

## MANAGED SERVICES PROVIDER AGREEMENT

This Managed Services Provider Agreement, dated as of the Effective Date listed on the signature page hereto is between CloudFabrix Software, Inc., a Delaware corporation (“**CloudFabrix**”) and the Managed Services Provider listed on the signature page hereto (“**Provider**” or “**MSP**”).

### Background

CloudFabrix has developed proprietary IT analytics software, including the applications known in the marketplace as cfxPulse™, cfxRealize™, cfxAutomate™ and cfxHorizons™ (collectively, the “**Software**”). Provider has requested the right to distribute the Software to its customers by installing and using the Software in connection with providing managed services to Provider’s customers. This Agreement sets forth in more detail the rights and obligations of the parties.

### Agreement

The parties hereby agree as follows:

#### 1. Definitions.

Certain terms are defined in this Agreement when first used. When used in this Agreement as a defined term, the following terms will have the meanings set forth below:

(a) “**Customer**” means any customer with whom Provider has entered into a Qualified Customer Agreement for the purpose of providing Remote Services using the Software.

(b) “**Documentation**” means copies of the user documentation provided electronically or in hard copy by CloudFabrix with respect to the Software.

(c) “**End User License Agreement**” means the standard End User License Agreement available online at [REDACTED], as updated by CloudFabrix from time to time.

(d) “**Implementation Schedule**” means an Implementation Schedule in the form attached hereto as **Exhibit A**.

(e) “**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world

(f) “**Qualified Customer Agreement**” means a legally valid and binding agreement with a Customer that (i) does not include any terms materially inconsistent with the End User License Agreement, (ii) sets forth Provider’s obligations to provide Remote Services, (iii) does not purport to grant the customer any right or license to access or use the Software itself nor

permit the customer to access or use the Software itself (except through a valid Subscription), and (iv) to the extent a Subscription is contemplated, incorporates the End User License Agreement by reference (including via use of an up-to-date hyperlink).

(g) “**Remote Services**” means Provider’s (i) Software installation and implementation services, (ii) use and management of the Software on behalf of a customer in connection with providing IT analytics services and reporting to such customer, and (iii) support services as described in **Section 5(a)(i)**.

(h) “**Subscription**” means a non-exclusive, non-transferable right and license granted by CloudFabrix to a Customer to install, access and/or use the Software.

## 2. **License Rights.**

(a) **Grant of License.** Subject to the terms and conditions of this Agreement, including compliance with the limitations and restrictions in **Section 3**, CloudFabrix hereby grants Provider a non-exclusive, non-transferable right and license to:

(i) Install on its own servers, or (if specified on the applicable Implementation Schedule and provided the condition set forth in **Section 3(c)** below is met) on the Customer’s servers, up to that number of copies of the Software that is specified on each applicable Implementation Schedule;

(ii) Use the Software in connection with providing Remote Services to Customers;

(iii) Provided the condition set forth in **Section 3(c)** has been met, market and sell Subscriptions to the Software to a specific Customer identified on an executed Implementation Schedule, subject to the corresponding limitations set forth on the applicable Implementation Schedule and solely in connection with Provider’s performance of Remote Services for such Customer as permitted under this Agreement (*i.e.*, Provider shall not be entitled to market, sell or distribute Subscriptions on a standalone basis without CloudFabrix prior written consent);

(iv) Modify and make extracts of the Documentation and combine it with other documentation of Provider, and provide such Documentation to its Customers;

(v) Use the Documentation to provide support services to its Customers, subject to the provisions of **Section 5**; and

(vi) Use the Software (A) for sales pitching, demonstration and evaluation purposes with respect to prospective Customers; and (B) internally for testing, proof of concept, servicing and supporting the provision of Remote Services for Customers as permitted under this Agreement.

