

DOCTOR APP LICENSE AGREEMENT

Use of Doctor App is contingent upon acceptance of the terms and conditions provided herein. As used throughout this Agreement, “Effective Date” shall mean the date upon which you indicate electronic acceptance to this Agreement with Cloud Nine Development, LLC (“Cloud Nine”).

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SERVICES OFFERED BY CLOUD NINE. BY INDICATING ELECTRONIC ACCEPTANCE OF THIS AGREEMENT, YOU AGREE TO FOLLOW AND BECOME BOUND BY IT. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU WILL NOT HAVE ANY RIGHT TO USE THE SERVICES OFFERED BY CLOUD NINE. CLOUD NINE’S ACCEPTANCE IS EXPRESSLY CONDITIONED UPON YOUR ASSENT TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF THIS AGREEMENT IS CONSIDERED AN OFFER BY CLOUD NINE, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS.

Cloud Nine is the sole and exclusive owner of CloudNineSilver.com and CloudNineDevelopment.com (the “Sites”), Doctor App—a mobile application interface that is designed for and intended to be published on Apple iTunes application store and/or Google Android Market—the “Application”), and certain services that relate to facilitating the production and customization of the Application and assisting in the process of establishing and maintaining certain relationships with Apple, Inc. and/or Google, Inc. (the “Services”), which Services are available to User in accordance with the terms of the license provided hereunder. User wishes to obtain a license from Cloud Nine to use the Sites, Application, and Services to have the Application made available to User and User’s clients, customers, and patients, as appropriate. Cloud Nine desires to make the Sites, Application, and Services available to User for such use.

In consideration of the promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, each intending legally to be bound, promise and agree as follows:

Cloud Nine hereby grants to User, for the term of this Agreement the non-transferable, non-exclusive right and license to use the Sites, Application, and Services, subject to User’s

compliance with the provisions hereof. As consideration for the license contemplated hereunder, User agrees to pay to Cloud Nine a non-refundable set-up fee and a reoccurring monthly fee.

1. **DEFINITIONS.** For purposes of this Agreement, the terms “we,” “us,” “our,” and other first person personal pronouns refer to Cloud Nine and its successors, affiliates, subsidiaries, and assigns. The terms “You,” “your,” and other second person personal pronouns and the term “User” refer to you as a user of the Sites, Application, and Services. The terms “Content Provider” and “Content Providers” refer to any person, firm, corporation, or other entity that supplies content to us. A User, such as you, may also furnish content; however, for purposes of this Agreement, you will not be considered a Content Provider.

2. **SERVICES.** Cloud Nine may provide Services to the User. Cloud Nine may change, suspend, or discontinue the Services (or User’s access thereto), including the availability of any feature, mobile application, mobile application template, Services, or Content (as defined below), without notice or liability. Cloud Nine reserves the right, in its sole discretion, to refuse to allow access to the Services to any User at any time. Cloud Nine reserves the right, in its sole discretion, unilaterally to modify this Agreement at any time. Cloud Nine is under no obligation to provide technical support for the Services, use of the Sites, or use of the Application at any time.

(a) **Registration and Security.** As a condition to using the Services, User may be required to register with Cloud Nine, to select a password, and to enter User’s email address (“Cloud Nine User ID”). User shall provide Cloud Nine with accurate, complete, and updated registration information. Failure to do so shall constitute a breach of this Agreement, which may result in immediate termination of this Agreement and User’s account. User may not (i) select or use as a Cloud Nine User ID, a name of another person with the intent to impersonate that person or (ii) use as a Cloud Nine User ID a name subject to any rights of a person other than User without appropriate authorization. Cloud Nine reserves the right to refuse registration of, or cancel a Cloud Nine User ID in its sole discretion. User shall be responsible for maintaining the confidentiality of User’s Cloud Nine password.

(b) **Equipment and Ancillary Services.** User shall be responsible for obtaining and maintaining any equipment or ancillary services needed to connect to or to access the Sites or otherwise to use the Services, including, without limitation, hardware devices, software, and other Internet, wireless, broadband, phone, or other communication device connection services. User shall be responsible for ensuring that such equipment or ancillary services are compatible with the Sites and the Services and User shall be responsible for all charges incurred in connection with all

such equipment and ancillary services, including any fees charged for airtime usage and sending and receiving messages or related notifications.

(c) **No Ownership.** No ownership rights are transferred by way of this license agreement. User does not acquire or maintain ownership rights in or to any content, document, code, name of the Application or other materials viewed through the Application or from posting information or materials displayed on or through the Application. With the exception of content purchased from third party entities, user may view, print, or download content displayed on or through the Application, but only for User's own business or professional use and not for any other purpose whatsoever. User represents and warrants that the Application, the Sites, and the Services are to be used solely for business or professional purposes and not for personal, family, household, or agricultural use. The use or display of any such material on any other application or networked computer environment is prohibited.

(d) **Copyright and Trademarks.** The content provided by Cloud Nine in the Application and on the Sites, including (without limitation) its selection and organization, graphics, design, and compilation are protected under applicable copyright laws. "Doctor App" and other marks used in connection with the Application are owned by Cloud Nine. Other products, company names, and content displayed on or through the Application may, in some cases, be the trademarks or copyrights of third parties and are used, when applicable, with permission. The copying, distribution, public display, modification, or other use by User of the Application and the Sites and all content displayed on or through the Application and the Sites, except as specifically permitted by this Agreement, is strictly prohibited – in the absence of the advance, written permission of an officer of Cloud Nine. In the event you are granted written permission to copy, transmit, publish, or link any material found in the Application or on the Sites, you may not make any changes or deletions and you must attribute Cloud Nine Development, LLC as the source of the material.

(e) As part of the Services that Cloud Nine provides to User, Cloud Nine may establish and maintain a license agreement, on behalf of User, with Apple, Inc. and/or Google, Inc., to have the Application published and made available via the Apple iTunes application store and/or the Google Android Market. For the purposes identified in this section 2(e), User appoints Cloud Nine to be its agent, with full power of attorney, and User acknowledges and agrees that: (i) any information provided to Cloud Nine may be shared with Apple, Inc. and/or Google, Inc.; and (ii) Cloud Nine may set up an email account on behalf of User. In the event that User enters into a license agreement with Apple, Inc. and/or Google, Inc. (whether on User's own or on User's behalf by Cloud Nine), User shall be responsible for the payment of any costs associated therewith, including, for example, costs associated with any other applications, changes or modifications to the Application, or ongoing periodic renewals. User has read and agrees to the terms and conditions required of Apple, Inc. and Google, Inc., respectively. User shall agree to

any updates or modifications to the terms and conditions required of Apple, Inc. or Google, Inc. (“Updated Apple/Google Terms”) and authorizes Cloud Nine to accept on User’s behalf any and all Updated Apple/Google Terms. User shall immediately notify Cloud Nine if User no longer accepts any Updated Apple/Google Terms.

(f) The web links provided at the Sites, and below, identifying certain terms and conditions required of Apple, Inc. and Google, Inc. are provided as a courtesy to User, nevertheless, Cloud Nine shall not be responsible for notifying User of any Updated Apple/Google Terms. Furthermore, Cloud Nine makes no representation or warranty regarding the web links provided below, as to operability, functionality, completeness, and/or accuracy.

<http://www.android.com/us/developer-distribution-agreement.html>

<http://developer.android.com/license.html>

<http://code.google.com/android/c2dm/terms.html>

<http://www.apple.com/legal/>

http://developer.apple.com/programs/terms/registered_apple_developer_20100301.pdf

{Link to Apple iOS Developer Program License Agreement }

3. **FEES.** As consideration for the licenses granted hereunder, User agrees to pay to Cloud Nine the fees set forth herein. Unless otherwise stated, all fees are quoted in U.S. Dollars and all reoccurring fees shall be paid by credit card. User shall complete a credit card authorization. Cloud Nine reserves the right to change its price list and to institute new charges at any time, upon prior notice to User, which may be sent by e-mail or posted on the Sites. User is responsible for paying all fees and applicable taxes associated with the Services in a timely manner with a valid payment method. If User’s payment method fails or if User’s account is past due, Cloud Nine may collect fees owed using (without limitation) collection agencies and legal counsel, and the cost thereof shall be added to all amounts otherwise owed to Cloud Nine.

