



## CLOUD SERVICES LICENSE AGREEMENT

***Revision Date: December 4, 2019***

This Cloud Services License Agreement (this “Agreement”) is a binding legal contract and applies to the CXO Nexus Order Form, or other agreement incorporating this Agreement by reference, (the “Order Form”) between CXO Nexus, a Delaware corporation (“CXO Nexus”) and the company set forth therein (“Company”). This Agreement, and the terms and conditions set forth herein, will become the exclusive agreement between the parties when the parties execute an Order Form and the Company accesses or uses the Services, as defined below, Company will be bound by the terms of this Agreement. If Company does not agree to the terms of this Agreement, CXO Nexus is not willing to license any right to use or access the Services. The provision of Services is specifically conditioned upon assent by the Company of the terms and conditions set forth in this Agreement, all of which are deemed incorporated by reference into the Order Form, and each subsequent Order Form executed by the parties. If this Agreement is being agreed to by a company or other legal entity, then the person agreeing to this Agreement on behalf of that company or entity represents and warrants that he or she is authorized and lawfully able to bind that company or entity to this Agreement. Company should print and retain a copy of this Agreement for its records.

1. **Term.** The initial term of a Service starts on the date specified in the Order Form, or the date that the Service is available for Company use. The term for each Service (a Service’s “Term”) shall be as set forth in the Order Form.

2. **Updates to this Agreement.**

2.1 This Agreement may be updated from time to time, provided that CXO Nexus notifies Company in advance of any material changes (a) by posting the revised Agreement (the date of such posting shall be deemed the date of notification), as applicable; or (b) to the extent such change(s) materially and adversely affect the rights of Company, by providing written notice of the change(s) by email to the Company’s Authorized Representative (set forth on the applicable Order Form). Modifications shall go into effect on the tenth (10<sup>th</sup>) Business Day following the day on which Company is notified of any such changes of this Agreement (a “**Modification Date**”).

2.2 In the event Company notifies CXO Nexus of its rejection of such modification within the review period set forth above (such notice, a “**Modification Rejection Notice**”) and such modification remains in effect with respect to the Company (i.e. CXO Nexus does not promptly notify Company that application of the rejected change(s) has been waived), the modification proposed by CXO Nexus will not go into effect and the terms and conditions of this Agreement will continue in full force and effect without such modification.

2.3 If Company has previously accepted any prior version of this Agreement, Company hereby acknowledges and agrees that, unless an agreement by and between Company and CXO Nexus expressly indicates otherwise, the current version of this Agreement shall be deemed to have replaced any prior versions that Company may have acknowledged and/or agreed to.

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**3. Services.** Subject to the terms and conditions of this Agreement and Company's payment of all relevant fees, CXO Nexus grants Company and its End Users a non-exclusive, non-transferable license to access and use the Services solely for Company's internal business purposes. To the extent any CXO Nexus software ("**CXO Nexus Software**") is provided to or is otherwise accessible by the Company for installation on its systems for use in connection with the Services, the CXO Nexus Software will be included in the definition of Services and subject to the foregoing license. All CXO Nexus Software may only be used in support of Company's use of the Services and for no other purpose. Services provided by CXO Nexus may also include customer support services.

**4. Restrictions.** Company and its End Users may only use the Services as described in this Agreement and in the then current documentation made generally available by CXO Nexus to its other customers regarding the Services (the "**Documentation**"). Company is responsible for ensuring its End Users comply with all relevant terms of this Agreement and any failure to comply will constitute a breach by Company. Except as expressly authorized by this Agreement, Company will not, and will not allow any End User or other third party to, (a) permit any third party to access or use the Services other than an End User; (b) decompile, disassemble, reverse engineer, or otherwise attempt to derive the trade secrets embodied in the Services, except to the extent expressly permitted by applicable law; (c) use the Services or any CXO Nexus Confidential Information to develop a competing product or service; (d) use any Service, or allow the transfer, transmission, export, or re-export of any Service or portion thereof, in violation of any export control laws or regulations administered by the U.S. Commerce Department or any other government agency; or (e) remove any copyright, trademark, proprietary rights, disclaimer, or warning notice included on or embedded in any part of the Documentation and Services, including any screen displays, components, or any other elements of any kind of the Documentation and Services, or any other products or materials provided by CXO Nexus in connection with this Agreement. Under no circumstances will CXO Nexus be liable or responsible for any use, or any results obtained by the use, of the Services in conjunction with any services, software, or hardware that are not provided by CXO Nexus. All such use will be at Company's sole risk and liability.

