

End User License Agreement Terms

THESE TERMS AND CONDITIONS (the "Agreement") CONSTITUTE A BINDING AGREEMENT BETWEEN YOU AND CLUSTERWATCH (AS DEFINED BELOW). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO BIND SUCH ENTITY TO THIS AGREEMENT. IN ANY EVENT, REFERENCES HEREIN TO "Customer" MEANS YOU OR SUCH ENTITY (AS THE CASE MAY BE). "CLUSTERWATCH" SHALL MEAN CLUSTERWATCH, INC.

By clicking on the "I agree" (or similar button or checkbox) that is presented to you at the time of your Order Form or using any part of the Software (as defined below), Customer acknowledges these terms and conditions and represents that it has fully read and understood, and agrees to be bound by, this Agreement and other supplemental terms and policies that this Agreement expressly incorporates by reference, and which are thereby made a part of this Agreement. The "Effective Date" of this Agreement is the date which is the earlier of (a) your initial access to or use of the Software or (b) the effective date of the first Order referencing this Agreement.

IF CUSTOMER DOES NOT AGREE WITH ANY OF THE TERMS OR CONDITIONS OF THIS AGREEMENT, CUSTOMER MUST NEITHER CLICK

"I agree" NOR INSTALL OR USE ANY PART OF THE SOFTWARE.

By entering into the Agreement, Customer hereby irrevocably and unconditionally waives any law or regulation applicable to Customer requiring that the Agreement be localized to meet Customer's language or requiring an original (i.e. non-electronic) signature or delivery or retention of non-electronic records.

1. License

Subject to the terms and conditions of this Agreement, Clusterwatch grants Customer a limited, non-exclusive, non-transferable, and non-sublicensable license (hereinafter, the "License") for the provision of Clusterwatch's software (hereinafter, the "Software"). The Software for purposes of this Agreement is a tool provided by Clusterwatch to monitor costs and infrastructure issues in Customer's environment. The License allows Customer to do the following: (i) install the Software in Customer's on-premise, private cloud, or other installation environment (the "Environment(s)"), and (ii) submit improvements or enhancements to the open source code as permitted at the following URL: github.com/kubecost and subject to licenses specified therein.

2. License Restrictions

Except to the extent expressly permitted in this Agreement (or otherwise mandated under any law applicable to Customer), Customer shall not, and shall not permit or encourage any third party to, do any of the following: (a) copy the

Software; (b) sell, lease, lend, rent, sublicense, or make available the Software to any third party, or otherwise use the Software to operate in a time-sharing, outsourcing, or service bureau environment; (c) modify, alter, adapt, arrange, translate, decompile, disassemble, reverse engineer, or otherwise attempt to discover the source code or non-literal aspects (such as the underlying structure, sequence, organization, and interfaces) of the Software; (d) remove, alter, or conceal, in whole or in part, any copyright, trademark, or other proprietary rights notice or legend displayed or contained on or in the Software; (e) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the Software (such as usage monitoring features); (f) make a derivative work of the Software, or use the Software to develop any service or product that is the same as (or substantially similar to) the Software; (g) use, publish or transmit any robot, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt the Software; and/or (i) access the Software and/or its servers through or use with the Software any unauthorized means, services or tools, including, without limitation, any data mining, robots, or similar automated means or data gathering and extraction tools, including, without limitation, in order to extract for re-utilization of any parts of the Software. The software shall only be used by Customer for its internal monitoring purposes (the "Use Restrictions") and may not be used to evaluate any systems or infrastructure which is not owned by Customer. Customer shall not ship, transfer, or export the Software or any component thereof

or use the Software in any manner, prohibited by law, including without limitation to, sell, distribute, export or download the Software: (a) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Sudan, Lebanon, Syria, or the Crimea Region of Ukraine, (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals, (c) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval, or (d) otherwise in violation of any export or import restrictions, laws or regulations of the U.S. or any foreign agency or authority. Customer agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The foregoing conditions are limitations on the scope of the License.

3. Installation

Customer will be responsible for the installation of the Software, including without limitation all configurations (including without limitation to the Environment and other third party systems) in connection therewith.

