

# Salesforce.com License and Distribution Agreement for the Heroku Elements Marketplace

This salesforce.com License and Distribution Agreement for the Heroku **Elements Marketplace** (the "**Agreement**") is entered into and made effective as of the day Provider accepts this Agreement as provided below (the "**Effective Date**"), by and between the Salesforce entity set forth in Section 11.9 (together with its Affiliates, "**SFDC**"), and you ("**You**" or "**Provider**").

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING PROVIDER'S ACCEPTANCE OR OTHERWISE ELECTRONICALLY INDICATING ACCEPTANCE, PROVIDER AGREES TO THE TERMS OF THE AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THE INDIVIDUAL REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. SFDC AND PROVIDER ARE EACH A "**PARTY**" AND COLLECTIVELY THE "**PARTIES**" TO THIS AGREEMENT.

PROVIDER MAY NOT ACCESS OR USE THE PARTNER PORTAL, THE API, THE HEROKU ELEMENTS MARKETPLACE OR OFFER ITS PROVIDER SERVICE THROUGH THE HEROKU ELEMENTS MARKETPLACE IF PROVIDER (i) DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, OR (ii) IS OR BECOMES (IN WHOLE OR IN PART) A DIRECT COMPETITOR OF SFDC EXCEPT WITH SFDC'S PRIOR WRITTEN CONSENT. FURTHER, PROVIDER MAY NOT ACCESS THE PARTNER PORTAL OR OTHERWISE UTILIZE THE HEROKU SERVICE FOR PURPOSES OF MONITORING SFDC OR ITS SERVICES, THEIR PERFORMANCE OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES.

This Agreement was last updated on October 1, 2020.

## 1. Definitions.

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

**1.1. "Add-on"** means a Non-SFDC Application that interoperates with the Heroku Service and is detailed in the Manifest, Provider Price, and any accompanying User Materials submitted via the Partner 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 Partner Portal through which the Add-on interoperates with the Heroku Service.

**1.4. "Beta Services"** means SFDC services or functionality that may be made available to Customer to try at Customer's option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

**1.5. "Buildpack"** means a Non-SFDC Application that interoperates with the Heroku Service, consists of a set of open-source scripts that are used for compiling apps, and automates build processes.

**1.6. "Button"** means a Non-SFDC Application that interoperates with the Heroku Service and provides one-click provisioning functionality.

**1.7. "Content"** means information obtained by SFDC from publicly available sources or its third party content providers and made available to any User or Provider through the Heroku Service or Beta Services, as more fully described in the Documentation.

**1.8. "Customer"** means an individual or entity (including its Affiliates) that has entered into a Master Subscription Agreement with SFDC (or its Affiliates) and one or more Order Form(s) (or on-line orders) for the Heroku Service.

**1.9. "Customer Data"** means electronic data and information submitted by or for a Customer to the Services which are accessible to the Customer while resident on SFDC's systems, including through the Heroku Elements excluding Content and Non-SFDC Applications.

**1.10. "Documentation"** means the Heroku Service's [Trust and Compliance](#) documentation, and its usage guides and policies, as updated from time to time, accessible via [help.salesforce.com](https://help.salesforce.com) or login to the Heroku Service.

**1.11. "Elements Content"** means information (including, without limitation, data files, application, written text, computer software, music, audio files or other sounds, photographs, videos or other images) obtained by Provider from publicly available sources or its third party content providers and made available to Customer through the Provider Service. Elements Content exclude web application(s) or source code developed or written by Customer or Users of the Heroku Services (collectively, "**Application(s)**").

**1.12. "Heroku Elements Developer Documentation"** means the technical documentation, usage guides and policies for the Heroku Elements Marketplace, as updated from time to time, accessible via <https://devcenter.heroku.com>. For clarity, the Heroku Elements Developer Documentation excludes Provider Service(s), User Materials or any other information provided by or on behalf of Provider or pertaining to a specific Provider Service.

**1.13. "Heroku Elements Marketplace"** means an online directory, catalog or marketplace of applications that interoperate with the Heroku Services, including, for example, <https://elements.heroku.com/>, and any successor websites.

**1.14. "Heroku Interface"** means the terminal or the web interfaces provided by Heroku to Customers and Users to view and manage Applications and Heroku Elements. Heroku Interface includes the Heroku Command Line Interface and Heroku Dashboard.

**1.15. "Heroku Service"** means the products and services that are made available online by SFDC at [www.heroku.com](http://www.heroku.com), including associated Heroku offline or mobile components, as described in the Documentation. "Heroku Services" exclude Content, Non-SFDC Applications and Elements Content.

**1.16. "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, knowhow, 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.

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

**1.18. "Malicious Code"** means code, files, scripts, agents, or programs intended to do harm, including, for example, viruses, worms, time bombs, and Trojan horses.

**1.19. "Manifest"** means a descriptive code document which describes the interface between the Heroku Service and the applicable Provider Service.

**1.20. "Master Subscription Agreement"** means the terms between SFDC and Customers, as such agreements may be updated from time to time, that govern Customers' use of the Heroku Service.

**1.21. "Net Subscription Revenues"** means all revenues actually received by SFDC for the sale of Subscriptions attributable to the Provider Service less (i) the actual costs incurred by SFDC in selling the Subscriptions, including but not limited to transaction costs related to credit card processing; (ii) any rebates, credits, chargebacks, refunds or similar offsets actually issued by SFDC for the Subscriptions and (iii) any taxes that SFDC is required to collect in connection with the sale of Subscriptions.

**1.22. "Non-SFDC Application"** means a Web-based, mobile, offline or other software application functionality that is provided by a Customer, Provider or a third party (i.e., not SFDC) and interoperates with the Heroku Service, including, for example, an application that is developed by or for Customer or Provider, is listed on an online directory, catalog or marketplace of applications that interoperate with the Heroku Service, including, for example, Elements, or is identified as SFDC Labs or by a similar designation.

**1.23. "Order Form"** means an ordering document or online order specifying the Heroku Services that is entered into between Customer and SFDC or any of their Affiliates, including any addenda and supplements thereto.

**1.24. "Partner Portal"** means the portal on the Heroku Service providing the interface between Provider and the Heroku Service.

**1.25. "Provider Price"** means the monthly User price(s) for a Subscription(s).

**1.26. "Provider Service"** means the Add-on(s), Buildpack(s), or Button(s) that Provider makes available to Customers pursuant to this Agreement.

**1.27. "Services"** means the products and services made available online by SFDC, including associated SFDC offline or mobile components, as described in the Documentation. "Services" exclude Content and Non-SFDC Applications and Elements Content.

