

This Agreement ("Agreement") is effective as of March 1<sup>st</sup>, 2018 ("Effective Date") by and between CloudBees, Inc. ("CloudBees"), 16192 Coastal Highway, Lewes, DE 19958-USA and Fishtech (the "Partner"), 13333 Holmes Road Kansas City, MO 64145, United States.

This Agreement permits Partner to purchase products, support and/or services from CloudBees.

**1. Partner Program.** During the term of this Agreement, Partner will be entitled to the benefits of the CloudBees Partner Program described in Exhibit B to this Agreement.

**2. Services.**

2.1 CloudBees will supply to Partner training and consulting services ("Services") at the location, rates and for the duration specified in an Order Form. Each party will appoint a coordinator who will manage the provision of Services. Services may be ordered by Partner pursuant to a Statement of Work ("SOW") describing the work to be performed, fees and any applicable milestones, dependencies and other technical specifications or related information. Each SOW must be signed by both parties before CloudBees shall commence work under such SOW. If the parties do not execute a separate Statement of Work, the Services shall be provided as stated on the Order Form. Partner will reimburse CloudBees for reasonable travel and lodging expenses as incurred.

2.2 Partner shall be responsible for promptly obtaining and providing to CloudBees all "Required Consents" and pay any associated costs, fees or charges for such Required Consents necessary for CloudBees to provide the Services described in an Order Form. A Required Consent means any consents or approvals required to give CloudBees and its subcontractors the right or license to access and use Partner and third party's software, hardware, firmware, or other products to enable CloudBees and its subcontractors to perform the Services set forth in an Order Form without infringing the ownership or license rights of the providers or owners of such products.

**3. Payment.**

3.1 Partner shall pay all fees as specified on Exhibits to this Agreement and on the applicable SOWs and Order Forms. In addition, Partner will pay all out-of-pocket travel and living expenses incurred in connection with CloudBees' provision of the Services, if any, identified in the applicable SOW or Order Form.

3.2 All undisputed fees shall be paid by Partner thirty (30) days from the Effective Date of the Order Form unless otherwise specified in the applicable SOW or Order Form. If Partner disputes any portion of any invoice, Partner will notify CloudBees in writing of such dispute and will pay the undisputed portions of the invoice as provided in this

Section 3.2. Partner and CloudBees will work together in good faith to resolve the dispute. All payments are non-refundable. Partner shall be responsible for all taxes, withholdings, duties and levies arising from the order, excluding taxes based on the net income of CloudBees. All fees will be paid to CloudBees from a United States entity. Any late payments shall be subject to a service charge equal to one percent (1%) per month of the amount due or the maximum amount allowed by law, whichever is less. If payment of any fee is overdue, CloudBees may also suspend the license, Support and/or Services until such delinquency is corrected.

3.3 Partner will maintain accurate records relating to contracts, sales of the Product, invoices, accounts, complaints and other transactions relating to its performance under this Agreement, for at least two (2) years after the expiration or termination of this Agreement. CloudBees, or persons designated by CloudBees, will, at any time during the period when Partner is obliged to maintain such records during normal business hours and on reasonable prior notice, be entitled to audit such records and to ascertain completeness and accuracy, in order to verify Partner's compliance with the terms of this Agreement. All information obtained during any such audit is the Confidential Information of Partner and may only be used or disclosed to enforce the terms of this Agreement.

**4. Term of Agreement.**

4.1 Term. This Agreement is effective as of the Effective Date and continues until February 28<sup>th</sup>, 2019. Thereafter, this Agreement shall automatically renew for additional one-year terms unless either party provides written notice of termination at least (30) days prior to the end of the then-current term. Either party may terminate this Agreement for convenience by providing (90) days prior written notice of such termination to the other party. Either party may terminate this Agreement (including all related Order Forms) if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within 60 days thereafter). Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice

to any other remedies it may have under this Agreement, by law, or otherwise.

4.2 **Effects of Termination.** Upon expiration or termination of this Agreement for any reason: (a) all rights and licenses granted hereunder will terminate and no further licenses may be granted by Partner; provided, however, that Partner shall have the right to fulfill all orders in existence at the time of any such expiration or termination; and (b) each party will immediately return to the other party all Confidential Information in its possession, custody or control in whichever form held (including all copies or embodiments of the Confidential Information) and will cease using any trademarks, service marks and other designations of the other party. Except as set forth in this Agreement, Partner will not be entitled to any additional remuneration, or reimbursement of any expenses based on the expiration or termination of this Agreement. Notwithstanding anything to the contrary, no termination or expiration of this Agreement shall affect any end user to whom Partner has distributed products or services.