(b) **Intellectual Property Rights.** As between the parties, CloudFabrix shall own and retain all right, title and interest in and to the Software and Documentation, including any derivatives, modifications, enhancements or improvements thereto, and in all of the Intellectual

Property Rights embodied in or related to the Software and Documentation. To the extent CloudFabrix develops corrections, enhancements, improvements, derivative works or software relating to the Software or Documentation based upon ideas or suggestions submitted by Provider to CloudFabrix, Provider hereby irrevocably assigns its rights to such ideas or suggestions or joint contributions to CloudFabrix, together with all Intellectual Property Rights in or relating thereto. Provider shall not take any action that would challenge, jeopardize, limit or interfere in any manner with CloudFabrix's rights with respect to the Software or Documentation.

### 3. **Limitations and Restrictions.**

(a) **General Limitations.** Provider may distribute the Software to Customers in the manner provided above only during the term of this Agreement (and as specifically provided in **Section 11(c)(i)**) and subject to the limitations in this **Section 3**. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Provider or any third party any Intellectual Property Rights or other right, title or interest in or to the Software or Documentation. All uses in this Agreement of the terms "sell", "sale", "resell", "resale", "purchase", "price" and the like with respect to any Software mean the purchase or sale of a license: (i) in the case of Provider, under this Agreement; and (ii) in the case of Customers, under a Subscription. Nothing in this Agreement grants or conveys, or permits Provider to grant or convey, any ownership or other rights in the Software or Intellectual Property Rights therein.

(b) **Implementation Schedule.** Before providing any Remote Services or marketing or reselling any Subscriptions to any prospective Customer, CloudFabrix must approve each instance of such activities using the following procedures: Provider must submit a written request to CloudFabrix, using the form of Implementation Schedule attached hereto as **Exhibit A**. Following its receipt of a proposed Implementation Schedule from Provider, CloudFabrix will approve or deny each proposed Implementation Schedule in writing within five (5) business days. CloudFabrix may approve deny a proposed Implementation Schedule in its sole discretion, including for any of the following reasons: (i) the proposed Implementation Schedule contemplates Customer access to and use of the Software and the specified Customer does not yet have (and the Implementation Schedule does not contemplate putting in place) a valid Subscription; (ii) CloudFabrix has determined that the proposed Remote Services, as described on the proposed Implementation Schedule, would be in violation of this Agreement or the End User License Agreement; (iii) Provider is not currently in compliance with the training and certification requirements set forth in **Section 3(d)**; or (iv) the proposed Implementation Schedule is incomplete or insufficiently detailed for CloudFabrix to determine if clauses (i) through (iii) apply. Should Provider desire to materially vary the Remote Services or Subscription provided to a Customer from those in an approved Implementation Schedule, Provider must submit such changes on a new proposed Implementation Schedule, and CloudFabrix shall have the right to approve or deny such changes using the procedure described in this Section.

(c) **Customer Access Only Through Subscription.** Provider may not permit access to or use of the Software itself by any Customer, or install the Software on any Customer's servers,

except with respect to Customers that have first obtained a valid Subscription to the Software from CloudFabrix (such as through execution of a Qualified Customer Agreement).

(d) Training and Certification. As a condition to Provider's right to engage in any of the activities provided in **Section 2** above, Provider shall at all times remain in compliance with the training and certification requirements set forth in **Exhibit B** attached hereto.

(e) Prohibited Conduct. Provider shall conduct its business diligently and in accordance with the highest business standards and will not act in any manner that would reflect adversely upon the business integrity or goodwill of CloudFabrix or expose CloudFabrix to a risk of penalties or sanctions under the laws and/or regulations of any relevant jurisdiction in which it does business. Neither Provider nor any of its employees will pay bribes or authorize giving anything of value directly or through third-party intermediaries to improperly influence employees of any Customer, including, but not limited to, officials of any government agency or political party, in order to obtain or retain business with such Customer.

(f) End User License Agreement. Provider acknowledges and agrees that its own access to and use of the Software under this Agreement is subject to the End User License Agreement (as modified by the additional limitations and restrictions set forth herein), and Provider acknowledges that it has read and accepts the End User License Agreement.

(g) General Rights. CloudFabrix is solely responsible for the design and function of the Software in the manner that it determines to be appropriate. CloudFabrix reserves the right to modify, upgrade and fix the Software, and to add or delete features and functionality of the Software, in the normal course of its business; provided, however, that notwithstanding any such modifications or upgrades, CloudFabrix must continue to support all versions of the Software that were current within the preceding two-year period.

(h) General Restrictions. Provider shall not: (i) reverse engineer, decompile, disassemble, decode, or otherwise attempt to access the source code of the Software; or (ii) modify, translate or create derivative works of the Software. Provider shall not aid or assist any Customer in taking any such prohibited action and shall not otherwise aid or assist any Customer in taking any action that would constitute a breach of such Customer's Subscription agreement with CloudFabrix, and shall promptly notify CloudFabrix should it learn that any Customer is taking any such prohibited action.

(i) No Infringing or Illegal Use. Provider shall not under or in connection with any part of this Agreement or its subject matter, perform any act that, or fail to perform any act the omission of which, infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any person or entity, or violates any applicable law.

(j) No Other Uses of the Software. Except as expressly provided above, Provider shall not use the Software for Provider's own purposes unless it enters into a separate agreement with CloudFabrix permitting such use.

(k) No Agency; No Misrepresentations. Provider shall not: (i) represent itself as an agent of CloudFabrix, commit CloudFabrix to any contracts or incur any obligation or liability whatsoever on behalf of CloudFabrix for any purpose; or (ii) make any representations,

warranties, guarantees, indemnities, claims or other commitments actually, apparently or impliedly on CloudFabrix's behalf. Should Provider make any representations, warranties, guarantees, indemnities, claims or other commitments concerning or relating to the Software that are in addition to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, claims or other commitments in this Agreement, the End User License Agreement or the Documentation, Provider shall be solely responsible for such commitments (and CloudFabrix shall not in any way be liable for such commitments).

(l) No Use for Competitive Purposes. Provider shall not access or use the Software for purposes of: (i) benchmarking or competitive analysis of the Software; (ii) developing, producing, marketing, distributing, licensing or selling any product or service that may compete with the Software; (iii) disclosing to CloudFabrix's competitors, for any purposes, otherwise non-public information about the Software. Provider agrees promptly to inform CloudFabrix of any known or anticipated instance of a Customer taking any such prohibited action in breach of such Customer's Subscription agreement with CloudFabrix.

#### 4. Marketing and Publicity.

(a) Grant of Trademark License.

(i) *Use of Marks.* Subject to the terms and conditions of this Agreement, CloudFabrix hereby grants to Provider a non-exclusive, non-transferable right and license to use the CloudFabrix trademarks identified on **Exhibit C** (the "**CFX Marks**") on written, electronic and other promotional materials solely in connection with Provider's permitted activities under this Agreement, and for no other purpose. Provider may not sublicense all or any part of its rights to the CFX Marks pursuant to this Agreement.

(ii) *Ownership of CFX Marks.* CloudFabrix expressly reserves its ownership rights in the CFX Marks and Provider agrees that nothing in this Agreement shall be construed as granting Provider any right, title, or interest in the CFX Marks other than the right to use the CFX Marks in accordance with this Agreement. Provider shall not register any mark that includes, or that is substantially identical to, resembles or is confusingly similar to, the CFX Marks. All goodwill resulting from Provider's use of the CFX Marks shall inure to the benefit of CloudFabrix. Provider will not, directly or indirectly, challenge the validity of any CFX Marks, or the right, title and interest of CloudFabrix therein and thereto, nor will it claim any ownership or other interest in any CFX Marks in any jurisdiction, other than the rights expressly granted hereunder.

(iii) *Use of CFX Marks.* Provider shall use the same style and appearance of the CFX Marks as used by CloudFabrix, shall strictly comply with the usage standards in any style guide or similar document provided by CloudFabrix from time to time, and shall not alter the CFX Marks in any way without the prior written consent of CloudFabrix. Provider may not use any CFX Mark as part of a composite mark without CloudFabrix's prior written consent. Provider may not use any mark that is confusingly similar to the CFX Marks. Provider shall always utilize the CFX Marks in a manner that reflects favorably on the CFX Marks and does not tarnish the CFX Marks or the reputation of CloudFabrix.

