

ENTERPRISE CLOUD SERVICES AGREEMENT (NZ Reseller Version)

1. **Introduction.** This Enterprise Cloud Services Agreement (this “Agreement”) is made and entered into on the Effective Date listed below by and between the Hewlett-Packard Company-related entity named EXEED and the RESELLER. For convenience, EXEED and RESELLER are referred to as the “parties” and entities controlled by, controlling and under common control with a party are referred to as their “Affiliates.”

Term: 60 months commencing on the acceptance of this agreement.

2. **Background.** RESELLER desires to purchase (a) Enterprise Cloud Services – New Zealand Cloud Services (“ECS-MYCLOUDSTORE”) services from EXEED as described in this Agreement, which constitute those services described in the ECS-MYCLOUDSTORE Service Descriptions set out in Schedule A (the “Cloud Services”) alone or together with (b) the capability to enable a connection to specified SaaS offerings (“Brokering Services”), and (c) the capability to order and manage the services set out in (a) and (b) through the Market Place Portal and Reseller Administration Portal in accordance with the ECS-MYCLOUDSTORE Cross Functional Service Description (collectively, together with other ancillary services performed by EXEED under this Agreement, including the Onboarding Services, the “Services”) in order to resell the Services together with other services that RESELLER may offer (collectively, the “Reseller Offerings”) to its customers (for the sole purpose of further reselling the Reseller Offerings to End User Customers) subject to the terms and conditions set forth in this Agreement. For the avoidance of doubt, the ECS-MYCLOUDSTORE Cross Functional Service Description will apply from the Effective Date and will apply to any of the Services purchased by RESELLER.

3. **Contract Documents.** This Agreement consists of the following, all of which will collectively constitute the entire Agreement:

- (a) This Cover Page.
- (b) The Enterprise Cloud Services – New Zealand Cloud Services Reseller Terms (“ECS-MYCLOUDSTORE Terms”) attached to this Agreement.
- (c) The Enterprise Cloud Services – New Zealand Cloud Services Service Descriptions (“ECS-MYCLOUDSTORE Service Descriptions”) that are designated in Schedule A to this Cover Page and that are attached to this Agreement. Additional ECS-MYCLOUDSTORE Service Descriptions may be added to this Agreement at any time upon the written agreement of EXEED and RESELLER that amends Schedule A and attaches the additional ECS Service Description(s) to this Agreement.
- (d) The Enterprise Cloud Services – New Zealand Cloud Services Policies (the “ECS-MYCLOUDSTORE Policies”) will be made available on the Market Place Portal, as the ECS-MYCLOUDSTORE Policies may be modified and supplemented by EXEED from time-to-time in its sole discretion, with or without notice. It is RESELLER’s responsibility to refer to the Market Place Portal for updated ECS-MYCLOUDSTORE Policies and to promptly transmit updated ECS-MYCLOUDSTORE Policies to any of its resellers and End User Customers. The ECS-MYCLOUDSTORE Policies as of the Effective Date are listed below:

ECS-MYCLOUDSTORE Policies
ECS-MYCLOUDSTORE - Acceptable Use Policy (NZ Reseller Version)
ECS MYCLOUDSTORE – Notification Policy (NZ Reseller Version)
ECS-MYCLOUDSTORE - Security Features (NZ Reseller Version)