**1.28. "Subscription"** means a User subscription to use one or more Add-on(s) on the Heroku Service.

**1.29. "User"** means, in the case of an individual using the Heroku Element on his or her own behalf, the Customer or, in the case of an individual accepting the Provider Service Terms on behalf of a company or other legal entity (the Customer), an individual who is authorized by Customer to use the Heroku Element, for whom such Customer has purchased a subscription (or in the case of any Heroku Element provided by SFDC without charge, for whom a Heroku Element has been provisioned), and to whom a user identification and password have been supplied.

**1.30. "User Materials"** means any user guides, technical specifications, or other documentation for the Provider Service(s) that Provider makes available to Users.

## 2. Integration of the Provider Service.

**2.1.** SFDC shall make available the Partner Portal, the API, and the Heroku Service in accordance with this Agreement.

**2.2.** Provider shall provide, host and maintain the Provider Service and, if applicable, its related User Materials.

**2.3. Privacy and Security of Customer Data Submitted or Accessed by the Provider Service.** Provider will maintain appropriate administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of Customer Data submitted, accessed or processed by the Provider Service. To the extent the Provider Service transmits or processes Customer Data outside SFDC's systems, Provider represents and warrants that it will notify all Customers and Users prior to their use of the Provider Service that their Customer Data will be transmitted or processed outside SFDC's system and to that extent SFDC is not responsible for the privacy, security, or integrity of that Customer Data. Provider shall not (a) modify Customer Data, except to provide the Provider Service or when expressly permitted in writing by Customer, (b) disclose Customer Data except as compelled by law or as expressly permitted in writing by Customer, or (c) access or use Customer Data except to provide the Provider Service and prevent or address service or technical problems, or at Customer's request in connection with customer support matters. In addition, Provider shall comply with all applicable laws in providing the Provider Service, the Provider Price, the Manifest, the User Materials and the Provider Service Terms to Customers and Users. Provider agrees to maintain the confidentiality of Customer Data indefinitely following the expiration or termination of this Agreement. For the avoidance of doubt, Customer Data will be deleted in accordance with the Documentation.

**2.4.** Provider must comply with the requirements set forth in the Heroku Elements Developer Documentation prior to submission of the Provider Service to SFDC. SFDC reserves the right, for any reason at any time (as SFDC decides in its sole discretion), to refuse to list or publish a Provider Service, Launch an Add-on, and/or remove any Provider Service from the Heroku

Elements Marketplace, including but not limited to, violations of the Salesforce Acceptable Use Policy available at [https://c1.sfdcstatic.com/content/dam/web/en\\_us/www/documents/legal/Agreements/policies/ExternalFacing\\_Services\\_Policy.pdf](https://c1.sfdcstatic.com/content/dam/web/en_us/www/documents/legal/Agreements/policies/ExternalFacing_Services_Policy.pdf) or successor URL.

## **2.5. Add-ons Integration.**

2.5.1. Provider shall submit each Add-on and the accompanying Provider Price via the Partner Portal for distribution pursuant to this Agreement.

## **2.6. Buttons and Buildpacks Integration.**

2.6.1. Provider may register a Buildpack by filling out the Buildpack registration form on the Partner Portal for registration of the Buildpack on the Heroku Elements Marketplace pursuant to this Agreement.

2.6.2. Provider may only register a Buildpack for which Provider has Github access to the Buildpack's source code repository, and Provider may not register a third-party Buildpack.

2.6.3. Provider must make available Provider's source code to each Button and Buildpack registered by Provider to the users of the Heroku Elements Marketplace under open source license terms and grant a license under Provider's intellectual property rights to all authorized users of the Heroku Elements Marketplace, to download, use, copy, modify, and distribute the Button and Buildpack and repost Provider's contributed content, subject to the terms and conditions herein.

2.6.4. When registering a Buildpack, Provider will be asked to select a namespace. Namespaces are provided on a first-come, first-served basis, and are intended for immediate and active use.

2.6.4.1. Namespaces may not be inactively held for future use. Namespace squatting is prohibited. Inactive namespaces may be renamed or removed by SFDC at their discretion, including but not limited to violations of the Salesforce Acceptable Use Policy available at [https://c1.sfdcstatic.com/content/dam/web/en\\_us/www/documents/legal/Agreements/policies/ExternalFacing\\_Services\\_Policy.pdf](https://c1.sfdcstatic.com/content/dam/web/en_us/www/documents/legal/Agreements/policies/ExternalFacing_Services_Policy.pdf) or successor URL. Attempts to sell, buy, or solicit any form of value in exchange for namespaces are prohibited and may result in permanent account suspension. Provider may not select a namespace that violates others' trademark rights.

## **3. Distribution of the Provider Service.**

**3.1. Distributor Appointment.** Subject to the terms and conditions of this Agreement, Provider hereby appoints SFDC as an authorized distributor to sell and/or distribute the Provider Service to Users for use in connection with the Heroku Elements Marketplace.

**3.2. Subscriptions.** SFDC shall distribute Add-ons only through Subscriptions.

**3.3. Price Changes.** Provider shall have the right to revise the Provider Price at any time with ninety (90) days advance written notice to SFDC, provided that any change to the Provider Price shall not take effect unless Provider has complied with the foregoing advance written notice to SFDC and the updated price change has been reflected in the Heroku Elements Marketplace. Unless otherwise agreed in advance in writing between SFDC and Provider, Provider Price changes shall apply (a) after the effective date of such price changes with respect to all new Subscriptions or (b) no sooner than the first day after the expiration of the then-current monthly term with respect to renewals of Subscriptions.

**3.4. Add-on Support.** Provider will be responsible for performing all User support for the Provider Service. SFDC will permit Users to submit trouble tickets for an Add-on to the Heroku Service, and SFDC will transmit such trouble tickets to Provider. Provider will provide support promptly and during at least the same hours and at the same or better service levels as Provider provides support to its other customers, but in no event in a manner that fails to meet industry standards. For clarity, neither Provider nor SFDC have any obligation to support Buildpacks or Buttons.

**3.5. Marketing.** The Parties may decide to engage in joint marketing activities to promote the Provider Service 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.

**3.6. Governing Terms.** Before Provider grants any Customer access to the Provider Service, Provider shall require such Customer to enter into a legally binding, written agreement with Provider that governs the Customer's access to and use of such Provider Service(s) (the "Provider Service Terms"). Such Provider Service Terms shall be in a form acceptable to SFDC, and Provider shall complete such steps as SFDC may require to publish such Provider Service Terms on the Heroku Elements Marketplace or successor marketplace. In the event that Provider does not provide Provider Service Terms, Provider agrees that the terms of use located at <https://www.heroku.com/policy/heroku-elements-terms> ("**Heroku Element Terms of Use (Default)**") (or such successor website) shall govern the Customer's access to and use of such Provider Service(s). Notwithstanding anything to the contrary in the Provider Service Terms, upon the Customer's request made within 30 days after the effective date of expiration or termination of a Heroku Elements subject to the Provider Service Terms, Provider will make available to such Customer for export or download any data submitted by Customer to such Heroku Elements.

## 4. Intellectual Property Rights.

**4.1. Provider's Intellectual Property.** SFDC acknowledges and agrees that, as between Provider and SFDC, Provider owns all right, title, and interest in and to the Provider Service and Provider's Intellectual Property Rights, and, other than as expressly set forth herein, Provider does not convey to SFDC any right of ownership or interest in any Provider Service or Provider's Intellectual Property Rights.

**4.2. SFDC's Intellectual Property.** Provider acknowledges and agrees that, as between Provider and SFDC, SFDC owns all right, title, and interest in and to the SFDC Service, API, and SFDC's Intellectual Property Rights, and, other than as expressly set forth herein, SFDC does not convey to Provider any right of ownership or interest in the SFDC Service, API, or SFDC's Intellectual Property Rights.

**4.3. Provider Service License.** Subject to the terms and conditions of this Agreement, Provider hereby grants to SFDC a worldwide, nonexclusive, non transferable (except as otherwise provided herein), royaltyfree 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 Provider Service and Elements Content in connection with its use with the Heroku Service, (b) access the Provider Service via the API solely for the purpose of providing the Provider Service and Elements Content via the Heroku Service and (c) convey the same license set forth in 4.3(a) and (b) to Customers and Users.

**4.4. Heroku Service License.** Subject to the terms and conditions of this Agreement, SFDC hereby grants to Provider a non-exclusive, non-transferable limited right to access and use the Heroku Service via the API solely for the purpose of providing the Provider Service to Customers and Users and providing support as contemplated by this Agreement.

**4.5. License Restrictions.** Provider shall not (a) reverse engineer, disassemble, decompile, or otherwise attempt to discover the source code for SFDC's API or the Heroku Service; (b) except as expressly set forth herein, sell, resell, license, sublicense, distribute, make available, rent or lease the Heroku Service, the Heroku Elements Marketplace, the Partner Portal, the Heroku Interface or API; or (c) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels from the Heroku Service, the Heroku Elements Marketplace, the Partner Portal, the Heroku Interface or API. SFDC shall not (a) reverse engineer, disassemble, decompile, or otherwise attempt to discover the source code for any Add-on; or (b) except as expressly set forth herein, sell, resell, license, sublicense, distribute, make available, rent or lease any Provider Service.

**4.6. Trademark Cross-License.**



4.6.1. **License.** Each Party (the "**Granting Party**") hereby grants to the other Party (the "**Licensed Party**") a limited, nonexclusive, nontransferable, non-sublicensable, royalty-free license during the Term to use the Granting Party's Marks ("**Licensed Marks**") for the sole purpose of identifying and promoting the Granting Party's business, products and services, and strictly in accordance with this Agreement. If the Granting Party is SFDC, its Licensed Marks are such marks identified publicly by SFDC as available for use to identify Provider and the Provider's participation in the Heroku Elements Marketplace, and such associated designs and logos as specified or approved in writing by SFDC in its discretion from time to time (see, e.g., SFDC Branding Guidelines) ("**SFDC Marks**"). Provider may use the SFDC Marks solely: (i) for so long as Provider remains a Provider of the Heroku Elements Marketplace; and (ii) in any jurisdiction in which Provider is authorized to be a Provider and SFDC has rights. This License does not grant rights to use any trademark of SFDC other than those identified as SFDC Marks herein. If the Granting Party is Provider, except to the extent any mark features any of the SFDC Marks, its Licensed Marks are its name, the name of the Provider Service(s), and such associated designs and logos as specified or approved in writing by Provider in its discretion from time to time ("**Provider Marks**"). Each Party represents and warrants that it owns or otherwise has sufficient rights to its Licensed Marks, to the extent the Parties have obtained rights in a given jurisdiction, to grant the rights granted in this Agreement and its Marks do not infringe any intellectual property rights of any third party. All of the benefit and goodwill associated with the Licensed Party's use of the Granting Party's Licensed Marks will inure entirely to the Granting Party.

4.6.2. **Usage Guidelines and Required Approvals.** The Licensed Party's use of the Granting Party's Licensed Marks will strictly comply with the Granting Party's written trademark usage policies communicated to the Licensed Party from time to time, including the use of proper notices and legends (see, e.g., SFDC Branding Guidelines). The Licensed Party will obtain the Granting Party's prior written approval of all uses of the Granting Party's Licensed Marks, which approval may be granted or withheld in the Granting Party's discretion. The Granting Party may withdraw any approval of any use of its Marks at any time in its discretion, although no such withdrawal will require the recall of any previously published or distributed written materials.

4.6.3. **Standards.** During the Term, the Licensed Party will reasonably cooperate with the Granting Party in facilitating the Granting Party's monitoring and control of the nature and quality of the materials, products and services bearing the Granting Party's Licensed Marks, and will supply the Granting Party with specimens of the Licensed Party's use of the Granting Party's Licensed Marks upon request. If the Granting Party notifies the Licensed Party that the Licensed Party's use of the Granting Party's Licensed Marks is not in compliance with the Granting Party's trademark policies or is otherwise in breach of this Agreement, then the Licensed Party will promptly take such reasonable corrective action as directed by the Granting Party.

4.6.4. **Ownership/Good Faith Covenants.** Provider acknowledges and agrees that the SFDC Marks are and will remain the sole and exclusive property of SFDC. Provider will not acquire any right, title, or interest in, to or associated with the SFDC Marks other than the limited license to use Licensed Marks identified above pursuant to this Agreement. Both during and after the

Term, Provider will not itself, and will not assist, permit, or encourage any other person to, do anything or omit to do anything that might prejudice, impair, jeopardize, violate, dilute, depreciate, or infringe any of the SFDC Marks or SFDC's interest in the SFDC Marks without SFDC's prior express written approval. SFDC acknowledges and agrees that the Provider Marks are and will remain the sole and exclusive property of Provider. SFDC will not acquire any right, title, or interest in, to or associated with the Provider Marks other than the limited license to use Licensed Marks identified above pursuant to this Agreement. Both during and after the Term, SFDC will not itself, and will not assist, permit, or encourage any other person to, do anything or omit to do anything that might prejudice, impair, jeopardize, violate, dilute, depreciate, or infringe any of the Provider Marks or Provider's interest in the Provider Marks without Provider's prior express written approval.

Subject to the limited rights expressly granted hereunder, each Party reserves all of right, title and interest in and to their respective intellectual property. No rights are granted hereunder other than as expressly set forth herein.

## 5. Revenue Share; Payments.

**5.1. Subscription Revenue Share.** For any Provider Service that generates revenue pursuant to this Agreement, SFDC shall pay Provider 70% of the Net Subscription Revenues it receives hereunder (the "**Revenue Share**"). SFDC may change the percentage of the Revenue Share upon thirty (30) days advanced notice to Provider via the Partner Portal.

**5.2. Payments.** SFDC 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 from Customers by SFDC, by wire transfer or other method mutually acceptable to the Parties.

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

**5.4. Taxes.** Unless otherwise stated, SFDC's fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "**Taxes**"). Provider is responsible for paying all Taxes associated with the Revenue Share and its activities on the Heroku Elements Marketplace, excluding taxes based on SFDC's net income or property. If SFDC has the legal obligation to pay or collect Taxes for which Provider is responsible under this Section, the appropriate amount shall be invoiced to and paid by Provider, unless Provider provides SFDC with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 6. Term; Termination.

**6.1. Term.** This Agreement starts on the Effective Date and shall remain in effect unless terminated as set forth herein (the "**Term**").

**6.2. Termination for Cause.** Either Party may immediately terminate this Agreement upon written notice to the other Party if (i) the other Party becomes the subject of a petition in bankruptcy or other proceeding relating to insolvency, or makes an assignment for the benefit of creditors, (ii) the other Party publicly announces (including by reporting it in SEC filings) that it has reached agreement to acquire or be acquired by the terminating Party's competitor, (iii) the other Party breaches its confidentiality obligations under this Agreement or infringes or misappropriates the terminating Party's intellectual property rights, (iv) it determines, based on one or more SFDC Customer or prospective SFDC Customer complaints, that the other Party's actions or statements creates a significant risk of harm to the terminating Party's reputation or customer relationships, (v) the other Party has committed fraud or misrepresentation with respect to entering into and/or the performance of this Agreement, (vi) a Party learns of circumstances that give it reason to believe that the other Party has engaged in illegal conduct or unethical business practices in connection with performance of this Agreement, (vii) the other Party, or any of its owners or employees responsible for providing services under this Agreement have become the target of an investigation or prosecution by any governmental authority for alleged corruption or other violation of laws, or (viii) the other Party has violated Section 11.6 (Provider's Compliance with Applicable Laws) including, in the case of SFDC, Provider's violating SFDC's rights under trademark and copyright laws and/or ICANN policies and procedures governing domain names. Subject to the foregoing, either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party of such other Party's material breach if the breach is not cured during that period. In addition, after providing notice of material breach to Provider pursuant to this Section, SFDC, in its sole discretion, shall be entitled to withhold payment of Revenue Share and may suspend or hide the listing of the Provider Service on the Heroku Elements Marketplace. For clarity, the foregoing remedies in this Section shall be in addition to, and not in lieu of either Party's other legal rights and remedies.

**6.3. Termination by SFDC for Convenience.** Subject to Section 6.5 (Effect of Termination) below, SFDC may terminate this Agreement for convenience upon thirty (30) days' written notice to Provider.

**6.4. Termination by Provider.** Provider may terminate this Agreement upon ninety (90) days written notice, if Provider provides such notice to SFDC within fifteen (15) days of notice by SFDC to Provider of any planned amendment to this Agreement that Provider chooses not to accept, provided that if SFDC lowers the percentage of the Revenue Share pursuant to Section 5.1 (Subscription Revenue Share), Provider may terminate upon forty-five (45) days written notice. If Provider terminates this Agreement in accord with this Section 6.4, 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 SFDC. Otherwise, Provider may terminate this Agreement on 180 days' written notice to SFDC.

**6.5. Effect of Termination.** Upon termination of this Agreement, Provider shall cease to be an SFDC Provider and all of Provider's rights detailed in this Agreement and to use the Heroku Service or SFDC's other intellectual property shall cease. Provisions that survive termination or expiration include those relating to limitation of liability, payment, and others which by their nature are intended to survive. All other rights and obligations of the Parties under this Agreement shall expire upon termination of this Agreement, except that all payment obligations accrued hereunder prior to termination shall survive such termination.

## 7. Representations and Warranties.

**7.1. Warranties.** Each Party represents that it has validly entered into this Agreement and has the legal power to do so.

**7.2. DISCLAIMER OF WARRANTIES.** SFDC DISCLAIMS ALL AND MAKES NO REPRESENTATIONS AND WARRANTIES REGARDING THE HEROKU SERVICE, THE PARTNER PORTAL, ELEMENTS AND THE API, WHETHER EXPRESS, IMPLIED OR STATUTORY, ORAL OR IN WRITING, ARISING UNDER ANY LAW, INCLUDING WITH RESPECT TO VALIDITY, NON-INTERRUPTION, ERROR-FREE OPERATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN NO EVENT WILL SFDC BE LIABLE TO PROVIDER (OR TO ANY INDIVIDUAL OR ENTITY AFFILIATED WITH PROVIDER) FOR ANY CLAIM, LOSS OR DAMAGE ARISING OUT OF THE OPERATION OR AVAILABILITY OF THE HEROKU SERVICE, THE PROVIDER SERVICES, ELEMENTS CONTENT OR ANY OTHER SFDC PRODUCT OR SERVICE, MADE AVAILABLE, ACCESSED OR USED AS PART OF PROVIDER'S DISTRIBUTION OF ANY PROVIDER SERVICE OR ELEMENTS CONTENT. CONTENT AND BETA SERVICES ARE PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

**7.3. No Representations.** 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 Documentation for the Heroku Service.

**7.4. Malicious Code.** Provider represents and warrants that the Provider Service does not contain any Malicious Code.

**7.5. Right to Provider Service.** Provider represents and warrants that Provider has the right to use and display the Provider Service and any related intellectual property, including but not limited to trademarks.

## 8. Confidentiality.

**8.1. Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or in writing, 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. Confidential Information of SFDC shall include, without limitation, non-public aspects of SFDC and third party applications, the Heroku Service, and User data to which Provider has access through SFDC systems. Provider's Confidential Information includes, but is not limited to Provider Service(s) and Provider's business and marketing plans, technology and technical information; products designs; and business processes. Confidential Information of each Party shall include this Agreement and discussions regarding the Provider relationship. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without breach of an obligations owed to the Disclosing Party.

