

MASTER SERVICES AGREEMENT - CLOUDNINE HOSTING

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered into as of June 25, 2023 ("Effective Date"), by and between:

Acme Corp, a Delaware corporation with its principal place of business at 123 Innovation Drive, Future City, DE 19901 ("Client"),

and

CloudNine Hosting, a Nevada corporation with its principal place of business at 789 Server Row, Techville, NV 89101 ("Provider").

Client and Provider may be referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Provider is in the business of providing managed hosting, cloud computing, and related information technology services;

WHEREAS, Client desires to engage Provider to perform certain services as described herein, and Provider is willing to perform such services on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

1.1. "Agreement" means this Master Services Agreement, including all exhibits, schedules, and Statements of Work attached hereto or incorporated by reference.

1.2. "Confidential Information" means any information, however conveyed or stored, that is disclosed by one Party to the other, which is either designated as confidential or which, by its nature or the circumstances of its disclosure, should reasonably be considered confidential.

1.3. "Deliverables" means any work product, reports, data, or other materials created by Provider for Client as a result of the Services.

1.4. "Intellectual Property Rights" means all patents, copyrights, trademarks, trade secrets, and other proprietary rights.

1.5. "Services" means the services to be provided by Provider to Client as described in one or more Statements of Work.

1.6. "Statement of Work" or "SOW" means a written document executed by both Parties that describes the specific Services to be performed by Provider, including any applicable fees, timelines, and Deliverables.

2. SCOPE OF SERVICES

2.1. Statements of Work. Provider shall perform the Services as described in one or more SOWs. Each SOW shall be mutually agreed upon and executed by the Parties and will be incorporated into and form a part of this Agreement.

2.2. Conflict. In the event of a conflict between the terms of this Agreement and the terms of any SOW, the terms of this Agreement shall prevail unless the SOW expressly states that it is modifying this Agreement for the purposes of that SOW only.

3. FEES AND PAYMENT

3.1. Fees. Client shall pay Provider the fees for the Services as set forth in the applicable SOW ("Fees").

3.2. Invoicing. Provider shall invoice Client on a monthly basis, unless otherwise specified in an SOW. All invoices shall be sent to the billing contact designated by Client and shall be due and payable within thirty (30) days of the invoice date ("Due Date").

3.3. Late Payments. Any undisputed amounts not paid by the Due Date shall be subject to a late payment charge of one and one-half percent (1.5%) per month, or the maximum rate permitted by law, whichever is less.

3.4. Taxes. All Fees are exclusive of any applicable sales, use, value-added, or other taxes, which shall be the sole responsibility of Client.

4. TERM AND TERMINATION

4.1. Initial Term. The initial term of this Agreement shall commence on the Effective Date and shall continue for a period of two (2) years, unless terminated earlier in accordance with this Section 4 (the "Initial Term").

4.2. Renewal. Upon expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each a "Renewal Term") unless either Party provides written notice of its intent not to renew at least sixty (60) days prior to the end of the then-current term. The Initial Term and all Renewal Terms are collectively referred to as the "Term."

4.3. Termination for Cause. Either Party may terminate this Agreement or any SOW upon written notice if the other Party:

a) Materially breaches any provision of this Agreement and fails to cure such breach within thirty (30) days of receiving written notice thereof; or b) Becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

4.4. Effect of Termination. Upon termination or expiration of this Agreement, Provider shall cease all work, and Client shall pay for all Services rendered and expenses incurred up to the

effective date of termination. Each Party shall promptly return or destroy all Confidential Information of the other Party.

5. CONFIDENTIALITY

5.1. Obligation. Each Party (the "Receiving Party") agrees to hold in confidence and not to disclose to any third party any Confidential Information of the other Party (the "Disclosing Party"). The Receiving Party shall use the Disclosing Party's Confidential Information solely for the purpose of performing its obligations under this Agreement.