4. Third Party Software

The Software may include third party software components that are subject to open source and/or pass-through commercial licenses and/or notices (such third party programs, "Third Party

Software" and "Third Party Software Terms and Notices", respectively). Some of the Third Party Software Terms and Notices may be made available to Customer in the Software, its Documentation or via a supplementary list provided by Clusterwatch. Any covenants, representations, warranties, indemnities and other commitments with respect to the Software in this Agreement are made by Clusterwatch and not by any authors, licensors, or suppliers of, or contributors to, such Third Party Software. Any use of Third Party Software is subject solely to the rights and obligations under the applicable Third Party Software Terms and Notices. Notwithstanding anything in this Agreement to the contrary, Clusterwatch does not make any representation, warranty, guarantee, or condition, and does not undertake any liability or obligation, with respect to any Third Party Software.

5. Confidentiality

Except as otherwise set forth in this Agreement, each party agrees that all code, inventions, know-how and business, technical and financial information disclosed to such party ("Receiving Party") by the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any Clusterwatch Technology and any performance information relating to the Software will be deemed Confidential Information of

Clusterwatch without any marking or further designation. Except as expressly authorized herein, the Receiving Party will (1) hold in confidence and not disclose any Confidential Information to third parties and (2) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement. The Receiving Party may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know, provided that they are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 5 and that the Receiving Party remains responsible for compliance by them with the terms of this Section 5. The Receiving Party's confidentiality obligations will not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may also disclose Confidential Information if so required pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any

such disclosure by the Receiving Party the Disclosing Party will be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

6. Ownership

As between the Parties, Clusterwatch is, and shall remain, the sole and exclusive owner of all Intellectual Property Rights in and to the Software and all its copies (as well as any modifications, improvements or derivatives thereto), and any other products or services provided by Clusterwatch (hereinafter, "Clusterwatch IPR"). Clusterwatch reserves all rights not expressly granted herein and except for the License, Customer is granted no other right or license in or to any Clusterwatch IPR. Customer undertakes not to contest Clusterwatch's ownership in the Clusterwatch IPR. "Intellectual Property Rights" means any and all right, title and interest in and to patents, inventions, discoveries, copyrights, works of authorship, trade secrets, trademarks, service marks, trade dress, technical information, data, know-how, show-how, designs, drawings, utility models, topography and semiconductor mask works, specifications, formulas, methods, techniques, processes, databases, software, code, algorithms, architecture, records, documentation, and other similar intellectual or industrial property, in any form and embodied in any media, whether capable of protection or not, whether registered or unregistered, and including all applications, registrations, renewals, extensions, continuations, divisions or reissues thereof.

7. Payment

All fees for paid plans are as set forth in the applicable Order Form and shall be paid by Customer in accordance with the payment terms set forth in the Order Form. If no payment terms are specified in the Order Form, then the following default terms apply: (i) for monthly paid plans, Customer will pay all fees at the end of the month and (ii) for annual paid plans, Customer will pay all fees within thirty (30) days of invoice. Clusterwatch reserves the right to increase the rates specified in the Order Form upon any renewal of a Service Term. Customer is required to pay any sales, use, GST, value-added, withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on the income of Clusterwatch. Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less. If Customer believes that Clusterwatch has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

8. Warranty & Disclaimer

General Warranties. Each party represents and warrants that it has the legal power and authority to enter into this Agreement. If you are an entity, you represent and warrant that this Agreement and each Order is entered into by an employee or agent of such entity with all necessary authority

to bind such entity to the terms and conditions of this Agreement.

Virus Warranty. Clusterwatch further represents and warrants that it will take reasonable commercial efforts to ensure that the Software, in the form and when provided to you, will be free of any viruses, malware, or other harmful code. For any breach of the foregoing warranty, your sole and exclusive remedy, and Clusterwatch's sole obligation, is to provide a replacement copy of the Software promptly upon notice.

EXCEPT AS EXPRESSLY SET FORTH IN THE PRECEDING PARAGRAPHS (GENERAL WARRANTIES and VIRUS WARRANTY), THE SOFTWARE AND ANY SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR QUALITY OF SERVICE, OR THAT OTHERWISE ARISE FROM A COURSE OF PERFORMANCE OR USAGE OF TRADE) ARE HEREBY DISCLAIMED. CLUSTERWATCH DOES NOT MAKE ANY REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION REGARDING THE EFFECTIVENESS, USEFULNESS, RELIABILITY, COMPLETENESS, OR QUALITY OF THE SOFTWARE, OR THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE OR THAT ERRORS/BUGS ARE REPRODUCIBLE OR THAT ERRORS/BUGS ARE REPAIRABLE.