**8.2. Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section.

**8.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

**8.4. Return of Confidential Information.** Upon Disclosing Party's written request upon expiration or termination of this Agreement (or at any earlier time upon written request by the Disclosing Party), the Receiving Party will: (a) promptly deliver to the Disclosing Party all originals and copies of all the Disclosing Party's Confidential Information and all documents, records, data and materials containing such Confidential Information in the Receiving Party's possession, power, or control and the Receiving Party will delete all of the Disclosing Party's Confidential Information from any and all of the Receiving Party's computer systems, retrieval systems, and databases except to the extent such systems retain such information in the ordinary course of business for back-up purposes; and (b) request that all persons to whom it has provided any of the Disclosing Party's Confidential Information comply herewith.

## 9. Limitation on Damages.

**9.1. EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES.** NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, COVER, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. SFDC'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF PAYMENTS MADE OR OWED TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. NOTWITHSTANDING THE FOREGOING, THE ABOVE LIMITATIONS ON LIABILITY SHALL NOT APPLY TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10 (INDEMNIFICATION) BELOW.

## 10. Indemnification.

**10.1. Indemnification by Provider.** Provider will defend SFDC against any claim, demand, suit or proceeding made or brought against SFDC by a third party (i) alleging that Provider's products or services (including Provider Services) or any data that Provider enters into the Heroku Service infringe the intellectual property rights of, or have otherwise harmed, a third party; (ii) based upon a representation made by Provider to such third party; or (iii) based upon a Provider's breach of this Agreement; (each a "**Claim Against SFDC**"), and will indemnify SFDC from any damages, attorney fees and costs finally awarded against SFDC as a result of, or for any amounts paid by SFDC under a settlement approved by Provider in writing of, a Claim Against SFDC, provided SFDC (a) promptly gives Provider written notice of the Claim Against SFDC, (b) gives Provider sole control of the defense and settlement of the Claim Against SFDC (except that Provider may not settle any Claim Against SFDC unless it unconditionally releases SFDC of all liability), and (c) gives Provider all reasonable assistance, at Provider's expense.

**10.2. Indemnification by SFDC.** SFDC will defend Provider against any claim, demand, suit or proceeding made or brought against Provider by a third party alleging that the Heroku Service

infringes or misappropriates the intellectual property rights of a third party; (a "**Claim Against Provider**"), and will indemnify Provider from any damages, attorney fees and costs finally awarded against Provider as a result of, or for amounts paid by Provider under a settlement approved by SFDC in writing of, a Claim Against Provider, provided Provider (a) promptly gives SFDC written notice of the Claim Against Provider, (b) gives SFDC sole control of the defense and settlement of the Claim Against Provider (except that SFDC may not settle any Claim Against Provider unless it unconditionally releases Provider of all liability), and (c) gives SFDC all reasonable assistance, at SFDC expense. If SFDC receives information about an infringement or misappropriation claim related to the Heroku Service, SFDC may in its discretion and at no cost to Provider (i) modify the Heroku Service so that they are no longer claimed to infringe or misappropriate, (ii) obtain a license for Provider's or Customer's (as applicable) continued use of that Heroku Service in accordance with this Agreement; or (iii) terminate any of Provider's or User's (as applicable) rights for that Heroku Service upon thirty (30) days' written notice and refund Provider or User (as applicable) any prepaid fees covering the remainder of the term of the terminated Heroku Service. The above defense and indemnification obligations do not apply to the extent a Claim Against Provider arises from Content, a Non-SFDC Application, Elements Content or Provider's breach of this Agreement, the Documentation or applicable Order Forms.

**10.3. Exclusive Remedy.** This "Indemnification" Section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third party claim described in this Section.

## 11. Miscellaneous.

**11.1. Assignment.** Neither Provider nor SFDC may assign any rights or obligations under this Agreement without the prior written consent of the other (not to be unreasonably withheld or delayed), provided either Party may assign this Agreement without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of the assigning Party's assets not involving a direct competitor of the other Party.

**11.2. Entire Agreement; Amendments.** Provider agrees that this Agreement and any addenda or exhibits attached hereto, constitutes the complete agreement between the Parties relating to its subject matter. This Agreement supersedes and replaces any prior representations, written or oral, regarding its subject matter as well as any other online or click-through agreement that Provider may have previously entered into with SFDC governing its subject matter. If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any addenda or exhibit hereto, the terms of such addenda or exhibit shall prevail. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Order Form, the terms of the Order Form shall prevail. The Parties agree that any term or condition stated in a Provider purchase order or in any other Provider order documentation (excluding Order Forms) is void. This Agreement and any Order Form that

SFDC and Provider enter into may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted; provided however, SFDC reserves the right to modify the terms and conditions of this Agreement upon at least 15 days' notice by posting a new version of this Agreement on the Heroku website, subject to the terms of Section 6.4.

**11.3. Relationship of Parties.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between Provider and SFDC. Neither Party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other Party, nor to represent the other Party as agent, employee, franchisee, or in any other capacity. There are no third-party beneficiaries to this Agreement. Provider shall not make any proposals, promises, warranties, guarantees, or representations on SFDC's behalf or in SFDC's name.

**11.4. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

**11.5. 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.

**11.6. Compliance with Applicable Laws.**

**11.6.1. Compliance with Ethical Brand Representation Standards.** Provider shall comply with all applicable laws and regulations in its marketing activities hereunder and shall not engage in any deceptive, misleading, illegal or unethical marketing activities, or activities that otherwise may be detrimental to SFDC and shall perform its obligations hereunder in a manner that in SFDC's judgment reflects well upon SFDC and its brands.

**11.6.2. Compliance with Global Trade Laws.** The Parties, as well as the Heroku Service, Content, and other technology SFDC makes available may be subject to export and economic sanctions laws and regulations of the United States and other jurisdictions. Each Party represents that as of the Effective Date neither the Party, nor its Affiliates, is: (a) currently identified on any sanctions or export control list maintained by the U.S. government, including, but not limited to, the Specially Designated Nationals ("**SDN**") List maintained by the Department of the Treasury, Office of Foreign Assets Control ("**OFAC**") or the Denied Persons or Entity Lists maintained by the Department of Commerce, Bureau of Industry and Security ("**BIS**") (collectively "**Sanctioned Persons**"); nor (b) located, organized or ordinarily resident in



a U.S.-embargoed country or territory (currently Cuba, Iran, North Korea, Sudan, Syria and the Crimea Region of Ukraine) (each, an "**Embargoed Territory**"). Unless otherwise authorized by a specific license, general license, exemption, or other authorization from the U.S. government, Provider shall not (a) submit or provide access to the Provider Service into or from, or permit Users to access or use any Provider Service from, an Embargoed Territory; (b) engage in any transaction with, or allow access or use of any Provider Service by, a Sanctioned Person, in connection with Provider's activities contemplated by this Agreement; or (c) engage in any other activity or transaction pursuant to this Agreement that would be in violation of any U.S. export or economic sanctions law or regulation.

