any and all Services and Software at the end of each 12 month period during the Term plus any year over year increase in CPI, calculated twelve (12) months after the Effective Date and annually thereafter, and any renewal term for all Services and Software you use. CPI means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items (1982-1984=100) published by the United States Department of Labor, Bureau of Statistics.

6.2 Late Payments. Late payments are subject to an interest charge of 2% per month (or at the highest rate permissible by law) from the due date of the payment until paid in full. CloudWave may consider any payment not received by its due date to be a material breach under this Agreement. Customer shall pay, or reimburse CloudWave for, its reasonable costs of collection of overdue amounts, including collection agency fees, attorney's fees, arbitration fees, arbitration costs, and court costs. Disputes as to the accuracy of an invoice must be presented in writing to CloudWave within forty-five (45) days of the date of the invoice, and invoices that are not so disputed within such forty-five-day time-period are conclusively deemed accurate and accepted. If Customer's accounts are past due by more than sixty (60) days twice during any six (6) month period during the Term, or if any invoice is more than ninety (90) days late at any time during the Term, the Customer will be subject to an additional 2% increase in their reoccurring monthly fees effective upon notice. This will be in addition to any interest charges incurred.

6.3 Taxes. The amounts payable to CloudWave under the Agreement are exclusive of any taxes, however designated, levied or based on the Agreement, including, without limitation, any personal property, sales, and excise, GST, PST and use taxes. Customer agrees to pay and be responsible for all taxes. If CloudWave is required to collect or pay any taxes, the taxes will be invoiced to the Customer unless a valid tax exemption certificate authorized by the appropriate taxing authority is provided. The Customer shall reimburse CloudWave for all taxes which CloudWave pays directly.

7 Suspension. To the extent allowable by law, CloudWave may suspend Customer's or any End-User's access to any or all of the Services or Support if:

- (a) Customer is more than ten (10) days late on any of its payment obligations under the Agreement;
- (b) Customer is in breach of the Agreement; or
- (c) CloudWave determines that there is a security threat that could affect the confidentiality, integrity, or availability of Customer Environment, Tenant Environment, or CloudWave's environment or Services, including to CloudWave's Affiliates' and subcontractors' platforms, systems and networks, which may include but not be limited to virus outbreaks, ransomware, denial of service attacks, or intrusion attempts.

CloudWave will promptly notify Customer of any such suspension, and CloudWave and Customer will reasonably cooperate to resolve the cause of the suspension. The suspended Services and Support will be reinstated upon CloudWave's determination that the cause of the suspension has been resolved. Customer remains responsible for all Fees and charges during the suspension until CloudWave deems the cause of the suspension resolved. Customer will not be entitled to a service credit during the period of suspension.

8 Term and Termination

8.1 Term of Agreement. At the end of the initial Term set forth in the Proposal, the Agreement, as applicable to each Proposal, will automatically renew for successive twelve (12) month periods (each a Term) unless either party gives the other party written notice of its desire to not renew at least one hundred eighty (180) days prior to the expiration of the then current Term for that Proposal. A Proposal may provide that certain Services have a Term and renewal provisions that differ from this Section; the Terms and renewal provisions in the Proposal will apply as to each designated Service. Termination is on a Proposal by Proposal basis. In no event shall the Agreement terminate prior to all Proposals between the parties having expired or terminated in accordance with their terms, unless this Agreement is earlier terminated pursuant to Section 8.2 or Section 8.3 below.

8.2 Termination for Breach. If either party materially breaches the Agreement as applicable to a Proposal, the other party may terminate the Agreement as to such Proposal upon written notice to the breaching party and the Agreement for such Proposal shall terminate if the breach is not cured within thirty (30) days from the date of receipt of such written notice. Termination will be effective on the date set forth in the notice, which will be on or after expiration of the thirty (30) day cure period.

8.3 Termination by CloudWave. In addition to CloudWave's rights under Section 8.2, CloudWave may terminate the Agreement as a whole or as to an applicable Proposal on ten (10) days written notice for any

nonpayment of amounts due hereunder. CloudWave may also terminate the Agreement in its entirety immediately upon written notice: (a) if Customer voluntarily files a petition for relief under any bankruptcy law; if an order for relief under any bankruptcy law is entered against Customer following an involuntary petition for relief or such involuntary petition is not terminated within sixty (60) days after the day on which such an involuntary petition is filed; (b) if Customer makes an assignment for the benefit of creditors, or if a receiver is appointed for Customer or any of its assets; or (c) if CloudWave reasonably believes that Customer is in violation of, or has violated, the AUP. Nothing in this Section 8 limits the rights and remedies available to CloudWave at law or in equity.

8.4 Effect of Termination. Upon any termination of the Agreement as to one or more Proposals: (i) CloudWave will have the right to immediately cease the delivery of any of the Services under such Proposal; and (ii) to the extent not applicable to other Proposals between the parties, each party will return or destroy any Confidential Information (as defined below) of the other party. Upon any termination for Customer's nonpayment, Customer will promptly pay CloudWave all amounts due and payable, including all amounts that would have been payable if the Term had continued through expiration. Upon CloudWave's receipt of payment in full, CloudWave will, upon Customer's written request if received within ten (10) days of the effective date of termination, provide services to backup and replicate Customer Data to a target destination of their choosing for an additional fee in an amount not to exceed the current Monthly Recurring Cost of the Service. No later than thirty (30) days after the effective date of termination of any portion of the Services that require CloudWave to store or maintain Customer Data (removal by change order) or termination of the Agreement, all Customer Data is deleted, unless required to be retained under Applicable Law.

8.5 Survival. The following Sections shall survive expiration or early termination of the Agreement as to each Proposal and as to the Agreement in its entirety: Sections 4.5, 4.6, 5.7, 6, 8.4, 8.5, 9, 10, 11, 12, 13, 14, 15, Exhibit A to these Terms, and the Business Associate Agreement in accordance with its terms.

9 Confidentiality.

9.1 Definition of Confidential Information. "Confidential Information" means all non-public, confidential, or proprietary information disclosed or made available by a party ("Disclosing Party") to the other party ("Receiving Party") (whether verbal, written, electronic, or in another form of media) in connection with the Agreement, before, on or after the Effective Date, that is marked, designated, or otherwise identified as confidential, proprietary, or similar, or would reasonably be considered non-public, confidential, or proprietary given the nature of the information or circumstances of disclosure. Customer's Confidential Information includes, without limitation, all Customer Data; CloudWave's Confidential Information includes, without limitation, all Documentation. Each party agrees to keep Confidential Information of the other confidential and will only use such Confidential Information to perform their respective obligations under the Agreement. Upon termination of this Agreement, to the extent technically practicable and subject to Applicable Law, each party will return or destroy all Confidential Information of the other. The parties agree that if they have entered into a Business Associate Agreement, such Business Associate Agreement shall govern the parties' obligations relating to PHI, electronic PHI, and any other similar information.

9.2 General Obligations. The Receiving Party agrees that it will (a) take reasonable security precautions, at least as great as the precautions it takes to protect its own Confidential Information but no less than reasonable care, to keep confidential the Confidential Information of the Disclosing Party, and (b) will use the Disclosing Party's Confidential Information only in performance of its obligations under the Agreement or as necessary to exercise the rights granted to it under the Agreement.