(iv) *Deficiencies.* CloudFabrix, or its representative, shall have the right to inspect Provider's operations, at reasonable times, with reasonable advance written notice, and at CloudFabrix's sole cost and expense, to confirm that any and all uses of the CFX Marks are in conformance with the terms of this Agreement. Should CloudFabrix determine, in its sole discretion, that any use of the CFX Marks: (A) is of unacceptable quality, (B) is likely to threaten the continued validity of the CFX Marks or CloudFabrix's exclusive ownership of the CFX Marks, (C) is likely to injure or reflect negatively on the CFX Marks or the goodwill associated with the CFX Marks or the reputation of CloudFabrix, (D) otherwise dilutes the value of the CFX Marks, or (E) is otherwise not in accordance with the quality control standards, terms and/or conditions of this Agreement, then CloudFabrix may notify Provider of such failure or deficiency in writing. Provider shall have **30 days** thereafter to satisfy CloudFabrix (in CloudFabrix's sole discretion) that Provider has fully corrected and remedied any such deficiencies, and should the deficiencies not be remedied within such **30-day** period, CloudFabrix may terminate this Agreement for cause immediately upon written notice to Provider.

(b) White Labeling. If so indicated on the applicable Implementation Schedule, Provider may market the Software to its Customers using its own proprietary marks, provided it includes attribution to CloudFabrix within the Software and on all related marketing or other materials distributed to the Customer by including the following (as applicable): "Powered by CloudFabrix Software".

(c) Marketing. Provider grants to CloudFabrix a non-exclusive, non-transferable right and license to use Provider's name, trademarks and/or logos on CloudFabrix's website and/or in other sales, publicity and marketing materials in order to factually identify Provider as a current or former managed services provider (as the case may be) for the Software and to otherwise promote the parties' relationship hereunder.

## 5. Support.

(a) Customer Support. If Provider has entered into a Qualified Customer Agreement with a Customer, then with respect to such Customer the following allocation of customer support and assistance responsibilities shall apply:

(i) *First Tier Support.* Provider shall have the sole responsibility for providing the first line of customer support and assistance services to such Customers. Such support responsibilities will include, but are not limited to, training, set-up, troubleshooting and routine problem resolution, and answering such Customers' questions about the Documentation or other frequently asked questions using the materials and Documentation provided to Provider by CloudFabrix for this purpose, but expressly shall not include resolving technical or engineering issues causing a failure of the Software to operate in all material respects in accordance with its Documentation ("Technical Problems") which such issues shall remain the exclusive responsibility of CloudFabrix under **Section 5(a)(ii)**. Provider shall keep a complete log of complaints and problems. Provider promptly shall (A) notify CloudFabrix of any problems Provider is unable to resolve using commercially reasonable efforts, and (B) escalate to CloudFabrix any Technical Problems that are within CloudFabrix's exclusive scope of responsibility under **Section 5(a)(ii)**. Provider shall be solely responsible for providing all

maintenance and support to such Customers for all software or equipment other than the Software.

(ii) *CloudFabrix Support.* CloudFabrix shall provide Provider with second line support and maintenance services for the term of this Agreement (and as provided in **Section 11(c)(ii)**) to assist Provider in responding to such Customers with respect to any Technical Problems or other problems that Provider is not able to resolve using commercially reasonable efforts in accordance with **Section 5(a)(i)**. Such services shall be limited to reasonable e-mail support during normal business hours. Additionally, CloudFabrix shall at all times remain exclusively responsible for resolving any Technical Problems. CloudFabrix reserves the right to charge Provider at an hourly rate (on a time-and-materials basis) for any support services provided (A) directly to Provider's Customers (other than with respect to Technical Problems), (B) outside of normal business hours, or (C) in connection with a request CloudFabrix reasonably determines was Provider's responsibility under **Section 5(a)(i)**. Any patches or other updates to the Software provided by CloudFabrix in connection with these support services will become a part of the Software hereunder, subject to all of the terms and conditions that govern the Software hereunder.

(b) *Additional Services.* Provider may request CloudFabrix to perform additional services to assist Provider in marketing Remote Services and Subscriptions, including custom software development, demonstrations and training. Should CloudFabrix agree to provide any such additional services, it shall invoice Provider for those services, and Provider shall pay for such services, at CloudFabrix's standard hourly rates.