- (e) The Pricing and Service Request form and the RESELLER's orders for services ("Orders"), including service requests expressly incorporated in the orders whether received directly from the RESELLER, any of its resellers or End User Customers, and whether such orders are in writing or submitted via an electronic facility specified by EXEED, as required by the applicable Service Description (collectively, "Ordering Documents"), each as accepted by EXEED.
4. Eligible Purchasers. This Agreement enables RESELLER and its Affiliates to place Orders for Services under this Agreement subject to the terms and conditions set forth in this Agreement. RESELLER remains responsible for the financial and other obligations of its Affiliates, any of its resellers and End User Customers placing Orders under this Agreement (unless otherwise agreed in writing by EXEED). Services to RESELLER's Affiliates in some locations may be subject to additional or different terms (for example, to accommodate differences in laws or currencies). Notwithstanding anything contained in this Agreement to the contrary, the RESELLER must only provide the Reseller Offerings to any of its resellers or End User Customers located in New Zealand.
5. Precedence. In the event of any conflict or inconsistency between or among the various documents forming a part of this Agreement, the order of precedence will be as follows (items with a lower number having priority over and controlling items having a higher number): (1) an ECS-MYCLOUDSTORE Policy, with respect to its subject matter; (2) an ECS-MYCLOUDSTORE Service Description, with respect to its subject matter; (3) this Cover Page; (4) the ECS-MYCLOUDSTORE Terms; and (5) Ordering Documents with respect to their subject matter.
6. Term. The term of this Agreement shall commence on the Effective Date and continue for the period of time specified as the Term in the Introduction above, unless extended or renewed by mutual written agreement of the parties' authorized representative or otherwise terminated as provided within the ECS-MYCLOUDSTORE Terms. Expiration of the Agreement shall not terminate outstanding Orders validly entered into during the term of the Agreement. Such Orders will continue to be subject to the terms of this Agreement until completion. If no Term is specified in the Introduction, this Agreement will expire one year after the Effective Date, and if no Effective Date is specified in the Introduction, the Effective Date shall be the last signature date provided below.
7. Defined Terms. All capitalised terms shall be as defined in this Agreement and, with respect to capitalised terms in a particular ECS-MYCLOUDSTORE Service Description, as otherwise defined in that ECS-MYCLOUDSTORE Service Description.
8. Appointment. On and from the Effective Date and throughout the term and subject to the terms and conditions of this Agreement:
- (a) EXEED appoints RESELLER as an authorised, non-exclusive reseller of the Cloud Services to customers without the right to assign or delegate said right and Reseller accepts the appointment;
 - (b) RESELLER shall sell the Reseller Offerings as a Exeed mycloudstore Cloud Services (except for those services described in the Enterprise Cloud Services - Livevault Server Backup and Enterprise Cloud Services- Storegate Online PC Backup and File Synchronisation Service Descriptions and Enterprise Cloud Services – Managed Firewall Services). Notwithstanding this clause, EXEED may require such ancillary branding as it considers, in its sole discretion, appropriate: and
 - (c) RESELLER permits EXEED to publicly use RESELLER as a reference.

9. Nature of Reseller Relationship. EXEED's appointment of RESELLER as a reseller and supply of the Services is on a non-exclusive basis (and EXEED can appoint, and supply Services to, other customers as resellers). RESELLER is free to enter into any contracts, arrangements, agreements or understandings with End User Customers and on terms and conditions as it determines subject to flowdown and other requirements stated in this Agreement. EXEED acknowledges that Reseller is under no obligation to purchase the Services, or place Orders, under this Agreement once the minimum contract term commitment has been met.

ENTERPRISE CLOUD SERVICES AGREEMENT

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SCHEDULE A – ECS-MYCLOUDSTORE SERVICE DESCRIPTIONS

The following ECS-MYCLOUDSTORE Service Descriptions are included in this Agreement.

ECS-MYCLOUDSTORE Service Descriptions	Check if Included	Applicable Notes
Enterprise Cloud Services -MYCLOUDSTORE – New Zealand Cross Functional Services (Reseller Version)	X	
Enterprise Cloud Services-MYCLOUDSTORE – New Zealand IaaS Services (Reseller Version)	X	
Enterprise Cloud Services-MYCLOUDSTORE - Livevault Server Backup	X	
Enterprise Cloud Services-MYCLOUDSTORE - Storegate Online PC Backup and File Synchronisation	X	
Enterprise Cloud Services -MYCLOUDSTORE – Managed Firewall	X	

ENTERPRISE CLOUD SERVICES TERMS (NZ Reseller Version)

1. Commencement of Services/Resellers & End User Customers.

- a. Commencement of Services. EXEED will provide Services to RESELLER and its Affiliates from the start date through the end date specified in the relevant Order (unless extended or terminated, as provided below). RESELLER's business includes providing its Reseller Offerings to its End User Customers (as defined below), which includes providing access to the Reseller Offerings consistent with and subject to the terms and conditions set forth in this Agreement. Services are provided to the extent specified in an accepted Order placed by RESELLER or its Affiliates. EXEED will have sole responsibility for access to the Reseller Administration Portal. RESELLER will have access to the RESELLER's Reseller Offerings, and sole responsibility for placement of Orders on the Market Place Portal. For the avoidance of doubt, a breach of a term of this Agreement relating to the Reseller Administration Portal or the Market Place Portal by any Affiliate, any RESELLER, End User Customer and any other third party that will have access to the RESELLER's Reseller Offerings is to be treated as if such a breach was committed by RESELLER.
- b. Reseller & End User Customer Flowdowns. As used in the Agreement, (a) the term "End User Customer" means any customer of RESELLER, or any other third party, that will have access to EXEED's Reseller Offerings (as offered by RESELLER).
- c. EXEED shall enter into a binding agreement with RESELLER ("Reseller Agreement") which includes the following:
 - i. An express release of EXEED from any and all losses and damages that RESELLER may incur as a result of using the Reseller Offerings, and an express waiver of any and all associated past and future claims and liabilities against EXEED;
 - ii. Agreement by RESELLER that EXEED has the right to directly enforce RESELLER's and End User Customer's obligations to EXEED;
 - iii. An express right RESELLER to assign or novate the Reseller Agreement to EXEED at any time;
 - iv. Terms consistent with this Agreement, including, but not limited to (1) the provisions of Section 9 (Compliance with Laws), Section 11 (Known Risks), Section 12 (Use Limits), Section 13 (Data Controller), Section 18 (Customer Data), Section 19 (Data Incidents), Section 20 (Confidential Information) and Section 23 (No Right to Use EXEED Marks) of the ECS-MYCLOUDSTORE Terms, (2) the Acceptable Use Policy and Notification Policy and (3) obligations of the Reseller under the Enterprise Cloud Services NZCS Security Features; and
 - v. Agreement by RESELLER that it will enter into a binding Agreement with each End User Customer which includes the following:
 1. An express release of EXEED from any and all losses and damages that the End User Customer may incur as a result of using the Reseller Offerings, and an express waiver of any and all associated past and future claims and liabilities against EXEED;

2. Agreement by the End User Customer that it has no right to enforce any term of this Agreement, that it is not a third party beneficiary to this Agreement and that EXEED owes no duties or obligations to the End User Customer;
 3. Agreement by the End User Customer that EXEED has the right to directly enforce End User Customer's obligations to EXEED;
 4. Agreement by the End User Customer that it will not resell the Services; and
 5. Terms consistent with this Agreement, including, but not limited to (1) the provisions of Section 9 (Compliance with Laws), Section 11 (Known Risks), Section 12 (Use Limits), Section 13 (Data Controller), Section 18 (Customer Data), Section 19 (Data Incidents), Section 20 (Confidential Information) and Section 23 (No Right to Use EXEED Marks) of the ECS-MYCLOUDSTORE Terms, (2) the Acceptable Use Policy and Notification Policy, and (3) obligations of RESELLER under the Enterprise Cloud Services NZCS Security Features (Reseller Version).
- d. RESELLER shall be and remain responsible and liable for any failure by the RESELLER or End User Customer to perform or comply with any terms, covenants, restrictions, duties or obligations under the Reseller's contract with RESELLER or under the RESELLER's contract with the End User Customer (or, if not included in such contract, that are required to be included in such contract pursuant to this Agreement) to the same extent as if such failure to perform or comply was committed by RESELLER.
- e. Notwithstanding anything contained in this Agreement to the contrary, RESELLER must not enter into a binding agreement to provide Reseller Offerings to any other Reseller or any other third party without first obtaining the written consent of EXEED, which consent must not be unreasonably withheld. For the avoidance of doubt, if EXEED does not provide its consent, RESELLER must not enter into a binding agreement or provide the Reseller Offerings to the other Reseller or third party.
- f. If requested to do so by EXEED at any time, RESELLER must make available all information reasonably requested by EXEED in respect of Reseller Agreements (which, for the avoidance of doubt, may include the terms of the Reseller Agreements).
- 2. Performance Standards.** EXEED will perform the Services using reasonable care and skill and meet or exceed applicable Service Levels. EXEED makes no other warranties concerning the Services, and disclaims all other warranties or conditions, including implied warranties, to the extent allowed by applicable law. EXEED does not assure uninterrupted or error-free operation of any computer, network, or other system or Service. If EXEED fails to meet Service Levels set out in any ECS-MYCLOUDSTORE Service Description, Reseller may receive Service Credits to the extent provided by the relevant Service Descriptions, unless the failure is excused by Sections 7 (Excused Performance) or 8 (Force Majeure). Service Credits are Reseller's sole remedy for unexcused failures to meet Service Levels ("Faults") except in case of material breach. Service Levels do not apply following Force Majeure Events or similar emergencies until normal Services are restored. EXEED's commitments in this Section 2 are personal to Reseller and may be enforced only by Reseller and not by any other person or entity (including Resellers or End User Customers).
- 3. Changes in Policies and Operations.** EXEED may make changes in its operations and Policies, so long as no such change (i) breaches any of EXEED's express obligations, (ii) increases EXEED's Charges for affected Services, or (iii) materially reduces the quality of affected Services. Changes that may significantly affect RESELLER will be effective after reasonable notice to

affected RESELLER. EXEED may make urgent changes at any time without notice but will inform RESELLER of significant changes within a reasonable time.

