

**FOLLOW ALL PROCEDURES ON BACK OF THIS FORM**

Contract # **240117**  
 Number Assigned by Purchasing Dept.



# CONTRACT REVIEW

BOARD MEETING DATE:  
 2/1/2024  
 WHEN BOARD APPROVAL IS REQUIRED DO NOT PLACE ITEM ON AGENDA UNTIL REVIEW IS COMPLETED  
 Must Have Board Approval over \$100,000.00

Date Submitted: January 22, 2024

Name of Contract Initiator: Ethan Caren Telephone #: 904-336-6903

School/Dept Submitting Contract: Information and Technology Cost Center # 9040

Vendor Name: Onix Networking Corporation

Contract Title: Better Cloud

Contract Type: New  Renewal  Amendment  Extension  Previous Year Contract #

Contract Term: 02/28/2024 - 02/27/2027 Renewal Option(s): Annual Auto Renew until terminated in writing

Contract Cost: \$331,775.19 (\$110,591.73 for 3 years: 24, 25, 26)

**BUDGETED FUNDS – SEND CONTRACT PACKAGE DIRECTLY TO PURCHASING DEPT**  
 Funding Source: Budget Line # 100.6500366.9040.0000.0000.000.0  
 Funding Source: Budget Line # \_\_\_\_\_

**NO COST MASTER (COUNTY WIDE) CONTRACT - SEND CONTRACT PACKAGE DIRECTLY TO PURCHASING DEPT**

**INTERNAL ACCOUNT - IF FUNDED FROM SCHOOL IA FUNDS – SEND CONTRACT PACKAGE DIRECTLY TO SBAO**

**REQUIRED DOCUMENTS FOR CONTRACT REVIEW PACKAGE (when applicable):**

Completed Contract Review Form

SBAO Template Contract or other Contract (NOT SIGNED by District / School)

SIGNED Addendum A (if not an SBAO Template Contract) - **When using the Addendum A, this Statement MUST BE included in the body of the Contract: "The terms and conditions of Addendum A are hereby incorporated into this Agreement and the same shall govern and prevail over any conflicting terms and/or conditions herein stated."**

Certificate of Insurance (COI) for General Liability & Workers' Compensation that meet these requirements:  
 COI must list the School Board of Clay County, Florida as an Additional Insured and Certificate Holder. Insurer must be rated as A- or better.  
 General Liability = \$1,000,000 Each Occurrence & \$2,000,000 General Aggregate.  
 Auto Liability = \$1,000,000 Combined Single Limit (\$5,000,000 for Charter Buses).  
 Workers' Compensation = \$100,000 Minimum  
 [If exempt from Workers' Compensation Insurance, vendor/contractor must sign a Release and Hold Harmless Form. If not exempt, vendor/contractor must provide Workers' Compensation coverage].

State of Florida Workers Comp Exemption (<https://apps.fldfs.com/bocexempt/>) (If Applicable)

Release and Hold Harmless (If Applicable)

**RECEIVED**  
 By Bertha Staefe at 1:05 pm, Jan 22, 2024

**\*\* AREA BELOW FOR DISTRICT PERSONNEL ONLY \*\***

CONTRACT REVIEWED BY:	COMMENTS BELOW BY REVIEWING DEPARTMENT
Purchasing Department Review Date <u>1/22/2024</u> <i>BTS</i>	Information Technology via DOE Rule 6A-1.012 (14) <u>Added PO T&amp;C statement on page 3 of order form.</u>
School Board Attorney Review Date <u>1/22/24</u> <i>JPS</i>	Subject to approval of the SBCC Data Share agreement. Otherwise legally sufficient. Understanding that we would be locked in for three years.
Other Dept. as Necessary Review Date <u>1/29/24</u> <i>RC</i>	<u>IT Department working on SBCC Data Share Agreement</u> Complete <i>RC</i>

PENDING STATUS:  YES  NO **IF YES, HIGHLIGHTED COMMENTS ABOVE MUST BE CORRECTED BY INITIATOR**

FINAL STATUS **APPROVED** DATE: 1/22/2024

# CONTRACT REVIEW PROCESS FOR "ALL" CONTRACTS

A contract is defined as an agreement between two or more parties that is intended to have legal effect. This may include MOUs, Interlocal Agreements, Service Agreements and Contracts. Contracts document the mutual understanding between the parties as to the terms and conditions of their agreement, contain mutual obligations, and clearly state the agreement's consideration. The term consideration includes the cost of the services and/or products to be provided by second party (vendor or service provider) and any non-monetary performance. No school, department, or other organizational unit has authority to contract in its own name. All Board contracts must be made in the legal name of the Board, "The School Board of Clay County, Florida". The School or Department may extend this name to include the school or department as follows, "The School Board of Clay County, Florida o/b/o Information & Technology (insert the school or department name)" where o/b/o means "on behalf of".

**All contracts shall be reviewed and approved by the School Board Attorney and/or the Supervisor of Purchasing to ensure legality, compliance with Board policy, and to ensure the Board interests are protected before the authorized signatory may execute the contract.**

All contracts having a value of \$100,000 or more shall be authorized by the Board at a regular or special meeting and signed by the Board Chairman. All approved contracts having a value of less than \$100,000 may be executed by the Superintendent or appropriate District administrator based on the value of the contract.

1. All approved contracts having a value of \$50,000 or more, but less than \$100,000 shall be signed by the Superintendent, or the person who has been designated, in writing by the Superintendent, as the Superintendent's Designee at the time of the contract signing. All contracts executed pursuant to this subparagraph shall be reported to the School Board in a separate entry as part of the monthly financial report.
2. All approved contracts having a value of \$25,000 or more, but less than \$50,000, shall be signed by the Superintendent, or the Assistant Superintendent for Business Affairs.
3. All approved contracts having a value of less than \$25,000 and contracts of any value described in Board Authorized Contracts above that are exempt from the requirement for Board approval, may be signed by the Superintendent, or the Assistant Superintendent for their Division, or Chief Officers, or Directors, or Principals.
4. The Superintendent is authorized to approve contract amendments or change orders for the purchase of commodities and services up to the amount of ten (10) percent or \$50,000, whichever is less, of the original contract amount that was previously approved by the Board.

Employees who enter into agreements without authority may be personally liable for such agreements, whether oral or written.

**Step 1:** Contract Initiator and Vendor prepare draft contract  
(School Board Attorney Office (SBAO) Template Contracts available on SBAO webpage are strongly encouraged)

**Step 2:** Complete Contract Review Form, attach Required Documents to include the UNSIGNED Contract by the District / School.

**For Contracts using Budgeted Funds or For No Cost / Master (County Wide) Contracts:**  
Initiator submits Contract Review Package to Purchasing Department - See Step 3

**For Contracts using Internal Funds Individual to each School:**  
Initiator submits Contract Review Package direct to SBAO - See Step 4

**IMPORTANT**

**Step 3:** If Funded by Budgeted Funds, submit the Contract Review Package to the Purchasing Department. Purchasing will begin the contract review process and submit the contract to the SBAO for review. SBAO may reach out to Initiator and/or other Departments (Risk, IT,) with questions or concerns and will assist with contract revisions. SBAO will send the Contract Review Package back to the Purchasing Department for final processing and the return to Initiator.

Purchasing will log "District" Contracts (Cost/No Cost) on Contract Review Log and save copy of the Contract Review Package PLUS the Final Signed Contract you've return to Purchasing in the Contract Review Team Drive.

