

End User License Agreement

Cloud9 Technologies, LLC

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PLEASE READ THIS END USER LICENSE AGREEMENT (“EULA”) CAREFULLY BEFORE USING THE CLOUD9 PUBLIC WEBSITE OR ENTERPRISE CLOUD9 TRADER PLATFORM. THIS EULA SETS FORTH THE TERMS BY WHICH YOU (AN INDIVIDUAL) MAY ACCESS THE CLOUD9 PUBLIC WEBSITE (“Website”) AND VOICE CLOUD-BASED COMMUNICATION AND COLLABORATION CLOUD9 TRADER SERVICES (“Services”). THE Website and Services ARE INDIVIDUALLY AND COLLECTIVELY REFERRED TO IN THE EULA AS THE “Cloud9 Platform.”

BY CLICKING “Accept” OR OTHERWISE ACCESSING, OR USING THE Cloud9 Platform, YOU ACKNOWLEDGE THAT THE EULA GOVERNS YOUR USE OF THE Cloud9 Platform, THE Services OFFERED BY CLOUD9 TECHNOLOGIES, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND ANY OF ITS SUBSIDIARIES AND AFFILIATES (each “Cloud9”).

The Cloud9 Platform is available for your use only on the condition that you agree to the terms and conditions set forth in this EULA and by accessing, using and transacting business over it, you are intending to be legally bound. You will not use the Cloud9 Platform if you are not 18 years of age or older. You also acknowledge that the Cloud9 Services are provided to enterprises under a Service Agreement and your company may have entered such an agreement, and if you are using the Services as an employee, consultant or contractor of a Cloud9 enterprise customer, you represent that you are a “Named User” authorized by our company to use Cloud9 Services, and acknowledge while your individual use is governed by the terms of this EULA, but that Cloud9’s Service Agreement with your enterprise/company contains additional legal terms and conditions that govern your use, which supersede any term and condition of this EULA that conflicts. It is your responsibility to understand the terms of your enterprise’s Service Agreement with Cloud9.

IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT CLICK “ACCEPT” AND DO NOT ACCESS OR USE THE Cloud9 Platform.

1. CLOUD9 PLATFORM

- 1.1. Named User Account. All authorized Named Users of the Cloud9 Services are required to provide information sufficient to identify them and assign LogIn credentials. You or your company may create your Cloud9 account. You will receive a unique LogIn identifier and password from Cloud9, or your company may establish a single sign-in feature, enabling you to access the Cloud9 Services with the LogIn details that your company provides. You agree to keep all LogIn credentials and passwords assigned to access the Cloud9 Services confidential, and if you become aware that your or another individual’s LogIn credentials or password has become compromised, you will immediately notify Cloud9 or your company representative as soon as you make the determination. CLOUD9 WILL NOT BE RESPONSIBLE OR LIABLE TO YOU OR YOUR ENTERPRISE FOR USE OF YOUR OR A THIRD PARTY’S LOGIN CREDENTIALS OR

PASSWORDS RESULTING FROM ANY THIRD PARTY'S FAILURE TO SECURE LOGIN IDENTIFIERS OR PASSWORDS.

- 1.2. Personal Data. Cloud9 uses your name, job title, email address, company affiliation, postal address and telephone number, that of your colleagues within your enterprise who are authorized to use the Cloud9 Services to create Named User accounts within your enterprise, for which you (and each authorized Named User) will receive a username and encrypted password. Cloud9 may also collect similar information from individuals who request information about the Service through the Website. You, by accepting this EULA and using the Cloud9 Platform consent to Cloud9's collection, processing and use of any data, information or facts that you provide to Cloud9 or Cloud9 or receives through your use of the Cloud9 Platform which can be used to identify or locate you ("Personal Data"), and we will handle your Personal Data as set out in the EULA and our Privacy Notice ([here](#)).