## 6. **Fees and Payment.**

(a) *Fees.* Provider shall remit to CloudFabrix certain fees ("**Fees**") with respect to each Customer relationship for which an executed Implementation Schedule is in place, as described in the applicable Implementation Schedule.

(b) *Customer Relationships.* Provider shall be responsible for all aspects of the sales process with each Customer, including determining pricing, credit and payment terms (provided that (i) such terms are not inconsistent with this Agreement or the End User License Agreement, and (ii) Provider may not without CloudFabrix's prior written consent set the subscription fees charged for the Software below CloudFabrix's then-current standard subscription pricing), creating proposals, presenting to the Customer, negotiating the Qualified Customer Agreement with the Customer, ensuring the Customer has read and accepts the End User License Agreement, invoicing the Customer for subscription and other fees and collecting such fees from the Customer. Except with respect to CloudFabrix's contractual relationship with a Customer under the End User License Agreement, Provider is solely responsible and liable for any such contracts it has executed with Customer and for any obligations incorporated therein.

(c) *Customer Pricing.* Subject to the limitations set forth in this Agreement and the applicable Implementation Schedule, Provider may determine in its sole discretion the prices that it will charge its Customers for software and services that it provides to its Customers, including (i) the right to receive Remote Services, and (ii) the right to obtain Subscriptions from CloudFabrix.

(d) Payment. Terms for any Fees due and payable to CloudFabrix hereunder are net 30 days from the CloudFabrix invoice date. All amounts are payable in U.S. currency, regardless of the currency in which any fees are invoiced by Provider to its Customers. All Fees are non-cancelable and non-refundable. Provider has the absolute obligation to pay CloudFabrix the applicable Fees due hereunder, whether or not the Customer pays Provider the fees agreed upon between Provider and the Customer. Provider shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to CloudFabrix is not paid when due, it shall bear interest at a rate of one percent (1.0%) per month, or the lesser maximum rate permitted by law, from the date on which it is due until it is paid. Provider shall pay any tax, duty, levy, customs fee or similar charge imposed as a result of the operation or existence of this Agreement, except taxes that are imposed upon CloudFabrix's net income.

(e) Reporting and Audit Rights. Within ten business days after the end of each calendar quarter (a "**Reporting Period**"), Provider shall deliver to CloudFabrix a statement (the "**Report**") that shall include the name and location of each Customer for which an executed Implementation Schedule is in place and the subscription and other fees being charged to each such Customer by Provider. Each Report shall be complete and accurate, and shall be in sufficient detail to permit CloudFabrix to understand and confirm Provider's compliance with this Agreement (including the calculation of Fees due to CloudFabrix hereunder). Provider shall keep full, clear and accurate records with respect to its activities under this Agreement, and shall furnish any information that CloudFabrix may reasonably request from time to time to enable it to confirm Provider's compliance with this Agreement. Provider shall retain all such records for at least seven (7) years. CloudFabrix shall have the right to audit all such records that bear upon Provider's compliance with this Agreement, upon reasonable advance notice and during normal business hours. Provider shall promptly pay any additional Fees found by such audit to be due, together with interest, from the date that the unpaid amount was payable, at the rate of one percent (1.0%) per month, or the lesser maximum rate permitted by applicable law. If any such audit discloses a material violation of the terms of this Agreement (including, without limitation, an underpayment of Fees of more than five percent (5%) for any Reporting Period audited), Provider shall reimburse CloudFabrix for the actual reasonable out-of-pocket costs of the audit. Provider's right to audit and examine all records and accounts of Provider in accordance with this Section shall survive termination of this Agreement for a period of two (2) years.

