

HEROKU, INC. ADD-ONS LICENSE AND DISTRIBUTION AGREEMENT

This AddOns License and Distribution Agreement (the “Agreement”) is entered into and made effective as of the day you click the “I ACCEPT” button below or if this Agreement is printed and executed in paper form, the date when last signed by a Party below (the “Effective Date”), by and between Heroku, Inc., a salesforce.com, inc. company with a principal place of business at The Landmark @ One Market, Suite 300, San Francisco, CA 94105, (together with its Affiliates, “Heroku”), and you (“You” or “Provider”) (Heroku and Provider are each a “Party” and collectively the “Parties” to this Agreement).

BY CLICKING THE "I ACCEPT" BUTTON BELOW, OR BY PRINTING AND SIGNING THE AGREEMENT WHERE INDICATED BELOW, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF AND BE A PARTY TO THIS AGREEMENT. YOU WARRANT THAT YOU ARE AT LEAST EIGHTEEN YEARS OLD AND THAT YOU HAVE THE LEGAL CAPACITY TO ENTER INTO CONTRACTS. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY, ORGANIZATION, OR OTHER ENTITY, THEN (A) “YOU” OR “PROVIDER” INCLUDES YOU AND THAT ENTITY, AND (B) YOU REPRESENT AND WARRANT THAT YOU ARE AN AUTHORIZED REPRESENTATIVE OF THE ENTITY WITH THE AUTHORITY TO BIND THE ENTITY TO THIS AGREEMENT, AND THAT YOU AGREE TO THIS AGREEMENT ON THE ENTITY’S BEHALF.

Heroku is an interactive service provider that owns and operates an online platform as a service offering for web applications at www.heroku.com (the “**Heroku Service**”).

Provider provides software of interest to Heroku users and customers via its online service (the “**Provider Service**”).

Heroku and Provider wish to establish and maintain the terms on which certain Add-On will be made available as “add-ons” to the Heroku Service, and certain other matters relating to the relationship between Heroku and Provider.

In consideration of the above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be bound, hereby agree as follows:

1. Definitions. For purposes of this Agreement, the following terms will have the meanings ascribed to them below.

1.1 “Add-On” means the Manifest, Provider Pricing, and any accompanying User Documentation submitted via the Provider Portal.

1.2 “Affiliate” means any entity which directly or indirectly controls, is controlled

by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.3 "API" means the Heroku application program interface(s) provided via the Provider Portal to interface the Add-On with the Heroku Service.

1.4 "Confidential Information" means all information of a Party (the "Disclosing Party"), in any form and on any medium, disclosed to the other Party (the "Receiving Party"), regardless of the form of disclosure, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including without limitation and without the need to designate as confidential: (a) for both Parties, the terms and conditions of this Agreement; (b) for Provider, the source code to the Add-On; (c) for Heroku, the source code to the Heroku Service and the Heroku API (including without limitation any API key); and (d) for both parties, the reports provided pursuant to Section 5.3.

1.5 "Documentation" means the technical integration specifications and other documentation provided on or in connection with the Provider Portal and/ or Resource Center, as they may be updated from time to time.

1.6 "EULA" means the end user license agreements between Heroku and Users, as such agreements may be updated from time to time.

1.7 "Heroku Service" has the meaning given in the Recitals.

1.8 Add-On "Intellectual Property Rights" means all rights in, to, or arising out of: (i) any U.S., international or foreign patent or any application therefore and any and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (ii) inventions (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology and technical data; (iii) copyrights, copyright registrations, mask works, mask works registrations, applications, moral rights, trademarks, and rights of personality, privacy and likeness, whether arising by operation of law, contract, license or otherwise; and (iv) any other similar or equivalent proprietary rights anywhere in the world.

1.9 "Launch" means the first offering of paid Subscriptions for an Add-On to Users (also referred to as general availability of the Add-On on the Heroku Service).

1.10 “Manifest” means a descriptive code document which describes the interface between the Heroku Service and the Provider Service.

1.11 “Marks” means all trademarks, service marks, trade dress, trade names, domain names, corporate names, brand names, proprietary logos, symbols, artwork, all other indicia of origin, all applications to register and registrations for the foregoing, and any renewals therefore, under which a Party offers its products or services.

1.12 “Net Subscription Revenues” means all revenues actually received by Heroku for the sale of Subscriptions attributable to the Add-On less (i) the actual costs incurred by Heroku in selling the Subscriptions, including but not limited to transaction costs related to credit card processing (ii) any rebates, credits, charge-backs, refunds or similar offsets actually issued by Heroku for the Subscriptions; and (iii) any taxes that Heroku is required to collect in connection with the sale of Subscriptions.

1.13 “Provider Portal” means the portal on the Heroku Service providing the interface between Provider and the Heroku Service.

1.14 “Provider Price” means the monthly User price(s) for Subscriptions.

1.15 “Provider Service” has the meaning given in the Recitals.

1.16 “Subscription” means a User subscription to use one or more Add-On on the Heroku Service.

1.17 “User” means an individual or entity that accesses the Heroku Service.

1.18 “User Tests” means the tests of the of the Add-On conducted with a select group of Users to achieve the Launch criteria, as further described in the Documentation.

2. Integration of the Add-On.

2.1 Heroku shall provide, host and maintain the Provider Portal, the API, and the Heroku Service.

2.2 Provider shall provide, host and maintain the Provider Service and its related Documentation.

2.3 Provider shall submit the Add-On and Provider Price via the Provider Portal

for Heroku's approval for distribution pursuant to this Agreement, which Heroku may grant or withhold in its sole discretion.

2.4 If Heroku approves the Add-On and Provider Price, Provider shall conduct the User Tests until the Launch criteria are satisfied. Following successful completion of the Integration Tests, Heroku shall Launch the Add-On on the Provider Service.

3. Distribution of the Add-On.

3.1 Distributor Appointment. Subject to the terms and conditions of this Agreement, Provider hereby appoints Heroku as an authorized distributor to license the Add-On to Users in connection with the Heroku Service.

3.2 Subscriptions. Heroku shall distribute the Add-On only pursuant to Subscriptions and the EULA.

3.3 Price Changes. Provider shall have the right to revise the Provider Price at any time with thirty (30) days written notice to Heroku or as otherwise permitted by the Provider Portal, provided that the Provider shall not change the Provider Price within less than thirty (30) days of any preceding change. Price increases shall apply to all Subscriptions after the effective date of such price changes.

3.4 Support. Provider will be responsible for performing all User support for the Add-On. Heroku will permit Users to submit trouble tickets for the Add-On to the Heroku Service, and transmit such trouble tickets to Provider. Provider will provide such support promptly, in a manner consistent with good industry practice, and during at least the same hours and at the same or better service levels as Provider provides support for the Provider Service.

3.5 Add-On Service Levels. Provider shall provide the Add-On in accordance with industry standards for Uptime, where Uptime is defined as the % of time, as measured 24 hours a day in a calendar month, that the Add-on is available in normal operation for Heroku Users. Should Provider fail to deliver the Add-on under these terms, then Heroku shall have the right to terminate this Agreement immediately and without liability upon written notice to Provider.

3.6 Marketing. The Parties may decide to engage in joint marketing activities to promote the Add-On offering on the Heroku Service. No party will engage in such marketing without the prior consent of the other. Each Party will pay its own costs and expenses for its marketing activities.

4. Licenses.

4.1 Add-On License. Subject to the terms and conditions of this Agreement, Provider hereby grants to Heroku a worldwide, non-exclusive, non-transferable (except as otherwise provided herein), royalty-free license during the Term to: (a) use, host, reproduce, publicly perform, distribute, transmit, translate, publicly display, modify and create derivative works of (only for purposes of integrating with the Heroku Service) the Add-On in connection with the Heroku Service, (b) allow Users to use and reproduce the Add-On via the Heroku Service, and (c) access the Provider Service via the API solely for the purpose of providing the Add-On to Users via the Heroku Service.

4.2 Heroku Service License. Subject to the terms and conditions of this Agreement, Heroku hereby grants to Provider a worldwide, non-exclusive, non-transferable (except as otherwise provided herein), royalty-free license during the Term to (a) access the Heroku Service via the API solely for the purpose of interfacing the Add-On and the Heroku Service and providing support as contemplated by this Agreement; and (b) use the API solely for the purpose of interfacing the Add-On and the Heroku Service as contemplated by this Agreement.

4.3 License Restrictions. Neither Party shall (a) reverse engineer, disassemble, decompile, or otherwise attempt to discover the source code for the other Party's API, software, or Service; (b) except as expressly set forth herein, redistribute, encumber, sell, rent, lease, sublicense, or otherwise transfer rights to these properties (whichever applicable); or (c) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in these properties (whichever applicable).

4.4 Branding; Trademark License. The Add-On on the Heroku Service shall bear Provider branding as generally displayed for other add-on providers on the Heroku Service. During the Term, Provider hereby grants to Heroku a limited, non-exclusive, non-transferable (except as otherwise provided herein), royalty-free license to use the Provider Marks provided to Heroku in order to (i) display the Add-On on the Heroku Service; and (ii) promote the Add-On in connection with the Heroku Service. During the Term, Heroku hereby grants to Provider a limited, non-exclusive, non-transferable (except as otherwise provided herein), royalty-free license to display the Heroku Marks provided to Provider via the API on the Provider Service solely as such Marks are displayed by normal operation of the API. Provider shall not interfere with or block display of the Heroku Marks by the API. Any goodwill accruing to a Party's Mark from use hereunder shall inure to the benefit of the owning Party.

4.5 Sublicenses. The licenses granted in this section shall not be sublicensable except to (i) Users to the extent contemplated hereunder; and (ii) the Party's subcontractors solely to perform the Party's obligations hereunder.

4.6 Reservation of Rights. Each Party acknowledges that it obtains no intellectual property rights or licenses by this Agreement except for those licenses expressly granted.

5. Revenue Share; Payments.

5.1 Subscription Revenue Share. Heroku shall pay Provider 70% of the Net Subscription Revenues it receives hereunder (the "Revenue Share"). Heroku may change the percentage of the Revenue Share upon thirty (30) days notice to Provider via the Partner Portal.

5.2 Payments. Heroku shall pay the Revenue Share due to Provider within thirty (30) days after the end of the calendar month in which such revenues are received by Heroku, by wire transfer or other method mutually acceptable to the Parties.

5.3 Reports. No later than the Revenue Share payment due date, Heroku shall make available to Provider via the Provider Portal a report itemizing the receipts and any permitted deductions thereto comprising the Net Subscription Revenues.

6. Term; Termination.

6.1 Term. Unless earlier terminated by either Party as provided in this Agreement, the term of this Agreement will commence on the Effective Date and will continue for six (6) months thereafter, and will thereafter automatically renew for consecutive periods of six (6) months unless either Party provides written notice of its intention not to renew to the other Party at least thirty (30) days prior to expiration of the current term (each a "Renewal Term," and collectively together with the initial term, the "Term").

6.2 Termination.

6.2.1 By Either Party. This Agreement may be terminated by either Party prior to the expiration of the Term, upon delivery of written notice of termination to the other Party, as follows:

- a. if the other Party fails to perform or observe any material term or condition in this Agreement and fails to cure such breach within

thirty (30) days after receipt of written notice of such breach from the non-breaching Party;

- b. if the other Party (i) makes a general assignment for the benefit of creditors, (ii) admits in writing its inability to pay debts as they come due, (iii) voluntarily files a petition or similar document initiating any bankruptcy or reorganization proceeding, or (iv) involuntarily becomes the subject of a petition in bankruptcy or reorganization proceeding and such proceeding shall not have been dismissed or stayed within sixty (60) days after such filing; or
- c. if the other Party is prevented from performing or unable to perform any of its obligations under this Agreement for more than sixty (60) days due to a Force Majeure Event.

6.2.2 By Provider. Provider may terminate this Agreement upon ninety (90) days written notice, if Provider provides such notice to Heroku within fifteen (15) days of notice by Heroku to Provider of any planned amendment to this Agreement that Provider chooses not to accept, provided that if Heroku lowers the percentage of the Revenue Share pursuant to Section 5.1, Provider may terminate upon forty-five (45) days written notice. If Provider terminates this Agreement in accord with this Section 6.2.2, such rejected amendment(s) shall not take effect with respect to Provider. The foregoing termination right shall constitute Provider's sole remedy if Provider rejects any amendment to this Agreement made by Heroku.

6.2.3 By Heroku. Heroku may terminate this Agreement upon written notice as provided in Section 12.5.

6.2.4 Effect of Termination. Sections 1, 6.2.2, 7, 8.2, and 9 through 12 shall survive termination or expiration of this Agreement for any reason. All other rights and obligations of the Parties under this Agreement shall expire upon termination or expiration of this Agreement, except that all payment obligations accrued hereunder prior to termination or expiration shall survive such termination or expiration.

7. Ownership.

7.1 By Heroku. Heroku acknowledges and agrees that, as between Provider and Heroku, Provider owns all right, title, and interest in and to the Add-On, Provider Service, Provider Marks, and the Intellectual Property Rights therein, and nothing in this Agreement will confer on Heroku any right of ownership or interest in the Add-On, Provider Service or Provider

Marks.

7.2 By Provider. Provider acknowledges and agrees that, as between Provider and Heroku, Heroku owns all right, title, and interest in and to the Heroku Service (excluding the Add-On Provider Service, and Provider Marks), API, Heroku Marks, and the Intellectual Property Rights therein, and nothing in this Agreement will confer on the Provider any right of ownership or interest in the Heroku Service, API, or Heroku Marks.

8. Representations and Warranties.

8.1 Warranties. Each Party represents and warrants that (a) it is a corporation duly organized and validly existing under the laws of the state set forth in the preamble above; (b) the execution, delivery, and performance by such Party of this Agreement are within the corporate powers of the Party, have been duly authorized by all necessary corporate action on the part of the Party, and will not violate any law, statute, or other governmental regulation, or any other agreement or instrument to which the Party is a party; and (c) it has obtained or shall obtain and maintain during the Term all rights, licenses, consents and authorizations necessary to perform its obligations as set forth in this Agreement. Provider further represents and warrants that the Add-On, Provider Service, and Provider Marks do not and will not violate any applicable laws, rules or regulations or infringe the rights, including without limitation Intellectual Property Rights, of any third party.

8.2 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8, (I) NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO SUCH PARTY'S NETWORK, SERVICE, SOFTWARE, INFORMATION OR MARKS PROVIDED UNDER THIS AGREEMENT, AND HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER ALLEGED TO ARISE BY LAW, BY USAGE IN THE TRADE, BY COURSE OF DEALING OR COURSE OF PERFORMANCE, AND (II) EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY'S NETWORK, SERVICE, SOFTWARE, INFORMATION OR MARKS ARE PROVIDED "AS IS" AND THAT THE OTHER PARTY MAKES NO WARRANTY THAT THE FOREGOING ITEMS WILL BE FREE FROM BUGS, FAULTS, DEFECTS, OR ERRORS OR THAT ACCESS TO ITS NETWORK WILL BE

UNINTERRUPTED.

8.3 No Representations. Heroku shall not, and Heroku shall ensure that its employees, contractors and agents do not, make any representations, warranties, or guarantees concerning the Add-On or related services, or their functionality or performance characteristics, except to the extent set forth in the user documentation provided by Provider. Provider shall not, and Provider shall ensure that its employees, contractors and agents do not, make any representations, warranties, or guarantees concerning the Heroku Service or its functionality or performance characteristics, except to the extent set forth in the user documentation for the Heroku Service provided by Heroku.

9. Confidentiality.

9.1 Nondisclosure. Each Party (each a “Receiving Party”) agrees that it shall use and reproduce the Confidential Information of the other Party (the “Disclosing Party”) only for purposes of exercising its rights and performing its obligations under this Agreement and only to the extent necessary for such purposes and shall restrict disclosure of such Confidential Information to the Receiving Party’s employees, consultants, or advisors who have a need to know and who are bound by obligations of confidentiality and non-use at least as protective of such information as this Agreement and shall not disclose such Confidential Information to any third party without the prior written approval of the Disclosing Party. The foregoing obligations shall be satisfied by the Receiving Party through the exercise of at least the same degree of care used to restrict disclosure and use of its own information of like importance, but not less than reasonable care. Notwithstanding the foregoing, it shall not be a breach of this Agreement for the Receiving Party to disclose Confidential Information if compelled to do so under law, in a judicial or other governmental investigation or proceeding, provided that, to the extent permitted by law, the Receiving Party has given the Disclosing Party prior notice and reasonable assistance to permit the Disclosing Party a reasonable opportunity to object to and/or limit the judicial or governmental requirement to disclosure.

9.2 Exceptions. Notwithstanding anything to the contrary herein, neither Party shall be liable for using or disclosing information that such Party can prove: (i) was publicly known at the time it was disclosed or has become publicly known 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 the Confidential Information, as demonstrated by files created at the time of such independent development; (v) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party without breach of this Agreement by the Receiving Party and otherwise not in violation of the Disclosing Party's rights; or (vi) is disclosed generally to third parties by the Disclosing Party without restrictions similar to those contained in this Agreement.

9.3 Remedies. The Receiving Party agrees that a breach of this Section 9 may result in immediate and irreparable harm to the Disclosing Party that money damages alone may be inadequate to compensate. Therefore, in the event of such a breach, the Disclosing Party will be entitled to seek equitable relief, including but not limited to a temporary restraining order, temporary injunction or permanent injunction without the posting of a bond or other security.

10. Limitation on Damages.

10.1 EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES. EXCEPT FOR INDEMNIFICATION OBLIGATIONS ARISING UNDER SECTION 11 OF THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH LIABILITY SOUNDS IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, WARRANTY, OR OTHERWISE.