### **5. Company's Obligations.**

5.1 Company shall: (a) in order to be permitted to access and use the Services, provide CXO Nexus with (i) all necessary co-operation in respect of this Agreement; and (ii) data elements reasonably requested by CXO Nexus (and approved by Company) in a widely accepted file format; (b) comply with all applicable laws and regulations with respect to its activities under this Agreement; (c) carry out all other Company responsibilities set out in this Agreement in a timely and efficient manner (and in the event of any delays in Company's provision of such assistance as agreed by the parties, CXO Nexus may adjust any agreed timetable or delivery schedule as reasonably necessary); (d) ensure that the End Users use the Services in accordance with this Agreement and shall be responsible for any End User's acts or omissions; (e) ensure its network and systems software are compatible with the Services.

5.2 In connection with the Services, Company shall not knowingly (after taking commercially reasonable precautions) access, store, distribute or transmit any viruses or any material that: (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) facilitates illegal activity; (c) depicts sexually explicit images; (d) promotes unlawful violence; (e) is discriminatory based on race, gender, color, religious belief, sexual orientation, disability, or any other illegal activity; (f) contains Sensitive Personal

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Information; or (g) causes damage or injury to any person or property; and Company reserves the right, without liability to Company, to disable Company's access to any material that breaches this Agreement.

5.3 Company represents and warrants that any information that Company (a) has provided or made available, or directed another party to provide or make available, directly or indirectly to CXO Nexus in connection with this Agreement, is entirely accurate, complete, and up to date, and Company remains solely responsible for ensuring this continues to be the case as long as this Agreement remains in effect and (b) maintains Company's IT systems such that, at a minimum, Company will maintain user role based access and access control levels and security to business sensitive data, single user usage per account and appropriate processes and policies in place for named user data access and usage audits. If such level of security is not maintained, CXO Nexus shall not be liable for any damages related thereto. Company shall immediately notify CXO Nexus of any suspected unauthorized use of any account that Company has with CXO Nexus or any breach of the security of any such account or of any Service.

5.4 Company is solely responsible for maintaining the confidentiality of any password, passcodes, activation keys and the like that may be required so that an End User can access and use any of the Services.

5.5 Company shall not assist any third party to do or attempt to do anything that Company itself is prohibited from doing under this Agreement.

**6. Availability.** The hosted elements of the Services will be available for remote access 99.5% of the time each calendar month of the Term, excluding Excused Outages (as defined below) ("**Availability**"). Downtime as a result of any causes beyond the control of CXO Nexus or that are not reasonably foreseeable by CXO Nexus, including, without limitation by any of the events noted below are excluded from the Availability calculations (collectively, "**Excused Outages**"):

6.1 Company or any End User environment issues affecting connectivity or interfering with the Services, including without limitation, Company's or any End User's telecommunications connection or any other Company or any End User software or equipment, Company's or any End User's firewall software, hardware or security settings, Company's or any End User's configuration of anti-virus software or anti-spyware or malware software, or operator error of Company or any End User;

6.2 any third party software, hardware, or telecommunication failures, including Internet slow-downs or failures;

6.3 force majeure events, including, without limitation fire, flood, earthquake, elements of nature or acts of God; third party labor disruptions, acts of war, terrorism, riots, civil disorders, rebellions or revolutions; quarantines, embargoes and other similar governmental action; or any other similar cause beyond the reasonable control of CXO Nexus;

6.4 issues related to third party domain name system (DNS) errors or failures;

6.5 scheduled maintenance of the Services, conducted on a regular basis, of which CXO Nexus will give Company a minimum of twenty-four (24) hours advanced notice by email or other pre-approved notification; and

6.6 emergency maintenance of the Services, not to exceed four (4) hours in any month, for which Company may not receive advanced notice.

