

## CloudTran, Inc

### **EVALUATION SOFTWARE LICENCE AGREEMENT FOR CloudTran FOR COHERENCE PRODUCTS**

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USE OF SOFTWARE ORDERED AND/OR DOWNLOADED FROM CLOUDTRAN Inc (CloudTran) IS PROVIDED UNDER LICENCE FROM CloudTran. PLEASE READ THE FOLLOWING LICENCE CAREFULLY. CERTAIN CAPITALISED TERMS ARE DEFINED IN SECTION 10.

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#### 1. LICENCE TERMS

(a) Evaluation Use. The terms of this Section 1(a) are applicable to you if you have downloaded an evaluation copy of the software or registered as an Evaluation customer. Subject to the terms of this Agreement, CloudTran grants to you a non-exclusive, non-transferable, licence to use the evaluation version of the Software solely for Evaluation Use. Third party software products or modules supplied by CloudTran, if any, may be used solely with the Software and in accordance with the licence(s) for those products and detailed in the accompanying file for 3rd party licences. This licence ends on 31 December 2012. When the licence expires you must stop using the Software. CloudTran retains all rights not specifically granted to you herein.

(b) Production Use. Production use is not allowed by this license.

(c) Restrictions on Use. You may not reverse engineer, decompile, disassemble or otherwise attempt to determine source code or protocols from the Software or disclose the results of software performance benchmarks to any third party without CloudTran's prior written consent. You will abide by the terms and conditions of use of licences of third party software utilised by the Software as detailed on the accompanying licence. You are forbidden from using Evaluation Software for Production Use. You may not lease, rent, resell or sublicense the Software to any third party, or otherwise use it except as permitted in this Agreement.

(d) Ownership Rights. You may modify the Software in accordance with the Documentation solely to allow for interoperability with your internal MIS system. Such modifications shall not be derivative works, nor shall you create or attempt to create any derivative works from the Software. Title, ownership rights and all intellectual property rights in and to the Software shall remain the sole and exclusive property of CloudTran.

(e) Copies and Number of Users. Does not apply.

(f) Territory. The licence grants hereunder are limited to use within the Territory.

(g) Audit. CloudTran may, at any time with seven (7) days prior written notice, request and gain access to your premises subject to your security procedures, for the limited purpose of conducting an audit to determine and verify that you are in compliance with these terms and conditions. You will promptly grant such access and cooperate with CloudTran in the audit. The Audit will be conducted in a manner not intended to unreasonably disrupt your business and will be restricted in scope, manner and duration to that reasonably necessary to achieve its purpose. You will be liable for promptly remedying discrepancies revealed during the audit, including reimbursement to CloudTran for the costs of the Audit and any underpayments.

## 2. LICENCE FEES.

(a) Payment and Taxes. In consideration of the applicable licence(s) granted pursuant to Section 1(b), you agree to pay CloudTran the total non-refundable and non-cancellable licence fee(s) within thirty (30) days of CloudTran's invoice. You will pay all sales, use, VAT and other consumption taxes, personal property taxes and other taxes (other than those based on CloudTran's net income) unless you furnish CloudTran with written proof of exemption. CloudTran may assess interest charges of one percent (1%) per month for late payments.

(b) Foreign Taxes. If you download and/or use the Software outside the United States of America, you agree that the amounts to be remitted to CloudTran are to be the actual amounts due without withholding taxes or other assessments by authorities anywhere in the foreign location, which withholding taxes or assessments you agree to pay. You will promptly furnish CloudTran with certificates evidencing payment of such amounts.

## 3. SUPPORT SERVICES

(a) Upgrades and technical support. You may purchase annual Support Services from CloudTran in order to qualify for Upgrades and Support Services. Purchase of said Support Services is at your option. Support Services generally means that CloudTran will provide:

- i. Maintenance Updates and Upgrades ("Maintenance Releases") if, as and when CloudTran makes any such Maintenance Releases generally available and
- ii. helpdesk assistance with respect to the Software, including (a) clarification of functions and features; (b) clarification of documentation; (c) guidance in the operation of the Software; and (d) Software error analysis.

CloudTran will use reasonable efforts to provide error corrections or workarounds for the most severe errors as soon as possible and based upon CloudTran's classification of the severity of the error. CloudTran will provide Support Services only with respect to versions of the Software that, in accordance with CloudTran policy, are then being supported. Support Services will be provided from CloudTran's operational centre for the time being.

(b) Consultancy and implementation support. Is not included within this Agreement but is available under separate agreement with CloudTran.

#### 4. WARRANTY

(a) No commitment to warranty for the software is implied by this license. Support is available via the forum at: <http://forum.cloudtran.com>

(b) Disclaimer. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### 5. LIMITATION OF LIABILITY

(a) Evaluation Use. Evaluation Use Software is provided gratuitously and, therefore, CloudTran and its suppliers shall not be liable for any direct, indirect, incidental, special, punitive or consequential damages under any theory of liability whether in tort, contract, strict liability or otherwise even if advised of the possibility of such damages.

(b) Production Use. CloudTran's aggregate liability to you for damages concerning performance or non-performance by CloudTran or in any way related to this Agreement, and regardless of whether the claim for such damages is based in contract, tort, strict liability or otherwise, shall not exceed the licence fees received by CloudTran for the affected Software for the twelve (12) month period preceding the occurrence of such liability. In no event shall CloudTran be liable for any indirect, incidental, special, punitive or consequential damages, lost data or lost profits, even if CloudTran has been advised as to the possibility of such damages.

#### 6. SOFTWARE CHANGES.

CloudTran reserves the right at any time not to release or to discontinue release of any Software and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Software.

#### 7. INTELLECTUAL PROPERTY INDEMNIFICATION.

(a) CloudTran shall fully indemnify you against all damages (excluding consequential damages), costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of copyright in consequence of the authorised use or possession of the Software or Documentation supplied to you by CloudTran under the Licence, subject to the following:-

- i. you will promptly notify CloudTran in writing of any alleged infringement of which you have notice,
- ii. you will make no admissions without CloudTran's prior written consent, and
- iii. you, at the request and expense of CloudTran shall allow the CloudTran to conduct any negotiations or litigation and/or settle any claim. You will give CloudTran all reasonable assistance. The costs incurred or recovered in such negotiations or settled claim shall be for CloudTran's account.

(b) If at any time an allegation of infringement of copyright is made in respect of the Software, or if in the CloudTran's reasonable opinion such an allegation is likely to be made, CloudTran may at its own expense modify or replace the Software so as to avoid the infringement, without detracting from overall performance, CloudTran making good to you any loss (excluding consequential loss) of use during modification or replacement.

## 8. TERM AND TERMINATION.

(a) Acceptance of Agreement. This Agreement takes effect upon the earlier of (i) your electronic indication of your selection of the ACCEPT button on a Web page prior to downloading the Software, (ii) your downloading of the Software, (iii) your use of the Software, or (iv) receipt by CloudTran of a valid, binding purchase order, Agreement or other ordering document for the Software.

(b) Duration of the Agreement. This Agreement will remain in force until terminated in accordance with this Agreement.

(c) This Agreement may be terminated by you upon thirty (30) days' prior written notice to CloudTran or by destroying or returning to CloudTran all copies and partial copies of the Software and Documentation under your control; provided that no such termination will entitle you to a refund of any portion of the Licence or Support Services Fees. CloudTran may, by written notice to you, terminate this Agreement immediately if any of the following events occur: (i) you fail to pay any amount due to CloudTran within thirty (30) days after CloudTran gives you written notice of such non-payment; (ii) you are in material breach of any non-monetary provision of this Agreement, which breach, if capable of being remedied, is not remedied within thirty (30) days after CloudTran gives you written notice thereof, (iii) you declare bankruptcy or make an assignment to or for the benefit of creditors, or (iv) in the case of Evaluation Software this Agreement terminates on 31 December 2012.

(d) Survival. Upon termination of this Agreement for non-default, the provisions of Sections 1, 2, 4(b), 5, 7(a), 8, 9 and 10 will survive. Upon termination of this Agreement for default, the provisions of Sections 1(c), 1(d), 1(g), 2, 4(b), 5, 7(c), 8, 9, and 10 will survive.

(c) Effect of Termination. Within thirty (30) days after the date of termination or discontinuance of this Agreement for any reason whatsoever, you will destroy the Software and all copies, in whole or in part, all Documentation relating thereto, and any other CloudTran confidential information in your possession that is in tangible form.

## 9. MISCELLANEOUS.

(a) Force Majeure. Neither party shall be liable for any delay or failure in performance due to causes beyond its reasonable control.

(b). Assignment. You may not assign this Agreement, except to a successor in interest as the result of a merger or acquisition or sale of all or substantially all of your assets, without CloudTran's prior written consent which will not be unreasonably withheld.

(c) Severability. If any part of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other parts of the Agreement.

(d) Waiver. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

(e) Notices. All notices permitted or required under this Agreement shall be in writing and shall be delivered in person, by facsimile or first class post to the other party.

(f) Governing Law and Venue. Unless otherwise agreed in writing between the parties, the Licence shall be subject to and construed and interpreted in accordance with US Law and shall be subject to the jurisdiction of the Courts of the United States of America.

(g) Entire Agreement. Any amendment or modification to the Agreement must be in writing signed by both parties. This Agreement constitutes the entire agreement and supersedes all prior or contemporaneous oral or written agreements regarding the subject matter hereof. No terms, provisions or conditions of any purchase order, acknowledgment or other business form that you may use in connection with the licensing of the Software will have any effect on the rights, duties or obligations of the parties hereunder, or otherwise modify this Agreement, regardless of any failure of CloudTran to object to such terms, provisions or conditions.

## 10. DEFINITIONS.

(a) "Documentation" means CloudTran's current user manuals, operating instructions and installation guides generally provided with the Software to its licensees.

(b) "Error" means a failure of the Software to conform to the specifications as set forth in the Documentation, resulting in the inability to use the Software or a material restriction in use of the Software.

(c) "Evaluation Use" means use of the Software solely for evaluation and trial for new applications intended for your Production Use.

(d) "Maintenance Release" means a subsequent version of the Software that includes Updates and/or Upgrades.

(e) "Production Use" means using the Software in your application for business purposes, which may include third party customers' access to, or use of such applications. Production Use does not include the right to reproduce or grant access (whether paid for or not) to the Software for sublicensing, resale, or distribution, including without limitation, operation on a time sharing or service bureau basis or distributing the Software as part of an ASP, VAR, OEM, distributor or reseller arrangement.

(f). "Server" means a single computer processor capable of executing the Software.

(g) "Site" means the specific, physical location of a Server.

(h) "Software" means the object code versions, extracts and/or derivative works of the software electronically downloaded from CloudTran's Website (or associated Websites) upon acceptance of this Agreement, and the related Documentation, including Maintenance Releases provided pursuant to the standard Support Services Terms and Conditions.

(i) "Support Services" means technical support for Software under CloudTran's then current policies.

(j) "Support Services Term" means the first year after the Effective Date of the applicable Software Licence Agreement and the related Order, plus any respective renewal terms.

(k) "Territory" means the geographical territory into which you download the Software or indicate acceptance of this Agreement.

(l) "Update" means either a Software modification or addition that, when made or added to the Software, corrects an Error, or a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of the Error on customer.

(m) "Upgrade" means a revision of the Software released by CloudTran to its end user customers generally, during the Support Services Term, to add new and different functions or to increase the capacity of the Software. Upgrade does not include the release of a new product or added features for which there may be a separate charge. If a question arises as to whether a new product offering is an Upgrade or a new product or feature, CloudTran's opinion will prevail, provided that CloudTran treats the product offering as a new product or feature for its end user customers generally.