9.3 Exclusions. Notwithstanding the nondisclosure obligations under this Section 9, either party may disclose Confidential Information to the extent such disclosure: (a) is in response to a request by law enforcement or a valid order of any federal, state, municipal, local, territorial, or other governmental department, regulatory authority, or judicial or administrative body, whether domestic, foreign, or international, provided however, that the Receiving Party shall, if permitted by Applicable Law, promptly give notice to the Disclosing Party of such order and allow the Disclosing Party the opportunity to obtain a protective order or other appropriate remedy, at the Disclosing Party's expense and/or waive compliance with the provisions of Section 9 of the Agreement with respect to such disclosure, or (b) is otherwise required to be disclosed by Applicable Law. In addition, CloudWave may disclose Customer's Confidential Information to its service providers, agents and representatives (including subcontractors) who are bound by confidentiality restrictions at least as restrictive as those stated in the Agreement and, upon notice to Customer (unless such notice is prohibited by Applicable Law), report to the appropriate authorities any conduct by Customer or its End Users that CloudWave believes violates Applicable Law.

10 Ownership. CloudWave acknowledges that all right, title and interest in and to all materials and information supplied by Customer for use in or with any of the Services are and will remain owned exclusively by Customer. Customer agrees that (a) CloudWave owns all right, title and interest in, and shall continue to own all right, title and interest in, any and all Intellectual Property that CloudWave used, uses, or develops in the course

of performing the Services, (b) Customer has no ownership interest or rights to possess or access CloudWave's server(s) or other hardware, and (c) Customer has no right of physical access to any CloudWave hardware. Except for the rights expressly granted to Customer under the Agreement, Customer has no right, title or interest in any of CloudWave's Intellectual Property. Customer shall not contest any of CloudWave's rights in any of its Intellectual Property relating to the Services.

11 Indemnification

11.1 CloudWave. CloudWave shall defend, indemnify, and hold Customer and its officers, directors, trustees, employees, or agents (collectively, "**Customer Indemnified Parties**") harmless from and against any liabilities, losses, damages, fees, judgments, costs and expenses (including attorneys' fees) resulting from suits, claims, or actions brought by a Third Party against Customer arising out of: (a) CloudWave's gross negligence or willful misconduct in performing CloudWave's obligations under the Agreement, or (b) any claim that Customer's use or access to the Services or any portion thereof infringes or violates such Third Party's Intellectual Property. Customer shall provide timely notice of any claim for which Customer seeks indemnification and shall provide CloudWave reasonable cooperation in defending or settling such claims, grants sole and exclusive control to CloudWave for the resolution and settlement of such claims, except that CloudWave may not enter into a settlement that names Customer as liable, responsible, culpable or imposes obligations upon Customer without Customer's express written permission. CloudWave shall have no obligations under this Section 11.1 to the extent that any Claim arises out of Customer's breach of the Agreement or any negligent, illegal, or intentionally wrongful act or omission of any of the Customer Indemnified Parties.

11.2 Customer. Customer shall defend, indemnify and hold CloudWave and its Affiliates and their respective officers, directors, trustees, employees, and agents (collectively, "**CloudWave Indemnified Parties**") harmless from and against any liabilities, losses, damages, fees, judgments, costs and expenses (including attorneys' fees) resulting from suits, claims, or actions brought by a Third Party against CloudWave arising out of: (a) Customer's gross negligence or willful misconduct, (b) any claim that Customer's material, data, or network, including any Customer Data, not provided by CloudWave infringes or violates any Third Party's Intellectual Property, (c) violations of Applicable Law by Customer or any of Customer's employees, representatives, agents or subcontractors; (d) any failures or defects in (i) any of Customer's software that Customer provides, any of the hardware Customer provides, or any equipment not under CloudWave's control, or (e) CloudWave complying with any instructions, authorizations or approvals made or provided by Customer. CloudWave shall provide timely notice of any claim for which CloudWave seeks indemnification and shall provide Customer reasonable cooperation in defending or settling such claims, grants sole and exclusive control to Customer for the resolution and settlement of such claims, except that Customer may not enter into a settlement that names CloudWave as liable, responsible, culpable or imposes obligations upon CloudWave without CloudWave's express written permission. Customer shall have no obligations under this Section 11.2 to the extent that any Claim arises out of any negligent, illegal, or intentionally wrongful act or omission of any of the CloudWave Indemnified Parties.