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In the event CXO Nexus fails to achieve the Availability requirement, CXO Nexus will use commercially reasonable efforts to correct the interruption as promptly as practicable. In the event CXO Nexus fails to achieve the Availability requirement in three consecutive months during the term of this Agreement, Company may terminate this Agreement within thirty (30) days following the end of the third consecutive month, without further obligation and receive a prorated refund of any pre-paid, unused recurring fees. The refund will constitute Company's sole and exclusive remedy and CXO Nexus' sole and exclusive liability for failure to achieve the Availability requirement.

**7. Information Security.** Consistent with any law or regulation applicable to the Services and CXO Nexus' then current practices and procedures, CXO Nexus will maintain and enforce administrative, technical, and physical safeguards to reasonably protect the confidentiality, availability, and integrity of Company's Confidential Information and the Company Data (as defined below). CXO Nexus will promptly report to Company any compromise of security that it becomes aware of with regard to Company Data. CXO Nexus makes no other covenants, promises or warranties of any kind with respect to Company's Confidential Information and the Company Data.

**8. Connectivity.** Company and End Users are solely responsible for all telecommunication or internet connections required to access the Services, as well as all hardware and software at Company's site. In addition to other third party costs that may apply, Company agrees to pay for all telecommunications costs, fees and services required for and dedicated to Company's or any End User's access to the Services.

**9. Proprietary Rights.** Company acknowledges and agrees that (i) all Services, including support services and professional services, are protected by intellectual property rights, as applicable, of CXO Nexus and its vendors/licensors and that Company has no right to transfer or reproduce any of the foregoing or any software provided with the Services or prepare any derivative works with respect to, or disclose Confidential Information (as defined in Section 15 (Confidentiality)) pertaining to, any Services, including support services and professional services, or any part of them and (ii) that CXO Nexus owns all right, title, and interest in and to the Services, including support services and professional services, including any changes or modifications made to the Services performed in connection with this Agreement, together with all ideas, architecture, algorithms, models, processes, techniques, Company interfaces, database design and architecture, and "know-how" embodying the Services, including support services and professional services. Under no circumstances will Company be deemed to receive title to any portion of the Services, including support services and professional services, title to which at all times will vest exclusively in CXO Nexus. This is not a "work made for hire" agreement, as that term is defined in Section 101 of Title 17 of the United States Code. Company will preserve all Services from any liens, encumbrances, and claims of any individual or entity. Company will not use any Confidential Information disclosed by CXO Nexus to Company in connection with this Agreement to contest the validity of any intellectual property rights of CXO Nexus or its licensors. Any such use of CXO Nexus' Confidential Information will constitute a material, non-curable breach of this Agreement.

**10. Company Data.** Company grants CXO Nexus a non-exclusive, world-wide, royalty-free license to use the documents, information, graphics, data, content, and other materials input by

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Company into the Services (the “**Company Data**”) for purposes of performing this Agreement. Company grants all of the necessary rights for CXO Nexus to access its pertinent data via third party systems and Authorized APIs, and Company grants permission to obtain the data on their behalf from its and third party systems. Company will be responsible for obtaining all rights, permissions, and authorizations to provide the Company Data to CXO Nexus for use as contemplated under this Agreement. Except for the license granted in this Section 8, nothing contained in this Agreement will be construed as CXO Nexus any right, title, or interest in the Company Data. Company grants CXO Nexus a non-exclusive, perpetual, irrevocable, fully-paid-up, royalty free license to use, copy, distribute, and contextualize Aggregated Data.

**11. Feedback.** Company may provide suggestions, comments or other feedback (collectively, “**Feedback**”) to CXO Nexus with respect to its products and services, including the Services. Feedback is voluntary. CXO Nexus may use Feedback for any purpose without obligation of any kind. To the extent a license is required under Company’s intellectual property rights to make use of the Feedback, Company grants CXO Nexus an irrevocable, non-exclusive, perpetual, fully-paid-up, royalty-free license to use the Feedback in connection with CXO Nexus business, including the enhancement of the Services.

**12. Support and Maintenance.** CXO Nexus will make the Services available and provide basic technical support, as described in our Service Level Agreement, attached hereto as Exhibit A. Higher levels of support may be available for an additional fee.

**13. Professional Services.** From time-to-time, CXO Nexus and Company may enter into one or more Statements of Work that specifically reference this Agreement under which CXO Nexus will furnish certain professional services to Company (the “**Professional Services**”). The Statements of Work will describe the nature of the services, fees, and other relevant terms.

### **14. Fees.**

**14.1 Fees.** Fees for the Services are set out in the Order Form. Fees are nonrefundable and payment obligations are non-cancelable, except as provided in Company purchase terms or where prohibited by law. Company will pay all Order Forms within thirty (30) days of Order Form date. Payments not made within that time period will be subject to late charges equal to the lesser of (a) one and one-half percent (1.5%) per month of the overdue amount or (b) the maximum amount permitted under applicable law. In the event an Order Form remains unpaid forty-five (45) or more days from the Order Form date, CXO Nexus may, in its discretion, suspend the Services until the Order Form is paid in full. Following the initial year of the Term, on sixty (60) days prior notice to Company, CXO Nexus may, at its discretion, adjust any or all fees due hereunder. Company may terminate this Agreement on written notice to CXO Nexus within thirty (30) days of its receipt of notice from CXO Nexus to adjust the fees; provided, however, that if Company fails to object to such adjustment in writing within the foregoing thirty (30) days then Company will be deemed to have agreed to the adjustment.

**14.2 Taxes.** In addition to any other payments due under this Agreement, Company agrees to pay, indemnify and hold CXO Nexus harmless from any sales, use, transfer, privilege, tariffs, excise, and all other taxes and all duties, whether international, national, state, or local, however designated, which are levied or imposed by reason of the performance of the Services under this Agreement; excluding, however, income taxes on profits which may be levied against CXO Nexus.

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### 15. Warranties.

15.1 Company Warranty. Company represents and warrants that (a) it has full power, capacity, and authority to enter into this Agreement and to grant the license set forth in Section 10 (Company Data); (b) any Company Data provided by Company to CXO Nexus for use in connection with the Services does not and will not infringe the intellectual property, publicity, or privacy rights of any person and is not defamatory, obscene, or in violation of applicable foreign, federal, state and local laws, rules and regulations (including but not limited to applicable policies and laws related to spamming, privacy, and consumer protection) (collectively, “**Applicable Law**”); and (c) its use of the Services will be in compliance with all Applicable Law.

15.2 CXO Nexus Warranty. During the Term, CXO Nexus represents and warrants (a) the Services will substantially comply with the Documentation; (b) it shall use commercially reasonable efforts to screen the Services for viruses, trojan horses, worms, and other similar intentionally harmful or destructive code; and (c) it shall comply with Applicable Law in performing this Agreement. In the event of a breach of the warranty in Section 15.2(a), CXO Nexus’ sole and exclusive liability and Company’s sole and exclusive remedy will be to perform the defective Service again. In the event CXO Nexus is unable through reasonable efforts to correct the defective Service within thirty (30) days from receipt of notice from Company of the breach, Company may elect to terminate this Agreement and receive a pro-rated refund of any pre-paid, unused recurring fees for the non-conforming Services.

15.3 Disclaimer of Warranties. Except as provided in Section 15.2 (CXO Nexus Warranty), the Services, support services, and professional services are provided “as is” and “as-available”, with all faults, and without warranties of any kind. CXO Nexus and its vendors and licensors disclaim all other warranties, express and implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, quiet enjoyment, quality of information, and title/non-infringement. No oral or written information or advice given by provider or its authorized representatives will create any other warranties or in any way increase the scope of CXO Nexus’ obligations hereunder. The Services may be used to access and transfer information over the Internet. Company acknowledges and agrees that CXO Nexus and its vendors and licensors do not operate or control the Internet and that: (a) viruses, worms, trojan horses, or other undesirable data or software; or (b) unauthorized users (e.g., hackers) may attempt to obtain access to and damage company’s data, websites, computers, or networks. CXO Nexus will not be responsible for such activities. Company is responsible for preserving and preserving and making adequate backups of its data.

### 16. Indemnification.

16.1 CXO Nexus Indemnity. CXO Nexus will defend Company against any third-party claim that a Service infringes such third-party’s patent or copyright (an “**Infringement Claim**”) and will indemnify Company against the final judgment entered by a court of competent jurisdiction or a settlement arising out of such Infringement Claim. CXO Nexus will have no obligation for any Infringement Claim to the extent such Infringement Claim is based on (a) a modification of the Services by Company or a third party, or use of the Services outside the scope of this Agreement; (b) combination, operation, or use of the Services with non-CXO Nexus products, software, services or business processes; (c) Company Data; or (d) services Company provides based on the Services. Company must (x) promptly notify CXO Nexus in writing of the Infringement Claim (or threat thereof), and any subsequent litigation updates, (y) cooperate with CXO Nexus in the defense of

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the Infringement Claim (including any statements to third parties regarding the Infringement Claim), and (z) grant CXO Nexus full and exclusive control of the defense and settlement of the Infringement Claim and any subsequent appeal. If Company fails to notify CXO Nexus promptly of the Infringement Claim or provide timely subsequent litigation updates, and that failure prejudices CXO Nexus' ability to defend, settle or respond to the Infringement Claim, then CXO Nexus' obligation to defend or indemnify Company with respect to that Infringement Claim will be reduced to the extent CXO Nexus has been prejudiced. In addition, such failure to provide prompt notification will relieve CXO Nexus of any obligation to reimburse Company for Company attorneys' fees incurred prior to notification. If an Infringement Claim is made or appears likely, CXO Nexus may, at CXO Nexus' option, (1) procure for Company the right to continue using the Services under the terms of this Agreement, or (2) replace or modify the Services to be non-infringing without material decrease in functionality. If CXO Nexus determines that neither of these options are reasonably available, CXO Nexus may terminate the applicable Service upon written notice to Company, and refund Company a pro rata portion of the price Company paid for the Service for the remainder of the unexpired term in full satisfaction of all Infringement Claims. This section states CXO Nexus' entire obligation and Company's exclusive remedy regarding any Infringement Claims against Company.

16.2 Company Indemnity. Company will defend CXO Nexus against any third party claim arising due to Company's material breach of this Agreement ("**Breach Claim**") and will indemnify CXO Nexus against the final judgment entered by a court of competent jurisdiction or a settlement arising out of such Breach Claim. CXO Nexus must (a) promptly notify Company in writing of the Breach Claim (or threat thereof), and any subsequent litigation updates, (b) cooperate with Company in the defense of the Breach Claim (including any statements to third parties regarding the Breach Claim), and (c) grant CXO Nexus full and exclusive control of the defense and settlement of the Breach Claim and any subsequent appeal. If CXO Nexus fails to notify Company promptly of the Breach Claim or provide timely subsequent litigation updates, and that failure prejudices Company's ability to defend, settle or respond to the Breach Claim, then Company's obligation to defend or indemnify CXO Nexus with respect to that Breach Claim will be reduced to the extent Company has been prejudiced. In addition, such failure to provide prompt notification will relieve Company of any obligation to reimburse CXO Nexus for CXO Nexus attorneys' fees incurred prior to notification. This section states Company's entire obligation and CXO Nexus' exclusive remedy regarding any Breach Claims against CXO Nexus.

## 17. Confidentiality.

17.1 Obligations. The parties acknowledge that they may disclose Confidential Information (a "**Disclosing Party**") to the other party (a "**Receiving Party**") throughout the Term. The parties will protect each other's Confidential Information and the Receiving Party shall maintain the Confidential Information in strict confidence and exercise all reasonable precautions to prevent unauthorized access to the Confidential Information. The Receiving Party will exercise at least the same degree of care that it uses to protect its own Confidential Information of a similar nature, but in no event less than reasonable care to (i) restrict dissemination of Confidential Information only to individuals or third parties with a need to know and who are under a substantially similar duty of confidentiality, and (ii) not use any Confidential Information for any purpose other than to perform its obligations under this Agreement. The Receiving Party's obligations will not apply to information that (a) is rightfully in its possession prior to receipt from the disclosing party, (b) is or

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becomes publicly available other than as a result of a breach of this Agreement, (c) is rightfully obtained by the Receiving Party from a third party under no obligation of confidentiality with respect to the information, or (d) is independently developed by the receiving party. The receiving party may disclose Confidential Information to the extent required by law or regulation.

17.2 Compelled Disclosures. To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over the Receiving Party, the Receiving Party may disclose Confidential Information in accordance with such law or order or requirement, subject to the following conditions: as soon as possible after becoming aware of such law, order, or requirement, and prior to disclosing Confidential Information pursuant thereto, the Receiving Party will so notify the Disclosing Party in writing and, if possible, the Receiving Party will provide the Disclosing Party notice not less than five (5) business days prior to the required disclosure. The Receiving Party will use reasonable efforts not to release Confidential Information pending the outcome of any measures taken by the Disclosing Party to contest, otherwise oppose, or seek to limit such disclosure by the Receiving Party, and any subsequent disclosure or use of Confidential Information that may result from such disclosure. The Receiving Party will cooperate with and provide assistance to the Disclosing Party regarding such measures. Notwithstanding any such compelled disclosure by the Receiving Party, such compelled disclosure will not otherwise affect the Receiving Party's obligations hereunder with respect to Confidential Information so disclosed.

17.3 Return of Confidential Information. On termination or expiration of this Agreement, Receiving Party will return or destroy, at the Disclosing Party's option, the Disclosing Party's Confidential Information. Notwithstanding the foregoing, the Receiving Party will not be required to remove copies of the Disclosing Party's Confidential Information from its backup media and servers, where doing so would be commercially impracticable. In addition, the foregoing destruction and return obligation will be subject to any retention obligations imposed on Receiving Party by law or regulation.

17.4 Non-Exclusive Equitable Remedy. Each party acknowledges and agrees that due to the unique nature of the Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a party or third parties to unfairly compete with the other party, resulting in irreparable harm to such party, and therefore, that upon any such breach or any threat thereof, each party will be entitled to appropriate equitable and injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity before an arbitrator in accordance with the arbitration provision of this Agreement. Any breach of this Section 17 (Confidentiality) will constitute a material breach of this Agreement and be grounds for immediate termination of this Agreement in the exclusive discretion of the non-breaching party.

**18. Limitation of Liability and Damages.** Neither CXO Nexus, nor its vendors and licensors, will have any liability to Company or any third party for any loss of profits, sales, trading losses, business, data, or other incidental, consequential, or special loss or damage, including exemplary and punitive, of any kind or nature resulting from or arising out of this agreement, including use of or inability to use the Services, support services, and professional services. The total liability of CXO Nexus and its vendors and licensors to Company or any third party arising out of this agreement or the Services, support services, and professional services in connection with any claim or type of



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damage (whether in contract or tort, including negligence), including Section 16.1, will not exceed the total fees paid hereunder by Company during the twelve (12) months immediately preceding the event giving rise to the liability. This limitation of liability will apply even if the express warranties set forth above fail of their essential purpose.

**19. Termination.** If a party materially breaches this Agreement and does not cure such breach within thirty (30) days after receipt of written notice of such breach, the non-breaching party may terminate this Agreement for cause. CXO Nexus also has the right to immediately suspend or terminate Company use of the Services if Company materially breaches Section 4 or Section 5 above. Upon any termination by Company for CXO Nexus' material breach of the Agreement, CXO Nexus will refund to Company any prepaid fees covering the remainder of the then-current Term after the effective date of termination. Upon any termination by CXO Nexus for Company's material breach of the Agreement: (a) Company will pay any unpaid fees covering the remainder of the then-current Term; (b) all access, Service use, support, and maintenance rights granted to Company hereunder will immediately cease to exist except as otherwise set forth in this Agreement; and (c) Company must promptly discontinue all use of the Services.

### 20. Certain Definitions

**"Aggregated Data"** means data of the Company used by CXO Nexus that is aggregated with data from other customers of CXO Nexus, provided, however, that such data is used for CXO Nexus' business purposes and does not include (directly or by inference) any information identifying the Company or any identifiable individual.

**"Authorized APIs"** means the application programmatic interfaces, web service or other integration method provided by CXO Nexus that Company may utilize as part of the interface Services.

**"CIO InCight™ Dashboard"** or **"CIO Heatmap"** means a hosted, SaaS solution provided by CXO Nexus, including a web-based software application, an on-demand cloud service application or service, component or integration that interoperates with CXO Nexus software or CXO Nexus cloud service or data/content that may be input or extracted into or out of the CXO Nexus cloud service or platforms, used by devices or technology that may interact with or support CXO Nexus software or CXO Nexus cloud service, or implementation. The CIO InCight™ Dashboards are Data Visualizations of categorized spend data into a Company directed or agreed upon taxonomy.

**"Confidential Information"** means any proprietary data or information that is not generally known to the public, and that is disclosed by a party (a **"Disclosing Party"**) to the other party (a **"Receiving Party"**) whether in tangible or intangible form, whenever and however disclosed, and whether or not marked designated or otherwise identified as "confidential", including, but not limited to: (a) any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of such Party, its affiliates, subsidiaries and affiliated companies; (b) plans for products or services, and customer or supplier lists; (c) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method; (d) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; (e) any Notes. For the avoidance of doubt, Confidential Information shall not include Aggregated Data.

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“**Data Visualizations**” means visualizations of such data sets in the form of multiple views of data insights, including: from the Level 1 view in the **TruSpend™ Map** (i) spend by category in US\$ amounts; (ii) spend by category as percentages of overall spend; (iii) trending indicators on spend per category; and in Level 2 of the **TruSpend™ Map**, details about vendors within categories including (i) percent of spend on a vendor; (ii) amount of spend on vendor (iii) authorizers of spend per invoice (if available) (iv) dates; (v) expense type; (vi) general ledger codes; (vii) SKU(s); and (viii) descriptions. The **Vendor TruSpend™ Map** shows vendor rollup, or which vendors have been acquired by another; also referred to as “Parentage”.

“**End Users**” means the subscribed number of employees of Company who have subscribed and been authorized to access the Services on Company’s behalf.

“**Notes**” means all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations, and other materials (the “**Notes**”) prepared by or for Receiving Party or its representatives that contain, are based on, or otherwise reflect or are derived from any Confidential Information.

“**OnCight™ Service**” means the assistance provided by the CXO Nexus integration team that assists in, but is not limited to, the preparation, classification and strategies for preparing and categorizing Company Data for ingestion into the other relevant Services.

“**Sensitive Personal Information**” means (a) government identification numbers or financial account numbers associated with individual persons (e.g. U.S. Social Security numbers, driver's license numbers, or personal credit card or banking account numbers), (b) medical records or health care claim information associated with individuals, including claims for payment or reimbursement for any type of medical care for an individual, and (c) Data designated as “Sensitive” or “Special Category” or the like requiring extra protective measures under the applicable data protection law.

“**Services**” means CXO Nexus’ hosted services, including the CIO InCight™ Dashboard, Data Visualizations, OnCight™ Services, and other support services and professional services as may be offered.

### 21. General Provisions.

21.1 Publicity. CXO Nexus may identify Company as a Company in its Company listings, Web sites, and other promotional materials.

21.2 USA Patriot Act Notice. The U.S. federal USA Patriot Act (“**USA Patriot Act**”) provides generally for the operator of a communication host and law enforcement to be able to monitor any content, upon request of the operator. CXO Nexus anticipates fully complying with all its obligations, and availing itself of all its rights, under the USA Patriot Act.

21.3 Force Majeure. Except for payment obligations, neither party will be responsible for failure of performance due to (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority.