You can address any questions that you have about your Personal Data to Cloud9 Technologies, 565 Fifth Avenue, 17th Floor, New York, NY 10017, or via email to infosec@c9tec.com.

2. LICENSE TO USE CLOUD9 PLATFORM.

- 2.1. Grant. Cloud9 grants you a limited, non-exclusive, revocable, non-transferable and limited license to access and use the Cloud9 Platform, Website and Services, in connection with your enterprise's commercial use of the Services, and subject to your compliance with this EULA and your any other restrictions of use set forth in the Service Agreement between your enterprise/company and Cloud9. Cloud9 grants individual users a license access and use the Website on a non-exclusive, revocable, non-transferable basis for their personal or commercial purposes strictly in accordance with the terms of this EULA. The license includes the right for you to access and use any software that is necessary for Cloud9 to deliver the Services.
- 2.2. Reservation of Cloud9's Rights. Subject to the limited license to access and use the Cloud9 Platform and Services expressly granted herein, Cloud9 reserves all rights, title and interest in and to the Cloud9 Platform, Website and Services, including all related intellectual property rights. No rights are granted to you except those that are expressly set forth in this EULA.

3. ACCEPTABLE USES OF THE CLOUD9 PLATFORM. You are responsible for your use of the Cloud9 Platform and the legality, appropriateness, and quality of the content you transmit to and over the Cloud9 Platform. You agree that you will not:

- 3.1. change, modify or otherwise alter any software that is provided for your use in connection with the Services;
- 3.2. use the Services for the benefit of any party other than your enterprise or for any purpose that is not expressly authorized in the Service Agreement between your enterprise/company and Cloud9;
- 3.3. use the Cloud9 Platform to make non-trader related calls, telemarketing calls or other unsolicited, non-trading marketing communications to other users of the Services;

- 3.4. use the Services and Cloud9 Platform to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or that violates third party privacy rights,
- 3.5. use the Services or Cloud9 Platform to store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;
- 3.6. misuse or abuse the Services, or interfere with or disrupt the integrity or performance of the Services or the data of third parties who use the Services; or
- 3.7. attempt to gain unauthorized access to the Services or to any third party services, content or applications included in or available over or through the Cloud9 Services or their related systems or networks;
- 3.8. enable or assist others to violate this EULA; or
- 3.9. benchmark the Cloud9 Services against third-party services without Cloud9's prior written approval.

4. PRIVACY NOTICE. Cloud9's Privacy Notice can be reviewed ([here](#)). The Privacy Notice explains how Cloud9 collects, uses and discloses information that individuals provide using the Cloud9 Platform. You acknowledge that use of the data or information you provide in and transmit through the Cloud9 Platform, whether uploaded by you directly or by your enterprise/company will be handled in accordance with Cloud9's Service Agreement with your enterprise and subject to the Privacy Notice. You consent to our use of your Personal Data for the purposes of providing the Services and our performance of the Service Agreement with your enterprise/company and for any other reason that your enterprise/company instructs us in writing. You by using the Service authorize and allow us to rely on those instructions, and the representation of your enterprise/company that your consent for any additional uses implicated by your enterprise's/company's instructions has been granted without asking you directly. PLEASE CONTACT YOUR ENTERPRISE/COMPANY AND INSTRUCT YOUR ENTERPRISE/COMPANY TO CONTACT US (AT THE ADDRESS LISTED ABOVE) IF YOU HAVE WITHDRAWN CONSENT FOR YOUR ENTERPRISE/COMPANY TO USE YOUR PERSONAL DATA FOR ANY PURPOSES. YOUR WITHDRAWAL OF CONSENT MAY TERMINATE YOUR ACCESS TO THE SERVICES.