4.3 **Survival.** Sections 4 (Term of Agreement), 5.2 (Warranty Disclaimer), 6 (Limitation of Remedies and Damages), 7 (Ownership), 8 (Confidential Information), 9 (General), and 10 (Definitions) shall survive any termination or expiration of this Agreement.

## **5. Limited Warranty and Disclaimer.**

### **5.1**

a. **Products.** CloudBees warrants to Partner only that, for a period of thirty (30) days following the date the Products are initially licensed by Partner, the Products will substantially conform to the description contained in the applicable Documentation ("Warranty Period"). If during the Warranty Period the Products do not substantially conform to the description contained in the applicable Documentation, CloudBees shall correct such nonconformities, or, at Partner's request, replace such products.

b. **Services.** CloudBees warrants that the Support and/or Services to be performed hereunder will be done in a workmanlike manner and shall conform to standards of the industry.

c. CloudBees and Partner covenant and agree that with respect to viruses: (a) each party shall be responsible for installing and operating up-to-date virus detection and removal products on equipment operated by such party; (b) each party shall be responsible for running virus scans and downloading the new definition files to its own equipment; and (c) if a virus is introduced into a system, each party shall use reasonable commercial efforts to identify and

neutralize such virus and to mitigate any adverse effect of such virus.

d. The warranties in this Section 5 are made to Partner only, provided, that, Partner shall have the right to make a warranty claim on behalf of its end users. The warranties will apply only if: (i) the Products have been properly installed and used at all times and in accordance with the instructions in the applicable Documentation; (ii) no modification, alteration or addition has been made to the Products by persons other than CloudBees; and (iii) CloudBees receives written notification of the breach, in the case of the warranty in Section 5.1.a., within thirty (30) days following the date the Products were initially licensed by Partner, and in the case of the warranty in Section 5.1.b, within sixty (60) days following the performance of the relevant Services or Support.

5.2 **Warranty Disclaimer.** THIS SECTION 5 IS A LIMITED WARRANTY AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5, THE SOFTWARE, DOCUMENTATION, DELIVERABLES, WORK PRODUCT, MATERIALS, SUPPORT AND ALL SERVICES ARE PROVIDED "AS IS". CLOUDBEES DOES NOT WARRANT THAT THE SERVICES, DELIVERABLES, WORK PRODUCT, SOFTWARE, DOCUMENTATION, SUPPORT OR ANY MATERIALS FURNISHED OR PROVIDED TO PARTNER UNDER THIS AGREEMENT WILL OPERATE UNINTERRUPTED OR THAT THEY WILL BE FREE FROM DEFECTS OR THAT THE SOFTWARE IS DESIGNED TO MEET PARTNER'S BUSINESS REQUIREMENTS. NEITHER CLOUDBEES NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. PARTNER MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE LIMITED WARRANTY PERIOD.

## **6. Limitation of Remedies and Damages.**

6.1 EXCEPT FOR PARTNER'S BREACH OF CONFIDENTIALITY OBLIGATIONS OR PARTNER'S VIOLATION OF THE LICENSE GRANTS OR RESTRICTIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR

OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

6.2 EXCEPT FOR PARTNER'S BREACH OF CONFIDENTIALITY OBLIGATIONS OR PARTNER'S VIOLATION OF THE LICENSE GRANTS OR RESTRICTIONS, EACH PARTY'S TOTAL LIABILITY AND THE OTHER PARTY'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER ARISING HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE PRICE PAID BY PARTNER TO CLOUDBEES FOR THE SPECIFIC SUPPORT, PRODUCTS OR SERVICES GIVING RISE TO THE CAUSE OF ACTION DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM.

6.3 CLOUDBEES' TOTAL LIABILITY ASSOCIATED WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ITS INDEMNIFICATION OBLIGATIONS HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THREE TIMES (3X) THE PRICE PAID BY PARTNER TO CLOUDBEES FOR THE SPECIFIC SUPPORT, PRODUCTS, OR SERVICES GIVING RISE TO THE CAUSE OF ACTION.

6.4 The provisions of this Section 6 allocate risks under this Agreement between Partner and CloudBees. CloudBees' fees for the Products, Support and/or Services reflect this allocation of risks and limitation of liability.

6.5 NEITHER PARTY SHALL BRING ANY CLAIM BASED ON THE SOFTWARE, SUPPORT, OR THE SERVICES PROVIDED HEREUNDER MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

## 7. Ownership.

7.1 Other than the limited rights specifically granted in this Agreement. CloudBees will own all right, title, and interest in and to its pre-existing technology, the Products and all associated Intellectual Property Rights.

7.2 Partner agrees and acknowledges that Partner is not obtaining any intellectual property right in or to any materials provided by CloudBees to Partner in connection with the provision to Partner of Support or Services ("Materials"), other than the rights of use specifically granted in this Agreement. Subject to the terms of this Agreement, Partner will be entitled to use all Materials provided by CloudBees to Partner in accordance with the terms set forth in this Section 7. Materials may not be copied electronically or otherwise whether or not for archival purposes, modified, translated, re-distributed,

disclosed to third parties, lent, hired out, made available to the public, sold, offered for sale, shared, or transferred in any other way.

7.3 Partner agrees that CloudBees may and will collect, store, use, disclose to third parties, and process any information that Partner provides in connection with the CloudBees Partner Program, including any information from Partner's use of the Partner Portal or any third party websites and software, in accordance with the privacy policy currently referenced at <https://www.cloudbees.com/privacy-policy>, as it may be updated by CloudBees from time to time. Partner acknowledges that third parties may collect, store, use, disclose, process, and make derivative works from such information. In some cases, CloudBees may disclose Partner information to a recipient in another country.

7.4 All CloudBees trademarks, trade names, logos and notices present on the Materials will be preserved and not deliberately defaced, modified or obliterated except by normal wear and tear. Partner shall not use any CloudBees trademarks without CloudBees' express written authorization. The use of the CloudBees trademarks is governed by CloudBees' then-current trademark standards for use. Any use by Partner of CloudBees trademarks will inure to the benefit of CloudBees.

7.5 Subject to the express limitation on liability set forth in section 6.3, During the term of this Agreement, CloudBees will defend at its expense any actual or threatened third party claim or suit brought against Partner alleging that the Products, documentation, trademarks or other materials provided by CloudBees hereunder (collectively "**Licensed Materials**") infringes a U.S. patent or copyright of such third party ("Infringement Claim") and will pay all costs and damages incurred as a result thereof. Partner shall give CloudBees (1) prompt written notice of the claim; (2) reasonably requested information that Partner possesses about the claim; (3) reasonable cooperation and assistance; and (4) sole authority to defend or settle the claim. If it is alleged that the Licensed Materials are subject to such an Infringement Claim, CloudBees may replace or modify the Licensed Materials so that they become non-infringing. If CloudBees is unable to reasonably secure such remedy, CloudBees may terminate the license and will refund all prepaid but unused fees related to the infringing Licensed Materials. CloudBees will have no obligation for claims of infringement resulting from any combination, operation, or use of the Licensed Materials with any programs or equipment not supplied by CloudBees. CloudBees will have no obligation for claims of infringement resulting from (i) any modification of the Licensed Materials by a party other than CloudBees; (ii) a failure, within a reasonable time frame, to implement any replacement or modification

of Licensed Materials provided by CloudBees; (iii) use for a purpose or in a manner for which the Licensed Materials were not designed; (iv) any intellectual property right owned or licensed by Customer, excluding the Licensed Products; (v) CloudBees compliance with any materials, designs, specifications or instructions provided by Customer; (vi) Customer running the Licensed Materials after CloudBees notifies Customer to discontinue running due to such a claim; or (vii) open source software. THIS SECTION STATES PARTNER'S SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF CLOUDBEES FOR INFRINGEMENT CLAIMS AND ONLY APPLIES DURING THE TERM OF THIS AGREEMENT.

**8. Confidential Information.** Each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Confidential Information excludes information that: (i) was in the public domain at the time it was disclosed or has become in the public domain through no fault of the Receiving Party; (ii) was known to the Receiving Party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the Disclosing Party; (iv) was independently developed by the Receiving Party without any use of Confidential Information of the Disclosing Party; or (v) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party. Any software, documentation or technical information provided by CloudBees (or its agents) that has not been released to the CloudBees community, performance information relating to the Products, and the terms of this Agreement shall be deemed Confidential Information of CloudBees without any marking or further designation. The Receiving Party shall not: (i) disclose any Confidential Information to any third party, except as otherwise expressly permitted herein; (ii) make any use of Confidential Information except: (a) to exercise its rights and perform its obligations under this Agreement; or (b) in connection with the parties' ongoing business relationship; or (iii) make Confidential Information available to any of its employees or consultants except those that have agreed to obligations of confidentiality at least as restrictive as those set forth herein and have a "need to know" such Confidential Information. The Receiving Party is liable for all acts and omissions of its employees and consultants to the extent that such act or omission would be a breach of this Agreement if done by Receiving Party. The Receiving Party shall be held to the same standard of care as it

applies to its own information and materials of a similar nature, and no less than reasonable care. The Receiving Party may disclose the other party's Confidential Information to the extent such disclosure is required by order or requirement of a court, administrative agency, or other governmental body, but only if the Receiving Party provides prompt written notice thereof to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure. The Receiving Party shall protect Confidential Information in the manner provided herein for five (5) years after receipt thereof, unless such obligation ceases earlier pursuant to this Section or to the extent the Confidential Information constitutes a trade secret under law, in which case the Receiving Party agrees to protect such information for so long as it qualifies as a trade secret under applicable law.. Notwithstanding anything to the contrary herein, neither party shall disclose the terms and conditions of this Agreement to any third party, without the prior written consent of the other party except: (a) as required by any court or other governmental body; (b) as otherwise required by law; (c) to legal counsel of the parties; (d) in confidence, to accountants, banks, and financing sources and their advisors; (e) in connection with the enforcement of this Agreement or rights under this Agreement; or (f) in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction.

**9. General.**

**9.1 Severability.** If any provision of this Agreement is adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

**9.2 Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of New York and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act (UCITA). The jurisdiction and venue for actions related to the subject matter hereof shall be New York City, New York, and both parties irrevocably consent to such personal jurisdiction of such courts and waive all objections thereto.

**9.3 Attorneys' Fees and Costs.** The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

**9.4 Notices and Reports.** Any notice or report hereunder shall be in writing to the notice address set forth in the signature line below and shall be deemed given upon delivery if sent by: (i) personal delivery; (ii) certified or

registered U.S. mail (return receipt requested); or (iii) overnight commercial delivery service.

9.5 Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Partner will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

9.6 Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement including, but not limited to, any terms and conditions printed on CloudBees' invoices or on Partner's purchase orders, unless such terms and conditions are expressly stated as an amendment to this Agreement and duly signed on behalf of both parties. Partner acknowledges that CloudBees products are subscription-based products and that, in order to provide improved customer experience, CloudBees may make changes to CloudBees products (including the Products or the Subscription offerings) or Documentation. In such event, CloudBees will update the Documentation accordingly. Purchase orders will be for the sole purpose of defining quantities, prices and describing the Products, Support and/or Services to be provided under this Agreement, and to this extent only are incorporated as a part of this Agreement and all other terms in purchase orders are rejected. No amendment, modification or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties. If an inconsistency exists between the terms of this Agreement and the terms of any SOW, the terms of the SOW will control.

9.7 Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

9.8 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the

reasonable control of such party, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval of a license by a government agency.

9.9 Government Regulation. Partner may not export or re-export the Products except in compliance with the United States Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. The Products and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Products and Documentation by the U.S. Government shall be governed solely by the terms of this Agreement.

9.10 Partner Acknowledgement. Partner agrees that CloudBees may from time to time identify Partner (with Partner's name, logo, or trademark) as a CloudBees customer in or on CloudBees' website, sales and marketing materials, or press releases. CloudBees may not use Partner's name, logo, or trademark for any other purpose without obtaining Partner's prior written consent.

9.11 Third-Party Code. The Products may contain or be provided with certain third-party code. Such third-party code is licensed under the terms of the applicable license conditions and/or copyright notices that can be found in the license's file, the Documentation or other materials accompanying the Products.

9.12 No Hire. Partner and Partner's Affiliates may not hire, or directly or indirectly solicit or employ, any employee or contractor of CloudBees who is or was involved in the development, use or provision of Services or Support to Partner, without the prior written consent of CloudBees, for a period of: (i) two (2) years after the termination of this Agreement, or (ii) during the time the employee is employed by CloudBees and for a period of one (1) year thereafter, whichever is later.

9.13 Assignment. Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld, and any such assignment in violation of this Section shall be void, except that the transfer of this Agreement or rights granted hereunder to a successor entity in the event of a merger, corporate reorganization, or acquisition shall not constitute an assignment for purposes of this Section. This Agreement shall inure to the benefit of and be binding upon

the parties hereto, and their successors and permitted assigns.

9.14 **Headings.** The headings in this Agreement are for purposes of reference only and will not in any way limit or affect the meaning or interpretation of any of the terms hereof.

#### **10. Definitions.**

**Affiliate** means an entity that a party, directly or indirectly, controls, an entity that controls a party or an entity that is under common control with a party. For purposes of this provision, control means ownership of at least fifty percent (50%) of the outstanding voting shares of the entity.

**Agent** means the Products necessary to run the Products jobs. For purposes of this definition: (i) when an Agent is on the same computer as a Master, it is included in the Master, and (ii) when an Agent is on a different computer than the Master, the Agent is a subset of the Master and the Agent is linked to the Master.

**Agreement** means this Partner Agreement and Order Form(s) attached or incorporated into this Agreement by reference.

**Business Day** means the period between 9:00 a.m. and 5:00 p.m. PST on a Monday through a Friday, excluding CloudBees holidays.

**Business Hour** means each hour during a Business Day.

**Calendar Quarter** means each period of three (3) consecutive calendar months during the term of this Agreement, starting on 1 January in each year, except that (i) the first Calendar Quarter shall mean the period starting on the Effective Date and ending on the last day of the Calendar Quarter in which the Effective Date falls; and (ii) the last Calendar Quarter shall mean the Calendar Quarter in which the termination date falls and shall end on that date.

**CloudBees Support Portal** means the portion of the CloudBees website through which CloudBees offers Support.

**Confidential Information** means all code, inventions, know-how, business, technical and financial information provided by either party that is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure.

**Disclosing Party** means the party disclosing Confidential Information.

**Documentation** means the technical specification documentation generally made available by CloudBees to its subscription customers with regard to the Products.

**Effective Date** means the date indicated at the top of this Agreement.

**End Customer** means any end user customer entity purchasing the Product for its own internal use and not for resale to a third party.

**Error** means a failure in the Products to materially conform to the specifications as described in the applicable Documentation.

**Executor** means a processing slot running on a Product Agent and/or Master.

**Intellectual Property Rights** means all intellectual property rights worldwide arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired, including all: (a) patent rights; (b) rights associated with works of authorship including copyrights and mask work rights; (c) rights relating to the protection of trade secrets and confidential information; (d) trademarks, service marks, trade dress and trade names; and (e) any right analogous to those set forth in this Agreement and any other proprietary rights relating to intangible property.

**List Price** means the then-current list price, as may be modified from time to time by CloudBees with at least sixty (60) days prior written notice.

**Major Release** means a change in the first digit of the Products Minor Release (e.g. 2.x, 3.x, 4.x).

**Master** means an instance of the Product containing all job definitions and related meta-data.

**Materials** mean any materials provided by CloudBees to Partner in connection with the provision to Partner of Services and/or a Support.

**Minor Release** means generally commercially released code corrections, patches, and minor version releases of the same Products as designated by a change in the number to the right of the decimal in the version number (e.g. x.4, x.5, x.6)..

**Named Contacts** mean Partner's internal resources who are (i) knowledgeable about CloudBees, the Products and Partner's use of the Products, and (ii) CloudBees' contact for all issues related to the Products.

Open Source Software means various open source software components licensed under the terms of applicable open source license agreements. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions.

Order Form(s) means the form submitted by Partner that permits Partner to purchase Products, Support and/or Services from CloudBees pursuant to this Agreement.

Partner Products means the Partner's proprietary software products listed on an Order Form.

Product means the software products specified, if applicable, in an Order Form.

Receiving Party means the party receiving Confidential Information.

Services means consulting services purchased in the applicable Order Form.

Statement of Work means the detailed, written description of the work to be performed, fees and any applicable milestones, dependencies and other technical specifications or related information.

Subscription means the Products and Support services as provided by CloudBees and paid for through annual subscription fees.

Support Fix means a later Minor Release of the Products, designated by CloudBees by means of a change in the digit to the right of the Minor Release number (e.g. x.x.1, x.x.2).

Support means support services provided by CloudBees for Products, as specified at [www.cloudbees.com/SLA](http://www.cloudbees.com/SLA).

Third Party Products means certain third party software and certain third party hardware that is not provided or licensed by CloudBees.

Upgrade means a Major Release, Minor Release, or Support Fix for the Products.

Accepted and agreed to as of the Effective Date by the authorized representative of each party:

**Fishtech**

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

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

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

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

Notice Address:

Fishtech  
13333 Holmes Road  
Kansas City, MO 64145  
United States

Attention: Chuck Crawford, Chief Strategy Officer

**CLOUDBEES, INC.**

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

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

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

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

Notice Address:

CloudBees, Inc.  
16192 Coastal Highway  
Lewes, DE 19958- USA  
Attention: Chief Financial Officer

**EXHIBIT A**  
**CloudBees Reseller Partner Exhibit**

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The terms of this Exhibit A are incorporated in the Partner Agreement # Fishtech -PTR.

Partner will be recognized as a CloudBees Summit Level Reseller Partner.

The following benefits are included in the Summit Level CloudBees Reseller Partner Program:

1. Reseller Partner License.

1.1 Subject to the terms of this Agreement including the usage limitations and payment requirements of Appendix A to this Exhibit, CloudBees grants Summit Level Services Partners a non-exclusive, non-transferable, limited license in the Territory (a) to access Jenkins Enterprise by CloudBees Services solely for Partner's internal testing, development and for demonstrating Jenkins Enterprise by CloudBees to potential End Customers; and (b) to resell the Products and Services specified in your Order Form attached as Appendix A to this Agreement to End Customers, solely for use by such End Customers in accordance with the minimum terms of the EULA attached as Appendix A-1 to this Agreement. This right to resell does not apply to any other end users, products or services.

1.2 License Restrictions. CloudBees owns and retains title to Jenkins Enterprise and the Documentation, including all intellectual property rights therein. Jenkins Enterprise and the Documentation are licensed not sold. Partner acknowledges that Jenkins Enterprise constitute a valuable trade secret of CloudBees. Accordingly, except as expressly permitted in this Agreement, Partner agrees not to and shall not allow any third party to: (a) modify, adapt, alter, recast, transform, translate or create derivative works from Jenkins Enterprise; (b) use (or cause or permit to be used) Jenkins Enterprise for rental or lease basis; (c) reverse engineer, decompile, or disassemble the Platform; or (d) except for the back-up purposes, Jenkins Enterprise may not be copied or otherwise reproduced. Except as expressly permitted in this Agreement, Partner will not remove, alter or obscure in any way any copyright notices and messages indicating the code is CloudBees' property on or within the copies of Jenkins Enterprise and / or the Documentation furnished by CloudBees to Partner.

1.3 Partner Responsibilities. Partner agrees during the term of this agreement to comply with the requirements described in Appendix A, Appendix A-1, Appendix A-2, Appendix A-3, and Exhibit B.

1.4. Additional Support and Services. As set forth in the applicable Order Form, CloudBees will provide Partner with additional Support and Services for Jenkins Enterprise.

1.5. Additional Benefits and Requirements. Additional benefits and requirements of the different levels of the CloudBees Services Partner Program are listed in Exhibit B to this Agreement.

1.7. The Territory is North America.

2. Forecasts. Partner will provide CloudBees with a monthly pipeline and forecast in writing, as applicable, with pipeline including End Customer company name, company address, contact person(s), title, email, phone, number of subscriptions, sales amount, expected close date, probability and other relevant information. Each forecast must include expected CloudBees Jenkins Subscriptions (total sales amount) for the current and next Calendar Quarter.

3. Discounts and Payment. Partner will receive the discounts off of CloudBees' List Price for each of the CloudBees Jenkins Enterprise Subscriptions sold directly by Partner to an End Customer shown on Exhibit B to this Agreement. Partner will pay the Subscription fee less the applicable discount set forth on Exhibit B within fifteen (15) days of the end of the calendar month in which the End Customer purchases the Jenkins Enterprise Subscription.

4. Consulting Services. Partner has the right to provide consulting services ("Jenkins Consulting Services") on its own behalf for the CloudBees Jenkins Enterprise software to its End Customers. Partner may not create derivative works of the CloudBees Jenkins Enterprise software during the provision of the Jenkins Consulting Services. Notwithstanding the foregoing, if Partner creates derivative works in the performance of the Jenkins Consulting Services, Partner agrees that CloudBees shall own all right, title and interest to such derivative works.



**APPENDIX A-1**  
**MINIMUM TERMS FOR RESELLER END CUSTOMER LICENSE AGREEMENTS**

Partner agrees it shall only distribute the Product to End Customers subject to an end user license agreement ("EULA") either between End Customers and CloudBees or End Customer and Partner. To the extent that Partner purchases the Product from CloudBees and resells the Product to End Customer in accordance with the Agreement, then Partner agrees to enter into EULAs with End Customers that are consistent with the Agreement and provide substantially the same degree of protection as the CloudBees EULA, and specifically includes the following terms and conditions:

1. The End Customer shall not:
  - 1.1 Sell, lease, license, sublicense or otherwise transfer in whole or in part, the Product or related documentation to a third party;
  - 1.2 De-compile, disassemble, reverse engineer or otherwise attempt to derive source code from the Product, in whole or in part (or in any instance where the law permits any such action, End Customer agrees to provide Partner at least ninety (90) days advance written notice of its belief that such action is warranted and permitted (which notice Partner shall immediately provide to CloudBees) and to provide Partner (in conjunction with CloudBees) with an opportunity to evaluate if the law's requirements necessitate such action);
  - 1.3 Allow access or permit use of the Products by any user other than the authorized End Customer; and
  - 1.4 Modify or create derivative works based upon the Products.
2. End Customer must comply fully with all applicable laws and regulations, including, without limitation, U.S. export laws and regulations, in any of its dealings with respect to the Products.
3. Partner makes no representations or warranties to End Customer and disclaims all warranties, express and implied.
4. Partner shall not be liable for any damages, whether direct, indirect, incidental, or consequential arising from the use of the Products.
4. Partner's EULA shall protect the Products and Partner to at least the same degree as such EULA protects its own product and Partner.
5. The End Customer shall fully comply with the applicable open source software licensing terms and conditions.

## APPENDIX A-2: RESELLER ORDER FORM

This Reseller Order Form is incorporated into the Partner Agreement # **Fishtech-PTR** ("Agreement"), and is entered into by and between CloudBees, Inc. and Fishtech ("Partner").

**ORDER FORM #:**

End Customer Name:

Address:

Phone:

Email:

CloudBees

Representative:

\_\_\_\_\_  
CloudBees, Inc.  
16192 Coastal Highway  
Lewes, DE 19958  
USA

Effective Date:

PURCHASE SUMMARY					
Quantity	Product Code	Term months	Products / Services	Per Unit Fee	Total Fee
TOTAL					

Fishtech

By:

Name:

Title:

Date:

CloudBees, Inc.

By:

Name:

Title:

Date:

## APPENDIX A-3: MARKETING DEVELOPMENT FUNDS

### Definitions and eligibility

Marketing Development Funds (MDF) are funds provided to partners to subsidize their costs for marketing activities which drive awareness, interest, and demand for CloudBees solution offerings. MDF are discretionary funds and are not linked to partner's revenue or performance.

MDF are restricted to partners of CloudBees that have an active partner agreement signed with CloudBees.

Vista and Summit CloudBees partners are eligible for Market Development Funds (MDF) to execute marketing initiatives that promote and drive revenue for CloudBees solutions.

MDFs are payable at CloudBees' sole discretion and available at a maximum 50/50 split unless otherwise agreed upon. Additional limits may apply based upon the initiative.

Decisions on funding, funding limits and general approval will be made on an initiative-by-initiative basis by the CloudBees.

Approved activity examples:

- Advertising
- Incentive - SPIFF (internal)
- Seminar
- Tradeshow/ Event
- Customer Workshop
- Executive Roundtable
- User Group
- Collateral
- Direct Marketing - Mail
- CloudBees-Branded Giveaways
- Partner Internal Event "Sponsorships"
- Partner Program Approved by CloudBees

Example of activities NOT approved:

- Purchasing CloudBees products/services (including CloudBees education services, training, conference passes, etc.)
- Or any other event/activity that CloudBees deems not applicable
- MDF may not be used to:
  - Affect price, promotional cash discounts, vouchers or products
  - Enhance a partner's margin
  - Provide charitable contributions/sponsorships without CloudBees' expressed approval
  - Fund partner's infrastructure costs (i.e general operating costs, capital expenditure, building fixtures, remodels, furniture)
  - Fund for a price sheet or "marketing menu" put together by the partner

### CloudBees MDF summarized process

1. Please fill out online MDF form to be provided by CloudBees. All MDF reimbursements must go through a request and approval process at least 30 days prior to starting/executing an initiative.

2. Once your request is received, you will be notified of its status within 3 business days. You will be able to check in on its status in by emailing [partnermarketing@cloudbees.com](mailto:partnermarketing@cloudbees.com) or by contacting your CloudBees partner marketing POC.
3. If your request is approved, you will receive a Marketing Purchase Order (PO) Number. Requests will NOT be considered fully approved until there is a PO Number attached to them.
  - Each MDF request will have a different PO Number associated with it.
4. Once the initiative has taken place you will need to follow the steps below to initiate the re-payment process.
  - Within 48 hours of initiative completion:
    - Attach proof of performance by uploading a contact list of all leads created to your requested initiative in the MDF request that you created.
      - (Be sure to use the submission template provided by CloudBees when doing so, and include all of the lead information requested.) Proof of performance will be reviewed by your approver and can be rejected if it does not meet the requirements. Rejected proof of performance can cause a delay or invalidation in your MDF request/ reimbursement.
      - If your activity does NOT generate leads, proof of performance can include:
        - Pictures from the event/ activity.
        - A digital copy of any related assets created -- such as emails, brochures, direct mailers, etc.
  - Within 30 days of initiative completion:
    - Upload an invoice with the PO Number for the specific initiative referenced directly on it, as well as any itemized/ individual receipts to demonstrate proof of spend.
      - This invoice MUST clearly indicate the total requested funds for reimbursement, which cannot exceed the approved amount in your approved MDF request.
5. Once proof of performance, invoice, and proof of spend have been properly submitted, CloudBees will process payment and you will receive reimbursement within 60 days.
  - PLEASE NOTE: Failure to submit proof of performance, invoice, and proof of spend in the manner and time outlined above can cause a delay or rejection in reimbursement.

### **Unearned Amounts**

- If CloudBees provides any funds (including funds provided in advance of receiving adequate Proof of Performance), that are (a) in excess of the amounts spent by the partner or (b) for which CloudBees does not subsequently receive adequate Proof of Performance or third-party receipts in a timely manner, the partner forfeits any rights to such amounts ("Unearned Amounts") and agrees to return the funds promptly.

### **Other Items**

- Non-Exclusivity: Nothing hereunder shall prevent either party from entering into similar arrangements with third parties.
- Taxes: Any MDF funds payment made to Partner by CloudBees does not include any taxes. Partner is responsible for paying all taxes arising out of any MDF funds payment received under this program.

### **Additional Marketing Support**

CloudBees has multiple programs and materials available in CloudBees' Partner Portal that you can leverage to promote CloudBees solutions. Some examples of these programs include:

- Regional events
- Events in a box
- Promotional toolkits
- and more

For questions email [partnermarketing@cloudbees.com](mailto:partnermarketing@cloudbees.com) or contact your CloudBees partner marketing representative.

## Exhibit B

### Partner Program Features and Requirements

The requirements for joining CloudBees' Elevate Channel Partner program are outlined below.

#### Partner Program Features

Partner will be entitled to the following discounts off of CloudBees' standard volume tiers, for all deals registered through CloudBees' Partner Portal. If a deal is not registered, Partner will be entitled to the discount set forth below as "No Registration/Fulfill." Instructions for registering deals can be found at CloudBees Partner Portal, or by contacting CloudBees directly.

Deal Reg Status	Opportunity Type	Base Camp	Vista	Summit
Partner-Sourced	New subscriptions/upsell/add-on (new deals – partner found)	15%	25%	30%
Teaming	New subscriptions/upsell/add-on (existing deals – forecasted in CloudBees' Salesforce)	10%	15%	15%
Renewal	Renewal (ARR growth less than 200% over previous year)	10%	15%	15%
Renewal Growth Kicker	Renewal (ARR growth more than 200% - receive on renewal and add-on)	15%	30%	30%
ALL	Public/private training/professional services – ALL	5%	10%	10%
No Registration/Fulfill	All products and services – no deal registration	5%	5%	5%

#### Partner Program Requirements

Partner agrees to fulfil the following yearly minimum commitments in each calendar year:

Requirement	Base Camp	Vista	Summit
Minimum Business Commitments	2 orders OR \$75K revenue	6 orders OR \$250K revenue	10 orders OR \$500K revenue
Customer Success Stories	Encouraged	Expected	Expected
CloudBees Sales Accreditation (coming soon)	1 Minimum	3 Minimum	5 Minimum
CJE Tech Accreditation (coming soon)	1 Minimum	3 Minimum	5 Minimum
CJP Certified Professionals	Encouraged	2 Minimum	3 Minimum
Quarterly Business Plan Review (quarterly)	N/A	Mandatory	Mandatory
Partner's Marketing Activities (quarterly)	1 Minimum	2 Minimum	3 Minimum

#### Partner Program Benefits

CloudBees agrees to provide the following benefits to Partner at no charge:

Benefit	Base Camp	Vista	Summit
Access to Regional Partner Manager		X	X
Eligible for Partner Advisory Board (by invitation only)		X	X
Access to Online Training (sales and technical)	X	X	X
Access to CloudBees Partner Center (partner portal)	X	X	X
Marketing Support and Lead Generation	X (Campaign Packs)	X (Campaign Packs, Custom Campaign Development)	X (Campaign Packs, Custom Campaign Development, Eligible for MDF)
Right to Use CloudBees Business Partner Logo	X	X	X
Inclusion in CloudBees Partner Directory (www.cloudbees.com)	X	X	X