**Step 4:** If Funded by Internal Account (IA), submit the Contract Review Package directly to SBAO.  
Email: [contractreview@myoneclay.net](mailto:contractreview@myoneclay.net)  
The SBAO will begin the contract review process and return it directly to Initiator

**Step 5:** The Initiator is responsible for finalizing the Contract which includes:  
Addressing Comments/Revisions, Obtaining Required Signatures, Send District Final Signed Contract to Purchasing OR Retain Internal Accounts Final Signed Contract at School per School Board Record Policy.  
If there is a Cost associated with Contract, the Initiator must work with their Bookkeeper to finalize the Purchasing Process.  
**Budgeted Funds require a District Purchase Order. Internal Accounts require an IA Purchase Order.**

For assistance with legal-related matters, please visit the [School Board Attorney's Office \("SBAO"\) webpage](#) or call 904-336-6507  
For assistance with insurance-related matters, please visit the [Business Affairs - Risk Management webpage](#) or call 904-336-6745  
For assistance with District Purchasing, please visit the [Business Affairs - Purchasing webpage](#) or call 904-336-6736

**Onix Networking Corp.**  
Tel: 216-529-3000  
Fax: 216-529-3020

**Better Cloud Order Form****SERVICES SCHEDULE****CUSTOMER: Clay County School District**

<b>Attention:</b>  <b>Address:</b>  <b>City, State, Zip:</b>  <b>Phone:</b>  <b>Fax:</b>  <b>Email:</b>	<b>Corporate Contact Information:</b>		<b>Billing Contact Information:</b> (if different from corporate contact)		
<b>Purchase Order Required:</b>			<b>Purchase Order #:</b>		
<b>BETTERCLOUD SKU</b>	<b>Order Type (New/Renewal)</b>	<b>Subscription Term</b>	<b>End User Accounts</b>	<b>PricePer User</b>	<b>Line Price</b>
<b>Year 1: 2/28/2024 through 2/27/2025</b>					
Complete Better Clous	Renewal	12 Months	51,921	\$2.13	\$110,591.73
<b>Year 2: 2/28/2025 through 2/27/2026</b>					
Complete Better Clous	Renewal	36 Months	51,921	\$2.13	\$110,591.73
<b>Year 3: 2/28/2026 through 2/27/2027</b>					
Complete Better Clous	Renewal	36 Months	51,921	\$2.13	\$110,591.73
<b>Total Fees Due (excluding applicable taxes): \$331,775.19</b>					
Notes: Invoices due Net 45 from invoice date.			Account Manager: Rob Stichweh		

Order Form Terms and Conditions

- License Terms. This Order Form ("Order Form") is subject to and incorporates by reference the most recent terms and conditions of the Better Cloud Main Subscription Agreement ("Agreement") at <https://www.bettercloud.com/main-subscription-agreement/> as such Agreement may be modified by BetterCloud from time-to-time. Customer must accept the Agreement prior to using the Service. All capitalized terms used herein have the meanings stated in the Agreement, unless stated otherwise. The terms of the Agreement shall supersede any terms in any purchase order or other ordering document. If Customer's Services include a Professional Services Package, BetterCloud's provision of the Professional Services will be governed by the Statement of Work applicable to such Package, available here: <https://www.bettercloud.com/statementsofwork> (the "SOW"). If Customer's Services includes a training package, BetterCloud's provision of such training package to the Customer will be governed by the terms located at [www.bettercloud.com/training-terms](https://www.bettercloud.com/training-terms). Additional Subscription Services details are available here at

<https://www.bettercloud.com/product-documentation/>. Capitalized but undefined terms used in this Order Form are defined in the Agreement (including the Documentation) and the SOW.

2. **Term of Purchased Subscriptions.** The Initial Term shall be as specified above in the Order Form ("Initial Term"). Thereafter, Subscriptions will automatically renew for additional periods equal to the expiring term or one year, whichever is shorter (each a subsequent renewal term and collectively with the Initial Term, the Subscription Term"), unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant Subscription Term. At the end of the Subscription Term, the price per End User Account will increase 10% for each subsequent Subscription Term.
3. **Fees and Payment**
  - 3.1 **Fees.** Customer will pay all fees specified in the Order Form. Fees are (i) based on the number of End User Accounts stated in this Order Form and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant Subscription Term. Fees are valid for the Subscription Term up to and inclusive of 110% of the number of End User Accounts stated in the Services Schedule above. If at any time during the Subscription Term the number of End User Accounts is greater than 110% of the number of End User Accounts stated in the Order Form, Customer's usage limits will automatically be increased to the new number of End User Accounts, and additional fees will apply to Customer for those End User Accounts above 110% of those stated in the Order Form and thereafter (if applicable). Onix shall send additional invoices to Customer for the additional fees described herein and Customer shall pay all such invoices pursuant to the terms of this Order Form.
  - 3.2 **Invoicing and Payment.**
    - 3.2.1 Customer will provide Onix with valid and updated credit card information or with a valid purchase order or alternative document reasonably acceptable to Onix. If Customer provides credit card information to Onix, Customer authorizes Onix to charge such credit card for all Purchased Services listed in the Order Form for the Initial Term and any renewal Subscription Term(s).
    - 3.2.2 Fees will be invoiced annually in advance. Professional Services fees, if any, will be included in full with the first invoice. Payments are due net forty-five (45) days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Onix and notifying Onix of any changes to such information. All payment obligations are non-cancelable and fees paid are non-refundable. BetterCloud does not accept credit card payments for invoices of more than \$10,000.
  - 3.3 **Suspension of Service and Acceleration.** If any amount owing by Customer under this Order Form for Services is thirty (30) or more days overdue (or ten (10) or more days overdue in the case of amounts Customer has authorized charged to Customer credit card), Onix may, without limiting any other rights and remedies, accelerate Customer's unpaid fee obligations so that all such obligations become immediately due and payable, and Suspend the Services to Customer until such amounts are paid in full. Onix will give Customer at least 10 days' prior notice before Suspending Services pursuant to the foregoing.
  - 3.4 **Payment Disputes.** Onix will not exercise its rights under 3.3 (Suspension of Service and Acceleration) above if Customer is disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.
  - 3.5 **Taxes.** "Taxes" means any duties, customs fees, or taxes (other than Onix' income tax) associated with the sale of the Services, including any related penalties or interest. Customer is responsible for any Taxes, and Customer will pay Onix for the Services without any reduction for such amounts. If Onix is obligated to collect or pay Taxes, the Taxes will be invoiced to Customer, unless Customer provides Onix with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by law to withhold any Taxes from its payments to Onix, Customer must provide Onix with an official tax receipt or other appropriate documentation to support such withholding.
  - 3.6 **Future Functionality.** Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Onix or BetterCloud regarding future functionality or features.
4. Customer agrees to provide to Onix and BetterCloud, on a quarterly basis or upon written request from Onix or BetterCloud, with its then-current total active number of Office365 users and reasonable supporting documentation confirming the total number of then-current active users to Onix or BetterCloud reasonable satisfaction (for example, a screenshot of the number of users in Customer's identity management systems).
5. Onix disclaims (a) to the extent permitted by applicable law, BetterCloud's liability for any damages, whether direct, indirect, incidental or consequential, arising from Onix's distribution and resale of the Services to Customer; and (b) all warranties with respect to the Services, including without limitation, warranties for merchantability, fitness for a particular purpose, and non-infringement.
6. **Publicity.** Customer agrees that Onix may include Customer's name or Brand Features in a list of Onix customers, whether online or in offline promotional materials. Customer also agrees that Onix may verbally reference Customer as Onix client. Customer agrees to be referenced and listed as BetterCloud's client and to BetterCloud's use of Customer's name and logo on BetterCloud's website and marketing materials.

6. Limitation of Liability. In no event shall either Onix's liability for any damages hereunder exceed the amounts paid by Customer to Onix during the twelve (12) month period preceding the causation of the damages.