11.3 In addition to the foregoing, if CloudWave determines in its sole discretion that the Services, or any portion of the Services, may infringe or violate any Intellectual Property, CloudWave shall, at its sole option and expense, either: (i) procure for Customer the right to continue using the Services as permitted hereunder free of any liability for infringement or violation; or (ii) replace or modify the Services with a non-infringing item of equivalent or better functionality.

THE REMEDIES CONTAINED IN THIS SECTION ARE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO EITHER PARTY FOR THIRD PARTY CLAIMS RELATING TO INFRINGEMENT OR VIOLATION OF THIRD PARTY INTELLECTUAL PROPERTY.

12 Limitation of Liability. CloudWave and its Affiliates and their respective officers, directors, trustees, employees, and agents, successors and assigns (collectively referred to as "**Covered Parties**") will not be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from (a) any deficiency, unavailability, or interruption in the Service not within the reasonable control of CloudWave, (b) any use of the Service by a Third Party (regardless of whether the Third Party received any assistance from a Covered Party in using the Service), (c) any Third Party's use of any equipment in connection with the Service, or (d) any delay or failure in performance beyond the reasonable control of a Covered Party. REGARDLESS OF WHETHER ANY REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, CLOUDWAVE'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY CLOUDWAVE'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER DURING THE SIX (6) MONTH PERIOD PRECEDING THE DATE THE CAUSE OF ACTION GIVING RISE TO THE LIABILITY AROSE. IN NO EVENT SHALL CLOUDWAVE BE LIABLE IN CONTRACT, TORT OR ANY OTHER THEORY OF LAW, FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, EXEMPLARY, EXTRA-CONTRACTUAL, OR CONSEQUENTIAL DAMAGE PERTAINING TO SERVICE HEREUNDER OR THE EQUIPMENT OR ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, INCLUDING BUT NOT

LIMITED TO LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTED FACILITIES, EQUIPMENT OR SERVICE DOWN-TIME COSTS OR CLAIMS OF CUSTOMERS OF CUSTOMER FOR SUCH DAMAGE, REGARDLESS OF HOW SUCH DAMAGES MAY BE CAUSED, WHETHER OR NOT BECAUSE OF NEGLIGENCE, STRICT LIABILITY, FAULT OR DELAY OF CLOUDWAVE OR ITS BREACH OR FAILURE OF PERFORMANCE HEREUNDER.

13 Disclaimer of Warranties. EXCEPT AS EXPRESSLY STATED HEREIN, CLOUDWAVE PROVIDES THE SERVICES, SUPPORT, SUPPORTED COMPONENTS, AND ANY EQUIPMENT AND THIRD PARTY SOFTWARE ON AN "AS IS" BASIS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CLOUDWAVE HEREBY DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, AVAILABILITY, SECURITY, REASONABLE CARE, AND FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT CLOUDWAVE KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), IN EACH INSTANCE WITH RESPECT TO ANY AND ALL SERVICES, SUPPORT, SUPPORTED COMPONENTS, AND ANY EQUIPMENT OR THIRD PARTY SOFTWARE. CLOUDWAVE DISCLAIMS ANY AND ALL WARRANTIES, AND REPRESENTATIONS OF TITLE AND NON-INFRINGEMENT.

14 Dispute Resolution

14.1 Arbitration. Any dispute, claim or controversy arising out of or relating to the Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be governed by the laws of the Commonwealth of Massachusetts without regard to its conflict of laws provisions and shall be determined by arbitration in Boston, Massachusetts before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The arbitrator shall make detailed findings of fact and law in writing in support of any decision or report which shall be in writing and shall state the reasons upon which it is based. Judgment on the award may be entered in any court having jurisdiction. Such arbitration shall be the exclusive remedy hereunder with respect to any dispute relating to the Agreement; provided, however, that nothing contained in this section shall limit any party's right to bring (a) post-arbitration actions in a court of competent jurisdiction seeking to confirm an arbitration award or (b) actions seeking emergency or temporary injunctive or other similar temporary relief (pending the resolution of the arbitration contemplated herein) in the event of a breach or threatened breach of any of the provisions of the Agreement. With respect to any action or proceeding that a successful party to the arbitration may wish to bring to confirm any arbitration award or to seek injunctive or other similar relief in the event of the breach or threatened breach of the Agreement (or any other agreement contemplated hereby), each party irrevocably and unconditionally (and without limitation): (i) submits to and accepts, for itself generally and unconditionally the exclusive jurisdiction of the state and federal courts of the Commonwealth of Massachusetts; and (ii) waives any objection it may have now or in the future that such action or proceeding has been brought in an inconvenient forum. Each party hereto shall use best efforts to cause any proceeding conducted pursuant to this Section to be held in confidence by JAMS, the arbitrator and each of the parties to such proceeding and their respective Affiliates, and all information relating to or disclosed by any party thereto in connection with such proceeding shall be treated by the parties thereto, their respective Affiliates and the arbitrator as confidential business information and no disclosure of such information shall be made by any party thereto, its Affiliates or the arbitrator without the prior written consent of the party thereto furnishing such information in connection with the arbitration proceeding, except as required by applicable law or to enforce any award of the arbitrator. Except as otherwise set forth in the Agreement, the parties shall equally share the administrative costs of the arbitration and the arbitrator, and each party shall bear its own costs and expenses for its own legal counsel and experts.

14.2 Jurisdiction. If for any reason a claim relating to this Agreement is brought and heard in any court and not through arbitration, such claim shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict of laws provisions, and Company and CloudWave agree that the sole venue and jurisdiction for all claims shall be the federal or state courts located in the Commonwealth of Massachusetts. Company and CloudWave hereby submit to the exclusive jurisdiction of the federal and state courts located in Suffolk County, Commonwealth of Massachusetts and each party waives any right that it might have to claim that venue in any such court is improper or that any such court is an inconvenient forum. COMPANY AND CLOUDWAVE EACH UNCONDITIONALLY AND IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY SUCH CLAIM.

14.3 The parties agree that, to the maximum extent permitted by law, the Uniform Computer Information Transactions Act does not apply to the transactions and other matters contained in the Agreement. Any action of any kind arising out of or in any way connected with the Agreement, other than collection of outstanding payment obligations by CloudWave, shall be barred unless such action is commenced within two (2) years of the date upon which the cause of action accrues.

15 General

15.1 Rights and Assignment. The rights and obligations herein shall bind the parties, their legal representatives, successors, heirs and assigns. Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Customer, CloudWave, and their respective successors and assigns, any rights, obligations, remedies or liabilities. Customer may not assign or subcontract its rights or obligations hereunder without CloudWave's prior written consent, not to be unreasonably withheld. CloudWave has the right to assign all of its rights and obligations under the Agreement to a successor in interest to all or substantially all of CloudWave's assets or equity.

15.2 Modifications. Except as expressly provided in the Agreement, CloudWave reserves the right to modify these Terms from time to time and shall provide notification of such modification to Customer through the notification process applicable to Customer's services.

15.3 Publicity. Neither party may use the other party's name or trademarks in any announcements, promotional or advertising materials without such other party's prior written approval. However, CloudWave may publicly disclose that it is providing Services to Customer and may include Customer's name and other identifying information in a customer list in promotional materials, including in press releases and on CloudWave's website.

15.4 Injunctive Relief. The parties agree that any breach of the provisions of the Agreement relating to confidentiality may cause the aggrieved party irreparable harm and that such party will be entitled to seek injunctive relief for such unauthorized use or breach in addition to such other rights and remedies as may be available to it.

15.5 Force Majeure. Neither party will be liable to the other party, nor deemed in breach under the Agreement, for any delay or failure in performing (except for obligations to make payments to the other party hereunder) to the extent such delay or failure is caused by unforeseen acts of God, natural disasters, war, insurrection, acts of terrorism, major electrical or power or utility or telecommunications outages, denial of service or distributed denial of service attacks outside of CloudWave's control, pandemic, health emergency declared by any governmental agency, or adoption of any law, regulation or governmental guideline, in each case to the extent outside of the non-performing party's reasonable control ("**Force Majeure Events**"), provided the non-performing party utilizes commercially practicable efforts to mitigate the effects of any Force Majeure Events.

15.6 Independent Contractors. The parties hereto are independent contractors. Nothing in this Agreement shall be deemed to create any form of partnership, principal-agent relationship, employer-employee relationship, or joint venture between the parties.

15.7 No Third-Party Beneficiaries. Nothing contained in this Agreement will be deemed to create, or be construed as creating, any third-party beneficiary right of action.

15.8 Reliance. CloudWave will not be liable for any failure to meet its obligations under the Agreement if such failure is attributable to: (a) Customer's or any of Customer's employees, representatives, agents or subcontractors infringement of Third Party proprietary rights or Third Party Intellectual Property; (b) violations of Applicable Law by Customer or any of Customer's employees, representatives, agents or subcontractors; (c) any failures or defects in (i) any of Customer's software that Customer provides, (ii) any of the hardware Customer provides, or (iii) any equipment not under CloudWave's control. Further, CloudWave is entitled to rely upon any instructions, authorizations or approvals made or provided by Customer, and CloudWave shall not incur any liability or responsibility of any kind in relying on or complying with any such instructions, authorizations, or approvals.

15.9 Compliance with Laws. Upon written request of the Secretary of the United States Department of Health and Human Services or the Comptroller General or any of their authorized representatives, CloudWave agrees to make available those agreements, books, documents, and records necessary to verify the nature and extent of the costs incurred hereunder. This section is included in the Agreement pursuant to and is governed by the requirements of Public Law 96-499, section 952 (section 1861 (v) (1) of the Social Security Act and the regulations promulgated thereunder and is applicable solely to the extent that such law and regulation may be applicable to the transactions contemplated herein.

15.10 Insurance Requirements. Customer agrees to obtain and maintain the following insurance in effect at all times during the Term in accordance with the terms and conditions set forth herein:

Commercial General Liability. Commercial General Liability in a form reasonably equivalent to the latest filed and approved ISO CG 0001 (including commercially acceptable endorsements) with limits of \$5,000,000 per occurrence;

Business Interruption and Extra Expense. Business Interruption and Extra Expense coverage for any interruption of its operations related to any disaster, and

Workers Compensation Insurance. Workers Compensation Insurance or state approved self-insurance in compliance with all applicable statutes of appropriate jurisdiction, including Employer's Liability with limits of \$1,000,000 each accident.

Privacy and Network Security ("cyber") Insurance. Covering actual or alleged acts, errors, or omissions committed by Customer, its agents, subcontractors, or employees, arising out of the performance of this Agreement. Customer will maintain a minimum limit of five million dollars (\$5,000,000) per loss for all coverages, and any combination of policies may be used to satisfy the coverage requirements. Such insurance will extend coverage for network risks, including (1) system breach, (2) denial or loss of service, (3) introduction, implantation, or spread of malicious software code, (4) unauthorized access to or use of computer systems, and (5) privacy breaches (loss, misuse, or disclosure of confidential information no matter how it occurs). Throughout the Term of this Agreement, any retroactive date within the policy(ies) must coincide with or precede Customer's initial services under this Agreement, and Customer must continue the required insurance for three (3) years following any Termination or expiration of this Agreement, either through maintenance of ongoing coverage or under an extended reporting period.

