EMQ Cloud Standard Terms of Service

THESE EMQ CLOUD STANDARD TERMS OF SERVICE (THE "TERMS") ARE PART OF A LEGAL CONTRACT BETWEEN EMQ, INC. ("EMQ", "WE" OR "US") AND PERSONS OR ENTITIES ("YOU") REGISTERING FOR AN ACCOUNT ("ACCOUNT") TO USE THE EMQ CLOUD SERVICE FOR WHICH YOU ARE REGISTERING (THE "CLOUD SERVICE").

THE TERMS, TOGETHER WITH ANY ADDITIONAL TERMS AND CONDITIONS AND/OR POLICIES REFERENCED AND INCORPORATED HEREIN, OR WHICH INCORPORATE THESE TERMS AND CONDITIONS, PROVIDE ALL OF THE TERMS AND CONDITIONS INCLUDED IN A LEGALLY BINDING CONTRACT BETWEEN YOU AND EMQ (THE "AGREEMENT"). THE AGREEMENT GOVERNS YOUR USE OF EMQ CLOUD SERVICE FOR WHICH YOU HAVE REGISTERED. IF YOU REGISTER FOR AN ACCOUNT ON BEHALF OF AN ENTITY, YOU HEREBY REPRESENT AND WARRANT TO EMQ THAT YOU HAVE THE ACTUAL AUTHORITY TO BIND SUCH ENTITY TO THE AGREEMENT.

EMQ RESERVES THE RIGHT TO CHANGE THE TERMS AND CONDITIONS OF THIS AGREEMENT BY POSTING MODIFIED TERMS AND CONDITIONS, ALONG WITH AN EFFECTIVE DATE FOR MODIFIED TERMS. OTHERWISE, YOU AGREE THAT THE AGREEMENT BETWEEN YOU AND EMQ MAY ONLY BE MODIFIED BY A WRITTEN AMENDMENT SIGNED BY AN AUTHORIZED EXECUTIVE OF EMQ.

IF YOU DO NOT AGREE WITH ANY OF THE TERMS IN THE AGREEMENT, YOU MAY NOT USE THE REGISTER FOR AN ACCOUNT OR USE THE EMQ CLOUD SERVICE FOR WHICH YOU HAVE REGISTERED. BY REGISTERING FOR AN ACCOUNT AND/OR USING THE EMQ CLOUD SERVICE, YOU IRREVOCABLY AGREE TO ALL OF THE TERMS AND CONDITIONS OF THE AGREEMENT APPLICABLE TO SUCH ACTIVITY.

1. Your Account

In order to use a Cloud Service, you must first register for one or more Accounts for such Cloud Service. By creating the Account, you are responsible for maintaining the security of your Account (including, but not limited to, login credentials, security-keys and the correct configuration of access control lists), and you are fully responsible for all activities that occur under your Account, and any other actions taken in connection with your Account. You agree to immediately notify EMQ of any unauthorized use of your Account, or any other breaches of security of which you become aware. EMQ will have no liability for any acts or omissions on your part, including any damages of any kind incurred as a result of such acts or omissions. You may not register multiple Accounts to simulate or act as a single Account or otherwise access a Cloud Service in a manner intended to avoid incurring fees. Your Account will be your main point of contact for the Cloud Service. Any notifications regarding a Cloud Service will be sent to the email address registered with your Account.

2. EMQ Cloud Services

These Terms apply to EMQ Cloud Service(s).

3. Provision of Cloud Service and Support Services

(a) EMQ Cloud Service(s) Generally. During the term of this Agreement and, subject to your compliance with these Terms, EMQ will provide to You, and You hereby granted the right to use the Cloud Service. EMQ may from time to time modify the features and functions of the Subscription.

(b) Provision of Support Services. During of this Agreement and, subject to your compliance with these Terms, EMQ will provide You with Standard Support Services. (as applicable, the "Support Services Policy").