- 4.1. License to Use Your Data and Information. You grant Cloud9 a non-exclusive, transferable, sublicenseable, worldwide, royalty-free license to use and distribute any data or information, including your Personal Data, as may be necessary for Cloud9 to operate, maintain and deliver Cloud9's Services to you and your enterprise/company until you terminate this EULA or the Service Agreement between your enterprise/company and Cloud9 expires or is terminated.
- 4.2. Feedback. If you provide Cloud9 with any suggestions, opinions or feedback relative to the Cloud9 Platform, Website or Services of any nature, including without limitation suggestions for improvements, feature enhancements or quality control measures, that Cloud9 implements, you hereby grant Cloud9 a non-exclusive, worldwide, perpetual, irrevocable, fully paid-up and royalty-free sublicenseable and transferrable license to use the suggestions, opinions or

feedback and any intellectual property rights that are implicated or embodied in Cloud9's use of the suggestions, opinions or feedback.

- 5. NO WARRANTY.** TO THE GREATEST EXTENT ALLOWED BY LAW, CLOUD9 DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CLOUD9 PLATFORM, WEBSITE AND SERVICES, AND HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR ANY PARTICULAR USE OR PURPOSE, ANY WARRANTY EXPRESS OR IMPLIED OF NONINFRINGEMENT, AND ANY REPRESENTATION OR WARRANTY THAT THE CLOUD9 PLATFORM, WEBSITE OR SERVICES WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTION. EXCEPT AS SET FORTH HEREIN, CLOUD9 FURTHER DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE NATURE AND QUALITY OF ANY OTHER PERFORMANCE BY CLOUD9 HEREUNDER. ANY WRITTEN OR ORAL REPRESENTATION OR WARRANTY NOT EXPRESSLY CONTAINED IN THIS AGREEMENT SHALL NOT BE ENFORCEABLE BY CUSTOMER.
- 6. LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY WILL CLOUD9 BE LIABLE TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR THE USE OR OPERATION OF THE CLOUD9 PLATFORM, WEBSITE AND/OR SERVICES, DAMAGES ARISING FROM ANY LOSS OF DATA, LOSS OF PROFITS, LOST SALES OR BUSINESS INTERRUPTION OF ANY CHARACTER, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF CLOUD9 HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL CLOUD9 BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY DAMAGES IN EXCESS OF THE FEES PAID DIRECTLY BY YOU TO FOR USE OF THE CLOUD9 SERVICES IN THE MONTH PRIOR TO THE EVENT GIVING RISE TO ANY LIABILITY.
- 7. CONFIDENTIALITY.** *"Confidential Information"* means all tangible and intangible confidential and proprietary information and trade secrets provided by one party t(*"Disclosing Party"*) prior to the expiration or termination of this EULA, that is disclosed to the other party (*"Receiving Party"*) or to which the Receiving Party gains access in connection with and prior to the expiration or termination of this EULA. Examples of Confidential Information include, but are not limited to, business information, customer information, business practices, data processes, technical information, know-how, inventions, computer or software products, systems and programs and all related documentation, cost and pricing data, marketing and business plans, analytical methods and procedures, hardware design, software design, technology, financial information, or personnel data, such as Personal Data.

 - 7.1. *Exclusions.* Confidential Information does not include information that (i) was already known to the Receiving Party at the time of disclosure by the Disclosing Party, (ii) is or becomes generally known to the public or is obtainable from public sources other than as a result of an act or omission of the Receiving Party that constitutes a breach of this Agreement, (iii) is independently developed by or on behalf of the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, or (iv) becomes available to the Receiving Party on a non-

confidential basis from a source which is not prohibited from disclosing such information to the Receiving Party by a legal, contractual or fiduciary obligation to the Disclosing Party.

- 7.2. Permitted Disclosures. The confidentiality obligations contained in this Section (Confidentiality) will not apply to (i) disclosures required by applicable law, regulation, or order of a court or government agency, provided that, to the extent practicable and permitted by such requirement, the Receiving Party shall promptly notify the Disclosing Party so as to provide the Disclosing Party an opportunity to seek a protective order or other confidential treatment or (ii) disclosures to legal counsel or auditors of the Receiving Party who are subject to confidentiality obligations no less stringent than in this EULA.
- 7.3. Non-Disclosure. The Receiving Party agrees (A) to hold the Disclosing Party's Confidential Information in confidence, to apply at least the standard of care used by the Receiving Party in protecting its own Confidential Information, and to not disclose such Confidential Information to any third party other than its Affiliates, agents or contractors or as set forth in Section 7.2 (Permitted Disclosures); and (B) without the written permission of the Disclosing Party, not to use the Confidential Information of the Disclosing Party except as required to exercise its rights or perform its obligations under this Agreement. The Receiving Party agrees to limit disclosure of the Disclosing Party's Confidential Information to those of its and its Affiliates' employees, agents and contractors who need to know the same to accomplish the purposes of this EULA, and who are bound by confidentiality obligations no less stringent than those in this EULA.

8. TERM AND TERMINATION.

- 8.1. Term. This EULA shall remain in effect from the time of your acceptance of its terms until you or your enterprise/company terminate your account for use of the Cloud9 Platform, Website or Services.
- 8.2. Suspension. Cloud9 may, in its sole discretion, at any time and for no reason, suspend or terminate this EULA with or without prior notice for no reason.
- 8.3. Termination. This EULA will terminate immediately with respect to your use and access to the Cloud9 Platform, Website and Services, without notice from Cloud9 in the event that you fail to comply with any provision of this EULA or you withdraw your consent for Cloud to access, process and use your Personal Data under the terms of this EULA, the Service Agreement with your enterprise/company and Cloud9's Privacy Notice. You may terminate this EULA by terminating your access from the Cloud9 Platform, Website and Services, and deleting your account, either directly or by your enterprise/company deleting your account.
- 8.4. Effect of Termination. Upon termination of this EULA, you will cease all use of and refrain from accessing the Cloud9 Platform, Website and Services, and you will delete any tools and software that enable you to access them. You acknowledge and agree that your account may be subject to the control of your enterprise/company and that your enterprise/company may

restrict or terminate your access to the Cloud9 Platform and Services, and this EULA at any time. You also acknowledge and agree that, subject to the requirements of applicable law or regulation and the Service Agreement between your enterprise/company and Cloud9, certain Personal Data may remain in archived/backup copies held by Cloud9 and/or your enterprise/company accordance with the retention practices of one or both of those parties in accordance such party's privacy policy or as otherwise required by law.

8.5. Survival. Sections 2, 4.1, 4.2, 5, 6, 7 and 9 survive the termination of this EULA.

9. **MISCELLANEOUS.** Nothing in this EULA will be construed to create a partnership, joint venture, employment or agency relationship between you and Cloud9. This EULA will be governed by the laws of New York without regard to principles of conflict of laws. The parties hereto agree to submit all disputes related to this EULA to the courts in New York County, New York, and each party consents to the jurisdiction of such courts and waives any objection it may have with respect to venue. You may not assign this EULA without Cloud9's prior written consent which may be withheld for any reason. Cloud9 may assign this EULA to a successor of all or substantially all of its assets, an acquirer pursuant to a merger, stock acquisition, consolidation or any other co prorate restructuring in which Cloud9 participates. Cloud9 reserves the right to modify, suspend or discontinue, temporarily or permanently, EULA, the Cloud9 Platform, Website or Services or any third party service to which it connects, with or without notice and without liability to you. If any provision of this EULA is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of the unenforceable or invalid provision to the greatest extent possible under applicable law and the remaining provisions will continue and remain in full force and effect. Notwithstanding anything to the contrary, Cloud9 will post changes to this EULA to the Website which will serve as notice to you and your enterprise/company with regard to such changes. The changes will be binding on you unless you discontinue your use of the Cloud9 Platform, Website and Services after the changes are posted to the Website.

Feel free to contact us at Cloud9 Technologies, 565 Fifth Avenue, 17th Floor, New York, NY 10017, or via email to infosec@c9tec.com should you have any questions about this EULA.