21.4 Entire Agreement; Amendment. This Agreement, including all related exhibits and schedules, set forth the entire agreement between the parties with regard to the subject matter hereof. No other agreements, representations, or warranties have been made by either

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party to the other with respect to the subject matter of this Agreement, except as referenced herein or therein. In the event of any inconsistency between the statements in the body of this Agreement and the related exhibits and schedules (other than an exception expressly set forth as such in the schedules), the statements in the body of this Agreement shall control.

21.5 Governing Law, Venue, and Limitation of Actions. This Agreement will be construed according to, and the rights of the parties will be governed by, the law of the State of New York, without reference to its conflict of laws rules. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal courts (if permitted by law and a party elects to file an action in federal court) located in the State of New York. This choice of venue is intended by the parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this Section. Each party waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or theory or to object to venue with respect to any proceeding brought in accordance with this Section. No action, regardless of form, arising out of this Agreement, may be brought by either party more than one (1) year after the cause of action has arisen. The prevailing party in any action or proceeding will be entitled to recover its reasonable attorneys' fees and costs.

21.6 No Third Party Beneficiaries. Except as explicitly specified herein, there are no third party beneficiaries to this Agreement.

21.7 Relationship of the Parties. The parties agree that CXO Nexus will perform its duties under this Agreement as an independent contractor. Nothing contained in this Agreement will be deemed to establish a partnership, joint venture, association, or employment relationship between the parties. Personnel employed or retained by CXO Nexus who perform duties related to this Agreement will remain under the supervision, management, and control of CXO Nexus.

21.8 Assignment. Company may not assign this Agreement without the prior written consent of CXO Nexus.

21.9 Severability. If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to affect the intent of the parties.

21.10 Waiver. Neither party will by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other party will not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this Agreement.

21.11 Survival. The following provisions will survive termination or expiration of this Agreement: 9 (Proprietary Rights), 10 (Company Data), 15.3 (Disclaimer of Warranties), 16.2 (Company Indemnity), 17 (Confidentiality), 18 (Limitation of Liability and Damages), 19 (Termination) (for claims accruing prior to termination), and 21 (General Provisions).

21.12 Notices. Any written notice or demand required by this Agreement will be sent by registered or certified mail (return receipt requested), personal delivery, overnight commercial carrier, or other guaranteed delivery to the other party at the address set forth herein, or in the Order Form. The notice will be effective as of the date of delivery if the notice is sent by personal delivery, overnight commercial courier or other guaranteed delivery, as of five (5) days after the date of posting if the notice is transmitted by registered or certified mail. Any party may change the address at which it

### **CLOUD SERVICES LICENSE AGREEMENT**

receives notices by giving written notice to the other party in the manner prescribed by this Section 21.12.

21.13 Electronic Execution. This Agreement may be accepted in electronic form (e.g., by an electronic or digital signature or other means of demonstrating assent) and Company's acceptance will be deemed binding between the parties. Company acknowledges and agrees it will not contest the validity or enforceability of this Agreement and related documents, including under any applicable statute of frauds, because they were accepted and/or signed in electronic form.

***[End of Document]***

**EXHIBIT A TO CLOUD SERVICES AGREEMENT  
SERVICE LEVEL AGREEMENT**

<b>Feature</b>	<b>Basic Support</b>
Hours of Operation	9 hours/day
Length of Service	Subscriber is paid
Product Updates and Upgrades	Yes
Products Supported	All
Methods of Access	Web, phone, email
Response Method	Email or Phone
Remote Support	Yes
Max # of Contacts / Contract	2 - Primary and Backup Admins
Number of Support Requests	Unlimited
<b>Target Response Times</b>	4 business hours
Critical (Severity 1) - Premium	Next Business
Major (Severity 2) - Premium	Day
Minor (Severity 3)	3-10 business
Cosmetic (Severity 4)	days 1 week
<b>Business Hours</b>	Monday - Friday
	8:00 AM – 5:00
North America	PM Mountain Time

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*Key Benefits*

- 9x5 access to support
- Unlimited support requests
- Remote support
- Online access to documentation
- Knowledge Base articles and other technical resources
- Product updates and upgrades