**11.6.3. Compliance with Anti-corruption Laws.** In connection with this Agreement, Provider, and all employees, officers, and directors, and any other third parties working for Provider or performing activities on Provider's behalf, (1) have complied with and shall comply with all applicable laws and regulations, including without limitation the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and other applicable anti-corruption laws and regulations (collectively, the "**Anti-Corruption Laws**"); and (2) shall keep accurate books, accounts, and records. It is the intent of the Parties that no payments or transfers of anything of value shall be made in connection with this Agreement that have the purpose or effect of public, commercial or other bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage.

**11.6.4. Consequences of Violation.** Provider hereby acknowledges and agrees, SFDC may terminate or suspend this Agreement immediately by written notice without any liability to Provider: (1) upon any violation by Provider of this "Compliance" Section; or (2) circumstances causing SFDC to believe, in good faith, that Provider, or any of its owners, directors, employees, or third parties (including subcontractors, sub-distributors, integrators, or other third parties), has engaged in illegal conduct or unethical business practices, including any potential violations of the Anti-Corruption Laws. Termination or suspension by SFDC under this section shall be in addition to, and not in lieu of, SFDC's other legal rights and remedies. If SFDC terminates or suspends the Agreement under this section, SFDC may suspend or withhold any payments to Provider, including payments for services previously performed. SFDC will not be liable for any claims, losses, or damages arising from or related to failure of Provider to comply with the "Compliance with Anti-Corruption Laws" Section or this Agreement or related to the termination or suspension of this Agreement under this clause, and Provider will indemnify and hold SFDC harmless against any such claims, losses, or damages.

**11.6.5. Training.** Provider agrees that it has provided or will provide training and information to its officers, directors, employees, and any third parties utilized by Provider in connection with performance of this Agreement as necessary to ensure full compliance with the Anti-Corruption Laws and any other applicable laws and any obligations set forth in this "Compliance" Section.

**11.6.6. Certification.** Provider agrees that Provider, by and through an authorized officer, will periodically, at SFDC's request, complete SFDC's Due Diligence Questionnaire and Compliance Certification and/or otherwise certify compliance in writing with Provider's obligations set forth in

this "Compliance" Section. Provider may be subject to additional due diligence, questions and training, as determined by SFDC in its sole discretion.

**11.6.7. Reporting Potential Violations.** Provider agrees that it shall promptly inform SFDC's Legal Department ([legalcompliance@salesforce.com](mailto:legalcompliance@salesforce.com)) in writing should it or any of its officers, directors, or employees learn of, or suspect, any act or circumstance that may violate applicable laws in connection with this Agreement.

**11.6.8. No Affiliation with Government Officials -- Disclosure Obligation.** Provider affirms that (1) none of its owners, directors, employees and, to its knowledge, third parties involved in the performance of this Agreement is a Government Official or a Close Family Member of a Government Official with the ability, or appearance of ability, to influence the performance of this Agreement; or that (2) it has fully described any such relationship in writing to SFDC's Legal Department ([legalcompliance@salesforce.com](mailto:legalcompliance@salesforce.com)) and received acknowledgement by SFDC's Legal Department of such disclosure. For purposes of this Agreement (A) "**Government Official**" means an officer or employee of any government; officer or employee of any public international organization; officer or employee of any department, agency, or instrumentality of any government or of any public international organization; officer or employee of any government-owned or government-controlled company; political party; political party official; or anyone, whether a private person or otherwise, acting in an official capacity on behalf of any of the above or of any government entity and (B) "Close Family Member of a Government Official" means the Government Official's spouse, the Government Official's or the spouse's grandparents, parents, siblings, children, nieces, nephews, aunts, uncles, and first cousins; the spouse of any of the above; or any other person who shares the same household with the Government Official. In the event that during the term of the Agreement there is a change in the information described in this paragraph, Provider shall promptly disclose such change to SFDC's Legal Department in writing.

**11.6.9. Disclosure of Third Parties.** Provider shall not utilize or employ any Affiliate, third-party subcontractor, consultant, agent, or other intermediary, not identified in this Agreement, in connection with the performance of lead generation, or Government-Controlled Entity procurement activities under this Agreement without express prior written consent from SFDC's Legal Department ([legalcompliance@salesforce.com](mailto:legalcompliance@salesforce.com)). SFDC will have the authority to accept or reject any proposed third party.

**11.6.10. Inspection Rights.** SFDC shall be allowed reasonable access to inspect, audit, and make copies of Provider's relevant books, records, and accounts, and may use third-parties, such as external audit firms, to assist in any such activities. Such inspection and audit may include interviews of relevant Provider personnel. Such audit may be conducted during regular business hours at Provider's offices and shall not unreasonably interfere with Provider's business activities. Provider agrees that it will fully cooperate with SFDC's reasonable requests in any such audit.

**11.7. Suggestions.** Provider grants SFDC a worldwide, perpetual, irrevocable, royalty-free, transferable, sublicenseable, license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Provider relating to the operation of SFDC's or its Affiliate's services.

**11.8. Cooperation on Disputes.** Provider shall cooperate with SFDC in regard to any inquiry, dispute or controversy in which SFDC may become involved and of which Provider may have knowledge. Such cooperation shall include disclosure of relevant documents and financial information, and interviews of Provider's personnel. Such obligation shall continue after the expiration or termination of this Agreement.

**11.9. SFDC Contracting Entity, Notices, Governing Law, and Venue.**

11.9.1. **General.** The SFDC entity that Provider is contracting with under this Agreement, the address to which Provider should direct legal notices arising under or relating to this Agreement, the law that will apply in any lawsuit arising out of or in connection with this Agreement, and which courts can adjudicate any such lawsuit, depend on where Provider is domiciled as follows:

| IF CUSTOMER IS DOMICILED IN:   | THE SFDC ENTITY ENTERING INTO THIS AGREEMENT IS: | NOTICES SHOULD BE ADDRESSED TO:  | GOVERNING LAW IS:                                    | COURTS WITH EXCLUSIVE JURISDICTION ARE: |
|--|--|--|--|---|
| The United States of America, Mexico or a Country in Central or South America or the Caribbean | salesforce.com, inc., a Delaware corporation     | Salesforce Tower, 415 Mission Street, 3rd Floor, San Francisco, California, 94105, U.S.A., attn: VP, Worldwide Sales Operations, with a copy to attn: General Counsel. | California and controlling United States federal law | San Francisco, California, U.S.A.       |

|         |  |  |  |                          |
|---------|--|--|--|--------------------------|
| Brazil  | Salesforce Tecnologia Ltda.  | Av. Jornalista Roberto Marinho, 85, 14º Andar - Cidade Monções, CEP 04576-010 São Paulo - SP   | Brazil                                       | São Paulo, SP, Brazil    |
| Canada  | salesforce.com<br>Canada Corporation, a Nova Scotia corporation  | Salesforce Tower, 415 Mission Street, 3rd Floor, San Francisco, California, 94105, U.S.A., attn: VP, Worldwide Sales Operations, with a copy to attn: General Counsel.   | Ontario and controlling Canadian federal law | Toronto, Ontario, Canada |
| France  | salesforce.com<br>France, a French S.A.S company with a share capital of 37,000 €, registered with the Paris Trade Registry under number 483 993 226 RCS Paris, Registered office: 3 Avenue Octave Gréard, 75007 Paris, France | Salesforce.com Sarl, Route de la Longeraie 9, Morges, 1110, Switzerland, attn: Director, EMEA Sales Operations, with a copy to attn.: Legal Department - Service Juridique, 3 Avenue Octave Gréard, 75007 Paris, France. | France                                       | Paris, France            |
| Germany | salesforce.com<br>Germany GmbH, a limited liability company, incorporated in Germany   | Salesforce.com Sarl, Route de la Longeraie 9, Morges, 1110, Switzerland, attn: Director, EMEA Sales Operations, with a copy to attn.: Legal Department - Erika-Mann-Strasse 31-37, 80636 München, Germany.               | Germany                                      | Munich, Germany          |

|   |  |   |         |                 |
|---|--|---|---------|-----------------|
| Italy   | Salesforce.com Italy S.r.l., an Italian limited liability company having its registered address at Piazza Filippo Meda 5, 20121 Milan (MI), VAT / Fiscal code n. 04959160963 | Salesforce.com Sarl, Route de la Longeraie 9, Morges, 1110, Switzerland, attn: Director, EMEA Sales Operations, with a copy to attn.: Legal Department  | Italy   | Milan, Italy    |
| Spain   | Salesforce Systems Spain, S.L.U., a limited liability company incorporated in Spain  | Salesforce.com Sarl, Route de la Longeraie 9, Morges, 1110, Switzerland, attn: Director, EMEA Sales Operations, with a copy to attn.: Legal Department - Paseo de la Castellana 79, Madrid, 28046, Spain  | Spain   | Madrid, Spain   |
| United Kingdom  | Salesforce UK Limited (f/k/a salesforce.com EMEA Limited), a limited liability company incorporated in England   | Salesforce.com Sarl, Route de la Longeraie 9, Morges, 1110, Switzerland, attn: Director, EMEA Sales Operations, with a copy to attn: Legal Department, Salesforce UK Limited (f/k/a salesforce.com EMEA Limited), Floor 26 Salesforce Tower, 110 Bishopsgate, London, EC2N 4AY, United Kingdom. | England | London, England |
| A Country in Europe, the Middle East or Africa, other | SFDC Ireland Limited, a limited liability company incorporated in Ireland  | Salesforce.com Sarl, Route de la Longeraie 9, Morges, 1110, Switzerland, attn: Director, EMEA Sales Operations, with a copy to attn.: Legal Department - 3rd and 4th Floor, 1 Central Park Block G,   | England | London, England |

than  
France,  
Germany,  
Italy,  
Spain,  
and the  
United  
Kingdom

Central Park,  
Leopardstown, Dublin 18,  
Ireland

Japan

Kabushiki Kaisha  
Salesforce.com, a  
Japan corporation

JP Tower 12F, 2-7-2  
Marunouchi, Chiyoda-ku,  
Tokyo 100-7012, Japan,  
attn: Senior Director,  
Japan Sales Operations,  
with a copy to attn:  
General Counsel.

Japa  
n

Tokyo,  
Japan

A Country  
in Asia or  
the  
Pacific  
region,  
other  
than  
Japan,  
Australia  
or New  
Zealand

Salesforce.com  
Singapore Pte Ltd, a  
Singapore private  
limited company

5 Temasek Boulevard  
#13-01, Suntec Tower 5,  
Singapore, 038985, attn:  
Director, APAC Sales  
Operations, with a copy to  
attn: General Counsel.

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Singa  
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Australia  
or New  
Zealand

SFDC Australia Pty  
Ltd

201 Sussex Street, Darling  
Park Tower 3, Level 12,  
Sydney NSW 2000, attn:  
Senior Director, Finance  
with a copy to attn:  
General Counsel.

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11.9.2. **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, or (iii) the first

business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Legal notices to Provider shall be addressed to the address provided above, and in the case of billing-related notices, to the relevant billing contact designated by Provider. Notices to SFDC shall be addressed to the entity Provider is contracting with, as described above, and to the attention of the Provider's Program Account Manager with a copy sent to SFDC's General Counsel.

**11.9.3. Governing Law and Jurisdiction.** Each Party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

**11.9.4. Local Law Requirements: France.** With respect to Providers domiciled in France, in the event of any conflict between any statutory law in France applicable to Provider, and the terms and conditions of this Agreement, the applicable statutory law shall prevail.

**11.9.5. Local Law Requirements: Germany.** With respect to Providers domiciled in Germany, the following provisions below shall apply. In case of any conflict or discrepancy between the following provisions and these Terms, the following provisions shall prevail.

11.9.5.1. Section 7.2 "WARRANTY DISCLAIMER" is deleted.

11.9.5.2. Section 10.3 "Exclusive Remedy" is deleted.

11.9.5.3. The below "LIMITATION OF LIABILITY FOR PROVIDERS DOMICILED IN GERMANY" section shall apply to any claims resulting from the "Indemnification" section.

11.9.5.4. The below "LIMITATION OF LIABILITY FOR PROVIDERS DOMICILED IN GERMANY" section shall replace section 9 "Limitation on Damage".

## **9. LIMITATION OF LIABILITY FOR PROVIDERS DOMICILED IN GERMANY.**

**9.1 Unlimited Liability.** SFDC will be liable without limitation

- (a) in the event of willful misconduct or gross negligence,
- (b) within the scope of a guarantee taken over by the respective party,
- (c) in the event that a defect is maliciously concealed,
- (d) in case of an injury to life, body or health,
- (e) according to the German Product Liability Law.

**9.2 SFDC's Liability for Breach of Cardinal Duties.** If cardinal duties of SFDC are infringed due to slight negligence and if, as a consequence, the achievement of the objective of this Agreement, or in the case of a slightly negligent failure to comply with duties, the very discharge of which is an essential prerequisite for the proper performance of this Agreement, SFDC's liability shall be limited to foreseeable damage typical for the contract. In all other respects, any liability for damage caused by slight negligence shall be excluded.

**9.3 Liability Cap.** Unless SFDC is liable in accordance with "Unlimited Liability" Section above, in no event shall the aggregate liability of SFDC together with all of its Affiliates arising out of or related to this Agreement exceed the total amount payable by SFDC to Provider hereunder for the Provider Service giving rise to the liability in the 12 months preceding the first incident out of which the liability arose. The foregoing limitation will not limit Provider's payment obligations under the "Fees and Payment" section above.

**9.4 Scope.** With the exception of liability in accordance with the "Unlimited Liability" Section, the above limitations of liability shall apply to all claims for damages, irrespective of the legal basis including claims for tort damages. The above limitations of liability also apply in the case of claims for Provider's damages against the SFDC's employees, agents or bodies.

11.9.6. **Local Law Requirements: Italy.** With respect to Providers domiciled in Italy and to the extent not already provided therein, the following provisions supplement these Terms: Section 5.2 "Payments" and Section 11.6.3 "Compliance with Anti-Corruption Laws". In case of any conflict or discrepancy between the following provisions and these Terms, the following provisions shall prevail.

#### 11.9.6.1. **5.2. Payments.**

**5.2.1. Payment.** The parties acknowledge that invoices also are to be submitted electronically by SFDC in accordance with the "Electronic Invoicing" Section below through the Agenzia delle Entrate's Exchange System (SDI -- Sistema di Interscambio) and any delay due to the SDI shall not affect the foregoing payment term. SFDC shall pay the Revenue Share due to the Provider within thirty (30) days after the end of the calendar month in which such revenues are received by SFDC, by wire transfer or other method mutually acceptable to the Parties. Provider shall be responsible for providing complete and accurate billing and contact information to SFDC and shall notify SFDC of any changes to such information.

**5.2.2. Electronic Invoicing.** The invoice will be issued in electronic format as defined in article 1, paragraph 916, of Law no. 205 of December 27, 2017, which introduced the obligation of electronic invoicing, starting from January 1, 2019, for the sale of goods and services performed between residents, established or identified in the territory of the Italian State. To facilitate such electronic invoicing, Provider shall provide to SFDC at least the following information in writing: Provider's full registered company name, registered office address, VAT number, tax/fiscal code



and any additional code and/or relevant information required under applicable law. In any event, the parties shall cooperate diligently to enable such electronic invoicing process. Any error due to the provision by Provider of incorrect or insufficient invoicing information preventing (a) SFDC to successfully submit the electronic invoice to the SDI or (b) the SDI to duly and effectively process such invoice or (c) which, in any event, requires SFDC to issue an invoice again, shall not result in an extension of the payment term set out in the "Payments" Section above, and such term shall still be calculated from the date of the original invoice. SFDC reserves the right to provide any invoice copy in electronic form via email in addition to the electronic invoicing described herein.

**5.2.3. Split Payment.** If subject to the "split payment" regime, Provider shall be exclusively responsible for payment of any VAT amount due, provided that Provider shall confirm to SFDC the applicability of such regime and, if applicable, Provider shall provide proof of such VAT payment to SFDC and, if applicable, Provider shall provide proof of such VAT payment to SFDC.

#### 11.9.6.2. **11.3. Anti-Corruption Laws and Compliance with Legislative Decree 231/2001.**

**11.3.1.** In connection with this Agreement, Provider, and all employees, officers, and directors, and any other third parties working for Provider or performing activities on Provider's behalf, (1) have complied with and shall comply with all applicable laws and regulations, including without limitation the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and other applicable anti-corruption laws and regulations (collectively, the "Anti-Corruption Laws"); and (2) shall keep accurate books, accounts, and records. It is the intent of the Parties that no payments or transfers of anything of value shall be made in connection with this Agreement that have the purpose or effect of public, commercial or other bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage.

**11.3.2.** For the avoidance of doubt, the "Anti-Corruption Laws" referred to in subsection 11.3.1 above include, without limitation, anti-corruption legislation in force in Italy (as amended from time to time). Provider acknowledges that SFDC has adopted an Organization, Management and Control Model pursuant to Legislative Decree 231/2001 to prevent crimes provided for therein and commits to comply with the principles contained in the above Legislative Decree 231/2001 and in the SFDC Code of Conduct which is available at the following link: <https://www.salesforce.com/company/legal/compliance/>. Provider also acknowledges and agrees that in addition to its rights under Section 10.10.4 of this Agreement, the violation of the principles and the provisions contained in Legislative Decree 231/2001 and in the SFDC Code of Conduct by Provider may entitle SFDC, based on the severity of the violation, to terminate this Agreement for cause.

11.9.6.3. **11.3.3. General Terms and Conditions -- Acceptance.** If Provider is domiciled in Italy, then pursuant to and by effect of art. 1341 of the Italian Civil Code, the Provider, after careful consideration and reading, specifically approves the following provisions of this

Agreement: (PRIVACY AND SECURITY OF CUSTOMER DATA SUBMITTED OR ACCESSED BY THE PROVIDER SERVICE), (PRICE CHANGES), (GOVERNING TERMS), (INTELLECTUAL PROPERTY RIGHTS), (TAXES), (TERMINATION FOR CAUSE), (REPRESENTATIONS AND WARRANTIES), (INDEMNIFICATION), (LIMITATION ON DAMAGES), (COMPLIANCE WITH APPLICABLE LAWS), (ANTI-CORRUPTION AND LAWS AND COMPLIANCE WITH LEGISLATIVE DECREE 231/2001), (GOVERNING LAW), (VENUE), (MISCELLANEOUS).

11.9.7. **Law Requirements: Spain.** With respect to Providers domiciled in Spain, in the event of any conflict between any statutory law in Spain applicable to Provider, and the terms and conditions of this Agreement, the applicable statutory law shall prevail.

[Salesforce Main Services Agreement](#)  
[Heroku Elements Terms of Use \(Default\)](#)  
[Additional Terms for Credit Card Customers](#)  
[Salesforce License and Distribution Agreement for Heroku Elements Marketplace](#)  
[Additional Terms for Heroku Elements Marketplace Providers](#)  
[Acceptable Use and Externally Facing Services Policy](#)  
[Notices and License Information](#)  
[Heroku Trust and Compliance Documentation](#)  
[Security](#)  
[Support Policy](#)  
[Privacy Policy](#)  
[Trademark Usage Guidelines](#)  
[DMCA Notices](#)  
[Previous Versions of Agreements and Terms.](#)

For contact information, visit [heroku.com/contact](https://heroku.com/contact).