(c) Support Services are provided to You solely for Your internal use and are subject to limitations described in the Support Services Policy. In addition, You agree not to:

(i) use the Support Services to supply any consulting, support or training services regarding any Cloud Service to any third party; or

(ii) use Support Services to obtain support for any use of EMQ software that is offered as a service by any third party.

You that any knowing failure to comply with the terms of this Section 3(c) will be deemed a material breach of this Agreement. In the event of any failure to comply this Section 3(c), EMQ may, without prejudice to any other remedies available hereunder, at law or in equity, suspend the provision of Support Services to You if You fail to cure such breach within fifteen (15) days after receipt of written notice thereof.

(d) This Agreement grants You a limited right to use the applicable Cloud Service as described herein. Nothing in this Agreement shall be understood to transfer from EMQ to You any intellectual property rights, and all right, title and interest in and to any Cloud Service and the applicable Support Services will remain (as between the parties) solely with EMQ or its third-party suppliers. " EMQ " and EMQ Cloud logos, and all other trademarks, service marks, graphics and logos used in connection with any Cloud Service and the Support Services are trademarks or registered trademarks of EMQ or EMQ’s third-party suppliers. Other trademarks, service marks, graphics and logos used in connection with any Cloud Service may be the trademarks of other third parties. EMQ grants to You no right or license to reproduce, or otherwise use any EMQ or third-party trademarks under this Agreement.

4. Fees and Payment

(a) With the exception of any free trial period, or where otherwise explicitly noted, you are required to pay a fee for the right to access and use a Cloud Service. You must provide a valid credit card, as well as name and address, to EMQ 's payment processor in order to make use of the Cloud Service. You are responsible for keeping the payment details up to date.

(b) EMQ will charge your credit card on a monthly basis in arrears based on the metric by which the applicable Cloud Service is billed as identified in the applicable Cloud Service description or registration page(s) ("Resources"). EMQ reserves the right to require up-front payment for some features or functions of a Cloud Service. You agree to pay the then-prevailing fees for the Resources that you use for the applicable Cloud Service. Any outstanding balance for a Cloud Service becomes immediately due and payable upon termination of your use of the Cloud Service for any reason. Prices are exclusive of all sales, use, value added and excise taxes. You are responsible for paying all taxes and government charges, if any, in your own jurisdiction.

(c) Late payments will bear interest at the rate of 1% per month (or the highest rate permitted by law, if less). You are responsible for paying all reasonable expenses and attorneys’ fees that EMQ incurs in connection with collecting unpaid amounts that are past due. EMQ reserves the right to terminate your right to access and use a Cloud Service for failure to timely pay amounts due. In order to dispute any amount billed to you for your use of a Cloud Service, you must do so within ten (10) days of being billed for such amounts, or you will be deemed to have waived your right to dispute such amounts.

(d) You acknowledge and agree that any credit card and related billing and payment information that you provide to EMQ may be shared by EMQ with companies who work on EMQ 's behalf, such as payment processors and/or credit agencies, solely for the purposes of checking credit, effecting payment to EMQ and servicing your Account. EMQ shall not be liable for any use or disclosure of such information by such third parties.

(e) EMQ may change its fees and payment policies at any time, provided that such changes will apply upon the start of the next billing cycle. Changes to the fees or payment policies will be communicated via the applicable Cloud Service and/or through any of our established communication channels.

5. Confidential Information

(a) Both parties acknowledge that, in the course of performing this Agreement, they may obtain information relating to products (such as goods, services, and software) of the other party, or relating to the parties themselves, which is of a confidential and proprietary nature ("Confidential Information"). Confidential Information includes materials and all communications concerning EMQ’s business, including but not limited to employee lists, product strategies, information security policies and procedures (and reports relating thereto), development activities, design and coding, and interfaces with a Cloud Service, and anything provided by EMQ in connection with the Support Services including, without limitation, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical plans and other information which by its nature can be reasonably expected to be proprietary and confidential, whether it is presented in oral, printed, written, graphic or photographic or other tangible form (including information received, stored or transmitted electronically) even though specific designation as Confidential Information has not been made. Confidential Information also includes any notes, summaries, analyses of the foregoing that are prepared by the receiving party.

(b) The parties shall at all times, both during the term of this Agreement and thereafter keep in trust and confidence all Confidential Information of the other party using commercially reasonable care (but in no event less than the same degree of care that the receiving party uses to protect its own Confidential Information) and shall not use such Confidential Information other than as necessary to carry out its duties under this Agreement, nor shall either party disclose any such Confidential Information to third parties other than to affiliates or as necessary to carry out its duties under this Agreement without the other party’s prior written consent, provided that each party shall be allowed to disclose Confidential Information of the other party to the extent that such disclosure is approved in writing by such other party, or necessary to enforce its rights under this Agreement.

(c) The obligations of confidentiality shall not apply to information which (i) has entered the public domain or is otherwise publicly available, except where such entry or availability is the result of a party’s breach of this Agreement; (ii) prior to disclosure hereunder was already in the receiving party’s possession without restriction as evidenced by appropriate documentation; (iii) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information; or (iv) was developed by the receiving party without any use of any of the Confidential Information as evidenced by appropriate documentation.

(d) Notwithstanding anything to the contrary herein, each party may disclose the other party’s Confidential Information in order to comply with applicable law and/or an order from a court or other governmental body of competent jurisdiction, and, in connection with compliance with such an order only, if such party: (i) unless prohibited by law, gives the other party prior written notice to such disclosure if the time between that order and such disclosure reasonably permits or, if time does not permit, gives the other party written notice of such disclosure promptly after complying with that order and (ii) fully cooperates with the other party, at the other party’s cost and expense, in seeking a protective order, or confidential treatment, or taking other measures to oppose or limit such disclosure. Each party must not release any more of the other party’s Confidential Information than is, in the opinion of its counsel, reasonably necessary to comply with an applicable order.

6. Your Content

(a) In connection with Your use of a Cloud Service, You and/or Your end users may enable the ingestion of information, content and data (collectively, "Content") to, or may retrieve Content from, such Cloud Service. You are fully responsible for the content, accuracy and completeness of such Content, and any loss, liabilities or damages resulting from the Content, regardless of the nature of the Content including, without limitation, whether the Content consists of, including but not limited to, data, text, graphics, audio, video, or computer software. You are solely responsible for backing up or otherwise making duplicates of Content. You represent and warrant to EMQ that: (i) You own or have the necessary licenses to provide the Content to EMQ, and the provision of the Content to, and use of the Content by, EMQ as contemplated herein will not infringe the intellectual property rights, including but not limited to copyright, patent, trademark or trade secret rights, of any third party; (ii) the Content does not contain any executable Malware (defined below); and (iii) You have, in the case of Content that includes computer code, accurately categorized and/or described the type, nature, uses and effects of the Content, whether requested to do so by EMQ or otherwise.

(b) To the extent that You Communicate any Content relating to an identified or identifiable individual ("Personal Data") to EMQ, or EMQ obtains any Personal Data from You, EMQ agrees that it (and/or its contractors) will not knowingly collect, access, use, store, disclose, transfer or otherwise process (collectively, "Process" or "Processing") any such Personal Data except (i) for the purposes of this Agreement, including without limitation, to implement and deliver a Cloud Service and its features and associated services, provide customer support, and help You prevent or address service or technical problems; (ii) as expressly permitted by You in this Agreement or otherwise; or (iii) as compelled by law. You shall make such disclosures, obtain such consents, provide such choices, implement such safeguards in compliance with, and otherwise comply with, any applicable law, rule or regulation regarding the Processing of Personal Data of any individual whose Personal Data Processed is by You (including, without limitation, by disclosing the Personal Data to EMQ) in connection with Your use of or access to a Cloud Service and its features and associated services. For purposes of this Agreement, You are a "data controller" and EMQ is a "data processor" with respect to Personal Data, as these terms are defined in the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("GDPR" or "General Data Protection Regulation").

(c) By submitting Content to EMQ, You hereby grant EMQ a sublicensable. worldwide, royalty-free, and non-exclusive right to reproduce, modify, adapt and publish the Content solely for the purpose of enabling EMQ to provide You with the applicable Cloud Service. If You wish to delete Content from Your Account, EMQ will use reasonable efforts to remove it, but You acknowledge that backups, caching or references to the Content may not be made immediately unavailable.

(d) You are solely responsible for deleting or retrieving Content from a Cloud Service prior to termination of the applicable Account for any reason. If EMQ terminates Your Account, EMQ will provide You a reasonable opportunity to retrieve Your Content from the applicable Cloud Service, if requested in writing. Such a request must be sent by email to EMQ within seven (7) days after You receive notice regarding the termination. In any event, Content will be deleted from such Cloud Service no earlier than fourteen (14) days after the termination date identified in the applicable notice regarding such Account has been sent to You.

(e) EMQ may collect and compile Service Analysis Data (defined below) and use such Service Analysis Data for security, product and operations management and for research and development. "Service Analysis Data" is information other than Content that may be collected or compiled by EMQ using session tracking and analytics technology in connection with Your acquisition or use of a Cloud Service.

(f) EMQ reserves the right, but has no obligation, to monitor all of the content, data or information uploaded on any Cloud Service by third parties ("Third Party Content"), and is not responsible for any such content, data or information. EMQ does not represent or imply that that such Third-Party Content is accurate, useful or non-harmful. You must take all precautions necessary to protect Yourself and Your computer systems from viruses, worms, Trojan horses, and other harmful or destructive materials. EMQ disclaims any responsibility for any harm resulting from the use any Cloud Services including, without limitation, resulting from any Third-Party Content.

7. Restrictions

(a) You shall use each Cloud Service in compliance with all applicable laws, including export control and data privacy laws. You shall not: (i) execute or attempt to execute any computer viruses, worms, time bombs, Trojan horses and other harmful or malicious code, routines, files, scripts, agents or programs ("Malware") in any Cloud Service or use any Cloud Service to transmit Malware; (ii) use any Cloud Service to store or distribute any information, material or data that is harassing, threatening, infringing, libelous, unlawful, obscene, or which violates the privacy or intellectual property rights of any third party; (iii) access or use any Cloud Service to compete against EMQ; (iv) access or use any Cloud Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive services; (v) except as expressly permitted herein, make access to any Cloud Service through Your account available to any third party; (vi) sell, resell, rent, lease, offer any time sharing arrangement, service bureau or any service based upon, any Cloud Service; (vii) interfere with or disrupt the integrity, security or performance of any Cloud Service or third-party data contained therein; (viii) attempt to gain unauthorized access to any Cloud Service or any associated systems or networks; (ix) modify, make derivative works of, disassemble, decompile or reverse engineer any Cloud Service or any component thereof; or (x) use any Cloud Service in furtherance of the violation of the rights of others.

(b) If EMQ believes, in its sole discretion, that You have violated or attempted to violate this Agreement, or that Your use of a Cloud Service presents a material security risk, EMQ may suspend access to such Cloud Service until the violation has been corrected. EMQ will use reasonable efforts to provide You with advance written notice prior to implementing such suspension and will work with You to resolve the underlying issue.

(c) If Your use of a Cloud Service materially degrades the performance of such Cloud Service for other customers, as determined solely by EMQ, EMQ reserves the right to throttle or pause Your use of such Cloud Service, with or without prior notice. You must contact EMQ if You desires to assess performance by benchmarking for more than five minutes.

8. Indemnification

You will, at Your expense (i) defend, or at Your option settle, but subject to EMQ’s prior written consent, not to be unreasonably withheld, a claim brought against EMQ, its contractors, suppliers, licensors, and or respective directors, officers, employees and agents, arising out of or related to Your use of the Cloud Service, including, without limitation, Your breach of Section 6 and/or Section 7 of this Agreement, and (ii) indemnify EMQ against and pay (1) any settlement of such claim or (2) any damages finally awarded to such third party by a court of competent jurisdiction as the result of such claim.

9. Limited Warranty, Warranty Disclaimer

(a) EMQ warrants that (i) during the Term of this Agreement it will perform applicable Support Services in a professional, workmanlike manner, consistent with generally accepted industry practice, and in substantial accordance with the Support Services Policy and (ii) the applicable Cloud Service will perform or in all material respects in accordance with the applicable Documentation. In the event of a breach of the foregoing warranty, EMQ’s sole obligation, and Your exclusive remedy, shall be for EMQ to re-perform the applicable Support Services or correct any non-conformity in the Cloud Service, as applicable.

(b) EXCEPT AS SET FORTH IN SECTION 9(a), THE SUPPORT SERVICES AND THE APPLICABLE CLOUD SERVICE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND EMQ MAKES NO ADDITIONAL WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SUPPORT SERVICES, ANY CLOUD SERVICE OR ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EMQ SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SUPPORT SERVICES, THE CLOUD SERVICE(S) AND ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT. YOU AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED IN CONNECTION WITH YOUR USE OF THE SUPPORT SERVICES OR APPLICABLE CLOUD SERVICE. YOU UNDERSTAND AND AGREES THAT THE SUPPORT SERVICES OR APPLICABLE CLOUD SERVICE AND ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, WEAPONS SYSTEMS, OR LIFE SUPPORT SYSTEMS.

10. Limitation of Liability

(a) IN NO EVENT SHALL EMQ BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF EMQ HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) EXCEPT WITH RESPECT TO A BREACH OF ITS OBLIGATIONS UNDER SECTION 5 (CONFIDENTIAL INFORMATION) IN NO EVENT SHALL EMQ’S TOTAL, CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED THE LESSER OF (1) THE AMOUNT PAID BY YOU TO EMQ UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY AND (2) US$20,000.

(c) THE ALLOCATIONS OF LIABILITY IN THIS SECTION 10 REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND THE COMPENSATION OF EMQ FOR THE SUPPORT SERVICES AND CLOUD SERVICE(S) PROVIDED HEREUNDER REFLECTS SUCH ALLOCATIONS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

11. Termination

(a) You may terminate this Agreement at any time by canceling your Account with the Cloud Service. Termination of this Agreement shall not release you from any obligations undertaken by You under this Agreement, or from any obligations to pay EMQ for any outstanding fees. You will not receive any refunds by canceling your Account.

(b) EMQ may terminate your access to all or any part of a Cloud Service at any time, with or without cause, with or without notice, effective immediately. You agree that EMQ will not be liable to you or any third party for any such termination.

(c) Upon expiration or termination of this Agreement, (i) You shall have no further right to access or use the Cloud Service(s); and (ii) Your payment obligations as well as the provisions of Sections 5, 6(d), 6(e), 9, 10, 11(c) and 12 will survive such expiration or termination of this Agreement. Any outstanding fees shall become immediately due and payable upon expiration or termination of this Agreement for any reason and will be billed to You or withdrawn from your registered credit card.

12. General

(a) You may not assign this Agreement, in whole or in part, without the prior written consent of EMQ. Any assignment in violation of this Section 12 shall be void, ab initio, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by, the parties and their respective successors and assigns. Nothing will restrict EMQ from subcontracting its obligations under this Agreement to any third parties.

(b) If any action or proceeding, whether regulatory, administrative, at law or in equity is commenced or instituted to enforce or interpret any of the terms or provisions of this Agreement (excluding any mediation required under this Agreement), the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs of suit and expenses, in addition to any other relief to which such prevailing party may be entitled. As used herein, "prevailing party" includes without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

(c) You consent to EMQ’s identification of You as a user of the Support Services and Cloud Service, on its website, through a press release issued by EMQ and in other promotional materials.

(d) You acknowledge that the Cloud Service(s) and Support Services, and technologies related thereto are subject to the Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774 (2010)) and the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control. You are now and will remain in the future compliant with all such export control laws and regulations, and will not export, re-export, otherwise transfer any EMQ goods, software or technology or disclose any EMQ software or technology to any person contrary to such laws or regulations. You acknowledge that remote access to a Cloud Service may in certain circumstances be considered a re-export of such Cloud Service, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

(e) Except with respect to payment obligations, neither party will be liable for, or be considered to be in breach of, or in default under, this Agreement, as a result of any cause or condition beyond such party’s reasonable control.

(f) You understand and agree that any features or functions of services or products referenced on any EMQ website, or in any presentations, press releases or public statements, which are not currently available or not currently available as a generally available (i.e., GA) release, may not be delivered on time or at all. The development, release, and timing of any features or functionality described for EMQ’s products and services remains at EMQ’s sole discretion. Accordingly, You agree that You are registering your Account and purchasing the Cloud Services based solely upon features and functions that are currently available as of the time you register the Account or use the Cloud Services, and not in expectation of any future feature or function.

(g) This Agreement will be governed by the laws of the State of California, without regard to its conflict of laws principles, and all suits hereunder will be brought solely in Federal Court for the Northern District of California, or if that court lacks subject matter jurisdiction, in any California State Court located in Santa Clara County. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding the courts set forth above, based upon any alleged lack of personal jurisdiction, improper venue, forum non conveniens, or any similar claim or defense. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. A breach or threatened breach, by either party of Section 5 (Confidential Information) may cause irreparable harm for which the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond.

(h) Any notice or other communication under this Agreement given by either party to the other will be deemed to be properly given if given in writing and delivered by e-mail, if acknowledged received by return e-mail or followed within one day by a delivered, if You, at the mailing address listed on Your Account. Notices to EMQ may also be sent to legal@emqx.io. Either party may from time to time change its address for notices under this Section by giving the other party notice of the change in accordance with this Section 12(h).

(i) Any failure of either party to insist upon or enforce performance by the other party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as a waiver or relinquishment of such party’s right to assert or rely upon such provision, right or remedy in that or any other instance.

(j) If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions will remain in full force and effect and such provision will be enforced to the maximum extent possible so as to give effect the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable.

(k) Subject to its obligations under Section 5 of this Agreement (Confidential Information), EMQ will be free to use, irrevocably, in perpetuity and for any purpose, all suggestions, ideas and/or feedback (collectively, "Feedback") provided to EMQ by You or your affiliates and Your respective employees, contractors or other agents, with respect to a Cloud Service and/or the Support Services. The foregoing grant of rights is made without any duty to account to any of the foregoing persons or entities for the use of such Feedback.

(l) This Agreement, together with the Support Services Policy, which is incorporated herein by reference, constitutes the entire agreement between the parties concerning the subject matter hereof, and it supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. In the event of any conflict between the terms and conditions of any of the foregoing documents, the conflict shall be resolved based on the following order of precedence: (i) this Agreement and (ii) the Support Services Policy. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if You issue any purchase orders or similar documents in connection with Your use or purchase of a Cloud Service and/or Support Services, You shall do so only for Your own internal, administrative purposes and not with the intent to provide any contractual terms. By entering into the Agreement, whether prior to or following receipt of Your purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound by the contents of any such purchase order or similar document, which are hereby deemed rejected and extraneous to this Agreement, and EMQ’s performance of this Agreement shall not amount to: (i) an acceptance by conduct of any terms set out or referred to in the purchase order or similar document; (ii) an amendment of this Agreement, nor (iii) an agreement to amend this Agreement.