7. Entire Agreement. This Order Form, including the Services Schedule hereto and any documents expressly referenced herein or therein is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject, including the order form between the parties with an effective date of March 27, 2018.

The terms and conditions of the attached SBCC Purchase Order are hereby incorporated into this Agreement and the same shall govern and prevail over any conflicting terms and/or conditions herein stated.

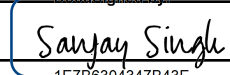
By signing this Order Form, each party represents and warrants that (i) it has read and understands the Agreement that is incorporated by reference herein and agrees to be bound by its terms, and (ii) it has full power and authority to accept the Agreement and this Order Form Terms and Conditions.

IN WITNESS WHEREOF, this Order Form has been executed by persons duly authorized as of the date signed by Onix below ("Effective Date").

**Clay County School District**

**Onix Networking Corp.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

DocuSigned by:  
By:   
1E7B6304347B43E...  
Name: Sanjay Singh  
Title: CEO  
Date: 1/23/2024

**BY ACCEPTANCE OF THIS ORDER SELLER AGREES WITH BUYER AS FOLLOWS:**

The School Board of Clay County, Florida (SBCC, District, Buyer) OBJECTS in advance to the inclusion of any additional terms proposed by Seller (Vendor, Contractor) in its acceptance or acknowledgement of this order. The inclusion of such terms by Seller will be of no significance, such terms will not be additional terms to this order, and Buyer's acceptance of Seller's goods or services shall not be deemed as acceptance of such terms. The terms and conditions from a relevant invitation to bid, request for proposal, or formal quote are incorporated herein by this reference. Unless otherwise stated on the face of this order, the following terms and conditions shall apply:

**TERMS OF PAYMENT, CONTINGENCIES, AND INVOICING:** Procurement is performed in accordance with applicable law, State Board of Education Rules, SBCC Policy and other applicable rules and regulations which govern. Payment is issued in accordance with the State Government Prompt Payment Act, Chapter 218 Part VII Florida Statutes. Normal terms of payment shall be "Net 45 Days" from receipt and acceptance of the goods and/or services and the Supplier's invoice bearing the Purchase Order number. Alternative terms offering discounts for early payment shall be made at the discretion of the Buyer. Submit invoice to SBCC Accounts Payable Department, 814 Walnut Street, Green Cove Springs, Florida 32043. Unless otherwise required by law, the SBCC payment obligations arising from this purchase order are contingent upon an annual appropriation by the SBCC and the availability of funds to pay for the contracted goods and/or services provided. If such funds are not appropriated or made available for the procurement and results in its termination, such conditions/events shall not constitute a default by the SBCC.

**PACKING, DELIVERY, INSPECTION, ACCEPTANCE AND TITLE:** All shipments must be made FOB SBCC at address specified. Shipper will prepay all transportation charges. C.O.D orders (including freight charges) shall not be accepted. All goods or services are subject to Buyer's inspection and acceptance. Delivery shall not be complete until the goods and/or services have been received, inspected and accepted by SBCC. Title to, or risk of loss or damage to goods and/or services shall be the responsibility of Seller until goods and/or services passed to Buyer upon receipt and acceptance at the destination or as indicated herein. Until acceptance, Seller retains the sole insurable interest in the goods. If the goods or services supplied to SBCC are found to be defective, or not to conform to specifications, SBCC reserves the right to reject and/or cancel order upon written notice to Seller. Goods are held for disposal at Seller's risk and returned at Seller's expense.

**WARRANTY:** In addition to any warranty implied by law and any other express warranties, Seller expressly warrants that all material or services covered herein will be: (a) Free of infringements of property rights of third parties, including without limitation, any patent, trademark, trade name, copyright or right of publicity; (b) free from defects in material and workmanship; (c) of merchantable quality; (d) fit for the intended use by SBCC and any other intended uses of such goods; (e) of a grade and performance in conformity with all specifications, blueprints, designs, drawings, samples, models, descriptions, instructions and other data. Seller warrants that any services to be performed by Seller hereunder will be performed, as an independent contractor in a good and competent manner. In the event of breach, Seller will take all necessary action, at Seller's expense to correct such breach in the most expeditious manner possible.

**INSURANCE AND INDEMNIFICATION:** Seller agrees to indemnify, hold harmless, and defend the SBCC, its officers, agents and employees from and against any and all claims and liabilities (including expenses) for injury or death of persons or damage to any property which may result, in whole or in part, from any act or omission on the part of Seller, its agents, employees, or representatives, or are arising from any Seller furnished goods or services, except to the extent that such damage is due solely/directly to the negligence of the Buyer. Seller shall carry comprehensive general liability insurance, including contractual and product liability coverage, with minimum limits acceptable to the SBCC. Seller shall maintain workmen's compensation coverage (statutory) and liability coverage for bodily injury, including death resulting therefrom, and property damage, with reasonable limits. Seller at the request of the SBCC shall supply certificates evidencing such coverage. The SBCC agrees to be fully responsible for its acts of negligence, or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence to the extent allowable pursuant to Section 768.28, Florida Statutes.

**LAWS AND REGULATIONS:** This Purchase Order and all extensions, contracts, and modifications thereto, and all questions relating to its validity, interpretation, performance or enforcement shall be governed and construed in conformance to the laws of the State of Florida. The venue for all proceedings will be the Circuit Court for Clay County Florida. Seller guarantees that the goods to be provided and the services to be performed herein, shall comply with all applicable Federal, State, Local laws, statutes ordinances, regulations, orders and decrees.

**GOVERNMENT FUNDING / FEDERAL GRANTS:** Funding for this Purchase Order Agreement may be provided in whole or in part by one or more Government funding agencies (Federal, State, Local). As a result, Seller shall comply with applicable Laws, Regulations, Executive Orders, and Governmental Agency Rules and Policies included but not limited to Florida Department of Education (DMS, SREF); Florida Statutes Chapter 287, 489; Code of Federal Regulations Titles: 2 – Grants and Agreements (2 C.F.R. §200), Title 7 – Agriculture (NSLP), Title 34 – Education (EDGAR, FERPA), Title 44 – Emergency Management and Assistance (FEMA); U.S. Code Titles: 20, 31, 40, 41. By fulfilling this order, Seller agrees that it is and will continue to be in compliance with said terms and conditions of this section for the term of the purchase.

**TERMINATION:** Default: The SBCC may terminate all or any part of this purchase order by giving notice of default to Seller, if Seller: becomes insolvent or subject to proceedings under any law relating to bankruptcy, insolvency, or relief of debtors. In the event of termination for default, Buyer's liability will be limited to the payment for goods and services delivered and accepted as of the date of termination.

**BACKGROUND SCREENING / JESSICA LUNS福德 ACT:** Seller shall comply with all the requirements set forth in SBCC Policy and Section 1012.32, 1012.465, 1012.467 & 1012.468 Florida Statutes, and Seller and all its personnel who (1) are permitted access to school grounds when students are present, (2) have direct contact with students, or (3) have access or control of school funds will successfully complete and meet the background screening requirements identified above. Background screening can be accomplished by following instructions at link: <https://www.oneclay.net/Page/5405>. Seller will bear the cost of acquiring background screening and any fee imposed by Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Seller and its personnel. The Parties agree that failure of Seller to perform any of the duties described in this section shall constitute a material breach of the Purchase Order entitling SBCC to terminate immediately with no further form of physical or mental injury, death or property damage resulting in Seller's failure to comply with requirements.

**E-VERIFY:** The Contractor named herein, and its subcontractors, are required to register with and use the U.S. Department of Homeland Security's (DHS) E-Verify system to verify the work authorization status of all newly hired employees. By executing this Contract, the Contractor certifies that it, and any subcontractors with which it contracts, are registered with, and use, the E-Verify system for all newly hired employees, and acknowledges that it must obtain an affidavit from its subcontractors in accordance with section 448.095(2)(b) Fla. Stat. that the subcontractor does not employ, contract with or subcontract with any unauthorized alien. The Contractor must maintain a copy of such affidavit for the duration of the Contract. This section serves as notice to the Contractor that, pursuant to the terms of section 448.095(2)(c)1 and 2, Florida Statutes, the School Board shall terminate this Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S. If the School Board has a good faith belief that the subcontractor, without the knowledge of the Contractor, has knowingly violated section 448.09(1) or 448.095(2), F.S., School board shall notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor. If the School Board terminates a contract with a Contractor pursuant to sec. 448.095(2)(c), F.S., the Contractor will not be awarded a public contract for at least one year after the date of such termination.

**PUBLIC ENTITY CRIMES:** In compliance to Section 287.133 Florida Statutes, a business, person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**EQUAL EMPLOYEMENT / DISCRIMINATION:** The Seller certifies that Seller is in compliance with the requirements of law regarding equal employment opportunity for all persons without regard to age, race, color, religion, sex, national origin, or disability and is not on the Discriminatory Vendor List pursuant to Florida Statute 287.134.

**CONFLICT OF INTEREST:** The award hereunder is subject to the provisions of Chapter 112 Florida Statutes. All Suppliers must disclose the name of any company owner, officer, director or agent who is an employee of the Buyer.

**FORCE MAJEURE:** Neither party to this Agreement shall be liable for delays or failures in performance under this Agreement (other than obligations relating to payment, confidentiality, and protection of ownership and intellectual property rights) resulting from acts or events beyond the reasonable control of such party (a "Force Majeure Event"), including acts of war, terrorism, acts of God, earthquake, flood, embargo, riot, sabotage, labor dispute, wide spread outbreak of disease or pandemic, governmental act, failure of the internet, power failure, or energy, utility, or telecommunications interruptions, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. In the event that a Force Majeure Event lasts for more than 90 days, and the party experiencing the initial delay cannot correct its failure or delay in performance during that period of time, despite using its reasonable commercial efforts to do so, the other party may terminate the affected portions of this Agreement.

**SOVEREIGN IMMUNITY:** No provision or language in the underlying contract shall be construed or interpreted to increase the scope or dollar limit of the SBCC's liability beyond that which is set forth in section 768.28 of the Florida Statutes. Nor shall any such language be construed or interpreted to waive the SBCC's sovereign immunity from suit, or to require the SBCC to indemnify Seller/Contractor/Vendor or any other person, corporation or legal entity of any kind or nature whatsoever for injury or loss resulting from any acts or omissions other than those which arise from the actionable negligence of the SBCC. The SBCC expressly reserves all other protections and privileges related to its sovereign immunity.

**FERPA:** To the extent services provided hereunder pertain to the access to student information, Seller shall adhere to all standards included in the Family Educational Rights and Privacy Act (FERPA) and Sections 1001.41 and 1002.22, Florida Statutes (the Protection of Pupil Privacy Acts), and other applicable laws and regulations as they relate to the release of student information.

**PUBLIC RECORDS:** IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTRACTOR SHALL CONTACT THE SCHOOL DISTRICT'S CUSTODIAN OF PUBLIC RECORDS AT 900 WALNUT STREET, GREEN COVE SPRINGS, FLORIDA 32043, OR AT 904-336-6500, OR AT: [PRR@myoneclay.net](mailto:PRR@myoneclay.net)

The SBCC is authorized to collect, use or release social security numbers (SSN) of Seller and their employees for the following purposes, which are noted as either required or authorized by law to be collected. The collection of social security numbers is either specifically authorized by law or imperative for the performance of the District's duties and responsibilities as prescribed by law (Sections 119.07(5)(a)2 and 3, Florida Statutes): a) Criminal history and criminal background checks/Identifiers for processing fingerprints by Department of Law Enforcement, if SSN is available [Required by Fla. Admin. Code 11 C-6.003 and Fla. Stat. § 119.07(5)(a)6]; b) Seller that District reasonably believes would receive a 1099 form if a tax identification number is not provided including for IRS form W-9 [Required by 26 C.F.R. § 31.3406-0, 26 C.F.R. § 301.61091, and Fla. Stat. § 119.07(5)(a)2 and 6]

The terms and conditions found on the SBCC Purchasing webpage: <https://www.oneclay.net/purchasing> shall apply for this order and the Seller accepts and acknowledges that it is and it will continue to be in compliance with said terms and conditions for the term of the purchase.



LAST UPDATED NOV 16, 2023

# Main Subscription Agreement

Previous Versions (<https://www.bettercloud.com/main-subscription-agreement/#previous-versions>)

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING THIS AGREEMENT OR AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES.

This Agreement is subject to revision. If We make any substantial changes, We will notify You in accordance with Section 13.1. Any changes to this Agreement will be effective upon the earlier of thirty (30) calendar days following dispatch of an email notice to You (if applicable) or Your next use of the Services. These changes are effective immediately to new Admins of Our Services. You are responsible for providing Us with Your most current email address. In the event that the email address that You have provided Us is not valid, or for any reason is not capable of delivering to You, Our email containing such notice will nonetheless constitute effective notice of the changes. Continued use of Our Services following notice of such changes shall indicate Your agreement to be bound by the terms and conditions of such changes.

This Agreement was last updated on November 16, 2023. It is effective between You and Us as of the earlier of: (a) the date You accept this Agreement or (b) the date You first access or otherwise use the Services.

## Table of Contents

1. Definitions (<https://www.bettercloud.com/main-subscription-agreement/#definitions>)
2. Free Trial (<https://www.bettercloud.com/main-subscription-agreement/#free-trial>)
3. Our Responsibilities (<https://www.bettercloud.com/main-subscription-agreement/#our-responsibilities>)
4. Use of the Services (<https://www.bettercloud.com/main-subscription-agreement/#use-of-our-services>)
5. Non-BetterCloud Providers (<https://www.bettercloud.com/main-subscription-agreement/#non-bettercloud-providers>)
6. Fees and Payment for Purchased Services (<https://www.bettercloud.com/main-subscription-agreement/#fees-and-payment-for-purchased-services>)
7. Proprietary Rights and Licenses (<https://www.bettercloud.com/main-subscription-agreement/#proprietary-rights-and-licenses>)
8. Confidentiality (<https://www.bettercloud.com/main-subscription-agreement/#confidentiality>)
9. Representations, Warranties, Exclusive Remedies and Disclaimers (<https://www.bettercloud.com/main-subscription-agreement/#representations-warranties-exclusive-remedies-and-disclaimers>)
10. Mutual Indemnification (<https://www.bettercloud.com/main-subscription-agreement/#mutual-indemnification>)
11. Limitation of Liability (<https://www.bettercloud.com/main-subscription-agreement/#limitation-of-liability>)
12. Term and Termination (<https://www.bettercloud.com/main-subscription-agreement/#term-and-termination>)
13. Notices, Governing Law and Jurisdiction (<https://www.bettercloud.com/main-subscription-agreement/#notices-governing-law-and-jurisdiction>)



## 1. DEFINITIONS

**“Admin”** means an individual who is authorized by You to use one or more of the Services. Admins may include, for example, Your employees or consultants.

**“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**“Agreement”** means this Main Subscription Agreement.

**“Beta Services”** means certain features, technologies, and services that are not generally available to Our customers, as updated from time to time.

**“CCPA”** means the California Consumer Privacy Act of 2018 together, as amended by the California Privacy Rights Act of 2020, with any subordinate legislation or regulations, as amended or superseded from time to time.

**“Confidential Information”** means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Our Confidential Information includes the Services; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**“Documentation”** means the online documentation and Service feature descriptions, as updated from time to time, located at <https://www.bettercloud.com/product-documentation/> (<https://www.bettercloud.com/product-documentation/>) or at such other URL as We may provide from time to time.

**“Disruption Event”** means either: (a) an Admin’s use of the Services which could disrupt: (i) the Services; (ii) other customers’ use of the Services; or (iii) Our network or servers used to provide the Services; or (b) unauthorized third party access to the Services.

**“End User Account”** means any provisioned account with unique login credentials for one or more Non-BetterCloud Applications that is managed, monitored and/or secured by the Services.

**“Generic Reports”** means reports that may include Your Services Data in an anonymous, generic, de-identified format and aggregated with other data not constituting Your Services Data solely and exclusively for analyzing customer needs, improving Our services, or providing benchmark data of usage and configuration of the Services or Non-BetterCloud Applications to other customers.

**“Integrations”** means the systematic interactions between Non-BetterCloud Applications and the Services. An **“API Integration”** means an Integration developed through the Platform API by You or not made generally available by Us.

**“Malicious Code”** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs, and trojan horses.

**“Non-BetterCloud Applications”** means a web-based or offline software application that is provided by You or a third party, and interoperates with one or more of the Services.



hereunder that is entered into between You and Us or any of Our Affiliates or Resellers.



**“Platform API”** means the API provided by Us that may be used to extend the platform’s functionality to interact with Non-BetterCloud Applications.

**“Product Privacy Statement”** means Our Product Privacy Statement, as updated from time to time, located at: <https://www.bettercloud.com/privacy-statement/> (<https://www.bettercloud.com/privacy-statement/>) or such other URL as We may provide from time to time.

**“Professional Services”** means the product implementation, training, and/or other professional services to be provided by Us to You to the extent purchased by You under an Order Form.

**“Purchased Services”** means Services (including Professional Services) that You purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

**“Reseller”** means one of Our preferred partner resellers through whom You purchase the Services.

**“Services”** means the products and services that are ordered by You under a free trial or an Order Form and made available by Us as described in the Documentation and/or SOW. “Services” exclude Non-BetterCloud Applications.

**“SOW”** means the Statement of Work applicable to the Professional Services package purchased by You (if any), located at <https://www.bettercloud.com/statementsofwork/> (<https://www.bettercloud.com/statementsofwork/>) or at such other URL as We may provide from time to time.

**“Subscription Term”** means the period of time during which Admins are permitted to use the Services hereunder, as specified in the applicable Order Form and including all renewals or extensions thereof.

**“Suspend”** or **“Suspension”** means the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services.

**“We,” “Us”** or **“Our”** means BetterCloud, Inc.

**“You”** or **“Your”** means the person accepting this Agreement, or, if applicable, the company or other legal entity for which you are accepting this Agreement.

**“Your Reports”** means reports regarding and/or incorporating Your Services Data generated, transmitted or displayed via the Services, but excluding Generic Reports.

**“Your Services Data”** means electronic data and information submitted by or for You to the Services or collected and processed by Us or for You as a result of Your use of the Services. Your Services Data includes “Your Reports”.

[Back to Top \(https://www.bettercloud.com/main-subscription-agreement/#top\)](https://www.bettercloud.com/main-subscription-agreement/#top)

## 2. FREE TRIAL

If You have access to the Services on a free trial basis, We will make one or more Services available to You on a trial basis, free of charge, until the earlier of (a) the end of the free trial period, or (b) the start date of any Purchased Service subscriptions ordered by You for such Service(s).

**YOUR SERVICES DATA ON OUR SYSTEMS OR IN OUR POSSESSION OR CONTROL, YOUR REPORTS, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR FREE TRIAL MAY BE PERMANENTLY LOST OR DELETED AT THE END OF THE FREE TRIAL PERIOD UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL OR PURCHASE UPGRADED SERVICES BEFORE THE END OF THE TRIAL PERIOD. WE WILL HAVE NO LIABILITY FOR ANY HARM OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH A FREE TRIAL.**

### 3. OUR RESPONSIBILITIES



**3.1 Provision of Purchased Services.** We will (a) make the Purchased Services available to You pursuant to this Agreement and the applicable Order Forms and SOWs; and (b) provide Our standard support for the Purchased Services to You at no additional charge. Notwithstanding the foregoing, the Purchased Services may not be available due to: (i) planned downtime (of which We shall give at least 8 hours electronic notice through the Services and which We shall schedule to the extent practicable during weekend hours), and (ii) circumstances beyond Our reasonable control, including, for example, Internet service provider failure or delay, Non-BetterCloud Application failure or delay, or denial of service attack. We reserve the right to make changes to the Services at any time and from time to time, provided, however, that We will not materially decrease the functionality of the Purchased Services during a Subscription Term.

**3.2 Protection of Your Services Data.** We will maintain industry-standard administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Your Services Data. Those safeguards will include measures designed to prevent access, use, modification or disclosure of Your Services Data by Our personnel except as expressly set forth in this Agreement.

**3.3 CCPA.** Except as expressly set forth in the Agreement, We shall not (a) have, derive or exercise any rights or benefits regarding Your Personal Information, (b) Sell or Share Your Personal Information, (c) collect, retain, use, disclose, or combine Your Personal Information except as necessary for performing the Services or as otherwise permitted by CCPA or (d) combine Your Personal Information with Personal Information received from or on behalf of any other person or collected from Our own interaction with a consumer except as permitted by the Agreement, for Our internal use in order to deliver the Services, or to comply with Our obligations in this Agreement or a data processing agreement executed by the parties, if any. We agree to refrain from taking any action that would cause any transfers of Your Personal Information, either to Us or from Us, to qualify as Selling or Sharing Personal Information, under the CCPA. We understand and will comply with the restrictions set forth in this Section and the applicable requirements of the CCPA. We shall permit You to take reasonable steps to ensure that We use Your Personal Information in a manner consistent with the CCPA and such reasonable steps will consist of You requesting, within reasonable intervals, all information reasonably required to demonstrate Our compliance with Our obligations under the CCPA. We will notify You within the time period required under the CCPA, if We determine that we are no longer able to meet Our obligations under the CCPA. Upon Your request, We shall provide You with commercially reasonable assistance in relation to the handling of a consumer's request for exercising the consumer rights laid down in the CCPA, taking into account the nature of Our processing of Your Personal Information and solely to the extent You are unable to fulfill such requests through the Services. For the purposes of this Section, We are a Service Provider and the terms "Personal Information", "Sell", "Sale", and "Service Provider", and "Share" shall have the same meaning as in the CCPA.

**3.4 Beta Services.** From time to time, We may invite You to try Beta Services at no charge. You may accept or decline any such trial in Your sole discretion. Beta Services will be clearly designated as beta, alpha, early access, preview, non-production, evaluation or by a description of similar import. Beta Services are for evaluation purposes and not for production use, are not considered "Services" under this Agreement, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the date that a version of the Beta Services becomes generally available. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. WE WILL HAVE NO LIABILITY FOR ANY HARM OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH A BETA SERVICE.

[Back to Top \(https://www.bettercloud.com/main-subscription-agreement/#top\)](https://www.bettercloud.com/main-subscription-agreement/#top)

### 4. USE OF SERVICES; AFFILIATES

**4.1 Subscriptions.** Unless otherwise provided in the applicable Order Form, (a) Services are purchased as subscriptions, (b) subscriptions may be added during a Subscription Term, with the term for such additional subscription(s) to be prorated for the portion of that Subscription Term remaining at the time the mid-term subscriptions

**4.2 Usage Limits.** Services are subject to usage limits, including, for example, the quantities specified in the applicable Order Form(s). Unless otherwise specified, a quantity in an Order Form refers to End User Accounts and Integrations, as applicable. If You exceed Your then-current contractual usage limit, as set forth in the relevant Order Form, You shall incur additional fees for Your excess usage and shall remit payment in accordance with Section 6.2 (Invoicing and Payment). Your then-current contractual usage limit will automatically be increased to the new number of End User Accounts for the remainder of the Subscription Term and thereafter (if applicable).

**4.3 Your Responsibilities.** You will (a) be responsible for Admins' compliance with this Agreement and for all activities that occur through Your Admins' use of Our Services, (b) access and use the Services in accordance with BetterCloud's usage guides and policies, and other documentation we make available to You, including, without limitation, through our help center located at <https://support.bettercloud.com/hc> (<https://support.bettercloud.com/hc>), as updated from time to time, (c) be responsible for the accuracy, quality and legality of Your Services Data, (d) use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Us promptly of any such unauthorized access or use, (e) use Services only in accordance with this Agreement and applicable laws and regulations, and (f) not share any Admin password(s) or credentials with any other individual.

**4.4 Usage Restrictions.** You will not (a) make any Service available to, or use any Service for the benefit of, anyone other than You or Your Admins, (b) sell, resell, license, sublicense, distribute, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or its related systems or networks, (g) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit, (h) copy a Service or any part, feature, function or user interface thereof, (i) frame or mirror any part of any Service, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in this Agreement, (j) monitor the availability, performance or functionality of the Services, or access the Services for any other benchmarking or competitive purposes, (k) access any Service in order to build a competitive product or service, (l) reverse engineer any Service (to the extent such restriction is permitted by law), (m) circumvent or attempt to circumvent any restrictions on access to or use of the Platform API or API Integrations; or (n) develop or use an API Integration in a manner that results in the violation of any third party's intellectual property rights. You can access, use, and make calls to the Platform API in order to develop API Integrations solely for Your internal business purposes and use in connection with the Purchased Services and in accordance with this Agreement.

**4.5 Privacy.** Our Product Privacy Statement describes the collection, use, and sharing of certain information that may be provided in connection with Your use of the Services. By using the Services, You acknowledge that Your Services Data will be processed in accordance with Our Product Privacy Statement, this Agreement, and, if applicable, the data processing agreement entered into by You and Us, and may be processed in a country where it was collected, as well as in countries where privacy laws may be less stringent, including the United States. By using the Services or submitting Your Services Data through the Services, You expressly consent to such processes. You represent that You obtained the required consents and provided appropriate notices for the collection and use of Your Services Data by Us in accordance with this Agreement, including with regard to the personal information associated with End User Accounts.

**4.6 Suspension.** If We become aware of an Admin's violation of this Agreement or if there is a Disruption Event, We may Suspend that Admin's use of the Services or the offending use. The Suspension will be limited to the period of time until the applicable Admin has cured the breach that caused the Suspension, and will be to the minimum extent and of the minimum duration required to prevent or terminate the Disruption Event.

**4.7 Affiliates.** By entering into an Order Form, an Affiliate agrees to be bound by the terms of this Agreement as if such Affiliate were an original party hereto.

[Back to Top \(https://www.bettercloud.com/main-subscription-agreement/#top\)](https://www.bettercloud.com/main-subscription-agreement/#top)

You may be required to obtain access to Non-BetterCloud Applications from their providers, and may be required to grant Us access to Your account(s) on the Non-BetterCloud Applications in order to use features in the Services designed to interoperate with Non-BetterCloud Applications.

Back to Top (<https://www.bettercloud.com/main-subscription-agreement/#top>)

## 6. FEES AND PAYMENT FOR PURCHASED SERVICES

**6.1 Fees.** You will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on the Service purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant Subscription Term. You will be responsible for any payments owed but not paid by any of Your Affiliates ordering Services hereunder.

**6.2 Invoicing and Payment.** We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net thirty (30) days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

**6.2.1. Payment by Credit Card.** If applicable: If You provide valid credit card information to Us, You (i) authorize Us to charge such credit card for all Purchased Services listed in the Order Form for the initial Subscription Term and any renewal Subscription Term(s) as applicable, and (ii) shall ensure that the credit card information is current and valid and promptly update the information if the credit card expires. Credit Card charges shall be made annually in advance, unless expressly otherwise stated in the applicable Order Form. We do not accept credit card payments for invoices of more than \$10,000 USD.

### 6.3 Overdue Charges.

If any undisputed invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 6.2 (Invoicing and Payment), and/or (c) We may require You to pay any collections or legal fees incurred by Us in order to collect payment of the corresponding undisputed invoiced amount.

**6.4 Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our Services is thirty (30) or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and Suspend Our Services to You until such amounts are paid in full. We will give You at least 10 days' prior notice, in accordance with Section 13.1 (Manner of Giving Notice), before Suspending Services to You pursuant to the foregoing.

**6.5 Payment Disputes.** If You dispute any invoiced amounts, You shall promptly provide Us with notice of the disputed amounts along with supporting documentation within 30 days of Your receipt of the invoice, and the parties both agree to cooperate diligently to resolve such dispute in good faith. We will not exercise Our rights under Section 6.3 (Overdue Charges) or 6.4 (Suspension of Service and Acceleration) above if You are timely disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute, provided that You shall remit payment for any undisputed amounts in a timely manner.

**6.6 Taxes.** Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 6.6, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property, and employees.

limited to, pricing, invoicing, billing, payment methods, and late payment charges) will be set forth in Your agreement directly with such Reseller and such payment-related terms shall not be construed to, and shall not be deemed to, supersede any conflicting terms set forth in this Section 6. We may suspend or terminate Your access to the Services in the event of non-payment of the applicable fees to Us by the Reseller, or Your uncured breach of this Agreement. Notwithstanding anything to the contrary, the agreement between You and a Reseller: (i) shall not modify any of the terms set forth herein, and (ii) is not binding on Us.

[Back to Top \(https://www.bettercloud.com/main-subscription-agreement/#top\)](https://www.bettercloud.com/main-subscription-agreement/#top)

## 7. PROPRIETARY RIGHTS AND LICENSES

**7.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We reserve all of Our rights, title, and interest in and to the Services, Professional Services, Documentation, Platform API, and API Integrations, and any and all materials provided by Us, including all derivatives, improvements or enhancements thereof, and including all intellectual property rights therein and thereto. You reserve all of Your rights, title and interest in Your Services Data, provided that We may use Your Services Data to create Generic Reports and as provided in Section 7.2 below. No rights are granted to You hereunder other than as expressly set forth herein.

**7.2 Our Rights to Use Your Services Data.** You grant Us and Our Affiliates the right to use Your Services Data, in compliance with applicable law, in order to: (a) provide the Services in accordance with this Agreement and the Product Privacy Statement, (b) prevent or address service or technical problems, or (c) as may be required by law.

We may also use Your Services Data in an aggregated, de-identified and generic manner, in compliance with applicable law, for marketing, survey purposes, setting benchmarks, feature suggestions, product analytics and new product features or services, Services utilization analyses and related purposes, provided that (i) It does not identify You or Your agents, representatives, customers or employees and is not attributable to such persons or entities in any way; and (ii) where Your Services Data is used in this manner to create publicly disclosed general usage statistics, such statistics are used to report only aggregated use among Our customers. Subject to the rights and licenses granted in this Agreement, We acquire no right, title, or interest from You under this Agreement in or to Your Services Data.

**7.3 License by You to Use Feedback.** You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of the Services.

[Back to Top \(https://www.bettercloud.com/main-subscription-agreement/#top\)](https://www.bettercloud.com/main-subscription-agreement/#top)

## 8. CONFIDENTIALITY

**8.1 Protection of Confidential Information.** The Receiving Party will (i) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care), (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (iii) except as otherwise authorized by the Disclosing Party in writing, disclose Confidential Information of the Disclosing Party only to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 8.1.8.2 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law or by the order of a court or similar judicial or administrative body to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the

the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

Back to Top (<https://www.bettercloud.com/main-subscription-agreement/#top>)



## 9. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

**9.1 Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

**9.2 Our Warranties.** We warrant that: (a) the Purchased Services will perform materially in accordance with the specifications set forth in the Documentation; and (b) We will provide the Professional Services, if applicable, in a professional and workmanlike manner. Your exclusive remedy, and Our entire liability, for any breach of the above warranties, is limited, at Our option, to: (i) reperform the Professional Services, if any; (ii) repair or provide a reasonable workaround for any material, reproducible failure of the Purchased Services to conform to the warranty; or (iii) refund any pre-paid fees for the remainder of the Subscription Term for the deficient Purchased Services, in which case the applicable Subscription Term shall be terminated.

**9.3 Mutual Warranties.** Each party warrants that it will comply with all laws and regulations applicable to its provision or use of the Services, as applicable (including applicable security breach notification law and applicable data protection laws).

**9.4 Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. FREE TRIALS AND BETA SERVICES ARE PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS OR NON-BETTERCLOUD APPLICATIONS. WE ARE NOT RESPONSIBLE OR LIABLE TO YOU FOR ANY DAMAGES THAT ARISE FROM (1) ANY DISCLOSURE, MODIFICATION OR DELETION OF YOUR SERVICES DATA RESULTING FROM ACCESS BY A NON-BETTERCLOUD APPLICATION; (2) YOUR INSTALLATION, CONNECTION, ENABLEMENT, USING OR SHARING OF ANY INTEGRATION, API INTEGRATION, FEATURE, WORKFLOWS, ACTIONS, OR SUGGESTIONS (A) AUTHORED OR MADE AVAILABLE BY AN ENTITY OTHER THAN BETTERCLOUD, INCLUDING YOU, OR (B) DESIGNATED AS "COMMUNITY BUILT" OR ANY SIMILAR DESIGNATION IN THE SERVICES; OR (3) THE DEVELOPMENT OF OR USE OF AN API INTEGRATION. YOU AGREE THAT YOUR PURCHASES ARE NOT CONTINGENT ON THE DELIVERY OF ANY FUTURE FUNCTIONALITY OR FEATURES, OR DEPENDENT ON ANY ORAL OR WRITTEN PUBLIC COMMENTS MADE BY US REGARDING FUTURE FUNCTIONALITY OR FEATURES.

Back to Top (<https://www.bettercloud.com/main-subscription-agreement/#top>)

## 10. MUTUAL INDEMNIFICATION

**10.1 Indemnification by Us.** We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of a Purchased Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a "Claim Against You"), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, without breaching Our warranties under Section 9.2 (Our Warranties), (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon thirty (30) days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. Notwithstanding the foregoing, the above defense and indemnification obligations do not

the combination of the Services of any part thereof with any other products, hardware, software, applications, processes, or technologies, to the extent the alleged  would have been avoided but for such combination, (iii) any unauthorized use of the Services or breach of this Agreement, or (iv) any Services other than Purchased Services.

**10.2 Indemnification by You.** You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Services Data, or Your use of any Service in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights, or violates any third party privacy rights (a "Claim Against Us"), and will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.

**10.3 Exclusive Remedy.** This Section 10 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 10.

[Back to Top \(https://www.bettercloud.com/main-subscription-agreement/#top\)](https://www.bettercloud.com/main-subscription-agreement/#top)

## 11. LIMITATION OF LIABILITY

**11.1 Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES IN THE TWELVE MONTHS PRECEDING THE INITIAL CLAIM. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES). IF THE DISCLAIMER OF DAMAGES OR LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 11.1 ARE UNENFORCEABLE, THEN THE PARTIES' LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

**11.2 Exclusion of Consequential and Related Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW. IF THE DISCLAIMER OF DAMAGES OR LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 11.2 ARE UNENFORCEABLE, THEN THE PARTIES' LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

**11.3 Collective Liability.** The provisions and limitations of this Section 11 will apply to You and all of Your Affiliates purchasing Services hereunder in the aggregate, meaning Our liability to You and/or one or more of Your Affiliates for an incident or series of related incidents, collectively, will be limited to the aggregate amount paid by You and Your Affiliates as set forth in this Section 11.

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## 12. TERM AND TERMINATION

**12.1 Term of Agreement.** This Agreement commences on the date You first accept it and continues until all Subscription Terms hereunder have expired or have been terminated.

**12.2 Term of Purchased Subscriptions.** The Subscription Term shall be and shall renew as specified in the applicable Order Form. Subscriptions will automatically renew for additional periods equal to the expiring Subscription Term, unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant

that during the immediately prior term unless We have given You written notice of a pricing increase at least sixty (60) days before the end of that prior term, in which case  increase will be effective upon renewal and thereafter.  
(l)

**12.3 Termination.** A party may terminate this Agreement (i) thirty (30) days after providing written notice to the other party of a material breach of its obligations under this Agreement if such breach remains uncured at the expiration of such 30-day period, (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, or (iii) upon ten (10) days' written notice to the other party if the other party is in material breach of this Agreement more than two (2) times notwithstanding any cure of such breaches.

**12.4 Refund or Payment upon Termination.** If this Agreement is terminated by You in accordance with Section 12.3 (Termination), We will refund You any prepaid fees covering the remainder of the Subscription Term of all Order Forms after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 12.3, You will pay any unpaid fees covering the remainder of the Subscription Term of all Order Forms. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

**12.5 Your Services Data Portability and Deletion.** After the effective date of termination or expiration of this Agreement, We will have no obligation to maintain or provide Your Services Data, and may, in Our sole discretion, delete or destroy all copies of Your Services Data in Our systems or otherwise in Our possession or control, unless legally prohibited.

**12.6 Surviving Provisions.** The Sections titled "Fees and Payment for Purchase Services," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Your Services Data Portability and Deletion," "Notices, Governing Law and Jurisdiction," and "General Provisions" will survive any termination or expiration of this Agreement.

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## 13. NOTICES, GOVERNING LAW AND JURISDICTION

**13.1 Manner of Giving Notice.** All notices, permissions, and approvals hereunder shall be in writing and shall be deemed to have been given upon the first business day after sending by email. Notices to Us shall be addressed to BCLegal@bettercloud.com. Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator.

**13.2 Agreement to Governing Law and Jurisdiction.** Each party agrees that this Agreement is governed by and shall be construed in accordance with the laws of the State of New York, in all respects, without regard to choice or conflicts of law rules, and that all disputes arising out of or relating to this Agreement are limited to the exclusive jurisdiction and venue of the state and federal courts located within New York County, New York. Each party hereby consents to and waives any objections with respect to such jurisdiction and venue.

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## 14. GENERAL PROVISIONS

**14.1 Export Compliance.** The Services and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Admins to access or use any Service in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

**14.2 Entire Agreement and Order of Precedence.** This Agreement, including any Order Forms, is the entire agreement between You and Us regarding Your use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the waiver is to be asserted.



parties. The parties agree that any term or condition stated in Your purchase order or in any other vendor procurement or similar documentation (excluding Order Forms) is  of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation.

**14.3 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets or equity securities. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice.

**14.4 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**14.5 Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**14.6 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

**14.7 Equitable Relief.** Nothing in this Agreement will limit either party's ability to seek equitable relief.

**14.8 Force Majeure.** Except for payment obligations, neither party will be liable for delays and failures in performance to the extent caused by a condition (for example, natural disaster, an act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.

