CloudForecast, Inc. Service Terms

AGREEMENT:

This Agreement for AWS Marketplace (the "Agreement") sets forth the terms and conditions applicable to the sale and access to software-as-a-service ("Services") provided by CloudForecast, Inc. ("Company") by the Party subscribing to the Services ("Client") through the software marketplace operated by Amazon Web Services, Inc. (the "AWS Marketplace"), or SaaS, via an Amazon Marketplace listing. The offer of the Services on the AWS Marketplace, and Client's purchase of the corresponding Services on the AWS Marketplace, constitutes each Party's respective acceptance of this Agreement and their entry into this Agreement. Client and Company may be referred to collectively as the "Parties" or individually as a "Party".

1.   SERVICES AND SUPPORT.

1.1   **Company Provision of Services.** Subject to the terms of this Agreement Company will provide to Client the Services set forth on the details page of the AWS Marketplace listing for Company's Services. The details page shall identify the Services to be provided, any usage limitations or meter ("Service Capacity"), price, support requirements, and other terms that may be applicable to the Service. All exhibits (if any) are incorporated under and governed by this Agreement. Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services.

1.2   **License.** The Services are provided by Company as "software-as-a-service," and thus Client does not have a license to download any aspect of the Services, except as expressly permitted or intended through the Services. Client is hereby granted, during the Term and subject to and limited by the terms of this Agreement, including any Service Capacity set forth herein (if any), a non-exclusive, non-sublicensable, non-transferable, non-assignable, limited, revocable license to access and use the Services, conditioned on compliance with this Agreement. With respect to any Services that are provided through distribution of software or documentation, or are otherwise provided to Client for use on Client premises or devices, Company hereby grants Client a non-exclusive, non-transferable, non-sublicensable license to use such distributed Services during the Term and conditioned on compliance with this Agreement, only in connection with the Services.

1.3   **Restrictions.** The Services may be used only for Client's internal business purposes and not for any commercialization by Client. Furthermore, Client will not, directly or indirectly: (i) reverse engineer, decompile, copy, mirror, disassemble or otherwise attempt to discover or reproduce the source code, object code or underlying structure, feature, function, user interface, ideas, know-how or algorithms relevant to the Services; (ii) modify, translate, or create derivative works based on the Services (except to the extent expressly permitted by Company or authorized within the Services); (iii) use or make available any portion of the Services for any timesharing, commercial or service bureau purposes or otherwise for the benefit of a third party, including as an outsourcing offering, except as expressly set forth herein; (iv) build or create applications, programs or services that are competitive with the Services; (v) remove any proprietary notices or labels; or (vi) use the Services beyond the Service Capacity or other usage limits set forth in a proposal.

1.4   **Support and Maintenance Obligations**. Subject to the terms hereof, Company will provide Client only with those technical support and maintenance services according with Company's standard practice, and in accordance with the Support Terms set forth in a proposal, if any.

1.5   **Company Monitoring.** Although Company has no obligation to monitor Client's use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of this Agreement.

1.6   **Control Over Services.** So long as during the Term Company does not materially decrease the functionality of Services as described in a proposal: (i) Company retains sole control over the operation, provision, maintenance, management, and performance of the Services, including the selection, deployment, modification and replacement of any software component of the Services, and maintenance, upgrades, corrections or repairs thereof; (ii) Company reserves the right to make any changes to any software component of the Services that it deems necessary or useful to maintain or enhance the quality or delivery of Company's Services to its customers, the competitive strength of or market for Company's Services, or the cost efficiency or performance of the Services; and (iii) Company may use global resources to provide Services and perform its obligations, unless otherwise expressly agreed.

2.   CLIENT RESPONSIBILITIES; RESTRICTIONS.

2.1   **Account Creation.**   As part of the registration process, Client will identify an administrative user name and password for Client's Company account. Client shall be solely responsible for maintaining, remembering and keeping confidential Client's account information, including user name and password. Company reserves the right to refuse

registration of, or cancel passwords it deems inappropriate. Client shall be responsible for maintaining the security of the Client account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Client account with or without Client's knowledge or consent.

2.2 **Client Representations**. Client represents, covenants, and warrants that Client will use the Services only in compliance with this Agreement and with Company's standard published policies then in effect, including as published on Company's websites or within any application through which the Services are available (the "*Policy*") and all applicable laws and regulations.

2.3 **Additional Equipment Responsibilities**. Client shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "*Equipment*"). Client shall also be responsible for maintaining the security of the Equipment, and for all uses of the Equipment with or without Client's knowledge or consent.