5.2. Exclusions. The obligations of confidentiality shall not apply to information that: (a) is or becomes publicly known through no wrongful act of the Receiving Party; (b) was in the Receiving Party's possession prior to the disclosure; (c) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information; or (d) is required to be disclosed by law, provided the Receiving Party gives the Disclosing Party prompt notice to allow for a protective order.

6. INTELLECTUAL PROPERTY

6.1. Pre-Existing IP. Each Party shall retain all right, title, and interest in and to its own pre-existing Intellectual Property Rights.

6.2. Client IP. All materials provided by Client to Provider shall remain the sole property of Client.

6.3. Ownership of Deliverables. Upon Client's full and final payment of all Fees due under the applicable SOW, all right, title, and interest in and to the Deliverables created specifically for Client shall be owned exclusively by Client. Provider hereby assigns all such rights to Client.

7. INDEMNIFICATION

7.1. Indemnification by Provider. Provider shall indemnify, defend, and hold harmless Client, its officers, directors, and employees from and against any and all third-party claims, liabilities, damages, and expenses (including reasonable attorneys' fees) ("Claims") arising out of or related to the gross negligence, willful misconduct, or material breach of this Agreement by Provider.

7.2. Indemnification by Client. Client shall indemnify, defend, and hold harmless Provider, its officers, directors, and employees from and against any and all Claims arising out of or related to the gross negligence, willful misconduct, or material breach of this Agreement by Client.

7.3. Procedure. The indemnified Party shall provide the indemnifying Party with prompt written notice of any Claim and shall cooperate with the indemnifying Party in the defense of such Claim. The indemnifying Party shall have sole control over the defense and settlement of the Claim.

7.4. Cap. The total liability of an indemnifying Party under this Section 7 shall not exceed the total amount of Fees paid or payable by Client to Provider under this Agreement in the twelve (12) months immediately preceding the event giving rise to the Claim.

8. WARRANTIES

[Intentionally Omitted]

9. LIMITATION OF LIABILITY

9.1. EXCLUSION OF DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF DATA, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2. LIABILITY CAP. EXCEPT FOR OBLIGATIONS UNDER SECTION 7 (INDEMNIFICATION) AND BREACHES OF SECTION 5 (CONFIDENTIALITY), EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID BY CLIENT TO PROVIDER IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10. INSURANCE

During the Term, Provider shall maintain, at its own expense, the following insurance coverages: a) Commercial General Liability insurance with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. b) Cyber Liability / Errors & Omissions insurance with a limit of not less than \$2,000,000 per claim. c) Workers' Compensation insurance as required by applicable law. Provider shall, upon request, provide Client with certificates of insurance evidencing such coverage.

11. GENERAL PROVISIONS

11.1. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles.

11.2. Dispute Resolution. Any dispute arising out of this Agreement shall be resolved through good faith negotiations. If the dispute cannot be resolved within thirty (30) days, it shall be submitted to binding arbitration in Wilmington, Delaware, in accordance with the rules of the American Arbitration Association.

11.3. Force Majeure. Neither Party shall be liable for any failure or delay in performance due to causes beyond its reasonable control, including but not limited to acts of God, war, terrorism, or natural disaster.

11.4. Notices. All notices under this Agreement shall be in writing and sent to the addresses of the Parties first set forth above.

11.5. Entire Agreement. This Agreement, together with all SOWs, constitutes the entire agreement between the Parties and supersedes all prior communications and understandings.

11.6. Amendment. No modification of this Agreement shall be effective unless in writing and signed by authorized representatives of both Parties.

11.7. Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party, except in the case of a merger, acquisition, or sale of all or substantially all of its assets.

IN WITNESS WHEREOF, the Parties have executed this Master Services Agreement as of the Effective Date.

CLIENT: Acme Corp

By: _____ Name: Title:

PROVIDER: CloudNine Hosting

By: _____ Name: Title:

--- Filename: CloudNine_Hosting_MSA.pdf Risk Level: High Indemnification Status: STANDARD
Warranty Status: MISSING Special Notes: None ---