4. **TERM.**

(a) **Initial Term.** This Agreement shall be in effect commencing on the Effective Date (the “Commencement Date”), and shall extend therefrom, unless sooner terminated (as provided herein), for an initial term of one (1) month (the “Initial Term”).

(b) **Renewal Term.** At the end of the Initial Term, provided User is not then in breach of any of the provisions of this Agreement, the licenses granted hereunder will automatically renew for an additional one-month term (the “Renewal Term”), unless, Cloud Nine or User furnishes to the other a written notice of non-renewal, which notice shall terminate this Agreement and the obligations arising hereunder after 30 days. Unless sooner terminated (as provided herein), this Agreement shall automatically renew for successive additional one-month terms. Throughout this Agreement, the Initial Term and the Renewal Terms shall be referred to collectively as the “Term” of the Agreement.

5. CONTENT AND CUSTOMIZATION. Users will access the Sites to upload user content to the Application. Such content may include (without limitation): pictures, logos, names, e-mail addresses, phone numbers, fax numbers, specialties, locations, slogans, physical addresses, missions, general information, history, accepted insurance plans, services, educational information, research studies, practice news, testimonials, feedback, appointment information, medication refill information, test result information, referrals, contacts, alarms, note takers, calendars, and other various interactive options (“User Content”). The customization permitted includes primarily User Content to be uploaded at specific points within a template we furnish for you.

(a) **No Control.** User acknowledges and agrees that Cloud Nine has no special relationship with or fiduciary duty to User and that Cloud Nine has no control over (and is merely a passive conduit with respect to), and no duty to take any action regarding: (i) the Content User makes available, publishes, or promotes in connection with its use of the Application and the Sites; (ii) which of User’s end users, clients, and customers (“End Users”) gain access to the Application; (iii) what effects, if any, Content may have on User or End Users; (iv) how User or End Users interpret, view, or use the Content; (v) what actions User or End Users may take as a result of having been exposed to the Content, or (vi) whether Content is being displayed properly in connection with the Services.

(b) **Additions.** Cloud Nine may add phrases such as “powered by” Cloud Nine including buttons calling for actions, text, splash screens, and any other marketing items to the Application.

(c) **Links to Other Applications and Websites.** The Application may contain links to other applications and websites. Cloud Nine is not responsible for the content, accuracy, or opinions expressed in such applications or websites. Cloud Nine does not warrant that such links are current or operational, and such applications and websites may not be investigated, monitored, or checked for accuracy or completeness by Cloud Nine on an ongoing basis. Inclusion of any linked website on the Application does not imply approval or endorsement of the linked website by Cloud Nine.

(d) **Customization.** The customization permitted is limited as permitted in our available template or templates. We may consider further customization; however, such additional customization will require a separate customization agreement and separate consideration.

(e) **Restrictions.** User warrants, represents, and agrees that it will not contribute, submit, or make available through the use of the Services any User Content that is infringing, libelous, defamatory, obscene, pornographic, abusive, offensive, or that otherwise violates any law or right of any third party, including (without limitation) any right of privacy or publicity. Cloud Nine reserves the right to remove any content (User Content or otherwise) from the Sites at any time, or to terminate User's right to use the Services or access the Sites, for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if Cloud Nine is concerned that User may have breached the terms of this paragraph), or for no reason at all, subject to the provisions of Section 10 ("Termination"). User is responsible for all of its activity in connection with the Services and accessing the Sites. User may not post or transmit, or cause to be posted or transmitted, any communication or solicitation designed or intended to obtain, without full disclosure and proper authorization, account or private information from any person. User shall not use any part of the Sites or Services to violate the security of any computer network, crack passwords, or security encryption codes, or to transfer or store material that is deemed threatening or obscene, or to engage in any kind of illegal activity.

6. WARRANTIES AND DISCLAIMERS

(a) **GENERAL.** THE SERVICES, APPLICATION, AND SITES ARE FURNISHED "AS IS," "WITH ALL FAULTS," AND "AS AVAILABLE." CLOUD NINE AND THE CONTENT PROVIDERS MAKE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE AVAILABILITY, FUNCTIONALITY, OR OPERABILITY OF THE SERVICES, APPLICATION, OR THE SITES OR TO THE ACCURACY, CORRECTNESS, OR COMPLETENESS OF THE INFORMATION FURNISHED BY OR THROUGH THE APPLICATION OR THE SITES OR THE DATA FROM WHICH SUCH INFORMATION IS

COMPILED. MOREOVER, CLOUD NINE SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US THROUGH THE SERVICES, APPLICATION, SITES, OR OTHERWISE SHALL CREATE ANY WARRANTY, REPRESENTATION, OR GUARANTEE NOT EXPRESSLY STATED IN THIS AGREEMENT. ALTHOUGH WE WILL EMPLOY COMMERCIALY REASONABLE MEASURES TO DETECT AND REMOVE SO-CALLED VIRUSES, EASTER EGGS, TROJAN HORSES, TIME BOMBS, OR OTHER INTENTIONALLY DISRUPTIVE, DESTRUCTIVE, OR DISABLING CODE (“VIRUSES”), WE DO NOT WARRANT THAT THE APPLICATION OR THE SITES WILL BE FREE OF VIRUSES.

(b) **USE.** USERS ARE RESPONSIBLE FOR THE USE OF THE SERVICES, APPLICATION, AND SITES. BY INDICATING ELECTRONIC ACCEPTANCE TO THIS AGREEMENT, YOU ACKNOWLEDGE AND AGREE TO THE FOREGOING WARRANTY DISCLAIMER AND THAT YOU USE THE SERVICES, APPLICATION, AND SITES AND THE INFORMATION FURNISHED ON OR THROUGH THE APPLICATION AND SITES AT YOUR OWN RISK. Additionally, as a condition of the grant of the license provided hereunder, you agree not to use the Application or the Sites for any purpose other than that permitted under this Agreement or for any purpose that is unlawful or prohibited by this Agreement. You may not use the Application or the Sites in any manner that could damage, disable, or impair the Application or the Sites, their availability and functionality, or the use or enjoyment of the Application and the Sites by others. You may not attempt to gain unauthorized access or any access beyond your rights as granted herein to any component of the Application, the Sites, or any content otherwise available on or through the Application or the Sites by hacking, password mining, or any other means. You may not obtain or attempt to obtain any content or information through any means not explicitly and intentionally made available through the Application or the Sites. WITHOUT LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, CLOUD NINE RESERVES THE RIGHT TO, IN ITS SOLE DISCRETION AND WITHOUT NOTICE OR LIABILITY, DENY ACCESS TO, AND USE OF, THE SERVICES, APPLICATION AND/OR SITES.

(c) **Electronic Communications Privacy Act Notice (18 USC 2701-2711).** CLOUD NINE MAKES NO GUARANTY OF CONFIDENTIALITY OR PRIVACY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED ON THE SITES OR APPLICATION OR OF ANY WEBSITE LINKED TO THE SITES OR THROUGH ANY USE OF THE SERVICES. Cloud Nine will not be liable for the privacy content or Cloud Nine User ID information stored on its equipment and transmitted over networks accessed by the Sites, Application, or otherwise connected with User’s use of the Sites, Application, or Services.

(d) **Acceptance.** CLOUD NINE MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE THAT THE APPLICATION WILL BE APPROVED OR PUBLISHED BY APPLE, INC. OR GOOGLE, INC. CLOUD NINE MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE THAT THE APPLICATION WILL NOT BE REMOVED FROM THE APPLE ITUNES APPLICATION STORE OR THE GOOGLE ANDROID MARKET AFTER THE APPLICATION IS PUBLISHED, IF AT ALL.

7. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES SHALL CLOUD NINE OR ANY OF THE CONTENT PROVIDERS BE LIABLE (i) FOR ANY AMOUNT IN EXCESS OF THE CONSIDERATION YOU PAID FOR THIS LICENSE, IF ANY, OR (ii) FOR INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (SUCH AS, WITHOUT LIMITATION, LOSS OF BUSINESS, DAMAGE TO REPUTATION, LOSS OF PROFITS OR REVENUE, DAMAGE TO TECHNOLOGICAL OR OTHER DEVICES, OR LITIGATION) OR FOR SPECIAL, EXEMPLARY, PUNITIVE, OR SIMILAR DAMAGES, EVEN IF ADVISED OR WARNED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. THE NEGATION OF DAMAGES SET FORTH ABOVE IS A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN US AND YOU. YOU AND WE (ON BEHALF OF OURSELVES AND THE CONTENT PROVIDERS) AGREE THAT THE FOREGOING LIMITATION OF LIABILITY IS A REASONABLE AND AGREED ALLOCATION OF RISK BETWEEN YOU AND US (AND THE CONTENT PROVIDERS AND SPONSORS) AND THAT IT REFLECTS THE FEES, IF ANY, WE CHARGE YOU FOR THIS LICENSE AND THE CONTENT FURNISHED ON OR THROUGH THE APPLICATION. YOU ACKNOWLEDGE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE THIS LICENSE TO YOU.

8. REVERSE ENGINEERING. Under no circumstances may you disassemble, decompile, or otherwise reverse engineer or attempt to discover the source code of the Application or the Sites, such source code being confidential and proprietary property of Cloud Nine.

9. INDEMNIFICATION. You agree to defend, indemnify, and hold harmless Cloud Nine its affiliates, the Content Providers, and their respective directors, officers, employees, and agents (collectively, "Affiliated Parties") from and against any and all claims, actions, suits, or proceedings, as well as any and all losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees and costs) arising out of, accruing from, or in any way related to: (a) any material posted or otherwise provided by You that infringes any copyright, trademark, trade secret, trade dress, patent or other intellectual property right of any person or defames any person or violates any person's rights of publicity or privacy; (b) any misrepresentation made by You in connection with Your use of the Application or the Sites; (c) any non-compliance by You with the terms and conditions of this Agreement; and (d) claims regarding any liability, loss, claim, and expense arising from or related to Your access and use of the Application or the Sites.

Notwithstanding the foregoing, Cloud Nine reserves the right to assume, at its expense, the exclusive defense and control of any matter subject to indemnification by You, in which event You will fully cooperate with us in asserting any available defenses.

10. **TERMINATION.** The following termination rights are in addition to the termination rights provided elsewhere in this Agreement:

(a) **Right to Terminate on Advance Notice.** This Agreement may be terminated by either party upon thirty (30) days' written notice to the other party in the event of a breach of a material provision of this Agreement by the other party, which breach continues without being cured to the satisfaction of the non-breaching party for a period of thirty (30) days from the date of the notice of termination. If the noticed breach is timely cured to the satisfaction of the non-breaching party, then this Agreement shall continue as though there had been no breach and no notice of termination. If, however, the breach is not timely cured, as provided herein, then this Agreement shall automatically terminate at the end of the said thirty (30) day period, without other or further action by the non-breaching party. Termination, as provided herein, shall not constitute an election of remedies, and the non-breaching party, in addition to such right of termination, shall have available to it all other appropriate legal or equitable remedies.

(b) **Termination of Rights.** Upon the expiration or termination of this Agreement, all of the rights granted to User under this Agreement shall terminate and revert to Cloud Nine.

11. **PRIVACY POLICY.** We are committed to protecting your online privacy. The privacy policy found in this Section 11 ("Privacy Policy") discloses the privacy practices for the Application and the Sites. We encourage you to read this Privacy Policy carefully to learn what information we collect from you and how we use that information. The privacy practices set forth in this Privacy Policy are for the Application and the Sites only. If you link to other web sites, please review the privacy policies posted at those sites.

(a) **Information We Collect.** We may collect information about an individual that does not identify a specific user or individual ("Non-Personal Information"). We may also collect your e-mail address, but we do not collect or store any other information that identifies a specific user or other individual ("Personal Information"). Non-Personal Information may include things like the Uniform Resource Locator ("URL") of the websites you visited before and after coming to the Application or Sites and your Internet Protocol ("IP") address. Although we may obtain and retain your e-mail address and your name, other personally identifiable information are not to be

associated with such data elements. We and our authorized third-party service providers and ad servers may automatically collect Non-Personal Information and your e-mail address when you visit the Application or Sites, as described in more detail below; however, all such information shall be deleted and destroyed from our server within 24 hours in accordance with our policies and procedures. Whenever, in this Privacy Policy, we refer to information which may include either or both Personal Information and/or Non-Personal Information, we will refer to such information as “Individual Information.”

(b) **Sharing Individual Information.** Except as set forth in this Privacy Policy, we will not share your Individual Information with other parties. We may share your Individual Information in a business transfer or with preferred vendors/collaborators/partners. As with any other business, we could merge with or be acquired by another company. If this occurs, the successor company would acquire the information we maintain, including Individual Information. All of your Individual Information, however, would remain subject to this Privacy Policy. We may also share your Individual Information for our protection and the protection of others. We may share Individual Information when we believe release is appropriate to: comply with the law; enforce this Agreement, or other agreements; or protect the rights, property or safety of the Application and Sites, its users, or others.

(c) **Cookies.** A cookie is a small text file that is stored on a user’s computer that stores Individual Information about that user. We may use cookies to save you time while using the Application and Sites and to remind us who you are. Most browsers automatically accept cookies, but you may be able to modify your browser settings to decline or delete cookies. Please note that if you decline or delete these cookies, some parts of the Application or Sites may not work properly. We may use a third-party analytic company to track and analyze Individual Information.

(d) **Security.** We take precautions to protect the security of your Individual Information. Such information resides on a secure server that only selected personnel and contractors have access to. Unfortunately, no data transmission over the Internet or any wireless network can be guaranteed to be 100% secure. As a result, although we employ commercially reasonable security measures to protect data and seek to partner with companies which do the same, we cannot guarantee the security of any information transmitted to or from the Application or Sites, and are not responsible for the actions of any third parties that may receive any such information.

(e) **Children.** Minors under the age of 13 may not use the Application or Sites. We do not collect or maintain information from anyone known to be under the age of 13, and no part of the Application or Sites is designed to attract anyone under the age of 13.

(f) **Notice of Privacy Rights to California Residents.** California law requires that we provide you with a summary of your privacy rights under the California Online Privacy Protection Act (the “Act”) and the California Business and Professions Code. As required by the Act, we will provide you with the categories of Personal Information (if any) that we collect through the Application or Sites and the categories of third-party persons or entities with whom such information may be shared for direct marketing purposes at your request. California law requires us to inform you, at your request of: (1) the categories of Personal Information we collect and what third parties we share that information with; (2) the names and addresses of those third parties; and (3) examples of the products marketed by those companies. California law further requires us to allow you to control who you do not want us to share the foregoing information with. To obtain this information, please send a request to: Cloud Nine Development, LLC, 14915 Outlook Lane, Overland Park, KS 66223. When contacting us, please indicate your name, address, email address, and what Personal Information you do not want us to share. The request should be labeled “California Customer Choice Notice.” Please allow at least 30 days for a response.

(g) **Changes to Privacy Policy.** We reserve the right to change this Privacy Policy from time to time by posting the revised Privacy Policy in the “Privacy Policy” section of this Agreement. You acknowledge that it is your responsibility to review our Privacy Policy periodically to learn of any modifications. Your continued use of the Application or Sites after the posting of the revised Privacy Policy shall constitute your acceptance of the revised Privacy Policy.