2.4 **Third Party Terms.** Client is responsible for complying with all terms of use for any software, content, service or website it loads, creates or accesses when using the Services.

2.5 **Client Data**. Client may be required to provide information or data to Company to enable the provision of the Services, and Company may collect data or information from Client by or through the access or use of the Services or any Software ("*Client Data*"). Client hereby grants Company a non-exclusive, worldwide, royalty-free right and license to any intellectual property, including Client Data, that is necessary for Company and its designees to perform the Services. Client has sole responsibility for the accuracy, quality, and legality of any Client Data, including the means by which it was acquired by Client.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS.

3.1 **Confidentiality.** "Confidential Information" means, for purposes of this Agreement, the non-public information provided by a Party ("Discloser") to the other Party ("Recipient") related to the business opportunities between the Parties, provided that such information is: (1) identified as confidential at the time of disclosure by the Discloser, or (2) if the initial disclosure is not in written or other tangible form, the Confidential Information will be so identified at the time of disclosure and reduced to written or other tangible form, appropriately marked and submitted by the Discloser to the Recipient as soon as reasonably practicable thereafter, but no later than thirty (30) days after disclosure. Confidential Information of Company shall include product architecture, product research and development plans, non-public financial data and roadmaps, whether marked as confidential or not. A Recipient may use the Confidential Information that it receives from the Discloser solely for the purpose of performing activities contemplated under this Agreement. For a period of five (5) years following the applicable date of disclosure of any Confidential Information, a Recipient will not disclose the Confidential Information to any third party. A Recipient will protect it by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication as the Recipient uses to protect its own confidential information of a like nature. The Recipient may disclose the Confidential Information to its affiliates, agents and subcontractors with a need to know in order to fulfill the purpose of this Agreement, under a nondisclosure agreement at least as protective of the Discloser's rights as this Agreement.

3.2 This section imposes no obligation upon a Recipient with respect to Confidential Information which: (i) is or becomes public knowledge other than by breach of this Agreement; (ii) was in the Recipient's possession before receipt from the Discloser and was not subject to a duty of confidentiality; (iii) is rightfully received by the Recipient without any duty of confidentiality; (iv) is disclosed generally to a third party by the Discloser without a duty of confidentiality on the third party; or (v) is independently developed by the Recipient without use of the Confidential Information. The Recipient may disclose the Discloser's Confidential Information as required by law or court order provided: (1) the Recipient promptly notifies the Discloser in writing of the requirement for disclosure, if legally permissible; and (2) discloses only as much of the Confidential Information as is required. Upon request from the Discloser or upon termination of the Agreement, the Recipient will aim to return all Confidential Information and all copies, notes, summaries or extracts thereof or certify destruction of the same. Each party will retain all right, title and interest to such party's Confidential Information. The parties acknowledge that a violation of the Recipient's obligations with respect to Confidential Information may cause irreparable harm to the Discloser for which a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, Discloser will be entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation of any or all of the provisions. Subject to the terms of this Agreement: (i) Discloser may request the return of Confidential Information; (ii) or upon termination or completion of the Agreement or any Online Services, Recipient will either return (if technically feasible to do so) or destroy the Confidential Information and upon request of Discloser, will certify such destruction. Notwithstanding the foregoing and provided that such information is protected in accordance with the terms of this Agreement, the Recipient may continue to maintain copies of Confidential Information: (x) that is included in its

data backup, which will be destroyed in accordance with the Recipient's data retention policies; or (y) as required to comply with applicable law, which will be destroyed when such obligation is met.

3.3 **Ownership Rights.** Client shall own all right, title and interest in and to the Client Data. Company shall own and retain all right, title and interest in and to (a) the Services, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with the Services or any support, (c) any suggestions or feedback provided to Company by Client, and (d) all intellectual property rights related to any of the foregoing. No transfer of ownership of any intellectual property will occur under this Agreement. No rights or licenses are granted except as expressly set forth herein. If deliverables are created by Company specifically for Client and identified as such in supporting material, Company hereby grants Client a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverables internally only.

3.4 **Data Collection**. Notwithstanding anything to the contrary, but subject to the confidentiality obligations contained herein, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Client Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data in aggregate or other form in connection with its business, subject to any applicable privacy laws, and use such data for business purposes including analytics, product benchmarking, and marketing. Company may use Client Data according to any privacy policies applicable to provision of the Services and as necessary to provide the Services (including preventative and reactive technical support), or as permitted by Client, or as otherwise required by law.

4. PAYMENT OF FEES.

4.1 **Services Fees.** Client will pay Company the then applicable Services Fees for the Services in accordance with the Payment Terms. If Client's use of the Services exceeds the Service Capacity or otherwise requires the payment of additional fees (per the terms of this Agreement), Client shall be billed for such usage and Client agrees to pay the additional fees in the manner provided herein (and such additional fees shall be deemed to be Services Fees for purposes of this Agreement). Company reserves the right to change the Services Fees or applicable charges and to institute new charges and Services Fees at the end of the Initial Service Term or then-current Renewal Term (if applicable), upon thirty (30) days prior notice to Client (which may be sent by email). If Client believes that Company has billed Client incorrectly, Client must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's Client support department.

4.2 **Late Fees.** Unpaid Services Fees are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service.

4.3 **Taxes.** Client shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

5. TERM AND TERMINATION.

5.1 **Term**. The term of this Agreement shall start on the Effective Date and extend for a period of one year (the "Initial Term"). This Agreement will automatically renew for additional one-year periods (each a "Renewal Term") unless a party gives notice of termination within thirty days prior to the renewal date. The Initial Term and each Renewal Term make up the "Term." If this Agreement is terminated, any ongoing Services shall still be governed by this Agreement.

5.2 **Termination For Cause.** In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement and does not cure such breach within ten (10) days of such notice. If either party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or asset assignment, the other party may terminate this Agreement and cancel any unfulfilled obligations. Client will pay in full for the Services up to and including the last day on which the Services are provided.

5.3 **Survival.** All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. WARRANTY AND DISCLAIMER.

COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. DEFENSE OF THIRD-PARTY CLAIMS

7.1 **Company Indemnity Obligations.** Company shall defend Client from third party claims asserting that the Services infringes any intellectual property right of a third party, and will pay all damages finally awarded to Client, or agreed to in final settlement by Company and attributable to such claim. Company's obligations under this provision are subject to: (a) Client notifying Company in writing of any and all threats, claims and proceedings related thereto as soon as Client learns of them, (b) providing Company with all reasonable assistance and information to enable Company to perform Company's duties under this section, (c) allowing Company sole control of the defense and all related settlement negotiations. Company will not be responsible for any settlement it does not approve in writing. Company is not liable for Client's attorneys' fees.

7.2 **Exclusions from Company Indemnity Obligations.** The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Client specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Client continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Client's use of the Service is not strictly in accordance with this Agreement.

7.3 **Replacement of Infringing Services.** If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its sole option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Client a license to continue using the Service, or (c) terminate this Agreement and Client's rights hereunder and provide Client a refund of any prepaid, unused fees for the Service.

7.4 **Client Indemnification**. Client hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of this Agreement or otherwise from Client's use of Services or as a result of Company's reliance on any Client Data or use of Client Data in connection with the provision of the Services.

THIS SECTION STATES CLIENT'S SOLE AND EXCLUSIVE REMEDY AND COMPANY'S SOLE AND EXCLUSIVE LIABILITY WITH RESPECT TO CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY. EXCEPT AS EXPRESSLY STATED IN THIS SECTION, ALL WARRANTIES AGAINST INFRINGMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, STATUTORY, EXPRESS, OR IMPLIED ARE EXPRESSLY DISCLAIMED.

8. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES, SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS OR LOST REVENUES, PROFITS OR DOWNTIME COSTS, OR FOR ANY DATA BREACHES OR HACKS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL COSTS OR DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CLIENT TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. MISCELLANEOUS

9.1 **Severability**. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

9.2 **Assignment**. This Agreement is not assignable, transferable or sublicensable by Client except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent.

9.3 **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, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.

9.4 **Relationship**. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Client does not have any authority of any kind to bind Company in any respect whatsoever.

9.5 **Notice**. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; the day after it is sent, if transmitted by facsimile or e-mail or if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

9.6 **Governing Law**. This Agreement shall be governed by the laws of the State of Delaware, without regard to its conflict of laws provisions.

9.7 **Publicity.** Client agrees to reasonably cooperate with Company to serve as a reference account upon request, and hereby grants Company a license to display Client's name and logo on its website and other marketing and sales materials to communicate that Client is a customer of Company.

9.8 **Export Restrictions.** Client may not remove or export from the United States or allow the export or re-export of the Services or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. The Services and related documentation are to be deemed "commercial items," "commercial computer software" and "commercial computer software documentation" for applicable DFAR and FAR regulations. Any use modification, reproduction, release, performance, display, or disclosure of commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement