Alfresco OEM Partner Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE ENTERING INTO THIS PARTNER AGREEMENT WITH ALFRESCO SOFTWARE. PARTNER ACCEPTS THIS AGREEMENT AND ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS AGREEMENT. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF PARTNER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MAY NOT ENTER THE ALFRESCO PARTNER PROGRAM OR REPRESENT ITSELF AS AN ALFRESCO PARTNER.

This Alfresco OEM Partner Agreement (the "**Agreement**") is between Alfresco Software, Ltd., a United Kingdom limited company ("**Alfresco**"), and the Partner who accepts the terms of this Agreement ("**Partner**") in an Addendum, Order Form or other form Partner enrollment document. The effective date of this Agreement ("**Effective Date**") is the date on which Partner signs the applicable enrollment form into which this Agreement is incorporated.

This Agreement relates to the business relationship between Alfresco and Partner with respect to the Alfresco Products (defined below). In consideration of the mutual covenants set forth in this Agreement and intending to be legally bound, the parties agree as follows:

1. **Program.** Partner hereby enrolls in the OEM partner program in the territory ("**Territory**") and at the level specified in the Program Details Addendum signed by both parties ("**Addendum**"). Subject to the terms of this Agreement, Partner will use reasonable efforts in the Territory to (i) integrate the Alfresco Products and/or Software with the Partner Product (specified in the Addendum); and (ii) market and sell the Alfresco Products as integrated with the Partner Product to End Users. Partner will represent the Alfresco Products accurately and fairly and at all times avoid misleading, illegal, or unethical business practices. Partner will make no claim or representation relating to the performance or functionality of the Alfresco Products other than as expressly set forth by Alfresco in the documentation provided by Alfresco. Partner will confer regularly on matters relating to market conditions, sales forecasting, product planning and promotional marketing strategies.

"**Alfresco Products**" means the Software subscriptions and services Alfresco makes generally available for purchase through third parties. For purposes of this Agreement, Community Versions are <u>not</u> Alfresco Products. "**Community Versions**" mean the free, unsupported, open source software that Alfresco makes available for download on its Alfresco and Activiti web sites. "**Software**" means the software programs branded by Alfresco and any enhancements, additions, corrections, modifications, updates or upgrades to the software provided by Alfresco. Software does not include third-party software which may be provided therewith. "**Services**" means Alfresco maintenance and support, training and professional services. "**End User**" means a customer of Partner who employs the Alfresco Products for its own internal use solely as integrated or bundled with the Partner Products. "**Subscription**" means access to the Software and support services for a defined period of time (the "**Subscription Period**"), as set forth in an Order Form. "**Enhancements**" means modifications, derivatives, improvements, updates, error corrections and/or bug fixes with respect to the functionality or performance of the Software which Partner may prepare for the Software for use solely in connection with Partner Products. As between the parties, Partner shall retain ownership of all right, title and interest in and to the Enhancements, subject to Section 2.3 below. "**Documentation**" means user manuals, training materials, software descriptions and specifications, brochures, technical manuals, release notes, installation guides, license agreements, supporting materials and other printed information, whether distributed in print, electronic or video format.

2. **License Grant**. Subject to the terms and conditions of this Agreement, Alfresco grants to Partner, and Partner hereby accepts, the following licenses:

2.1 **Distribution License**. Subject to the terms and conditions of this Agreement, Alfresco grants Partner a worldwide, non-exclusive, non-transferable, non-sublicenseable right during the Term to (a) use, reproduce, and distribute the Software in the Territory to End Users, solely as integrated or bundled with the Partner Product, limited to the number of CPUs, Named Users, and/or Active Processes (as applicable) designated in the Order Form or applicable Partner Addendum, and subject to an end user agreement that includes terms at least as protective of Alfresco's rights as set forth in Exhibit A ("**End User Agreement**"); (b) use, reproduce, modify and create Enhancements for use with the Partner Product; (c) modify and incorporate some or all of the Documentation into the End User documentation for distribution with the Partner Product. A CPU is a single central processing unit ("**CPU**") with up to four (4) cores on which the Software may be installed or executed. In virtualized environments, a CPU is defined as an allocation of 1 to 4 virtual cores to a given virtual machine instance. As an example, a virtual machine with 6 virtual cores counts as 2 CPUs. A "**Named User**" is an individual who is authorized by Partner to access the Alfresco Products and who has been given a unique user name or identifier (regardless of whether the user has actually used those credentials to access the Software). No more than one individual may use an issued user name or identifier, and the sharing of such credentials is expressly prohibited. "**Active Process**" means a process instance within the Software that has not been completed, cancelled, or formally suspended. Processes that have been initiated—but which have not been completed, cancelled, or formally suspended, or which are in a "wait" state—shall constitute Active Processes regardless of the level of user activity associated with those processes over time.