12. GENERAL.

(a) **Waiver.** Our failure to enforce any provision of this Agreement shall not be construed as a waiver or limitation of our rights subsequently to enforce and compel strict compliance with every provision of this Agreement.

(b) **Governing Law, Jurisdiction, and Venue.** This Agreement shall be interpreted under and governed by the laws of the State of Kansas without giving effect to Kansas conflicts of laws principles or provisions. Any action properly brought pursuant to this Agreement, shall be brought in the state or federal courts sitting in Johnson County, Kansas, and You hereby waive any challenges to jurisdiction and venue (other than a challenge based on the obligation to arbitrate) for any such action brought by us. In the event of any litigation over this Agreement if we are the prevailing party, You agree to pay all of our expenses associated with such litigation, including (without limitation) court costs and attorneys’ fees.

(c) **Severability.** If any term or provision in this Agreement is found to be void, against public policy, or unenforceable by a court of competent jurisdiction and such finding or order becomes final and non-appealable, then the offending provision shall be deemed modified to the minimum extent necessary to make it valid and enforceable. If the offending provision cannot be so modified, then the same shall be deemed stricken in its entirety, and unless such term or provision is material to the performance of this Agreement, the remainder of this Agreement shall survive with the offending provision eliminated.

(d) **Amendment or Modification.** This Agreement may not be amended except by a written instrument signed by you and by us. Notwithstanding the foregoing, we may, from time to time, post amendments to this Agreement. Your further use of the Application and Sites following the posting, by us, of such an amendment will constitute your agreement to such amendment or modification. If you do not wish to accept such amendment or modification, you must cease all further use of the Application and the Sites.

(e) **Entire Agreement.** This Agreement contains the entire agreement and understanding between you and us with respect to the subject matter hereof, and there are no representations, inducements, promises, or agreements, oral or otherwise, not embodied herein. Any and all prior discussions, negotiations, commitments, and understandings relating thereto are merged herein.

(f) **Arbitration.** All disputes between You and Cloud Nine arising in connection with this Agreement (other than actions for injunctive relief as set forth in Section 12(g) below) shall be finally settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, using the Expedited Procedures, and judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. The arbitrator shall be an individual generally skilled in the legal and business aspects of the subject matter of this Agreement. The arbitrator shall have no authority to impose penalties or award punitive damages. The arbitration shall take place in Overland Park, Kansas and the arbitrator shall apply the law of the State of Kansas and applicable rules of evidence. If all parties and the arbitrator agree, arbitration may take place by telephone or by written communication. Unless the arbitrator otherwise directs, the parties, their representatives, other participants, and the arbitrator shall hold the existence, content, and result of the arbitration in confidence. No action, regardless of form, related to the obligations of the parties under this Agreement may be brought by either party against the other more than one (1) year after the cause of action has accrued.

(g) **Injunctive Relief.** Notwithstanding anything to the contrary herein, we may seek immediate injunctive relief (whether temporary or preliminary) in the event of Your infringement or threatened infringement of any intellectual property rights of Cloud Nine or any Content Provider or a breach or threatened breach of Your obligations hereunder. You acknowledge that any such infringement, threatened infringement, breach, or threatened breach will result in irreparable damage to us and will inflict injury difficult to remedy through monetary damages alone. Accordingly, with respect to any such infringement, threatened infringement, breach, or threatened breach, we may seek and obtain, from a court of competent jurisdiction, such preliminary, temporary, or permanent injunctive relief as the court may award, without the need for us to post or file any bond or like surety or security.

(h) **Headings.** The paragraph or section headings used herein are for convenience only and in no way define, limit, extend, or interpret the scope of this Agreement or of any particular paragraph hereof.

(i) **Representation by Counsel and Contra Proferentum.** User hereby represents that: (a) it has been represented by competent counsel of its choice, or has had the opportunity to engage such counsel, in the review and execution of this Agreement, (b) it has read and fully understands the terms hereof, (c) User and its counsel have been afforded an opportunity to review the terms of this Agreement and that User intends to be bound hereby. In accordance with the foregoing, the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall NOT be employed in the construction and interpretation of this Agreement.