**14.9 Jury Trial Waiver.** EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

#### **Previous Versions**

BetterCloud Main Subscription Agreement (September 30, 2022 – November 15, 2023)

(/main-subscription-agreement-1115-legacy/) BetterCloud Master Subscription Agreement (May 10, 2022 – September 30, 2022) (<https://www.bettercloud.com/main-subscription-agreement-0930-legacy/>)

BetterCloud Master Subscription Agreement (August 12, 2021 – May 10, 2022) (<https://www.bettercloud.com/master-subscription-agreement-051022-legacy/>)

BetterCloud Master Subscription Agreement (June 14, 2020 – August 12, 2021) (<https://www.bettercloud.com/legacy-agreements/master-subscription-agreement-081221/>)

BetterCloud Master Subscription Agreement (October 1, 2019 – June 14, 2020) (<https://www.bettercloud.com/master-subscription-agreement-06142020/>)

BetterCloud Master Subscription Agreement (prior to October 1, 2019) (<https://www.bettercloud.com/master-subscription-agreement-1019/>)

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# BetterCloud Statements of Work

## Links:

- BetterCloud's BetterStart Launch Services (<https://www.bettercloud.com/statementsofwork/betterstartlaunchservices/>)
- BetterCloud's QuickStart Launch Services (<https://www.bettercloud.com/statementsofwork/quickstartlaunchservices/>)
- BetterCloud's UpStart Launch Services (<https://www.bettercloud.com/statementsofwork/upstartlaunchservices/>)
- BetterCloud's Expert Advisory Services (<https://www.bettercloud.com/statementsofwork/expertadvisoryservices/>)
- BetterCloud's Non-Native Integration Build Services (<https://www.bettercloud.com/nonnativeintegrationbuildservices/>)
- BetterCloud's Legacy SOWs (<https://www.bettercloud.com/statementsofwork/legacysows/>)



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# BetterCloud Training Terms

Hello! Welcome to our BetterCloud Learning Center terms page. We offer several training programs, some cost money, and some we offer for free. If you are planning to attend a BetterCloud training program, please read the terms that apply to you carefully.

If you are attending one of our *free* training programs, our **BetterCloud Free Training Program Terms of Use** (<https://www.bettercloud.com/certification/trainingterms-free/>) apply.

If you have any questions about these terms, please contact us at [bclegal@bettercloud.com](mailto:bclegal@bettercloud.com) (<mailto:bclegal@bettercloud.com>).



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# Product Documentation

As set forth in the BetterCloud Main Subscription Agreement (/master-subscription-agreement), the below defines the Service available to you as a BetterCloud customer.

## BetterCloud Features Comparison

Feature <sup>1</sup>	Platform +	
	Pro	Complete
Access to the Integration Center Ability to access all integrations available in the Integration Center.	✓	✓
User 360: Manage a user's applications, file access, group memberships, roles, settings, and licenses.	✓	✓
Role Management: Role-based privileges and time-based roles.	✓	✓
Reporting API: Access to BetterCloud's Graph API, which provides analysis of cross-application data in the platform to identify security trends and report on unique metrics.	✓	✓
Automated User Management Workflows: Trigger automated user onboarding, mid-lifecycle, and offboarding workflows based on user profile changes using Action Engine <sup>2</sup>	✓	✓
Group Management: Control group membership and settings.	✓	✓
License Reclamation: Last login alerts to help your reclaim unused or underused application licenses.	✓	✓
User Management: Assign users to correct folders, calendars, assets, etc.	✓	✓
File Security: Discover and Control file exposure and permissions across users and applications with the Files Grid.	✓	✓



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<p><b>App Discovery:</b> Discover apps that are granted API access to SaaS systems and apps that produce login event via sign-on integrations.</p>	✓	✓
<p><b>Application Usage:</b> Report and evaluate application usage to determine app redundancies and inefficiencies within applications across your SaaS environment.</p>	✓	✓
<p><b>Apps Permission &amp; Risk:</b> Report on potentially risk 3rd party applications that are connected to your environment and have access to data.</p>	✓	✓
<p><b>Platform API:</b> Create additional actions, alerts, and integrations.</p>	✓	✓
<p><b>Automated Remediation:</b> Alerts for file activity and violations of your internal policies. Identify and take action on policy violations for users and files.</p>		✓
<p><b>File Activity Alerts:</b> Alerts for suspicious file activity.</p>		✓
<p><b>Content Scanning:</b> Scan files for a wide range of content.</p>		✓

Our Services must be used in accordance with Our user guides located in Our Help Center (<https://support.bettercloud.com/hc/>), and other documentation that We make available to You.

For customers with a current subscription to BetterCloud Standard, Standard+, Pro+, Enterprise, or Enterprise+, please visit this page (<https://www.bettercloud.com/product-documentation-standard-pro-enterprise>) for information related to the features included in your subscription.

For customers with a current subscription to Manage+, Secure or Discover, please visit this page. (<https://www.bettercloud.com/legacy-agreements/manage-secure-discover>)

To view a list of our sub-processors or subscribe for notifications for when a subprocessor is added to the list, please visit this page (<https://www.bettercloud.com/subprocessors/>).

<sup>1</sup>Please note that functionality differs by Integration. "Integration" refers to systematic interactions between Non-BetterCloud Applications and the BetterCloud Services.

<sup>2</sup>Action engine only available in the BCX-BetterCloud platform.

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[BLOG \(HTTPS://WWW.BETTERCLOUD.COM/MONITOR/\)](https://www.bettercloud.com/monitor/)

[CONTENT LIBRARY \(/RESOURCES/\)](#)

[CASE STUDIES \(HTTPS://WWW.BETTERCLOUD.COM/CUSTOMERS/\)](https://www.bettercloud.com/customers/)

[INTERACTIVE DEMO \(/INTERACTIVE-DEMO/\)](#)

[CALCULATE YOUR ROI \(HTTPS://WWW.BETTERCLOUD.COM/CALCULATE-YOUR-ROI/\)](https://www.bettercloud.com/calculate-your-roi/)

[MATURITY MODEL ASSESSMENT \(HTTPS://WWW.BETTERCLOUD.COM/IT-AUTOMATION-MATURITY-MODEL/\)](https://www.bettercloud.com/it-automation-maturity-model/)

**CUSTOMER SUPPORT**

[TRAINING \(HTTPS://WWW.BETTERCLOUD.COM/TRAINING/\)](https://www.bettercloud.com/training/)

[CERTIFICATION \(HTTPS://WWW.BETTERCLOUD.COM/CERTIFICATION/\)](https://www.bettercloud.com/certification/)

[PRODUCT UPDATES \(HTTPS://WWW.BETTERCLOUD.COM/MONITOR/#PRODUCT-UPDATES\)](https://www.bettercloud.com/monitor/#product-updates)

[DEVELOPERS \(HTTPS://DEVELOPER.BETTERCLOUD.COM/#/P/QUICKSTART\)](https://developer.bettercloud.com/#/p/quickstart)

[BETTERIT SLACK COMMUNITY \(HTTPS://BETTER-IT.SLACK.COM/\)](https://better-it.slack.com/)

[HELP CENTER \(HTTPS://SUPPORT.BETTERCLOUD.COM/S/\)](https://support.bettercloud.com/s/)

**MORE LINKS**

[DO NOT SELL OR SHARE MY INFO \(HTTPS://WWW.BETTERCLOUD.COM/DO-NOT-SELL-MY-INFO/\)](https://www.bettercloud.com/do-not-sell-my-info/)

[TRANSPARENCY REPORT \(HTTPS://WWW.BETTERCLOUD.COM/TRANSPARENCYREPORT/\)](https://www.bettercloud.com/transparencyreport/)

[ACCESSIBILITY](#)