7. **Compliance with Laws; Export Restrictions.**

Provider shall comply with all applicable federal, state and local laws, ordinances, codes, rules and regulations pertaining to its obligations under this Agreement. Provider acknowledges and agrees that the Software may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder. Provider shall be responsible for complying with any laws that govern the export of software and other products to any country. Provider shall not export the Software in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

8. **Confidentiality.**

Each party agrees to treat as confidential any and all proprietary and confidential information received from the other in connection with the negotiation, execution and performance of this Agreement, including, but not limited to, the terms and provisions of this Agreement, trade secrets, revenue or income information, specific business plans and marketing information (collectively, “**Confidential Information**”). Each party agrees: (a) not to use Confidential Information for any purpose except for carrying out its obligations or exercising its rights under this Agreement; and (b) not to disclose Confidential Information to any third party without obtaining the other party’s prior written consent; provided, however, that Confidential Information may be disclosed on a need-to-know basis to either party’s respective directors, officers, employees, agents and advisors, including legal, financial and accounting advisors, so long as such persons are informed by such party of the confidential nature of such information and are directed by such party to treat such information confidentially. These restrictions will not restrict the use or disclosure of information disclosed by one party to the other that (i) is or becomes publicly known other than as a result of any act by the receiving party, (ii) is lawfully received by the receiving party from a third party not in a confidential relationship with the disclosing party, (iii) was already rightfully known by the receiving party prior to receipt thereof from the disclosing party, or (iv) after notice and an opportunity to object, is required by law or regulatory process to be disclosed.

9. **Warranty Disclaimer.**

EXCEPT AS EXPRESSLY PROVIDED IN THE END USER LICENSE AGREEMENT, CLOUDFABRIX DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, DOCUMENTATION OR CLOUDFABRIX’S PROVISION OF SUPPORT SERVICES OR OTHER SERVICES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, CLOUDFABRIX MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES OR THAT THE SOFTWARE OR SERVICES WILL MEET PROVIDER’S OR ANY CUSTOMER’S REQUIREMENTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CLOUDFABRIX, ITS EMPLOYEES, OR AGENTS SHALL IN ANY WAY INCREASE THE SCOPE OF THE FOREGOING WARRANTY.

10. **Limitation of Liability.**

CLOUDFABRIX SHALL NOT BE LIABLE TO PROVIDER OR TO ANY CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS OR GOODWILL, BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR CLOUDFABRIX’S PROVISION OF SUPPORT SERVICES OR OTHER SERVICES, EVEN IF CLOUDFABRIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER ANY SUCH CLAIM ARISES IN TORT, CONTRACT, STATUTE OR OTHERWISE. IN ANY EVENT, CLOUDFABRIX’S ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO A MAXIMUM

OF THE GREATER OF (A) \$50,000, OR (B) FEES PROVIDER HAS ACTUALLY PAID TO CLOUDFABRIX IN THE SIX (6) MONTH PERIOD PRECEDING THE CLAIM IN RESPECT OF SUCH LIABILITY. CLOUDFABRIX SHALL NOT BE LIABLE TO PROVIDER OR TO ANY THIRD PARTY WHATSOEVER FOR ANY FAILURE OF ANY SOFTWARE OR EQUIPMENT NOT PROVIDED BY CLOUDFABRIX (SUCH AS SOFTWARE DEVELOPED BY PROVIDER INTENDED TO INTEROPERATE WITH THE SOFTWARE), AND PROVIDER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CLOUDFABRIX, ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS AND EMPLOYEES FROM AND AGAINST ANY AND ALL PAYMENTS, LOSSES, COSTS, LIABILITY, EXPENSES, DAMAGES, FINES, PENALTIES AND JUDGMENTS (INCLUDING WITHOUT LIMITATION ACTUAL ATTORNEY'S FEES AND EXPENSES) ARISING FROM ANY SUCH SOFTWARE OR EQUIPMENT PROVIDED BY PROVIDER.

11. **Term and Termination.**

(a) **Term.** The initial term of this Agreement is for a period of **three years** from the Effective Date (the "**Initial Term**"), after which it will renew automatically for successive one-year terms (each, a "**Renewal Term**"), unless either party has given the other party written notice of an intent not to renew at least 60 days prior to the expiration of the then-current Initial Term or Renewal Term.

(b) **Termination.** During any Initial Term or Renewal Term, CloudFabrix has the right to terminate this Agreement: (i) at any time, without cause, upon ninety 90 days written notice to Provider; and (ii) upon notice, should Provider breach a material term of this Agreement and fail to cure that breach within 30 days after notice thereof from CloudFabrix.

(c) **Effect of Termination; Surviving Terms.** Upon any expiration or termination of this Agreement, Provider shall have no further right or license to distribute the Software or the Documentation hereunder to new Customers, nor to enter into further Qualified Customer Agreements with new Customers with respect to the Software, and (except as provided below) the trademark license granted to Provider in **Section 4** shall cease and Provider shall as soon as practicable (but in any event **within 90 days**) discontinue all use of the CFX Marks and destroy all marketing, promotional and other materials bearing or incorporating the CFX Marks. Each party will cease all use of the other party's Confidential Information and promptly destroy or (at such other party's request) return all of the other party's Confidential Information. Provided that termination of this Agreement was not as a result of a material breach by Provider:

(i) Any Qualified Customer Agreement with a Customer then in effect shall continue in force for its term, except that any automatically renewable subscription may continue only for the subscription term then in effect and may not be renewed;

(ii) Provider shall continue to have the right to CloudFabrix's support services as provided in **Section 5(a)(ii)** for so long as any Qualified Customer Agreement with a Customer remains in effect; and

(iii) The license to use CFX Marks for the purpose of providing the attribution set forth in **Section 4(b)** shall survive so long as the applicable Qualified Customer Agreement with a Customer remains in effect.

All of the other terms and conditions of this Agreement shall survive expiration or termination of this Agreement and continue in full force and effect.

12. **Miscellaneous.**

(a) **Force Majeure.** CloudFabrix shall not be liable for delays in performance or for non-performance due to unforeseen circumstances or any events or causes beyond CloudFabrix's reasonable control, including cyber-attacks, acts of God, war, epidemic, fire, flood, weather, sabotage, strikes or labor disputes, civil disturbances or riots or governmental action.

(b) **Notice.** Except as otherwise specified in this Agreement, all notices, instructions, requests, authorizations, consents, demands and other communications hereunder shall be in writing and shall be delivered by one of the following means, at the address listed on the signature page hereto, with notice deemed given as indicated in parentheses: (i) by personal delivery (when actually delivered); (ii) by overnight courier (upon written verification of receipt); or (iii) by certified or registered mail, return receipt requested (upon verification of receipt). Any party may change the address to which notice is to be given by notice given in the manner set forth above.

(c) **Choice of Law and Venue.** This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California, excluding its choice of law rules. Exclusive jurisdiction and venue for any lawsuits brought by either party arising from this Agreement or related to transactions under this Agreement shall be in the federal or state courts located in the State of California. In any event, this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

(d) **Interpretation.** No failure or delay by either party in enforcing any of its rights under this Agreement shall be construed as a waiver of the right to subsequently enforce any of its rights, whether relating to the same or a subsequent matter. This Agreement does not grant any rights or remedies to any person or entity that is not a party to this Agreement and no person or entity is a third party beneficiary of this Agreement. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, such provision shall be deemed modified to the extent necessary to render such provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest extent permissible the intent and the agreements of the parties.

(e) **Relationship of the Parties.** It is expressly agreed that the parties hereto shall be independent contractors and that the relationship between the parties shall not constitute a partnership, joint venture or agency. Provider shall employ all necessary measures to ensure Customers are aware that Provider and CloudFabrix are independent contracting parties and that Provider is not CloudFabrix's agent, is not engaged in any partnership joint venture or other form of joint enterprise, employment or fiduciary relationship with CloudFabrix, and does not have authority to contract for or bind CloudFabrix in any manner whatsoever, including, without

limitation, by adding appropriate disclaimers to each Qualified Customer Agreement. Provider agrees to indemnify, defend and hold harmless CloudFabrix, its affiliates and their respective officers, directors and employees from and against any and all payments, losses, costs, liability, expenses, damages, fines, penalties and judgments (including without limitation actual attorney's fees and expenses) as a result of a failure of Provider to comply with its obligations in the immediately preceding sentence.

(f) Entire Agreement. This Agreement, the End User License Agreement referenced herein and any related Schedules and Exhibits together constitute the entire agreement between the parties and supersede any prior agreement concerning their subject matter. This Agreement may be amended, modified or supplemented only by written agreement of the parties.

(g) Assignment. Neither party may assign all or any part of its rights or delegate all or any part of its duties hereunder without the prior written consent of the other party, and any such purported assignment or delegation, without such consent, shall be void; provided, however, that CloudFabrix may assign this Agreement in its entirety without Provider's consent to (i) its affiliates, or (ii) an entity that acquires all or substantially all of the business or assets of CloudFabrix to which this Agreement pertains, whether by merger, reorganization, acquisition, sale, stock sale or otherwise. This Agreement is binding on and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(h) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered as of the Effective Date, and represent that the persons whose signatures appear below are duly authorized to execute this Agreement.

**Effective Date:** \_\_\_\_\_

**CLOUDFABRIX SOFTWARE, INC.**

**[PROVIDER]**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address for Notice:

Mailing Address for Notice:

7901 Stoneridge Drive  
Suite 300  
Pleasanton, CA 94588

[REDACTED]

**Exhibit A**

**Implementation Schedule**

**MSP Name:** \_\_\_\_\_

**MSP Contact Person:** \_\_\_\_\_

**Contact Information:** \_\_\_\_\_

**Potential Customer Name:** \_\_\_\_\_

**Potential Customer Business Unit (if applicable):** \_\_\_\_\_

Remote Services will involve the following CFX Software applications (select all that apply):

cfxPulse                       cfxRealize                       cfxAutomate                       cfxHorizons

Number of instances installed locally @ MSP \_\_\_\_\_                      Number of instances installed @ Customer \_\_\_\_\_

MSP to White Label CFX Software?                      Yes                       No                       (If yes, please provide sample attribution)

Other relevant deployment information: \_\_\_\_\_

Describe Remote Services to be provided (attach additional sheets as necessary): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Customer to access the CFX Software itself?    Yes                       No

Customer Subscription information:                      Term of Subscription: \_\_\_\_\_                      Auto-renew period: \_\_\_\_\_

Other Customer Subscription terms / limitations (attach additional sheets as necessary): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Description of pricing MSP will charge to Customer: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**NOTE: PLEASE ATTACH A SUBSTANTIALLY FINAL DRAFT OF YOUR CUSTOMER AGREEMENT**

Fees payable to CloudFabrix: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Payment Terms: As provided in Section 6(d) of the Managed Services Provider Agreement.

\* \* \*

**Submitted By (MSP):**

**Reviewed By (CloudFabrix Software, Inc.):**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

For CloudFabrix's use:    Accepted             Not Accepted

Reason (if Not Accepted): \_\_\_\_\_

\_\_\_\_\_

## Exhibit B

### **Training and Certification Schedule**

#### Basic Training

Each MSP employee or contractor intending to use the CFX Software to provide Remote Services to Customers must attend and complete CFX Software training of [XX] hours.

#### CFX Masters

As a condition to engaging in Remote Services activities, unless otherwise agreed by CloudFabrix in writing, Provider must ensure it at all times employs at least [XX] certified CFX Software Masters and that at least one such CFX Software Master is participating in and supervising any such activities. A “**CFX Software Master**” is an individual who has met all of the following requirements:

- Attend and complete CFX Software training of [XX] hours;
- Complete at least [XX] end-to-end CFX Software implementation projects, led by CloudFabrix’s managed services teams (e.g., working collaboratively through a customer project with CloudFabrix’s team); and
- Has worked on a CFX Software implementation / Remote Services project in the past 12 months (otherwise such individual shall have to re-certify by completing the first two steps above).

CloudFabrix reserves the right to apply the CFX Software Master designation to any individual or withhold such designation from any individual based solely on such individual’s proficiency in working with CFX Software, in CloudFabrix’s sole discretion.

**Exhibit C**

**CFX Marks**

Word Marks:

CLOUDFABRIX

CLOUDFABRIX SOFTWARE

CFXPULSE

CFXREALIZE

CFXAUTOMATE

CFXHORIZONS

Logos:

[Insert any applicable logos]