10.2 MAXIMUM AGGREGATE LIABILITY. EXCEPT FOR BREACH OF SECTION 9 AND INDEMNIFICATION OF THIRD-PARTY DAMAGES ARISING UNDER SECTION 11 OF THIS AGREEMENT, THE MAXIMUM LIABILITY OF EITHER PARTY FOR ANY CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE AGGREGATE AMOUNT OF PAYMENTS MADE OR OWED UNDER THIS AGREEMENT IN THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY. THE PARTIES AGREE THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11. Indemnification. Provider shall indemnify, defend and hold harmless Heroku and its officers, directors, consultants, employees, successors and permitted assigns from and against any damages, losses, and expenses (including reasonable attorneys' fees), as a result of any third-party claim, demand or action (collectively, a "Claim") arising from any breach of any of the representations, warranties, or covenants made by Provider hereunder. Heroku shall promptly notify Provider in writing of any such Claim; provided that the failure to provide such notice shall not relieve Provider of its indemnification obligations hereunder except to the extent of any material prejudice directly resulting from such failure. Provider shall bear full responsibility for, and shall have the right to solely control, the defense (including any settlements) of any such Claim; provided, however, that (i) Provider shall keep Heroku informed of, and consult with Heroku in connection with the progress of such litigation or settlement and (ii) Provider shall not settle any such Claim in a manner that does not unconditionally release Heroku without Heroku's written consent, not to be unreasonably withheld or delayed.

12. Miscellaneous.

12.1 Assignment. Neither Party may assign, sublicense, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the consent of the other Party, assign this Agreement to an entity merging with, consolidating with, or purchasing substantially all its assets or stock, provided that such entity is not a direct competitor of the other Party (if a public company, as listed in the other Party's then-most recent 10-K filing) and that the assignee shall assume all rights and obligations under this Agreement. Any permitted assignment of this Agreement shall be binding upon and enforceable by and against the Parties' successors and assigns, provided that any unauthorized assignment shall be null and void and constitute a breach of this Agreement.

12.2 Entire Agreement; Amendments. This Agreement, and any exhibits and amendments thereto, constitute the entire agreement between the Parties and supersede all previous agreements, oral or written, with respect to the subject matter of this Agreement. This Agreement may not be amended without the prior written consent of Heroku. Heroku may amend this Agreement upon fifteen (15) days written notice to Provider, subject to the terms of Section 6.2.2. If printed and signed subsequent to accepting similar on-line terms covering the same subject matter, the terms of this Agreement when executed by both Parties shall supersede any such earlier accepted on-line terms.

12.3 Force Majeure. If either Party is prevented from performing or is unable to perform any of its obligations under this Agreement due to causes beyond the reasonable control of the Party invoking this provision, including but not limited to acts of God, acts of civil or military authorities, riots or civil disobedience, wars, strikes or labor disputes (each, a “Force Majeure Event”), such Party’s performance shall be excused and the time for performance shall be extended accordingly provided that the Party immediately takes all reasonably necessary steps to resume full performance.

12.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the state of California without giving effect to its conflicts of law rules. Each of the Parties to this Agreement consents to the exclusive jurisdiction and venue of the state and federal courts of San Francisco County, California.

12.5 Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when sent by email, if to Provider to the current email address on file for the Provider’s account on the Provider Portal, and if to Heroku to addons@heroku.com. Heroku may change its contact information by providing Provider with notice of the change in accordance with this section. Provider may change its contact information as permitted by the Provider Portal, provided that Heroku may rely on the email address on file for the Provider’s account on the Provider Portal at the time a notice is sent.

12.6 Relationship of Parties. The Parties are independent contractors and will have no right to assume or create any obligation or responsibility on behalf of the other Party. Neither Party shall hold itself out as an agent of the other Party. This Agreement will not be construed to create or imply any partnership, agency, joint venture or formal business entity of any kind.

12.7 Severability. If any provision of this Agreement is held invalid or unenforceable, it shall be replaced with the valid provision that most closely reflects the intent of the Parties and the remaining provisions of the Agreement will remain in full force and effect.

12.8 Waiver. No delay or failure by either Party to exercise any right or remedy under this Agreement will constitute a waiver of such right or remedy. All waivers must be in writing and signed by an authorized representative of the Party waiving its rights. A waiver by any Party of any

breach or covenant shall not be construed as a waiver of any succeeding breach of any other covenant.

12.9 Headings. The headings of the articles and paragraphs contained in this Agreement are inserted for convenience and are not intended to be part of or to affect the interpretation of this Agreement.

12.10 Advice of Counsel. Each Party acknowledges and represents that, in executing this Agreement, it has had the opportunity to seek advice as to its legal rights from legal counsel and has read and understood all of the terms and provisions of this Agreement.