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1.   **Acceptance of this Agreement**.

1.1   Assent.   BY SELECTING "ACCEPT", OR BY DOWNLOADING, INSTALLING, ACCESSING OR USING THE SOFTWARE, ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT BECOME LEGALLY BINDING ON YOU AS AN INDIVIDUAL OR ON THE ORGANIZATION THAT YOU REPRESENT. AS A RESULT, PLEASE READ ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY. IF YOU THE INDIVIDUAL (A) DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR (B) ARE NOT AUTHORIZED TO DOWNLOAD, INSTALL ACCESS OR USE THE SOFTWARE AND AGREE TO BE BOUND BY THIS AGREEMENT ON BEHALF OF YOUR ORGANIZATION, YOU ARE REQUIRED TO SELECT "DO NOT ACCEPT", IN WHICH CASE YOU ARE NOT PERMITTED TO DOWNLOAD, INSTALL, ACCESS OR USE THE SOFTWARE.

1.2   Identity. A legally binding contract is immediately formed upon your acceptance of this Agreement. The licensee who is bound by this Agreement ("**Licensee**") is: (i) the individual accepting this Agreement, if the individual is licensing the Software for his or her personal use or use as a sole proprietor; or (ii) the corporation, limited liability company, institution, partnership, organization or other entity ("**Organization**") on whose behalf the individual accepting this Agreement is acting. Licensee represents that the name provided to CloudFabrix, if any, is its full and correct legal name.

1.3   Changes. CloudFabrix may revise and update this Agreement, or make changes to or discontinue the Software (in whole or in part), from time to time in its sole discretion; provided, however, that CloudFabrix will provide at least sixty (60) days' prior notice to Licensee if CloudFabrix decides to discontinue the Software or change the Software in any way that reduces the Software's material features or functionality. CloudFabrix will not be obligated to provide notice under this **Section 1.3** if the change or discontinuation is necessary to address an emergency, respond to claims, litigation, or loss of license rights related to third-party intellectual property rights, or comply with the law or requests of a government entity. Changes to this Agreement are effective immediately when posted, but are not retroactive. Licensee's continued use of the Software following the posting of a revised Agreement means that Licensee accepts and agrees to the changes. As a courtesy, CloudFabrix will make a good faith effort to notify Licensee of any material changes to this Agreement using the e-mail address that CloudFabrix has on file for Licensee. However, it is Licensee's responsibility to check this page frequently so that Licensee is aware of any changes, and immediately discontinue Licensee's use of and all other activities with respect to the Software if Licensee does not want to agree to the revised Agreement.

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2.1   Definitions.

(a)   "**Authorized Users**" means Licensee's employees (including contract employees) and independent contractors who need to Use the Software to support Licensee's Usage Purpose, up to the maximum number of users (if any) specified in Licensee's Purchase Order and/or Statement of Work.

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(c)   "**Usage Purpose**" means the internal requirements of Licensee's business or activities in the ordinary course of such business or activities. The Usage Purpose shall not in any case include the Use of the Software by any Authorized User of an Organization for any personal projects.

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2.2   Software License.   Subject to the terms and conditions of this Agreement, CloudFabrix hereby grants Licensee a limited, nonexclusive, nontransferable right and license, with no right to grant sublicenses, for Authorized Users to (a) install and Use the Software (i) solely in object code format, and (ii) solely for the Usage Purpose; and (b) Use the Documentation.

2.3   Licensee Responsibilities. Licensee shall: (i) use commercially reasonable efforts to prevent unauthorized installation, access to or Use of the Software; (ii) ensure that all Authorized Users comply with all of the terms and conditions of this Agreement, including the limitations and restrictions set forth in **Section 2.4**; (iii) be solely responsible for any Licensee Content, including compliance with any restrictions imposed by the author of the content and any violations of intellectual property or privacy rights; and (iv) Use the Software in compliance with all applicable laws, rules and regulations (including those relating to export, homeland security, anti-terrorism, data protection and privacy) and the Documentation. Licensee shall be responsible for any breach of this Agreement by Authorized Users and any installation or Use of the Software by persons other than Authorized Users. Licensee shall immediately notify CloudFabrix of any unauthorized installation or Use of the Software.

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2

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3.   **Software Support**. During the Term, CloudFabrix shall provide commercially reasonable e-mail support and assistance to Licensee in connection with its Use of the Software, as more particularly described in Licensee's Purchase Order and/or Statement of Work (the "**Support Services**"), which, Licensee agrees, unless Licensee has purchase a Support Services Package (as defined below), consists primarily of general guidance on Use and operation of the Software, troubleshooting common issues, and response to Frequently Asked Questions. Any updates, upgrades and patches provided by CloudFabrix in connection with the Support Services will become a part of the Software hereunder, subject to all of the terms and conditions that govern the Use of the Software hereunder, and shall be provided to Licensee in CloudFabrix's sole discretion. All such Support Services shall be subject to the availability of CloudFabrix personnel and shall be provided during the hours of 9:00 a.m. to 6:00 p.m. (California time) Monday through Friday, excluding federal holidays ("**Regular Business Hours**"). Unless otherwise specified in Licensee's Support Services Package, turnaround time on Support Services is not guaranteed. Following initial installation and on-boarding, Licensee agrees that any requests for Support Services, whether by telephone, e-mail or in person, shall be submitted only when the Software does not execute or function in all material respects with its Documentation.   Licensee acknowledges and agrees that CloudFabrix shall not be obligated to provide Support Services

3

outside of Regular Business Hours or in connection with any reported support request that CloudFabrix reasonably determines is not attributable to a failure of the Software to operate in all material respects with its Documentation. CloudFabrix reserves the right to charge Licensee at an hourly rate (on a time-and-materials basis) for Support Services provided (i) outside of Regular Business Hours, or (ii) in connection with a request CloudFabrix reasonably determines is not attributable to a failure of the Software to operate in all material respects in accordance with its Documentation. Licensee may, for an additional fee, purchase additional CloudFabrix commitments with respect to support levels, response times and other similar variables, as set forth in a separate agreement between CloudFabrix and Licensee ("**Support Services Package**").

4. **Additional Services**.

4.1 <u>Scope of Professional Services</u>. Subject to the terms of this Agreement, CloudFabrix shall perform the additional implementation, development, customization, and/or training services (collectively, the "**Professional Services**") that are mutually agreed upon and described in one or more Statements of Work to this Agreement. If there is a conflict between this Agreement and any Statement of Work, the terms of the Statement of Work shall govern the provision of the Professional Services involved; <u>provided</u>, <u>however</u>, that **Sections 8 - 13** of this Agreement shall not be affected by the terms of any Statement of Work unless the parties have expressly provided otherwise in the Statement of Work, in which case this Agreement shall be so amended, solely with respect to such Statement of Work. Each Statement of Work shall include, without limitation, (i) a description of the Professional Services that CloudFabrix is obligated to perform for Licensee, (ii) the specifications ("**Specifications**") for such Professional Services, and (iii) the fees and payment terms applicable to such Statement of Work.

4.2 <u>Standard of Performance</u>. CloudFabrix represents and warrants that: (i) it shall perform the Professional Services in a professional and workmanlike manner, and (ii) the Professional Services provided by CloudFabrix shall substantially conform to the Specifications.

4.3 <u>Acceptance Procedure</u>. If CloudFabrix is to produce any deliverables under a Statement of Work, unless otherwise specified in the Statement of Work, the following acceptance procedures will apply:

(a) Upon completion of the deliverables specified in the Statement of Work (collectively, the "**Deliverables**"), CloudFabrix will provide Licensee with written notice of completion of such Deliverables and with access to any necessary prototypes in order to conduct acceptance testing. Within five (5) business days after receipt of CloudFabrix's notice, Licensee must review such Deliverables to confirm whether such Deliverables are acceptable and conform to the applicable Specifications, and will notify CloudFabrix in writing of Licensee's acceptance ("**Licensee Acceptance**") or Licensee's rejection ("**Licensee Rejection**") of such Deliverables; <u>provided</u> that if Licensee has not provided CloudFabrix with a notice of a Licensee Rejection prior to the expiration of such 5-business day testing period, it will be deemed to be a Licensee Acceptance of such Deliverables. Each Licensee Rejection must include a detailed description of the specific way in which such Deliverables fail to conform to the applicable Specifications.

(b) If Licensee rejects the Deliverables in accordance with **Section 4.3(a)** above**Error! Reference source not found.**, CloudFabrix will, within ten (10) business days after receiving

Licensee's notice of such Licensee Rejection, either (i) correct any nonconformities in the Deliverables that correct any issues identified by Licensee and otherwise substantially conform to the applicable Specifications or (ii) to the extent such nonconformities cannot be corrected within such 10-business day period, provide Licensee with a plan to correct such nonconformities within a period of time that is reasonable under the circumstances and proceed according to such plan until such nonconformities have been corrected. Upon receipt of the new Deliverables, Licensee will again undertake the process described in **Section 4.3(a)** above to re-evaluate such Deliverables (each such evaluation cycle, a "**Cycle**"). CloudFabrix and Licensee will conduct additional Cycles with respect to such Deliverables, as necessary, until Licensee Acceptance of such Deliverables.

(c)   Cycle Constraints. Under **Section 4.3(b)** above, Licensee is entitled to up to two (2) Cycles (less defect resolution) ("**Maximum Cycles**") at no additional cost; provided, however, that Licensee acknowledges that if additional Cycles are required to reach Licensee Acceptance, Licensee will be required to reimburse CloudFabrix for the cost of each Cycle in excess of the Maximum Cycles, in each case where such cost will be equal to (x) the actual number of hours required to complete the additional Cycles multiplied by (y) CloudFabrix's then-current standard hourly rate.

4.4   Licensee may at any time request in writing (including via e-mail) to CloudFabrix modifications, updates or enhancements to the Deliverables provided (each, a "**Change Request**"). CloudFabrix shall, within fifteen (15) business days after receiving a Change Request, evaluate the impact of such modifications, updates and/or enhancements and respond with a written proposal to effectuate such modifications, updates and/or enhancements, which shall set forth the estimated delivery timeline, the cost (including, without limitation, any affect or impact on the then-existing service fees) and any other terms applicable for effectuating such modifications, updates and/or enhancements. Licensee will, within ten (10) business days after receiving CloudFabrix's written proposal, notify CloudFabrix in writing as to whether Licensee accepts CloudFabrix's written proposal. If Licensee fails to notify CloudFabrix of its acceptance of CloudFabrix's written proposal, Licensee will be deemed to have rejected the written proposal and CloudFabrix will have no further obligation to Licensee with respect to such Change Request. If CloudFabrix's written proposal is accepted by Licensee in writing, CloudFabrix will use commercially reasonable efforts to complete such services in accordance with such proposal.

5.   **Maintenance**.

5.1   Definitions. "**Maintenance Release**" means any update, upgrade, release or other adaptation or modification of the Software, including any updated Documentation, that CloudFabrix may provide to users from time to time, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software, but does not include any Licensee-specific Support Services or New Version. "**New Version**" means any new version of the Software that CloudFabrix may from time to time introduce and market generally as a distinct licensed product (as may be indicated by CloudFabrix's designation of a new version number), and which CloudFabrix may make available to its users at an additional cost under a separate written agreement.

5.2   Availability of Maintenance Releases. Unless otherwise specified in a Purchase Order and/or Statement of Work, CloudFabrix will provide Licensee with all Maintenance Releases (including updated Documentation) that CloudFabrix may, in its sole discretion, make generally available to its licensees at no additional charge. All Maintenance Releases, on being provided by CloudFabrix to Customer hereunder, are deemed to be a part of the Software subject to all applicable terms and conditions in this Agreement. Licensee will install all Maintenance Releases as soon as practicable after receipt. Licensee does not have any right hereunder to receive any New Versions of the Software that CloudFabrix may, in its sole discretion, release from time to time. Licensee may license any New Version that CloudFabrix makes generally available to its users at CloudFabrix's then-current list price and subject to a separate license agreement, provided that Licensee is in compliance with the terms and conditions of this Agreement.

6.   **Fees and Payment**. The fees applicable to Use of the Software shall be as set forth in the Licensee's Purchase Order and/or Statement of Work. The applicable fees (including any fees specified in a Purchase Order and/or Statement of Work) are payable within the period set out in the applicable invoice (and if no period is set out in the invoice, within thirty (30) days of the date on which Licensee receives the invoice). If Licensee fails to make any payment when due then, in addition to all other remedies that may be available to CloudFabrix: (a) CloudFabrix may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; and (b) if such failure continues for fifteen (15) calendar days following written notice that such payment is past due, CloudFabrix may suspend any and all license rights granted hereunder until all past due amount and interest thereon have been paid. The remedies specified in this **Section 6** are in addition to, and not in lieu of, CloudFabrix's right to terminate this Agreement under **Section 7**. **All fees are non-cancelable and non-refundable. CloudFabrix may, not more than one time during any calendar year, increase its fees; <u>provided</u> <u>that</u> (x) it provides written notice to Licensee at least sixty (60) calendar days prior to the effective date of such increase, and (y) any such fee increase shall not exceed the greater of five percent (5%) or any increase to the consumer price index (CPI) since the immediately preceding fee increase.** All fees are exclusive of any applicable taxes, levies, duties or similar government charges or assessments of any nature, including sales taxes, value-added taxes and withholding taxes (collectively, "**Taxes**"). If CloudFabrix has a legal obligation to pay or collect Taxes, the appropriate amount shall be invoiced to and paid by Licensee, unless Licensee provides CloudFabrix with an acceptable tax exemption certificate issued by the appropriate taxing authority.

7.   **Term and Termination**.

7.1   Term. Licensee's right to Use the Software pursuant to this Agreement shall commence on the Effective Date and shall continue, unless otherwise terminated as provided below or unless otherwise specified in Licensee's Purchase Order and/or Statement of Work, for an initial term of twelve (12) months (the "**Initial Term**"), after which it will renew automatically for successive one (1) year terms (each, a "**Renewal Term**") unless either party has given the other party written notice of an intent not to renew at least thirty (30) days prior to the expiration of the then-current Initial Term or Renewal Term. The Initial Term and the Renewal Term(s), if any, are referred to in this Agreement as the "**Term**." For the avoidance of doubt, if this Agreement is terminated, any applicable Purchase Order and/or Statement of Work will also be terminated effective as of such date.

7.2   Termination for Convenience. Either party may terminate this Agreement at any time by providing the other party with sixty (60) days' prior written notice of the same; provided, however, that any such termination by Licensee shall not relieve Licensee from its obligation to pay any fees (or any pro rata portion thereof) owing for Professional Services work already performed by CloudFabrix under an applicable Statement of Work.

7.3   Termination for Cause. In addition to any other express termination right set forth elsewhere in this Agreement, this Agreement may be terminated at any time: (a) by CloudFabrix, effective on written notice to Licensee, if Licensee fails to pay any amount when due under this Agreement, where such failure continues more than fifteen (15) calendar days after CloudFabrix's delivery of written notice thereof; (b) by either party, effective on written notice to the other party, if the other party materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; or (c) by either party, effective immediately, if the other party: (i) is dissolved or liquidated or takes any corporate action for such purpose; (ii) becomes insolvent or is generally unable to pay its debts as they become due; (iii) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

7.4   Obligations Upon Termination. Upon receipt by Licensee of written notice of termination from CloudFabrix, or termination by Licensee, Licensee shall immediately (i) pay to CloudFabrix any outstanding fees payable hereunder, and (ii) cease Using the Software, and shall within five (5) days after the date of such termination, (x) deliver to CloudFabrix, or at CloudFabrix's written request destroy, and permanently erase from all devices and systems Licensee directly or indirectly controls, all installed and back-up copies of the Software, the Documentation, and CloudFabrix's Confidential Information (as defined below), including all documents, files and tangible materials (and any partial and complete copies) containing, reflecting, incorporating or based on any of the foregoing, whether or not modified or merged into other materials, and (y) provide CloudFabrix with a written confirmation that Licensee has complied with all of the foregoing.

7.5   Survival. The provisions of **Sections 2.3**, **2.4**, **7.4**, **8**, **9.2**, **10**, **11**, **12**, and **13** shall survive termination of this Agreement.

8.   **Intellectual Property and Confidential Information**.

8.1   Ownership of Software. As between the parties, CloudFabrix shall own and retain all right, title and interest in and to the Software and Documentation and in all of the methods, processes, techniques, software logic, software features and other intellectual property used in the Software, and in all of the patents, copyrights, trade secrets, trademarks and other intellectual property rights ("**Intellectual Property Rights**") embodied in or related to the Software. Licensee acknowledges and agrees that its installation and use of the Software does not transfer to it any title to the Software nor the Intellectual Property Rights in the Software, and that it is acquiring no rights of any nature to the Software except for the license expressly granted under **Section 2.2**.

7

Licensee shall not take any action that would challenge, jeopardize, limit or interfere in any manner with CloudFabrix's rights with respect to the Software.

8.2   Ownership of Deliverables. Unless otherwise expressly specified in a Statement of Work, CloudFabrix shall own and retain all right, title and interest in and to the Deliverables, and in all of the Intellectual Property Rights embodied in or related to such Deliverables. Licensee acknowledges that CloudFabrix's delivery of the Deliverables to Licensee does not transfer to Licensee any title to the Deliverables nor the Intellectual Property Rights in the Deliverables, and that Licensee is acquiring no rights of any nature to the Deliverables except for the limited license expressly granted in the applicable Statement of Work. If no license is expressly granted in the applicable Statement of Work, then CloudFabrix grants to Licensee, during the Term, a limited, nonexclusive, nontransferable right and license, with no right to grant sublicenses, to access, copy and use the Deliverable (i) for the Usage Purpose, and (ii) solely in connection with the Software. Licensee shall not take any action that would challenge, jeopardize, limit or interfere in any manner with CloudFabrix's rights with respect to the Deliverables.

8.3   Ownership of Derivative Works. During the Term, Licensee may provide feedback to CloudFabrix with respect to the performance and/or functionality of the Software, including, without limitation, any flaws, errors, bugs or other problems it discovers in the Software as well as suggested improvements or modifications of the Software. All feedback, information and suggestions provided by Licensee to CloudFabrix with respect to the Software shall be deemed "**Ideas and Suggestions**".   To the extent any modifications, improvements, enhancements, upgrades, new releases or other derivative Works of the Software are developed by CloudFabrix (collectively, "**Derivative Works**") based upon Ideas or Suggestions submitted by Licensee, Licensee hereby irrevocably assigns to CloudFabrix all rights to such Derivative Works and in all of the methods, processes, techniques and other intellectual property used in such Derivative Works, and in all of the Intellectual Property Rights embodied in or related to the use of such Derivative Works.

8.4   Ownership of Improvements. To the extent any modifications, enhancements, customizations, upgrades, new releases or other improvements of the Software are developed by CloudFabrix (collectively, the "**Improvements**"), whether or not such Improvements are developed by CloudFabrix in connection with the performance of any Professional Services, Licensee hereby acknowledges that, as between the parties, CloudFabrix shall own and retain all right, title and interest in and to the Improvements and in all of the methods, processes, techniques, software logic, software features and other intellectual property used in such Improvements, and in all of the Intellectual Property Rights embodied in or related to such Improvements.

8.5   Confidential Information. During the term of this Agreement and for a period of five years thereafter, each receiving party (each, a "**Recipient**") shall hold in strict confidence any proprietary or confidential information (collectively, "**Confidential Information**") of the other party (the "**Discloser**") and shall not disclose Discloser's Confidential Information to any third party nor use the Discloser's Confidential Information for any purpose except for purposes expressly provided for in this Agreement. 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 Recipient, (ii) is lawfully received by the

Recipient from a third party not in a confidential relationship with the Discloser, (iii) was already rightfully known by the Recipient prior to receipt thereof from the Discloser, or (iv) after notice and an opportunity to object, is required by law to be disclosed. Notwithstanding the foregoing, each party's confidentiality obligations set forth herein shall survive with respect to the other party's Confidential Information that is a trade secret for so long as such Confidential Information continues to be a trade secret under applicable law.

9. **Disclaimer of Warranties**.

9.1 <u>Limited Warranty</u>. CloudFabrix warrants that, provided that Licensee complies with its obligations under **Section 2.3** above, (i) the Software will perform substantially in accordance with the Documentation (excluding any errors in the Documentation, as determined by CloudFabrix in good faith), (ii) it has used and will use commercially reasonable efforts to ensure that the Software does not contain (and will not introduce) any malware including software viruses, trojan horses, worms, time bombs, logic bombs, trap doors, back doors, cancelbots, spyware, botnet nodes, keyloggers, root kits, or any other computer code, files or programs designed to disrupt, interrupt, disable, damage, destroy or limit the functionality of any device, software, system or telecommunications equipment of Licensee, and (iii) the Software as licensed to Licensee hereunder complies with all applicable federal, state and local laws and regulations. CloudFabrix's entire responsibility and obligation, and Licensee's exclusive remedy, for any breach of the foregoing warranties shall be for CloudFabrix to use commercially reasonable efforts to cause the Software to comply with such warranties.

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10. **Limitation of Liability**.

10.1 <u>Direct Damages Only</u>. CLOUDFABRIX WILL ONLY BE LIABLE FOR DIRECT DAMAGES, SUBJECT TO **SECTION 10.2**. IN NO EVENT WILL CLOUDFABRIX BE LIABLE TO LICENSEE OR ANY OTHER PERSON FOR ANY LOST PROFITS, LOST OR DAMAGED DATA, OR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL

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10.2   Monetary Cap on Damages. LICENSEE AGREES THAT THE MAXIMUM AGGREGATE LIABILITY OF CLOUDFABRIX AND ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES FOR ALL CLAIMS UNDER ANY AND ALL CIRCUMSTANCES RELATING TO THE SOFTWARE OR PROFESSIONAL SERVICES UNDER ALL THEORIES OF LIABILITY WILL BE LIMITED TO THE FEES PAID TO CLOUDFABRIX BY LICENSEE IN RESPECT OF THE SOFTWARE AND THE PROFESSIONAL SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM IN RESPECT OF SUCH LIABILITY.

10.3   Essential Terms. The limitation of liability in this **Section 10** constitutes an essential part of this Agreement. A fundamental breach or breach of a fundamental term of this Agreement by CloudFabrix shall not limit the intended effect of **Section 10** or any other provision of this Agreement which is intended to limit CloudFabrix's liability. Licensee acknowledges that, but for the limitation of liability, CloudFabrix would not enter into this Agreement.

11.   **Intellectual Property Infringement Indemnity**.

11.1   Indemnity. If any claim based upon an alleged direct infringement of a United States copyright or trade secret is asserted against Licensee by a third party (other than an affiliate of Licensee) by virtue of License's Use of the Software in accordance with this Agreement, CloudFabrix will indemnify Licensee solely for direct damages (which, for greater certainty, excludes any accounting of profits) awarded to such third party and which the Licensee has been ordered to pay as a result of such claim, provided that CloudFabrix (i) receives prompt written notice of such claim. (ii) has the sole and exclusive right, if it chooses, to control and direct the investigation and the defense or settlement of such claim, and (iii) receives the reasonable cooperation and assistance of Licensee as requested by CloudFabrix, at CloudFabrix's expense.

11.2   Exclusions. CloudFabrix shall have no obligation or liability under **Section 11.1** if the infringement relates to: (i) Use of the Software other than as expressly authorized under this Agreement; (ii) the combination, merger or interface of the Software with other software by Licensee or a third party; or (iii) compliance with any Licensee instructions or requests. CloudFabrix shall also have no obligation or liability under **Section 11.1** in connection with any software or other technology not claimed to be owned by CloudFabrix, including without limitation, the Third Party Software and any materials related thereto.

11.3   Options. If the Software infringes, or in the reasonable determination of CloudFabrix is likely to infringe, any third party's intellectual property rights, CloudFabrix may, at its option, either: (i) procure for Licensee the right to continue Using the Software or replace or modify the Software (without loss of material functionality) so that it becomes non-infringing; or

(ii) terminate this Agreement and refund the license fee paid (if any) by Licensee less a reasonable amount for any value received by Licensee.

11.4   Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS **SECTION 11** STATE CLOUDFABRIX'S ENTIRE LIABILITY AND OBLIGATIONS, AND THE EXCLUSIVE REMEDY OF LICENSEE, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

12.   **Inspection**.

12.1   Inspection. CloudFabrix or its authorized representative may at any time after written notice to Licensee, electronically or otherwise, reasonably inspect Licensee's (including any third party Authorized User's) records, systems and facilities in order to ensure compliance with this Agreement. Licensee will provide (and ensure that each applicable third-party Authorized User provides) full cooperation in connection with any such inspection, including the provision of such additional documentation and information as CloudFabrix may reasonably request. Licensee shall ensure that the agreement between Licensee and each applicable third-party Authorized User includes the right for CloudFabrix to perform such inspections.

12.2   Remediation. If as a result of an inspection pursuant to **Section 12.1**, CloudFabrix determines that Licensee's (or any applicable third-party Authorized User's) installation or Use of the Software is not, or has not been, in conformity with this Agreement, Licensee shall promptly: (i) acquire from CloudFabrix the applicable license required to ensure compliance with such installation or Use; (ii) pay the applicable fees in respect of such license(s) for prior and future Use; and (iii) pay all reasonable costs and expenses incurred by CloudFabrix in respect of the applicable inspection.

13.   **Miscellaneous**.

13.1   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.

13.2   Assignment. Licensee may not assign all or any part of its rights or delegate all or any part of its duties hereunder without the prior written consent of CloudFabrix. Any such purported assignment or delegation, without such consent, shall be void.

13.3   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, 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). Unless otherwise designated in writing by Licensee, all notices to Licensee shall be delivered to Licensee, attention "Legal Department," at the address set forth on the signature page hereto, and all notices to CloudFabrix shall be delivered to CloudFabrix, attention "Chief Executive Officer," at the address set forth on the signature page

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

13.4 <u>Choice of Law and Venue</u>. 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 courts of 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.

13.5 <u>Interpretation</u>. The article and 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. 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. No party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on any other party, without the prior written consent of such other party.

13.6 <u>Publicity</u>. Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, association or sponsorship, in each case, without the prior written consent of the other party; <u>provided</u>, however, that CloudFabrix may, without Licensee's consent, include Licensee's name and/or other indicia in its lists of Licensee's current and/or, as the case may be, former customers of CloudFabrix in promotional and marketing materials.

13.7 <u>Entire Agreement</u>. This Agreement (and, if applicable, the Purchase Order and/or Statement of Work entered into by CloudFabrix and the Licensee) constitutes the entire agreement between the parties and supersedes any prior agreement concerning the Software. Except as specifically provided in **Sections 1.3** and **6** above, this Agreement may be amended, modified or supplemented only by written agreement of the parties. CloudFabrix is not bound by any of the terms and conditions of any purchase order, receipt, acceptance, confirmation or other correspondence provided by Licensee.

13.8 <u>Equitable Remedies</u>. Licensee acknowledges and agrees that a breach or threatened breach by Licensee of any of its obligations under **Sections 2.3**, **2.4** and **8** of this Agreement would cause CloudFabrix irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, CloudFabrix shall be entitled to equitable relief, including in a restraining order, an injunction, specific performance and any other

relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.