9. LIMITATION OF LIABILITY

Consequential Damages Waiver. EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), NEITHER PARTY (NOR ITS SUPPLIERS) WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, LOST PROFITS, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

Liability Cap. EXCEPT FOR EXCLUDED CLAIMS, EACH PARTY'S AND ITS SUPPLIERS' AGGREGATE LIABILITY TO THE OTHER ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT ACTUALLY PAID OR PAYABLE BY YOU TO US UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM.

Excluded Claims. "Excluded Claims" means (1) amounts owed by you under any Orders, (2) either party's express indemnification obligations in this Agreement, and (3) your breach of Section 2 (License Restrictions).

Nature of Claims and Failure of Essential Purpose. The parties agree that the waivers and limitations specified in this Section 9 (Limitation of Liability) apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

10. Term and Termination.

Term. This Agreement commences as of the Effective Date and will continue in full force and effect for the duration of the License Term, unless earlier terminated in accordance with this Agreement.

Termination. For unpaid plans, each Party may terminate this Agreement at any time and for its convenience effective upon written notice (including via e-mail) to the other Party. For paid plans, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current term. In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the software and services up to and including the last day on which the software and/or services are provided.

Effect of Termination; Survival. Upon expiration or the effective date of termination of this Agreement (as the case may be): (a) this License will automatically terminate and Customer will uninstall and permanently erase all copies of the Software from the Customer's systems and (b) Customer shall, at Clusterwatch's election, erase or return to Clusterwatch all Clusterwatch Confidential Information in its possession or under its control. Sections 1 (License), 2 (License Restrictions), 4 (Third Party Software) through 13

(Miscellaneous) will survive the expiration or termination of this Agreement.

11. Indemnification By You

You will defend, indemnify and hold harmless Clusterwatch from and against any loss, cost, liability or damage (including attorney's fees) arising from or relating to any claim brought against Clusterwatch (a) arising from or related to your breach of Section 2 (License Restrictions); (b) Customer's violation of applicable law by Customer and/or its users; (c) Customer's content or the combination of content with other applications, content or processes; and (d) any claim or allegation that Customer's content or software modifications infringes or misappropriates the intellectual property rights of any third party. This indemnification obligation is subject to your receiving (i) prompt written notice of such claim (but in any event notice in sufficient time for you to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) all reasonably necessary cooperation of Clusterwatch at your expense.

12. Indemnification By Us

We will defend you against any claim brought against you by a third party alleging that the Software, when used as authorized under this Agreement, infringes any third-party patent, copyright or trademark, or misappropriates any third-party trade secret enforceable in any jurisdiction that is a signatory to the Berne Convention (a "Claim"), and we will indemnify you and hold you harmless against any damages

and costs finally awarded on the Claim by a court of competent jurisdiction or agreed to via settlement executed by Clusterwatch (including reasonable attorneys' fees), provided that we have received from you: (a) prompt written notice of the Claim (but in any event notice in sufficient time for us to respond without prejudice); (b) reasonable assistance in the defense and investigation of the Claim, including providing us a copy of the Claim, all relevant evidence in your possession, custody, or control, and cooperation with evidentiary discovery, litigation, and trial, including making witnesses within your employ or control available for testimony; and (c) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of the Claim. If your use of the Software is (or in our opinion is likely to be) enjoined, whether by court order or by settlement, or if we determine such actions are reasonably necessary to avoid material liability, we may, at our option and in our discretion: (i) procure the right or license for your continued use of the Software in accordance with this Agreement; (ii) substitute substantially functionally similar Software; or (iii) terminate your right to continue using the Software and refund any license fees pre-paid by you for use of the Software for the terminated portion of the applicable License Term. Clusterwatch's indemnification obligations above do not apply: (1) if the total aggregate fees received by Clusterwatch with respect to your license to Software in the twelve (12) month period immediately preceding the Claim is less than US\$20,000; (2) if the Software is modified by any party other than Clusterwatch, but solely to the

extent the alleged infringement is caused by such modification; (3) if the Software is used in combination with any non-Clusterwatch product, software, service or equipment, but solely to the extent the alleged infringement is caused by such combination; (4) to unauthorized use of Software; (5) to any Claim arising as a result of (y) circumstances covered by your indemnification obligations in Section 11 (Indemnification by You) or (z) any third-party deliverables or components contained with the Software; (6) to any unsupported release of the Software; or (7) if you settle or make any admissions with respect to a Claim without Clusterwatch's prior written consent. THIS SECTION 12 STATES OUR SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH ANY SOFTWARE OR OTHER ITEMS PROVIDED BY CLUSTERWATCH UNDER THIS AGREEMENT.

13. Miscellaneous

Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral or written understandings and statements by the Parties with respect to such subject matter. In entering into this Agreement, neither Party is relying on any representation not expressly specified in this Agreement. This Agreement may only be amended by a written instrument duly signed by each Party. The Section and subsection headings used in this Agreement are for convenience only.

Publicity Rights. We may identify you as a customer on our website. Please send a request to team@kubecost.com and we will promptly add you to our list of companies opting out of any forms of publicity.

Assignment. You may not assign or transfer this Agreement without our prior written consent. As an exception to the foregoing, you may assign this Agreement in its entirety (including all Orders) to your successor resulting from your merger, acquisition, or sale of all or substantially all of your assets or voting securities, provided that you provide us with prompt written notice of the assignment and the assignee agrees in writing to assume all of your obligations under this Agreement. Any attempt by you to transfer or assign this Agreement except as expressly authorized above will be null and void. We may assign our rights and obligations under this Agreement (in whole or in part) without your consent. We may also permit our Affiliates, agents and contractors to exercise our rights or perform our obligations under this Agreement, in which case we will remain responsible for their compliance with this Agreement. Subject to the foregoing, this Agreement will inure to the parties' permitted successors and assigns.

Governing Law; Jurisdiction. this Agreement will be governed by, and construed in accordance with, the laws of the State of Delaware, USA without regard to its conflicts of law rules. Any claim, dispute or controversy between the Parties will be subject to the exclusive jurisdiction and venue of the competent federal and state courts located in Delaware, and each Party hereby irrevocably submits to the personal jurisdiction of

such courts and waives any jurisdictional, venue, or inconvenient forum or other objections to such courts; The following applies to all users notwithstanding the foregoing, Clusterwatch may seek injunctive relief in any court worldwide that has competent jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods is hereby disclaimed.

Feedback. If Customer provides Clusterwatch with Feedback, Clusterwatch may, at no cost, freely use such Feedback, for any purpose whatsoever. For the avoidance of doubt, Feedback will not be deemed Customer's Confidential Information.

Relationship. The Parties are solely independent contractors. Nothing in this Agreement shall create a partnership, joint venture, agency, or employment relationship between the Parties. Neither Party may make, or undertake, any commitments or obligations on behalf of the other.

Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) such provision will be ineffective solely as to such jurisdiction (and only to the extent and for the duration of such invalidity or unenforceability), and will be substituted (in respect of such jurisdiction) with a valid and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.

Notices. All notices and communications between the Parties under, or in connection with, this

Agreement ("Notices") shall be in writing, by hand delivery, by nationally recognized courier service or by prepaid certified mail. Clusterwatch may send Notices to Customer through the management module of the Software. Customer shall send all Notices to the mailing and email addresses and contact person listed in the Purchase Order, unless Customer has no Purchase Order with Clusterwatch in which case Notices shall be sent to: Clusterwatch Inc., 315 Montgomery St, Floor 9, San Francisco, CA 94123.

Force Majeure. Neither Party will be liable for failure or delay in performance of any of its obligations under or in connection with this Agreement arising out of any event or circumstance beyond that Party's reasonable control, including without limitation an Act of God, fire, flood, lightning, war, revolution, act of terrorism, riot, civil commotion, adverse weather condition, adverse traffic condition, strike, lock-out or other industrial action, and failure of supply of power, fuel, transport, equipment, raw materials, or other goods or services.

Customer Data Storage. Customer acknowledges that the Software is not intended to, and will not, operate as an archive or file-storage product or service for Customer Data (as defined below), and Customer will be solely responsible for the maintenance and backup of all Customer Data. "Customer Data" means Customer's content, code, or data uploaded to, or otherwise processed by, the Software.

Waiver. Any waiver granted hereunder must be in writing, duly signed by the waiving Party, and will

be valid only in the specific instance in which given.

14. Definitions

"Affiliate" means an entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with a party, where "control" means the power to direct the management or affairs of an entity, and "ownership" means the beneficial ownership of greater than 50% of the voting equity securities or other equivalent voting interests of the entity.

"Feedback" means comments, questions, ideas, suggestions or other feedback relating to the Software or its support and maintenance.

"Order" means Clusterwatch's applicable ordering form or other purchase flow referencing this Agreement. Orders may include purchases of Software licenses, Support and Maintenance, or Additional Services.