Limits and Terms. The liability insurance limits required herein may be obtained through any combination of primary, excess or umbrella liability insurance. Upon written request, Customer will deliver to CloudWave certificates of insurance which evidence the minimum levels of insurance set forth above. Customer agrees to provide not less than thirty (30) days prior written notice of cancellation to any herein required policy. Such insurance policies shall provide that the insurance companies and any approved self-insured employer waive all rights of subrogation for such amounts against CloudWave and its respective Affiliates, officers, directors and employees. Customer's Commercial General Liability and Excess or Umbrella policy shall include CloudWave as an additional insured. All insurance policies shall be issued by insurance companies shall have an A.M. Best Rating of A -XII or better or such equivalent credit rating issued by another recognized rating agency. Any deductibles or self-insured retentions are the sole responsibility of the named insured party.

15.11 Waiver. Neither party shall be deemed to have waived any provision hereof unless such waiver is in writing and executed by a duly authorized officer of the waiving party. No waiver by either party of any provision hereof shall constitute a waiver of such provision on any other occasion. No delay or omission by either party in exercising any right hereunder shall be construed as a waiver.

15.12 Severability. The invalidity or unenforceability, in whole or in part, of any provision, term, or condition hereof shall not affect the validity or enforceability of the remainder of such provision, term or condition or of any other provision, term, or condition. The parties agree that should any material provision, term or condition be found to be invalid or unenforceable, the parties will in good faith amend this Agreement by modifying such provision to the extent necessary to make it valid and enforceable, while preserving its intent or, if that is not possible, by substituting another provision that is valid and enforceable and achieves the same objective.

15.13 Controlling Terms. No term, condition, or other provision of any purchase order issued by Customer shall have any effect and the Agreement supersedes any term, condition, or other provision of any purchase order. If there are any conflicts among the provisions that comprise the Agreement, the following is the order of precedence: (i) the Proposal solely as to that Proposal; (ii) these Terms; then (iii) the Business Associate Agreement, solely as to the subject matter of the Business Associate Agreement.

15.14 Headings. Headings of the sections of the Agreement are for reference purpose only and do not constitute terms or conditions of the Agreement nor shall they limit or affect the terms and conditions hereof.

15.15 Entire Agreement. The Agreement constitutes the entire agreement between Customer and CloudWave and supersedes any prior and contemporaneous agreements and understandings between the parties concerning the subject matter hereof.

15.16 Notices. All notices given hereunder including, without limitation, notices of address change shall be given in English and in writing. Notices from Customer shall be entered into the Customer portal webpage, sent by email to CloudWave's designated business contact, or sent by overnight courier to CloudWave's address in the preamble above. Except as otherwise set forth in the Agreement, notices from CloudWave shall be posted to the Customer portal webpage, or sent by email to Customer's designated primary contact, or sent by overnight courier to Customer's address in the Proposal. Any notices given in accordance with this Section shall be deemed given on the day received. Upon notice by a party to the other party in accordance with the provisions of this Section, such party may change its notice address.

THESE MASTER TERMS AND CONDITIONS ARE INCORPORATED BY REFERENCE INTO THE PROPOSAL.

Attachment:

Exhibit A-- Definitions

EXHIBIT A—Definitions

Affiliate means, with respect to a party, any entity that now or hereafter, directly or indirectly controls, is controlled by, or is under common control with, such party. The term “control”, and its variations, for purposes of this definition, means the possession, direct or indirect, of the power to direct or cause the direction of the management of the subject entity, whether through the ownership of voting securities, by contract or otherwise.

Applicable Laws means all federal, state and local laws, rules and regulations, and all orders, judgments, decrees or other binding determinations of any Governmental Authority that are applicable to, or binding upon, including pertaining to privacy, data processing, data protection, data security, encryption, or confidentiality: (i) as to CloudWave, to the extent of CloudWave’s Services and Support under the Agreement; or (ii) as to Customer, to the extent applicable to Customer’s use of the Services and Support under the Agreement and to Customer’s operations and property. “Governmental Authority” for this definition means any nation or government, any state or other political subdivision thereof and any entity or agency exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

Change Order means the written agreement entered into by the parties to add, subtract or modify Services, Support, Supported Components, or Equipment provided under the Agreement.

Customer Data means all data and information provided by Customer to CloudWave or made accessible to CloudWave in performance of the Services and Support, including PII and PHI.

Customer Environment means the platforms, systems, network and equipment owned or managed by or for Customer that is not expressly included in the CloudWave Services and Support as set forth in the Proposal; Customer Environment is the environment the Customer provides (whether on-site or virtual).

Documentation means CloudWave’s user guides, operating manuals, and specifications, whether in print or machine readable media, and all materials supplied by CloudWave to Customer. Documentation specifically includes all technical information and responses prepared by CloudWave to any request for information or request for proposals issued by Customer, including audit and security reports and, without limitation, all content of such reports and the “look and feel” of such reports, CloudWave’s server and network configuration designs, and without limiting the generality of any of the foregoing, CloudWave’s tools, methods and techniques used to deliver and perform the Services and Support.

End User means the individuals who are authorized by Customer to access the Service.

Equipment means any hardware that Customer is purchasing from CloudWave as set forth in the Proposal or any Change Order.

Fees means the amounts payable pursuant to the Proposal and the Agreement.

Intellectual Property means all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask works; (b) trademark and trade name rights and similar rights and their associated goodwill; (c) trade secrets; (d) patents and industrial property rights; (e) other proprietary rights in intellectual property of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the foregoing.

Personally Identifiable Information or **PII** means information given by Customer to CloudWave, or made accessible to CloudWave by Customer, relating to an identified or identifiable natural person, including without limitation: a person’s first and last name, home or other physical address; telephone, fax number, email address or other online identifier; photographs; third-party issued identifier, such as a driver’s license number; biometric data and health information (excluding PHI); credit card number or other financial information; and IP address and cookie information, and any other device-specific number or identifier. Personally Identifiable Information does not include publicly available information that is lawfully made available to the general public by Customer or from federal, state, or local government records. PHI is excluded from Personally Identifiable Information.

Proposal means the written proposal signed by both CloudWave and Customer describing the Services, Support and Equipment to be provided by CloudWave to Customer, including the applicable Fees and any special terms and conditions.

Protected Health Information or **PHI** has the meaning set forth in the Business Associate Agreement.

Security Breach means, in connection with the Services, the unauthorized and/or unlawful disclosure, access, acquisition, alteration, corruption, destruction, use or other processing of or to Personally Identifiable Information that is a violation of or triggers a disclosure requirement under Applicable Law. PHI is addressed and governed by the Business Associate Agreement.

Service Level Agreement or **SLA** means the terms and conditions pursuant to which CloudWave agrees to provide Services and Support to Customer at the level elected by Customer in the Proposal.

Services means the Services selected by Customer as set forth in the Proposal, as may be modified pursuant to the Agreement or a Change Order.

Supported Components means the hardware and Supported Software listed in the Proposal, or a Change Order, as supported by CloudWave as part of the Services.

Supported Software means Third Party Software that CloudWave includes or incorporates into the Services and that is specifically listed as supported in the Proposal or a Change Order.

Tenant Environment means the environment (whether on-site or virtual) that CloudWave provides the Customer via Services as expressly included in the Proposal.

Term means the effective period of the Services and Support set forth in the Proposal, as may be modified by a Change Order, and including any renewal, unless otherwise terminated in accordance with the Agreement.

Third-Party means any individual, entity or other organization that is not a party to the Agreement and is not an Affiliate of a party to the Agreement.

Third Party Software means all software and applications that are not owned by CloudWave and that are not included in Supported Software. For avoidance of doubt, all software and applications licensed to Customer by MediTech® or by any Third Party provider of electronic health record solutions is Third Party Software.