4. **Changes in Service.** RESELLER may request certain changes by providing EXEED with such details in writing which must be approved by the parties' authorized representatives. Changes are priced at EXEED's then-current standard rates or as the parties may agree. EXEED may decline to quote requested changes. EXEED may also offer enhancements as options at additional cost. Change proposals or change orders, once signed by the parties' authorized representatives, amend and supplement the Agreement effective as of an agreed date.
5. **Place of Operations.** EXEED will provide the Services described in the Enterprise Cloud Services – New Zealand IaaS Services (Reseller Version) Service Description from data center(s) within New Zealand, and may relocate the data center(s) within New Zealand from time to time, after reasonable notice to RESELLER. If RESELLER has concerns about relocation, RESELLER may terminate affected Services for its convenience without paying any termination charge (subject to applicable minimums). Wherever infrastructure supporting RESELLER may be located, RESELLER acknowledges that EXEED and its Affiliates may perform related services (such as monitoring and other support) from other locations worldwide. For the avoidance of doubt, the Services described in any of the Service Descriptions set out in Schedule A of the Cover Page (except for the Services described in the Enterprise Cloud Services – New Zealand IaaS Services (Reseller Version) Service Description) may be provided from any worldwide location.
6. **Points of Contact.** EXEED will assign a representative to act as RESELLER's point of contact concerning the Services. RESELLER will designate two (2) representatives authorized to act for RESELLER and its Affiliates and to serve as EXEED's principal point of contact. Each party may replace its representatives and will so inform the other party. RESELLER will designate technical representatives to obtain support and manage RESELLER's receipt of Services, if relevant Service Descriptions so provide. (For convenience, Reseller's representatives and the EXEED representative are sometimes referred to as "Authorised Representatives").
7. **Excused Performance.** Each party will be excused from delays or failures to perform to the extent caused by acts or omissions of the other party, its employees, agents, users, Affiliates or contractors.
8. **Force Majeure.** Neither party shall be liable for delays or failures to perform to the extent caused by circumstances beyond its reasonable control ("Force Majeure Event[s]"). Performance is not excused for payment obligations or to the extent the delay or failure could have been prevented by (i) normal precautions (such as emergency power) or (ii) EXEED's failure to execute a disaster recovery plan (if (A) included in the relevant Service, (B) RESELLER has chosen relevant options, and (C) execution of the plan is not prevented or disrupted by the same or another Force Majeure Event). Charges shall be reduced proportionally if Services are unavailable because of a Force Majeure Event. If EXEED is unable to restore Service within forty-five (45) days after a Force Majeure Event, RESELLER may terminate affected Services for its convenience by giving written notice and without paying a termination charge (subject to any applicable minimum).
9. **Compliance with Laws.** Each party will comply with laws, regulations, and legal requirements that apply to the exercise of its rights and performance of its obligations and, for RESELLER, receipt and use of the Services. In particular, RESELLER shall comply with applicable privacy and export control laws and regulations. Imports, exports and other transfers of data or software stored, used or processed using the Services or related infrastructure are RESELLER's sole responsibility and RESELLER will obtain any authorizations that may be required. RESELLER bears sole responsibility for all use of the Services, including (i) acts and omissions of its Affiliates, all Resellers and all End User Customers, and (ii) RESELLER's compliance and

its Affiliates', Resellers' and End User Customers' compliance with applicable laws, regulations, legal requirements and standards.

- 10. Security.** EXEED provides only the security features described by the Service Descriptions, Policies and Regulatory Supplements (if any) with respect to the Services ("Security"). RESELLER has sole responsibility for the security of its, its Resellers' and its End User Customers' systems, software, Reseller Offerings, data, confidential information and information which can be used to distinguish or trace an individual's identity—either alone or when combined with other personal or identifying information which is linked or linkable to a specific individual Reseller has verified that the Security satisfies RESELLER's requirements; complies with relevant laws, regulations, treaties and standards concerning RESELLERs data, business and use of the Services; and otherwise meets RESELLER's needs.
- 11. Known Risks.** RESELLER acknowledges that: (i) transmissions on networks, including the Internet and Internet-facing applications carry certain risks that could result in losses of data and property; (ii) those risks are not EXEED responsibilities; (iii) EXEED provides only the network and monitoring services (if any) described by relevant Service Descriptions and Policies; (iv) EXEED has no responsibility for the security of Reseller Offerings or software installed by RESELLER or its Resellers; (v) where RESELLER or its Reseller chooses to deviate from EXEED's standard security practices for the Services, RESELLER or its Reseller (as applicable) does so at its own risk; (vi) Services are not designed to comply with any particular laws; (vii) no security measures provide absolute protection; and (viii) RESELLER maintains all data on EXEED infrastructure or any third party infrastructure at its own risk. However, none of these acknowledgments alter or diminish EXEED's express obligations (including those in the Service Description[s] and in Sections 2 [Performance Standards], 9 [Compliance with Laws] and 10 [Security] of these ECS-MYCLOUDSTORE Terms.)
- 12. Use Limits.** Services are not intended for and neither RESELLER, any of its Resellers nor any End User Customer will use the Services to store, transmit or process data for any applications or uses that: (i) require or relate to information or technology subject to military or dual use export controls; (ii) might endanger individuals, property or the environment, such as operation of: (A) ships, aircraft, railroads and motor vehicles; (B) chemical or nuclear facilities; (C) critical public infrastructure (such as power stations); and (D) medical devices used in patient care; or (iii) involve implementation or provision of regulated network and/or telecommunications services. RESELLER is responsible for compliance with specific regulatory standards that apply to RESELLER's, its Resellers' and End User Customers' data, business, and use of Services (such as those for health care and related services, financial services, payment card transactions, etc.). Any additional EXEED responsibilities related to compliance with such regulatory standards are permitted solely to the extent such additional EXEED responsibilities are expressly described in an attachment to the Agreement ("Regulatory Supplement").
- 13. Data Controller.** RESELLER shall be Data Controller of its, its Resellers' and its End User Customers' data at all times. EXEED does not monitor what data Reseller, Resellers or End User Customers enters into, stores or processes on EXEED infrastructure or any third party infrastructure. EXEED may have access to business contact information and the other data that RESELLER furnishes enters into, stores or processes on EXEED infrastructure (such as contact information for RESELLER's representatives) from countries other than the country from which RESELLER, its Resellers or End User Customers entered that data. EXEED may make reasonable use of RESELLER's, its Resellers' and End User Customers' business contact information in connection with performance and delivery of Services. In this Agreement, "Data Controller" means the RESELLER, as the natural or legal person which alone determines the purposes and means of the processing of their customer's personal information.

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- 15. Reseller Audits.** Upon request, after at least thirty (30) days' notice, RESELLER's auditors and End User Customer's regulators may have electronic or logical access to Customer Data and Reseller's dedicated environments on EXEED infrastructure in order to audit RESELLER's systems, data, controls, and other matters pertinent to RESELLER's business. Reseller may conduct a single annual audit (absent unusual circumstances, such as investigations that may warrant additional audits). EXEED may charge for additional audits and audit support in accordance with the relevant Service Descriptions.
- 16. Audit Procedures.** RESELLER's and its Resellers' auditors and End User Customers' regulators shall enter into confidentiality and other appropriate agreements reasonably requested by EXEED in order to protect the confidentiality of its business and other Resellers, assure compliance with relevant technical, security and other standards, and prevent any disruption of EXEED's operations. Use of audit software shall be limited to RESELLER's dedicated environment(s), comply with EXEED's technical, security and other standards, and be entirely at RESELLER's risk. RESELLER's auditors shall have no access to any shared infrastructure or to data concerning other EXEED customers or EXEED operations. RESELLER's auditors may not be competitors of the Hewlett-Packard Company or its Affiliates. RESELLER's audits are at RESELLER's sole expense.
- 17. EXEED Audits.** Upon request, EXEED will provide to RESELLER its annual service auditor's report on controls placed in operation and tests of operating effectiveness for the EXEED data center(s) used to provide Services, in compliance with ISAE 3402 and SSAE 16 (or successor standards), as and when available.
- 18. Customer Data.** RESELLER is responsible for managing all information entered on storage media or equipment by or on behalf of RESELLER, its Resellers and End User Customers and information derived from such information, any access to end user Customer Data. EXEED will have limited access to Customer Data only where necessary to support the IT systems, networks and other resources used by EXEED to provide the Services. If EXEED should have access to Customer Data, EXEED may use or disclose Customer Data only (i) as authorized, directed, or permitted by RESELLER or, where the Customer Data is owned by RESELLER or End User Customer, that RESELLER or End User Customer; (ii) in connection with performance of Services; (iii) in order to comply with applicable laws, regulations, subpoenas, discovery, or similar orders or requests; (iv) to investigate and help to prevent or mitigate security threats, fraud or other illegal, malicious, or inappropriate activity; or (v) with the prior informed consent of affected data subjects. If and when any such disclosure is required by law EXEED will (if permitted to do so) make reasonable efforts to inform RESELLER so that RESELLER may seek legal protection. RESELLER may retrieve Customer Data at any time in its usual format. Except as otherwise provided in this Agreement, RESELLER acknowledges that EXEED may route, process or store, and could or may access data (including Customer Data) that RESELLER, its Resellers or End User Customers enter into EXEED's or third party SaaS infrastructure from countries other than the country from which RESELLER, its Reseller or End User Customer enters such data.
- 19. Data Incidents.** In the event that any customer personal data is disclosed by EXEED contrary to its obligations under the Agreement, or EXEED discovers or receives notice that unauthorised access, acquisition, disclosure or use of customer personal data has occurred ("Data Incident"), then EXEED shall inform Reseller as soon as reasonably possible, investigate causes of the Data Incident, and take appropriate corrective action to prevent recurrence (to the extent the causes are within EXEED's responsibility). If applicable laws require notice to public authorities or individuals, RESELLER shall give required notices (with EXEED's cooperation) at RESELLER's expense, except to the extent that: (i) RESELLER can demonstrate that the Data Incident occurred because of EXEED's failure to perform its express obligations under the Agreement; and (ii) EXEED approves arrangements for notice and related remedial measures, if any.
- 20. EXEED Confidential Information.** RESELLER acknowledges that the Agreement and such information as EXEED may from time to time disclose in the course of performance concerning the Services are confidential information of EXEED. That

information includes, for example, EXEED's Service Descriptions, Policies and Charges. RESELLER (i) may not disclose any such information to anyone other than its own employees to the extent necessary to receive and use the Services (or as may be required by law), and (ii) will protect all such information with at least the care it uses to protect its own confidential information. RESELLER will give EXEED prompt notice of any third party requests for EXEED confidential information and cooperate in EXEED's efforts to protect its confidential information. When the Agreement expires or terminates, RESELLER shall return, destroy, or erase all such EXEED information in its possession (and its Affiliates' and users' possession).

- 21. Intellectual Property Rights.** Neither RESELLER, any of its Resellers nor any End User Customer is granted any right, title, or interest in any EXEED intellectual property.
- 22. Software.** EXEED shall obtain and maintain sufficient rights to third party software that EXEED uses to perform the Services. EXEED grants RESELLER a nonexclusive, revocable license to use any EXEED software included in the Services, solely to the extent necessary for RESELLER to receive and use the Services. RESELLER, its Resellers and End User Customers shall obtain and maintain sufficient rights to third party software that RESELLER uses or its Resellers or End User Customers use in connection with receipt of Services and use of related infrastructure, including applications or systems software furnished or installed by RESELLER, its Resellers or End User Customers. RESELLER grants, and must ensure that RESELLER's grant, EXEED a nonexclusive, revocable license to use any of its proprietary software or other intellectual property from time to time transmitted to, stored, or otherwise used on EXEED infrastructure, to the extent necessary to perform the Services.
- 23. No Right to Use EXEED Marks.** Neither RESELLER, its Resellers nor any End User Customer has the right to use EXEED's name, symbol, trademark, logotype, trade name and/or insignia ("EXEED Marks") in any manner or media including web and paper based.
- 24. Financial Terms.** EXEED will invoice RESELLER monthly in arrears from the 23rd of each calendar month or the first working day thereafter. Periodic charges will be pro-rated for partial periods. EXEED Charges exclude taxes. RESELLER will pay or reimburse all sales, use, value-added and other taxes, assessments, fees, and governmental charges of all kinds that may be imposed upon the Services or Charges. EXEED's invoices will separately state Charges and applicable taxes (if any). RESELLER shall pay invoices in full (without any withholding or set-off) with electronic or other immediately available funds within thirty (30) days after the invoice date. EXEED may impose a late charge of one percent (1%) per month (not to exceed any applicable legal maximum) upon amounts not paid when due. Late charges are intended as liquidated damages to compensate EXEED for delays in payment, and not as penalties or interest.
- 25. Liability Limits.** Each party's total liability for damages and other amounts related to all claims of every kind ("claims") will not exceed: (i) for claims related to a Service Description, RESELLER's actual payments of Charges for those Services during the twelve (12) months preceding accrual of RESELLER's claims (or, if there are multiple claims, the last such claim to accrue); and (ii) for claims related solely to the Agreement and not to any Service Description, US\$100,000 or its equivalent in relevant currency. Neither party may recover (for breach of contract or under any other basis for liability) lost profits, revenues or goodwill, anticipated savings, business interruption, diminished value of its business, or special, incidental, indirect, consequential, exemplary, or punitive damages (even if advised of the possibility of any such loss or damage). EXEED has no responsibility for loss, corruption, or destruction of data other than restoration from then-current backups maintained by EXEED (only to the extent that EXEED provides backups and RESELLER chooses relevant options). The limitations above do not apply to (A) claims of intentional wrongdoing (such as fraud) or other matters for which liability cannot be excluded as a matter of law, (B) third party claims subject to Sections 26, 27 or 28 (below), or (C) RESELLER's payment obligations. Both Parties will use reasonable efforts to mitigate damages for which the other party may be

responsible. The foregoing limitations shall not apply to RESELLER's obligations set forth in Sections 26 and 28 of these ECS-MYCLOUDSTORE Terms or to EXEED's obligations set forth in Section 27.

- 26. Reseller Indemnification.** RESELLER agrees to indemnify, defend and hold harmless EXEED from and against any and all claims, liabilities, damages and losses concerning (i) actual or alleged acts or omissions of RESELLER, its Affiliates, their respective users, its resellers, End User Customers, employees, contractors or agents in connection with receipt or use of the Services, (ii) the provision, receipt or use of Reseller Offerings or any portion thereof, (iii) Any reseller of RESELLER failure to perform or comply with the RESELLER's contract with the its reseller and to perform and comply with terms that are required to be included in such contract pursuant to this Agreement or (iv) an End User Customer's failure to perform or comply with RESELLER's contract with the End User Customer and to perform and comply with terms that are required to be included in such contract pursuant to this Agreement.
- 27. Infringements by EXEED.** EXEED agrees to defend and pay final awards of damages and approved settlement payments to unrelated third parties concerning allegations that EXEED's performance of Services (except where RESELLER is required to defend and indemnify EXEED under Section 28 below including for EXEED enabling a connection to a specified SaaS offering that is available through the Services where RESELLER, the applicable reseller and/or the applicable End User Customer has not obtained the necessary consents from the supplier of that SaaS offering) or use of any proprietary technology of EXEED or its Affiliates, but excluding in all cases the use or provision of Red Hat Enterprise Linux software and any other open source software, infringes the third party's intellectual property rights. This Section 27 is RESELLER 's sole remedy against third party claims of infringement.
- 28. Infringements by RESELLER, Resellers and/or End User Customers.** RESELLER agrees to defend and pay final awards of damages and approved settlement payments to unrelated third parties (including without limitation claims from resellers, End User Customers and other customers of RESELLER) concerning allegations that RESELLER, its resellers' or End User Customers' acts or omissions (or those of their Affiliates, or respective users, employees, contractors or agents) related to the receipt or use of the Services, the provision, receipt or use of Reseller Offerings, the Reseller Offerings themselves or any other software or product of RESELLER, any of its Reseller or any End User Customer infringe the third party's intellectual property rights.
- 29. Proportional Responsibility.** Defense and payment liability under Sections 26, 27, and 28 shall be limited proportionally to the extent of the relevant party's responsibility. Neither party shall have any liability to the extent that any defense costs, damages or settlement payments are attributable to acts or omissions of the other party, its Affiliates, or their respective employees, agents, or users. In cases of infringement, neither party shall be liable to the extent that claims of infringement concern (i) infringing matter or instructions supplied by the other party; (ii) unauthorized modifications or uses of hardware, software, or intellectual property; or (iii) acts or omissions of the other party, its Affiliates, or their respective employees, agents, or users (excluding use of infringing matter supplied by the other party).
- 30. Defense and Settlement Procedures.** Each party agrees to give the other party prompt written notice of all claims that the other party ("responsible party") is responsible to defend and to cooperate in their investigation and defense. The party entitled to a defense may participate in the investigation and defense of claims at its expense with its own counsel. If, after receiving timely notice, a responsible party fails to defend a third party claim, the other party may defend or settle the claim in its discretion and at the responsible party's expense. In cases of infringement, the responsible party may procure a license or provide a non-infringing substitute or modification. If neither alternative is practical, the allegedly infringing matter shall be withdrawn from use in the performance or receipt of Services. A responsible party has no obligation to pay or reimburse amounts paid for any settlement reached without its prior written consent (except in cases of failure to defend). Settlements

by a responsible party are subject to the other party's prior written consent (which may not be withheld if the settlement involves payment of money without any admission of liability or other remedy). Upon full payment, the responsible party shall be subrogated to the other party's rights, claims and defenses.

- 31. Disputes.** In the event of a dispute, the parties agree to confer to discuss amicable resolution. Their meetings, related communications, and any settlement offers (or counter-offers) will be confidential, without prejudice to any claims or defenses, and inadmissible as evidence in any later proceedings (but use of otherwise admissible evidence during negotiations will not render that evidence inadmissible). If a party believes that provisional remedies are necessary, it may proceed directly to court. All questions concerning the performance, interpretation or breach of the Agreement will be governed by the country of EXEED and the courts of that locale will have jurisdiction. EXEED or its Affiliates may bring suit for payment or to enforce a judgment in the country where the RESELLER or any Affiliate receiving Services is located. RESELLER and EXEED agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Each party will pay its own costs and attorneys' fees.
- 32. Disengagement.** Upon expiration or any termination of the Agreement, the parties shall disengage in accordance with the relevant Service Description.
- 33. Termination for Cause.** Either party may terminate the Agreement or a Service Description, wholly or partially (subject to applicable minimums) if the other party (i) breaches a material obligation, (ii) fails to cure the breach within thirty (30) days after receiving written notice of the details, and (iii) thereafter delivers a second written notice specifying a termination date at least fifteen (15) and no more than thirty (30) days later. If a material breach cannot be cured with reasonable diligence within thirty (30) days, the breaching party may have up to an additional thirty (30) days to cure.
- 34. Termination for Insolvency.** If either party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or asset assignment, the other party may terminate this Agreement and cancel any unfulfilled obligations.
- 35. Discontinuance of Services.** EXEED may discontinue any Service upon twelve (12) months' prior written notice.
- 36. Assignments.** RESELLER may assign or transfer this Agreement in connection with a merger, sale of assets, divestiture or other, similar transaction effecting a change in control of RESELLER's business, or any substantial portion of RESELLER's business (unless the assignee, transferee, or successor competes with EXEED in the provision of information technology services). Other assignments by RESELLER require EXEED's prior written consent. EXEED may assign or transfer any of its rights and obligations in its discretion.
- 37. Good Faith.** Whenever this Agreement requires or contemplates any action, consent, or approval, the parties shall act reasonably and in good faith. They may not unreasonably withhold or delay any action, consent, or approval.
- 38. Publicity.** Except as provided herein, each party agrees not to publicize or disclose the existence or terms of this Agreement to any third party without the prior written consent of the other except as required by law. In particular, no press releases (including postings on the internet) shall be made without the mutual written consent of each party.
- 39. General Provisions.** This Agreement, including Service Descriptions and Policies, constitutes the parties' entire understanding and supersedes any previous communication or agreements. Modifications will be made only through written amendment signed by both parties' representatives (excluding Orders and changes entered and accepted electronically, and permitted EXEED changes to Services or Policies). Waivers must be written and neither waive other provisions nor constitute

a continuing waiver unless they so state. Invalidity or unenforceability of one provision does not affect other provisions. Notices shall be given in writing by courier, electronic mail or facsimile, with proof of delivery, and effective upon receipt by the parties' representatives at their usual business address. Headings and the division of the Agreement into sections, subsections and supporting materials are for convenience only and do not affect their meaning. The Parties are independent contractors and, except as otherwise expressly provided, neither party is agent for the other, or authorized to bind the other party to any agreement with a third party. A person who is not a party to this Agreement has no right to enforce any term of this Agreement, and any resellers of RESELLER and End User Customers are not third party beneficiaries of this Agreement. This Agreement may be executed in one or more counterparts. Sections 20 (EXEED Confidential Information), 22 (Financial Terms), 25 (Liability Limits), 26, 27, and 28 (Third Party Claims, Infringements, Proportional Responsibility, Defense and Settlement Procedures) and 31 (Disputes) shall survive expiration or termination of this Agreement until fulfilled or expiration of relevant statutes of limitation, together with any other terms that expressly or by their nature survive expiration or termination.

- 40. Termination for Convenience.** Subject to RESELLER giving EXEED at least thirty (30) days' written notice RESELLER may terminate this Agreement for convenience.
- 41. Termination & Reseller Agreements.** If (i) RESELLER becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or asset assignment or (ii) RESELLER terminates this Agreement under clause 41 (Termination for Convenience), EXEED may in its sole discretion give written notice to RESELLER requiring RESELLER to assign the benefit, or effect the novation, of such Reseller Agreements as it considers appropriate to EXEED or EXEED's nominee. If EXEED gives written notice to RESELLER under this clause 42 (i), RESELLER must, as soon as practicable but in any event no later than fourteen (14) days after receiving such notice, do everything necessary to comply with the requirements of the written notice as to the assignment or novation of the relevant Reseller Agreements.