2.2 **Additional Licenses.** Partner may grant End Users the right to evaluate the Software as integrated or bundled with the Partner Product, for no additional fees, for up to thirty (30) days. Partner may also include the Software in demos of the Partner

Product to End Users. Alfresco shall have no obligation to provide Services for any such evaluation or demo uses of the Software. In addition, Alfresco grants Partner a non-exclusive, non-transferable, non-sublicenseable, royalty free license to use the Software to: (a) design, develop and/or test Enhancements; (b) provide training for the Partner Product; and (c) make back-up copies of the Software.

2.3 **Restrictions.** Except as expressly permitted in this Agreement, Partner will not (a) reproduce the Software in an amount exceeding the number of End Users actually receiving the Partner Product; (b) integrate or bundle the Software as part of any products or services for resale or distribution other than the Partner Product; (c) redistribute the Software as a standalone product; (d) use or permit End Users to use the Software or any portion thereof in any manner except in connection with the use of the Partner Product; (e) itemize the fees for the Software separately from the fees for the Partner Product on an invoice to an End User; (f) integrate, sell support for, or bundle Community Versions, or (g) grant any rights to any End User that conflict with the End User Agreement, including, without limitation, granting any form of perpetual license rights to the Software, or any right for End Users to further distribute the Software and/or provide access to third parties on a hosted basis. Should Partner wish to use the Alfresco Products for Partner's own internal or production use, Partner shall enter into a separate End User Agreement and pay the applicable subscription fee for all periods of use.

If at any time Alfresco reasonably determines the laws of any country may adversely impact Alfresco's ability to distribute Alfresco Products in that country, Alfresco reserves the right to suspend Partner's right to distribute the Alfresco Products or Promotional Materials in that country upon thirty (30) days' prior notice. Partner's rights with respect to the affected country may be reinstated upon written notification from Alfresco.

2.4 **Promotional Materials.** Subject to the terms and conditions below, Alfresco grants to Partner a non-exclusive, non-transferable right during the Term to reproduce or copy the Promotional Materials as reasonably necessary for Partner to fulfill its obligations under this Agreement; provided, however, that such right does not include the right to copy or distribute any third-party copyrighted materials separate from the Promotional Materials. "**Promotional Materials**" means any marketing collateral associated with the Alfresco Products that is provided by Alfresco to Partner for distribution to prospective End Users, including any translations of those materials approved by Alfresco in writing. All Promotional Materials and modifications to such materials will remain or become the property of Alfresco. Partner agrees not to modify or use the Promotional Materials except as permitted by this Agreement.

3. **Purchase and Payment**

3.1 **Fees and Invoices.** Pricing, billing and invoice terms for the Alfresco Products and applicable program fees are set forth in the Addendum (collectively, "**Fees**"). Partner must shall pay all Fees to Alfresco in accordance with the payment terms without regard for when and whether Partner collects payment from an End User.

3.2 **Taxes.** All fees are exclusive of Taxes. "**Taxes**" means any form of sales, use, value added or other form of taxation, but excluding any taxes based on the net income of Alfresco. Should Partner be legally required to withhold or deduct any portion of the payments due to Alfresco, then the payment to Alfresco will be increased by the amount necessary to yield Alfresco an amount equal to the sum it would have received without withholdings or deductions.

3.3 **Expenses.** All expenses, costs and charges incurred by Partner in the performance of its obligations under this Agreement will be borne by and paid by Partner unless Alfresco has expressly agreed beforehand in writing to pay such expenses, costs or charges.

3.4 **Late Payment.** Alfresco may charge interest on any overdue Fees at the rate of 12% per annum without prejudice to any other right or remedy of Alfresco.

3.5 **Records and Audit.** During the Term and for three (3) years thereafter, Partner will maintain written records and accounts regarding Partner's distribution of the Alfresco Products to End Users and compliance with this Agreement. Alfresco may request and receive copies of any such records within thirty days of the notice date. Upon thirty days' written notice to Partner, Alfresco may engage its independent accountants to conduct an inspection and audit of all relevant facilities and records of Partner. The inspection will be conducted at Alfresco's expense; provided, however, that if the inspection and audit reveals Partner has failed to comply with this Agreement in any material respect, Partner will pay all reasonable costs and expenses incurred by Alfresco in conducting the audit.

4. **Intellectual Property**

4.1 **Alfresco Ownership**. Partner's rights in the Alfresco Products are limited to those license rights expressly granted under this Agreement, and Alfresco retains all rights not expressly granted (including all rights under trademarks, copyrights, patents, and/or other Alfresco intellectual property). Except with the prior written consent of Alfresco, Partner will not: (a) distribute modified Alfresco Products under Alfresco's trademarks; (b) remove any copyright, proprietary notice, or license information from any Alfresco Products or documentation; or (c) use the Services in any manner or for any purpose not specifically permitted by this Agreement. Alfresco owns and retains all right, title, and interest in the Alfresco Products and all intellectual property rights inherent therein, including, without limitation, all changes incorporated into the Software by Alfresco, even if originally requested or suggested by Partner and/or its End Users.

4.2 **Trademarks**

4.2.1 **License Grant.** As used in this Agreement, the term "**Alfresco Marks**" means the Alfresco trademarks. During the Term of the Agreement, Alfresco grants Partner a non-exclusive, non-transferable, worldwide, royalty-free, revocable license, with no right to sublicense, to use the Alfresco Marks in the Territory solely in connection with the marketing and distribution of the Alfresco Products. This license is granted solely to Partner and does not extend to Partner's affiliated

and/or subsidiary companies. All other use of the Alfresco Marks is prohibited. Partner agrees to follow the Alfresco trademark usage guidelines located at www.alfresco.com/legal/licensing/Alfresco_Trademark_Policy.doc. Partner will not use the Alfresco Marks in combination with any other trade name, trademark or service mark, except as stated in this Agreement, without Alfresco's prior written approval. Alfresco reserves the right to terminate this Agreement upon Partner's misuse of any Alfresco Mark.

4.2.2 **Reservation of Rights.** All uses of the Alfresco Marks by Partner, including the goodwill therein, inure to the benefit of Alfresco. Partner acquires no right, title or interest in the Alfresco Marks or associated goodwill, other than the right to use the Alfresco Marks according to this Agreement. As between Partner and Alfresco, Alfresco owns all Alfresco Marks and Partner agrees not to apply to register any marks which include a Alfresco Mark or any trademark, service mark, trade name or derivation confusingly similar to a Alfresco Mark, or to register any domain name containing any Alfresco Mark or a derivative or abbreviation thereof in any country or territory during the term of this Agreement. At Alfresco's reasonable request, Partner will execute any papers or documents reasonably necessary to protect the rights of Alfresco in the Alfresco Marks Partner will cease using the Alfresco Marks immediately upon termination of this Agreement.

5. Term and Termination

5.1 **Term**. This Agreement will begin on the Effective Date and continue for the term set forth in the Addendum ("**Term**") unless terminated earlier in accordance with this Agreement. In the event of termination or expiration of this Agreement (a) agreements with End Users that were entered during the Term of this Agreement will continue in accordance with their terms, for the duration of the applicable Subscription Period(s), as long as such End Users comply with the terms of such agreements: and (b) Partner will remain responsible for all ongoing End User subscription fees until those End User subscriptions have expired. Alfresco will provide information to End Users about how to renew their subscriptions going forward, which may include directing End Users to work with Alfresco directly or with other authorized distributors.

5.2 **Termination**. Either party may (without prejudice to any other right or remedy) terminate this Agreement upon written notice if the other party materially breaches the terms of this Agreement, including the failure of timely payment, and fails to cure the breach within fifteen (15) days of being requested in writing to do so; provided, however, that no cure period will be required for a breach of Section 8.2 or other breach that cannot be reasonably cured.

5.3 **Effect of Termination of Agreement**. If this Agreement is terminated for any reason or expires by its terms:

5.3.1 All rights and obligations of the parties will terminate immediately, except that the obligations of the parties under Sections 3, 4.1, 4.2.2, 5.3, 6.2, 6.3, 6.4, 8.2, 8.3, 8.4, and 9 will survive such termination or expiration; and

5.3.2 Partner will immediately (i) cease all promotion, demonstration, sale and distribution of the Alfresco Products, (ii) cease all use of Alfresco Marks, and (iii) return or destroy, at Alfresco's option, all printed materials containing such marks.

6. Warranties, Limitation of Liability, and Disclaimers

6.1 **General Representations and Warranties**. Alfresco represents and warrants to Partner that: (a) it will use reasonable skill and care in providing the Services which shall be performed in a professional and workmanlike manner by qualified personnel; (b) it has the authority to enter into this Agreement with Partner; and (c) to Alfresco's knowledge, the Alfresco Products do not, at the time of delivery to Partner, include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Alfresco Products.

Partner represents and warrants to Alfresco that: (a) it will use reasonable skill and care in performing under this Agreement and providing services to End Users, and will perform any services it provides to End Users in a professional and workmanlike manner by qualified personnel; (b) it has the authority to enter into this Agreement with Alfresco; and (c) it will comply with all applicable laws in the sale, distribution, and servicing of the Alfresco Products.

6.2 **Disclaimer of Warranty.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY EITHER PARTY OR ITS AFFILIATES, DEALERS, PARTNERS, AGENTS OR EMPLOYEES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN. ALFRESCO DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE ALFRESCO PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. Partner will make no representations or warranties on behalf of Alfresco regarding the Alfresco Products in connection with the distribution of the Alfresco Products or otherwise.

6.3 **Disclaimer of Damages**. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR AN ORDER FORM, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR DAMAGES OTHER THAN DIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION: ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER IN TORT, (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE; OR ANY DAMAGES ARISING FROM ANY MALFUNCTIONS, REGULATORY NON-COMPLIANCE, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF A PARTY OR ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR THESE DAMAGES WILL BE LIMITED AND EXCLUDED EVEN IF ANY

EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

6.4 **Limitation of Liability**. FOR ALL EVENTS AND CIRCUMSTANCES, NEITHER PARTY'S (OR ITS AFFILIATES') AGGREGATE AND CUMULATIVE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, STATUTE OR OTHERWISE WILL EXCEED THE AMOUNTS PAID OR OWED TO ALFRESCO BY PARTNER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY FOR ILLEGAL ACTS, DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE CAUSED BY NEGLIGENCE, OR FOR FRAUD. NOTHING IN THIS SECTION WILL LIMIT THE FEES OWED BY PARTNER UNDER THIS AGREEMENT, OR FOR EXCEEDING THE SCOPE OF THE LICENSES GRANTED OR OTHERWISE VIOLATING THE REQUIREMENTS IN SECTION 2 OR 4.2.

6.5 **Insurance**. Partner will at all times during the Term maintain sufficient insurance coverage to cover its activities under this Agreement, including without limitation general commercial liability coverage of at least two million dollars.

7. Indemnification

7.1 **Defense**. If a third party initiates a legal action alleging that the Alfresco Products directly infringe the third party's patent, copyright, trademark or misappropriates the third party's trade secret rights ("**Third Party Rights**") (such action, a "**Claim**"), and provided Partner is not in material breach of this Agreement, then Alfresco will (a) promptly assume the defense of the Claim and (b) pay costs, damages and/or reasonable attorneys' fees that are included in a final judgment against Partner (without right of appeal) or in a settlement approved by Alfresco that are attributable to Partner's distribution of the Alfresco Products; provided that Partner (i) is current in the payment of all applicable fees, or becomes current, prior to requesting indemnification, (ii) notifies Alfresco in writing of the Claim promptly after receipt of the Claim, (iii) provides Alfresco with the right to control the defense of the Claim with counsel of its choice, and to settle such Claim at Alfresco's sole discretion (unless the settlement requires payment by Partner or requires Partner to admit liability), and (iv) cooperates with Alfresco in the defense of the Claim.

7.2 **Injunctive Relief**. If an injunction is sought or obtained against Partner's use of the Alfresco Products as a result of a third party infringement claim, Alfresco may, at its sole option and expense, (i) procure for Partner the right to continue using the affected Alfresco Products consistent with this Agreement, (ii) replace or modify the affected Alfresco Products with functionally equivalent software so that it does not infringe, or, if either (i) or (ii) is not available on a basis that Alfresco finds commercially feasible, (iii) terminate the applicable licenses without further liability under this section and, if Partner returns the Alfresco Products that are subject to the Claim, refund any prepaid and unused Fees for the affected Alfresco Products.

7.3 **Exclusions**. Alfresco will have no liability for any Claim based upon (a) use of non-current versions of the Software when Alfresco has made newer versions available that do not infringe; (b) altered versions of the Software (unless the specific alteration was made by or for Alfresco); (c) use, operation or combination of the applicable Software with non-Alfresco programs, data, equipment or documentation if such infringement would have been avoided but for such use, operation or combination; (d) Alfresco's compliance with designs, specifications or instructions provided by Partner or its End User where those designs, specifications or instructions cause the infringement; (e) use by Partner or its End Users after notice by Alfresco to discontinue use of all or a portion of the Software; or (f) third party software. This section constitutes Alfresco's entire liability, and Partner's sole and exclusive remedy, with respect to any third party claims of infringement or misappropriation of intellectual property rights.

7.4 **Partner Indemnity**. Partner agrees to indemnify, defend and hold Alfresco harmless from and against any costs, losses, liabilities, claims or expenses (including reasonable attorneys' fees) arising out of (i) any third-party claim that any Partner product or service infringes its intellectual property rights including any combination of Partner's product or service with the Software, except to the extent such infringement is caused solely by the Software, and (ii) any breach of Section 2 of this Agreement. To obtain indemnity from Partner, Alfresco shall: (a) notify Partner in writing of the claim promptly after receipt of the claim, (b) provide Partner the right to control the defense of the claim with counsel of its choice, and to settle such claim at Partner's sole discretion (unless the settlement requires payment by Alfresco or requires Alfresco to admit liability), and (c) cooperate with Partner in the defense of the Claim.

8. Publicity and Confidentiality

8.1 **Publicity**. Neither party will disclose the terms of this Agreement (including the Fees paid hereunder) without the other party's prior written consent. Alfresco may reference its relationship with Partner on its website, during discussions with analysts, meetings with the press, customer briefings, or in regulatory filings. Partner may identify itself as an Alfresco partner on its web site and in promotional materials, in accordance with Exhibit A, but shall not represent itself as Alfresco.

8.2 **Confidentiality.** During the term of this Agreement, both parties agree that: (a) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (b) each party will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care; and (c) the Confidential Information may be disclosed only to employees, agents, contractors with a need to know, and to its auditors and legal counsel who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. Both parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information. "**Confidential Information**" means all non-public information, including the terms of this Agreement or any Addendum, disclosed by either Alfresco or Partner ("**Disclosing Party**") to the other party ("**Recipient**") during the term of this Agreement

that is either (y) marked confidential or (z) any information a reasonable person would understand to be confidential or proprietary under the circumstances of its disclosure.

8.3 **Exclusions.** Confidential Information will not include information which: (a) is or later becomes publicly available without breach of this Agreement, or is disclosed by the Disclosing Party without obligation of confidentiality; (b) is known to the Recipient at the time of disclosure by the Disclosing Party; (c) is independently developed by the Recipient without use of the Confidential Information; (d) becomes lawfully known or available to the Recipient without restriction from a source having the lawful right to disclose the information; or (e) is generally known or easily ascertainable by parties of ordinary skill in the business of the Recipient. The Recipient will not be prohibited from complying with disclosure mandated by applicable or regulation, provided it gives the Disclosing Party sufficient advance notice of the disclosure requirement to seek an order or other mechanism to prevent or limit disclosure. In the event disclosure is required by law or regulation, the party making the disclosure will disclose only the minimum amount of Confidential Information necessary to comply with the applicable requirements.

8.4 **Independent Development**. Each party understands that the other party may develop or receive information similar to the other party's Confidential Information. Subject to the intellectual property rights of each party, (a) either party may develop or acquire technology or products, for itself or others, that are similar to or competitive with the technology or products of the disclosing party, and (b) each party is free to use (but not disclose to third parties) information which may be retained in the unaided memory of the receiving party's employees or contractors who have had access to the Confidential Information of the other party.

9. **Dispute Resolution.**
The following dispute resolution provisions will apply based upon Partner's Territory.

9.1 **Partners with Territories in Europe, Africa and/or the Middle East (EMEA).** English law shall govern all aspects of this Agreement. Any dispute arising from this Agreement shall be subject to the exclusive jurisdiction of courts located in England and Wales, without regard to their conflict-of-law principles or the United Nations Convention on Contracts for the International Sale of Goods.

9.2 **Partners with Territories in the United States and all Non-EMEA Locations**. California law shall govern all aspects of this Agreement, without regard to its conflict-of-law principles. Any dispute arising from this Agreement shall be subject to the exclusive jurisdiction of state and federal courts located in the Northern District of California. The prevailing party in any such dispute shall recover its reasonable attorneys' fees and costs from the losing party, including any fees or costs arising from an appeal.

9.3 **Partners with Territories in Both EMEA and Non-EMEA Locations**. In the event a Partner has a global Territory, or one that otherwise includes both EMEA and non-EMEA locations, then the party initiating the action may choose to proceed under either Section 9.1 or 9.2.

10. **General**

10.1 **Notices.** Notices under this Agreement must be in in the English language and delivered to the receiving party's Chief Financial Officer, with a copy to its General Counsel, at the receiving party's address listed below or, if not listed in this Agreement, in the most recent Addendum or Order Form. Notices will be deemed received when (1) delivered personally; or (2) upon confirmed delivery by a commercial express carrier.

10.2 **Assignment.** This Agreement is binding on the signing parties. Nothing in this Agreement confers upon any other person or entity any right, benefit or remedy of any nature. This Agreement is assignable by a party only with the other party's prior written consent, which will not be unreasonably withheld; provided, however, that either party may assign this Agreement as a result of a merger or a sale of all or substantially all of such party's assets or stock without the other party's approval.

10.3 **Subcontracting.** Alfresco may subcontract services under this Agreement without the prior approval of Partner; provided, however, that (a) subcontractors must agree to keep confidential any proprietary information received from Alfresco or Partner, and (b) Alfresco remains responsible to Partner for the performance of its obligations under this Agreement. Partner acknowledges and agrees that to provide the Services, it may be necessary for Alfresco to transfer information received from Partner to its affiliates, and/or subcontractors, which may be located worldwide.

10.4 **Independent Contractor.** Partner is an independent contractor for all purposes, without express or implied authority to bind Alfresco. Neither Partner nor its employees, agents or subcontractors are entitled to any employee benefits of Alfresco. Partner will be responsible for all costs and expenses incident to performing its business. Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture between the parties.

10.5 **Force Majeure.** Neither party will be liable for nonperformance or delays caused by acts of God, wars, riots, strikes, fires, floods, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control, except with respect to payment under Section 3. In the event of foregoing force majeure event, the date of performance will be deferred for a period of time equal to the time lost by reason of the delay. The affected party will notify the other in writing of such events promptly upon their occurrence.

10.6 **Compliance with Law and Export Controls**

10.6.1 Partner represents and warrants, that: (a) it has not entered into, nor will it enter into, any personal, business, or financial dealing with, or make any payment to, any directors, officers, employees, affiliates and subsidiaries of Alfresco, except as specifically provided for in this Agreement; (b) Partner has not and will not, in connection with its performance under this Agreement, make or receive any payments or give or receive any gift, loans, entertainment, gratuities or other

compensation in any form to or from third parties for any purpose if such would be in violation of any laws or regulations of any country; and (c) Partner has not entered into any agreement that would prevent Partner from diligently performing its obligations under this Agreement.

10.6.2 Partner agrees that it will not re-export the Alfresco Products or any other technical data received from Alfresco except as permitted by all applicable laws.

10.6.3 To the extent required by applicable law, Partner will register this Agreement, at its expense, with any governmental authority requiring such registration. At Alfresco's option, Alfresco may obtain such registration in its own name. At Alfresco's request, Partner will withdraw any application or registration of this Agreement that it has filed.

10.7 **Headings.** All headings contained in this Agreement are inserted for identification and convenience, and will not be deemed part of this Agreement for purposes of interpretation.

10.8 **Severability.** If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable to the greatest possible extent. If the impacted provision cannot be so modified, the parties agree that the invalid provision will not affect the validity of the remaining portions of the Agreement.

10.9 **Waiver.** The delay or failure of either party to exercise any rights hereunder will not constitute a waiver or forfeiture of those rights. No waiver will be valid unless in writing and signed by an authorized representative of the party against whom the waiver or forfeiture would be enforced. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

10.10 **Entire Agreement.** This Agreement contains the final, complete and exclusive statement of the agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous oral and written agreements. In the event of any conflict between this Agreement, the Addendum and any order form or exhibits, this Agreement will take precedence unless otherwise expressly provided in the Addendum, order form or exhibit.

10.11 **Amendment.** This Agreement may not be amended, supplemented or modified except by specific written agreement signed by authorized representatives of each party.

10.12 **Interpretation.** Each party acknowledges it has reviewed and participated in settling the terms of this Agreement. The parties further agree that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation or construction of this Agreement.

10.13 **Controlling Language.** This Agreement has been prepared, negotiated and signed in English, and English is the controlling language of this Agreement.

EXHIBIT A
ALFRESCO END USER LICENSE TERMS

1. **License Grant**. Alfresco grants to the end user ("**End User**") a non-exclusive, non-transferable, non-sublicensable license to use, copy and modify the Alfresco Software ("**Software**") only for End User's own internal use of the Software. End User will not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to: (i) the Software, (ii) any modified version or derivative work of the Software created by the End User or for the End User, or (iii) Alfresco Community (which includes all non-supported versions of Alfresco-developed software), for any purpose including timesharing or service bureau purposes; (b) remove or alter any copyright, trademark or proprietary notice in the Software; (c) transfer, use or export the Software in violation of any laws or regulations of any government or governmental agency; or (d) reverse engineer, decompile or modify any encrypted or encoded portion of the Software. Alfresco and its licensors will own all right, title, and interest to the Software, technology, information, code or software provided to End User, including all portions, copies or modifications thereof.

2. **Disclaimer of Warranty.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE PROVIDED BY ALFRESCO IS PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. ALFRESCO DOES NOT GUARANTEE THAT THE USE OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED, COMPLY WITH REGULATORY REQUIREMENTS, BE ERROR FREE OR THAT ALFRESCO WILL CORRECT ALL SOFTWARE ERRORS. End User agrees that it is solely responsible for the results obtained from the use of the Software.

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6. The following dispute resolution provisions will apply based upon the territory where the End User deploys the Software ("**Territory**"):

6.1 **End User with Territories in Europe, Africa and/or the Middle East (EMEA).** English law shall govern all aspects of this Agreement. Any dispute arising from this Agreement shall be subject to the exclusive jurisdiction of courts located in England and Wales, without regard to their conflict-of-law principles or the United Nations Convention on Contracts for the International Sale of Goods.

6.2 **End User with Territories in the United States and all Non-EMEA Locations**. California law shall govern all aspects of this Agreement, without regard to its conflict-of-law principles. Any dispute arising from this Agreement shall be subject to the exclusive jurisdiction of state and federal courts located in the Northern District of California. The prevailing party in any such dispute shall recover its reasonable attorneys' fees and costs from the losing party, including any fees or costs arising from an appeal.

6.3 **End User with Territories in Both EMEA and Non-EMEA Locations**. In the event a Partner has a global Territory, or one that otherwise includes both EMEA and non-EMEA locations, then the party initiating the action may choose to proceed under either Section 6.1 or 6.2.

7. **General.** If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement.