

Reseller Agreement

This Reseller Agreement (the “Agreement”) is entered into as of _____ (the “Effective Date”) by and between CloudFabrix Software, Inc. (“Company”) and _____ (“Reseller”).

Background Statement

Company develops and licenses certain software and related documentation that transforms and modernizes legacy applications and provides an outcomes-driven application analytics and intelligence platform. Reseller desires to become a reseller of licenses to such software, subject to the terms and conditions of this Agreement.

Agreement

In consideration of the mutual promises and covenants set forth in this Agreement, the parties agree for themselves and their successors and assigns as follows:

1. Appointment.

1.1 Scope of Appointment. Company hereby grants Reseller the non-exclusive right to solicit orders from proposed third party end users (“Customers”) for licenses to object code versions of the computer software described on **Exhibit A** (the “Software”), and the related online and electronic documentation for the Software (the “Documentation”), subject to Reseller’s compliance with the terms and conditions set forth in this Agreement. The Software and Documentation are cumulatively referred to in this Agreement as the “Software Product.” Reseller shall not be licensing any Software Product from Company hereunder and shall have no right to grant any license or sublicense in any Software Product to any Customer, and shall have only the right to enter into contracts with Customers pursuant to which each such Customer would have the right, subject to the terms and conditions of this Agreement, to enter into an End User License Agreement directly between Company and such Customer (a “EULA”) by registering on Company’s website as a user of the Software and accepting Company’s on-line Terms of Use. Reseller must obtain its own separate EULA of the Software Product to permit it to conduct any demonstration of the Software or to provide any first tier support. For clarity, Reseller acknowledges and agrees that it has no right to distribute or offer to distribute any pre-release version of the Software made available to Reseller under a Developer Agreement with Company.

1.2 Solicitation and Acceptance of Orders. Company has the right, in its sole discretion, to decline to enter into a EULA with any proposed Customer. Once an order has been received and accepted by Company, it constitutes a binding agreement between the parties, and Company will provide an electronic copy of the Software Product to the Customer. Reseller may not modify, delay or cancel any accepted order without Company’s consent.

1.3 Ownership of Intellectual Property Rights. As between the parties, Company shall own and retain all right, title and interest in and to the Software Products and in all of the methods, processes, techniques and other intellectual property used in the Software Products, and in all of the patents, copyrights, trade secrets, trademarks and other intellectual property rights embodied in or related to the use of the Software Products. Neither Reseller nor any Customer shall have

the right to (a) reverse engineer, decompile, disassemble, decode, or otherwise attempt to access the source code of the Software, nor (b) copy, modify, translate or create derivative works of the Software Product, nor (c) take any action that would challenge, jeopardize, limit or interfere in any manner with Company's rights with respect to the Software Products.

1.4 Third Party Software. The Software may contain or be provided with open source software and/or software owned by third parties, as identified in the Documentation ("Third Party Software"). The Customer will be licensed the right to use any such Third Party Software subject to the applicable restrictions and other terms and conditions of use set forth in the Documentation or in any "Third-Party Licenses ReadMe" file or similar file located in the installation directory for the Software.

2. Company Rights and Obligations.

2.1 General Obligations. Company is solely responsible for the design and function of the Software in the manner that it determines to be appropriate. Company reserves the right to modify, upgrade and fix the Software, and to add or delete features, in the normal course of its business. All Software Products, including but not limited to any updates, upgrades or patches that are provided by Company, will be delivered by Company only by electronic means. In no event will Company be required to deliver any Software Product, or any updates, upgrades or patches, on tangible media.

2.2 Standard Support. Company shall provide direct Software support to each Customer in the manner provided in the applicable EULA.

2.3 Additional Requested Support. In addition to providing the standard support described above, Company shall make a commercially reasonable effort to provide any additional support requested by Reseller, including custom software development, technical support, demonstrations and training ("Professional Services"). Reseller acknowledges and agrees that Company's ability to respond to any particular support request from Reseller in a timely manner will depend on the nature and scope of the request and the availability of the required Company personnel. Should Company agree to provide any Professional Services, Reseller must pay Company its then current standard hourly fee for the type of services requested. Invoices shall be payable in the manner provided in **Section 4**. The parties may establish more detailed terms and conditions for specific Professional Services in a separate Statement of Work.

3. Reseller Rights and Obligations.

Reseller shall conduct its business 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 Company or expose Company to a risk of penalties or sanctions under the laws and/or regulations of any relevant jurisdiction in which Company and/or Reseller does business. Reseller shall not make any false or misleading representation about the Software, and shall not make any representation about the specifications, capabilities or features of the Software that is inconsistent with Company's then current publically available descriptions, instructions and Documentation.

4. **Prices and Fees.**

4.1 **Prices.** Reseller shall be responsible for invoicing and collecting the amounts listed on **Exhibit A** (the (“License Fee”)) from each Customer to whom Reseller resells a license to the Software Product. With respect to each such license, Reseller shall pay Company an amount equal to the License Fee, less the discount specified in **Exhibit A**.

4.2 **Payment Terms.** Unless otherwise specified by Company, terms are Net thirty (30) days from the date of each EULA. Reseller has the absolute obligation to pay Company the applicable prices for each license to Software that it resells, whether or not its Customers pay Reseller the amounts agreed upon between Reseller and the Customers. If any payment owed to Company is not paid when due, it shall bear interest at a rate of one percent per month, or the lesser maximum rate permitted by law, from the date on which it is due until it is paid.

4.3 **Taxes.** Reseller 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 Company’s net income or taxes that will be allowed in full as a credit against income tax otherwise payable by Company.

5. **Confidentiality.** During the term of this Agreement and for a period of five years thereafter, Reseller shall hold in strict confidence the Software Product, the commercial terms and conditions related to this Agreement (including prices and discounts) and any other proprietary or confidential information of Company that is disclosed to Reseller (“Company Confidential Information”) and shall not disclose the Company Confidential Information to any third party nor use the Company Confidential Information for any purpose except for purposes expressly provided for in this Agreement. During the term of this Agreement and for a period of five years thereafter, Company shall hold in strict confidence any proprietary or confidential information of Reseller that is disclosed to Company (“Reseller Confidential Information”) and shall not disclose the Reseller Confidential Information to any third party nor use the Reseller Confidential Information for any purpose except for purposes expressly provided for in this Agreement. Each of the parties will have the right to disclose the other party’s confidential information to its employees, contractors or agents for the purposes of this Agreement, but only on a need to know basis, and subject to such other person being bound by obligations of confidentiality and nondisclosure similar to the terms contained herein. The above restriction shall not be construed to 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; or (iii) was already rightfully known by the receiving party prior to receipt thereof from the disclosing party. In addition, either party may disclose the other party’s confidential information pursuant to an order issued by a court of competent jurisdiction or pursuant to an investigation from a governmental authority, subject to prior written notification to the other party.

6. **Trademarks.**

6.1 **Grant of License.** Subject to the terms and conditions of this Agreement, Company grants to Reseller, and Reseller accepts, a nonexclusive, nontransferable license to use the Company trademarks identified on **Exhibit A**, as modified from time to time by Company (the

“Covered Marks”) on written, electronic and other promotional materials (the “Covered Materials”), solely in conjunction with the advertising, marketing and promotion of the Software Products under this Agreement, subject to all of the terms and conditions of this Agreement. Reseller may not sublicense all or any part of its rights. Reseller has only the right to use the Covered Marks specifically granted above and may not use the Covered Marks for any other purpose. Upon termination of this Agreement, Reseller must discontinue all use of the Covered Marks and of any other names and marks sounding like or appearing to be similar to the Covered Marks.

6.2 Ownership of Covered Marks. Company expressly reserves its ownership rights in the Covered Marks and Reseller agrees that nothing in this Agreement shall be construed as granting Reseller any right, title, or interest in the Covered Marks, other than the right to use the Covered Marks in accordance with this Agreement. Company may elect, in its sole discretion, to use and grant other third parties the right to use the Covered Marks for any purpose. Company may determine, in its sole discretion, whether to register and maintain any Covered Marks in any jurisdiction. Company shall have the sole right to enforce the Covered Marks and to determine whether any potential infringement of any Covered Mark by any third party is serious enough to justify legal action by Company. Reseller shall not challenge Company’s ownership of the Covered Marks nor use the Covered Marks as part of its name or as a trade name to identify its business nor in any metatag, e-mail address or domain name, without the express written consent of Company. Reseller shall not use or register any other mark that includes, or that is substantially identical to, resembles or is confusingly similar to, any of the Covered Marks. All goodwill resulting from Reseller’s use of the Covered Marks shall inure to the benefit of Company.

6.3 Manner of Use. Reseller shall use the Covered Marks solely in a manner that would reflect positively on the goodwill associated with the Covered Marks and that would not dilute the value of the Covered Marks. Reseller shall use the same style and appearance of the Covered Marks as used by Company, shall strictly comply with the usage standards in any style guide or similar document provided by Company, and shall not alter the Covered Marks in any way without the prior written consent of Company. Reseller may not use any Covered Mark as part of a composite mark without Company’s prior written consent.

6.4 Failure to Comply. Company may require Reseller to immediately discontinue using the Covered Marks should Reseller use the Covered Marks in any manner that would reflect negatively on the goodwill associated with the Covered Marks or that would dilute the value of the Covered Marks, or should Reseller fail to comply in full with its obligations under this Agreement with respect to the Covered Marks.

7. **Limitation of Liability.** In each EULA, Company will be extending a limited warranty directly to each Customer, including a warranty that the Software will perform substantially in accordance with the Documentation when operated by the Customer in the manner provided in the Documentation, and will be agreeing to provide the Customer with certain rights of indemnification if the use by the Customer of the Software Product infringes or misappropriates the intellectual property rights of a third party. AS BETWEEN COMPANY AND RESELLER, THE SOFTWARE PRODUCT AND THE PROFESSIONAL SERVICES ARE PROVIDED “AS-IS” AND WITHOUT WARRANTY. COMPANY HEREBY DISCLAIMS ALL WARRANTIES WITH REGARD TO THE SOFTWARE PRODUCT AND THE PROFESSIONAL SERVICES,

INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. EXCEPT WITH RESPECT TO (a) AMOUNTS EXPRESSLY PAYABLE BY RESELLER HEREUNDER, (b) THE BREACH BY EITHER PARTY OF THE OBLIGATION OF CONFIDENTIALITY IN **SECTION 5**, AND (c) THE BREACH BY RESELLER OF ITS OBLIGATIONS WITH RESPECT TO THE LICENSED TRADEMARKS IN **SECTION 6**, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS OR GOODWILL, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER ANY SUCH CLAIM ARISES IN TORT, CONTRACT, STATUTE OR OTHERWISE.

8. **Term and Termination**. This Agreement shall have an initial term of one year from the Effective Date and shall be automatically renewed for additional one-year terms unless either party provides prior written notification of its desire to terminate this Agreement at the end of any one-year term. During any one-year term, either party has the right to terminate this Agreement (a) at any time, without cause, upon ninety (90) days written notice to the other party; and (b) upon notice, should the other party breach a material term of this Agreement and fail to cure that breach within ten days after notice thereof from the non-breaching party. Upon the expiration or termination of this Agreement, the appointment of Reseller in **Section 1**, including the license to use the Covered Marks in **Section 6**, shall cease and Reseller shall have no further right or obligation to conduct marketing or solicit orders for Software Product licenses, but the other terms and conditions of this Agreement shall survive and continue in full force and effect.

9. **Export Controls**. Reseller acknowledges and agrees that the Software Products may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder. Reseller shall not place any order for any EULA that would result in the export or re-export of any Software Product in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

10. **Force Majeure**. Neither party shall be liable for delays in performance or for non-performance of its obligations hereunder (other than payment obligations) due to unforeseen circumstances or any events or causes beyond such party'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.

11. **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. Any such purported assignment or delegation, without such consent, shall be void.

12. **Notice**. All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed given when delivered by hand or by a reputable national over-night courier service or three business days after mailing when mailed by registered or

certified mail (return receipt requested), postage prepaid, to the parties in the manner provided below:

To Company:

If to Reseller:

Any party may change the address to which notice is to be given by notice given in the manner set forth above.

13. **Choice of Law.** This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California, excluding its choice of law rules. In any event, this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

14. **Dispute Resolution.** The parties shall attempt in good faith to settle any dispute relating to this Agreement through consultation and negotiation, in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute shall be mediated by a mutually acceptable mediator to be chosen by the parties within fifteen (15) days after written notice by either party to the other demanding mediation. Neither party shall unreasonably withhold consent to the selection of a mediator, and the parties will share the costs of the mediation equally. If the parties cannot agree upon a mediator or if the mediation has not resolved the dispute within sixty (60) days subsequent to the parties' agreement upon the mediator, either party may demand that the dispute be arbitrated in accordance with the Rules of the American Arbitration Association in San Jose, California. The dispute shall be arbitrated by one mutually acceptable arbitrator. If the parties are unable to agree upon a single arbitrator, each party shall appoint one arbitrator and the two arbitrators so appointed shall choose a third arbitrator. The arbitrators shall not have the power to award any punitive damages nor attorneys' fees to either party. Each party shall bear all of its own expenses and pay one-half of the fees and expenses of the arbitrators. The decision of the arbitrators shall be final and binding and may be enforced in any court of competent jurisdiction. The procedure set forth in this paragraph is the exclusive means for resolving any dispute between the parties arising out of or relating to this Agreement and neither party may initiate or maintain any proceeding in any court or similar tribunal relating to any dispute within the scope of this paragraph; provided that either party may seek temporary equitable relief to the extent reasonably necessary to protect its rights under this Agreement.

15. **Legal Relationship.** Reseller is an independent contractor, and is not an agent or representative of Company for any purpose. Neither party has any right to create any liability or obligation on behalf of the other party.

16. **Interpretation.** The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement. 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.

17. **Entire Agreement.** This Agreement (including any Nondisclosure Agreement incorporated herein by reference) and any Developer Agreement between the parties, constitute the entire understanding and agreement between the parties and supersede any other prior agreement concerning the Software Products. This Agreement may be amended, modified or supplemented only by written agreement of the parties. Neither party shall be bound by any of the terms and conditions of any purchase order, receipt, acceptance, confirmation or other correspondence provided by the other party. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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.

CLOUDFABRIX SOFTWARE, INC.

[NAME OF RESELLER]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

Software Products:

License Fee:

Discount:

Covered Mark: