

# Salesforce License and Distribution Agreement for the Heroku Elements Marketplace

This Salesforce 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 September 15, 2023.

## 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, supports a Customer's application(s) built on the Heroku Service, and is described in the Partner Portal.

**1.2. "Add-On Credit(s)"** means a credit that a Customer purchases from SFDC on an Order Form that may only be used to purchase Subscriptions for one or more Add-Ons.

**1.3. "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.

**1.4. "API"** means the Heroku application program interface(s) through which the Heroku Element(s) interoperates with the Heroku Service.

**1.5. "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.

**1.6. "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.

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

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

**1.9. "Customer"** means an individual or entity (including its Affiliates) that has entered into a Main Services Agreement with SFDC (or its Affiliates) and one or more Order Form(s) for the Heroku Service and to whom a Provider Service is distributed for its use.

**1.10. "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 Provider Service, excluding Content and Non-SFDC Applications.

**1.11. "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.

**1.12. "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 excludes web application(s) or source code developed or written by Customers (collectively, "**Application(s)**").

**1.13. "Heroku Element(s)"** means Add-on(s), Buildpack(s), or Button(s) available on the Heroku Elements Marketplace. All Heroku Elements are Non-SFDC Applications.

**1.14. "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.

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

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

**1.17. "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 Service" excludes Content, Non-SFDC Applications and Elements Content.

**1.18. "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.

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

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

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

**1.22. "Main Services Agreement" or "MSA"** 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.

**1.23. "Marketplace"** means an online directory, catalog or marketplace of applications that interoperate with the Services, including, for example, the AppExchange at <http://www.salesforce.com/appexchange>, Mulesoft Anypoint Exchange at

<https://www.mulesoft.com/exchange>, or the Heroku Elements Marketplace at <https://elements.heroku.com/>, and any successor websites.

**1.24. "Net Subscription Revenues"** means Subscription Revenue 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.

**1.25. "Non-SFDC Application"** means a Web-based, mobile, offline or other software functionality that interoperates with a Service, that is provided by a Customer, Provider or a third party and/or is listed on a Marketplace, including the Heroku Elements Marketplace, including as Salesforce Labs or under similar designation.

**1.26. "Order Form"** means an ordering document or online order specifying the Service and/or Add-On Credits to be purchased by Customer that is entered into between Customer and SFDC or any of their Affiliates, including any addenda and supplements thereto.

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

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

**1.29. "Provider Service"** means each Heroku Element that Provider makes available to Customers pursuant to this Agreement.

**1.30. "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. For clarity, "Services" includes the Heroku Service.

**1.31. "Subscription"** means a subscription to use one or more Provider Service(s). Subscriptions may be purchased by a Customer online at <https://signup.heroku.com/dc> (or any successor website) or by using Add-On Credits.

**1.32. "Subscription Revenue"** means revenues actually received by SFDC from the Customer for the sale of a Subscription for use with Provider's Provider Service(s), provided that "Subscription Revenue" from an Add-On Credit shall in no event exceed the listed value of one Add-On Credit as set forth in the Heroku Elements Developer Documentation, regardless of amounts actually received by SFDC in connection with the purchase of such Add-On Credits. For clarity, revenues from subscriptions purchased by a Customer to use or access anything other than a Provider Service (for example and without limitation, another service or product offered by a Provider) are not "Subscription Revenue" under this Agreement.

**1.33. "User"** means an individual who is authorized by Customer to use the Heroku Service, for whom such Customer has purchased a subscription (or in the case of any Heroku Service provided by SFDC without charge, for whom a Heroku Service subscription has been provisioned), and to whom Customer (or, when applicable, SFDC or Provider at Customer's request) has supplied a user identification and password.

**1.34. "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 to the Provider 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 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. 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. 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 a Provider Service, and/or remove any Provider Service from the Heroku Elements Marketplace and/or the Heroku Service, including but not limited to, violations of the Salesforce Acceptable Use Policy available at [https://www.salesforce.com/content/dam/web/en\\_us/www/documents/legal/Agreements/policies/ExternalFacing\\_Services\\_Policy.pdf](https://www.salesforce.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 its discretion, including but not limited to violations of the Salesforce Acceptable Use Policy available at [https://www.salesforce.com/content/dam/web/en\\_us/www/documents/legal/Agreements/policies/ExternalFacing\\_Services\\_Policy.pdf](https://www.salesforce.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 Customers.

**3.2. Subscriptions.** Provider agrees that Customers purchase Subscriptions from SFDC, and such Subscriptions may only be used by the Customer to pay for Customer's use of the Provider Service(s) available on the Heroku Elements Marketplace.

**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 Customer support for the Provider Add-On(s). SFDC will permit Customers 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 Provider Service subject to the Provider Service Terms, Provider will make available to such Customer for export or download any data submitted by Customer to such Provider Service.

**3.7. Suspension and Termination of Services.** Provider acknowledges and understands that a Customer's access to the Services may be suspended or terminated due to breach, termination or expiration of the MSA and/or Order Form between SFDC and Customer. In no case will any such termination or suspension give rise to any liability of SFDC to Provider or to the Customer, including for a refund or damages.

**3.8. Provider Service Restrictions.** Provider may not (i) allow Subscriptions to be used for any services or products other than the Provider Service(s); or (ii) provide a Provider Service that adds functionality to Services other than Heroku Services.

## 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), 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 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.

**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 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 Services; (b) except as expressly set forth herein, sell, resell, license, sublicense, distribute, make available, rent or lease the Services, 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 Services, 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 Subscription Revenues pursuant to this Agreement, SFDC shall pay Provider 70% of the Net Subscription Revenues it receives hereunder (the "**Revenue Share**") pursuant to the terms of this Agreement. SFDC may change the percentage of the Revenue Share upon thirty (30) days advanced notice to Provider via the Partner Portal. For clarity, fees received in connection with subscriptions purchased for any purpose other than to use or access a Provider Service shall not be included in any revenue share with Provider.

**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 fees 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, the Revenue Share does 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 pursuant to the foregoing "Refunds and Invoices" Section of the Agreement, unless Provider provides SFDC with a valid tax exemption certificate authorized by the appropriate taxing authority.

**5.5. Refunds And Invoices.** If SFDC makes a payment of the Revenue Share to Provider in error, SFDC will be entitled to a refund of the corresponding payment for the Revenue Share made to Provider. SFDC or its Affiliate may in its sole discretion choose to either offset such refundable payments of the Revenue Share against fees, if any, owed to Provider hereunder, or invoice Provider for the refundable amounts. SFDC's right to a refund of which SFDC has not notified Provider will expire ninety (90) days after the end of the SFDC fiscal quarter in which fees were received by SFDC. Invoiced amounts are due and payable by Provider within thirty (30) days of the invoice date 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.

## 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, (i) Provider shall cease to be an Heroku Marketplace 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; and (ii) SFDC will have no obligation to continue providing the Partner Portal, the API, and/or the Heroku Service to Partner. 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.

**6.6. Force Majeure.** Neither party shall be liable for any default or delay in the performance of its responsibilities under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, strikes, civil disorders, quarantine restrictions, epidemics, pandemics, or any other cause beyond the reasonable control of such party (“Force Majeure”). The time for performance for the non-defaulting party under the Agreement will be extended as necessary, without penalty or liability to such party, for the same period of time as the delay. However, if it appears that the Force Majeure will result in a delay in Provider’s performance of more than thirty (30) days, SFDC may, at its option, terminate the Agreement immediately by written notice to Provider.

## 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 SERVICES, 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 SERVICES, 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 Services or their functionality or performance characteristics, except to the extent set forth in the Documentation for the 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 Services, and Customer and/or 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. 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 Services 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 Services infringe or misappropriate 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 Services, SFDC may in its discretion and at no cost to Provider (i) modify the 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 Service in accordance with this Agreement; or (iii) terminate any of Provider's or Customer's (as applicable) rights for Service upon thirty (30) days' written notice and refund Provider or Customer (as applicable) any prepaid fees covering the remainder of the term of the terminated 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, 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. As between SFDC and Provider, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Order Form, the terms of this Agreement 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 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 Services, Content, and other technology SFDC makes available may be subject to export and economic sanctions laws and regulations of the United States, the European Union, the United Kingdom 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, European Union, or other applicable government list, 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 U.S. 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 the Crimea region, Cuba, Iran, North Korea, Syria, Luhansk and Donetsk regions, or as may be updated from time to time at <https://www.salesforce.com/company/legal/compliance/>) (each, an "Embargoed Territory"). Partner is responsible for complying with U.S. and other applicable export controls and economic sanctions, including the Export Administration Regulations (EAR) and the regulations administered by OFAC, any applicable import laws, regulations and requirements of the country of importation, and all other applicable laws, regulations and requirements which may apply to downloads of software. Partner is responsible for any violation of those laws, regulations and requirements. Unless otherwise authorized by a specific license, general license, exemption, or other authorization from the U.S. government or other applicable government authority, Partner shall not, directly or indirectly (a) sell a Provider Service into or from, or permit Users to access or use any Provider Service from, an Embargoed Territory; (b) in connection with Partner's activities contemplated by this Agreement, engage in any transaction with a Sanctioned Person, or engage in a transaction with an individual or entity otherwise prohibited by applicable sanctions and export control laws; (c) allow access or use of any Provider Service by (i) a Sanctioned Person or individual or entity otherwise prohibited by applicable sanctions and export control laws or (ii) for an end-use prohibited by applicable sanctions and export control laws; or (d) engage in any other activity or transaction pursuant to this Agreement that would be in violation of any U.S. or other applicable export or economic sanctions law.

**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, have complied with and shall continue to 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**"). 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 the "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 Anti-Corruption Laws 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 and Claims.** 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 (i) learn of, or suspect, any act or circumstance that may violate applicable laws in connection with this Agreement or (ii) learn of any claim or proceeding involving the Provider Service or SFDC.

**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 Officials**" means the Government Official's spouse, the Government Official's or the spouse's grandparents, parents, siblings, children, nieces, nephews, aunts, uncles; 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, sales and 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:

For Partners domiciled in North or South America				
If Partner is domiciled in:	The SFDC entity entering into this Agreement is:	Notices should be addressed to:	Governing law is:	Courts with exclusive jurisdiction are:
Any country other than Brazil or Canada	Salesforce, Inc. (f/k/a 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 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

For Partners domiciled in Europe, the Middle East, or Africa				
If Partner is domiciled in:	The SFDC entity entering into this Agreement is:	Notices should be addressed to:	Governing law is:	Courts with exclusive jurisdiction are:
Any country other than France, Germany, Italy, Spain, or the United Kingdom	SFDC Ireland Limited, a limited liability company incorporated in Ireland	Salesforce UK Limited, Floor 26 Salesforce Tower, 110 Bishopsgate, London, EC2N 4AY, United Kingdom, attn: VP, Sales Operations, with a copy to attn.: Legal Department - Salesforce Tower, 60 R801, North Dock, Dublin, Ireland	England	London, England
France	salesforce.com 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 UK Limited, Floor 26 Salesforce Tower, 110 Bishopsgate, London, EC2N 4AY, United Kingdom, attn: VP, Sales Operations, with a copy to attn.: Legal Department - Service Juridique, 3 Avenue Octave Gréard, 75007 Paris, France	France	Paris, France
Germany	salesforce.com Germany GmbH, a limited liability company, incorporated in Germany	Salesforce UK Limited, Floor 26 Salesforce Tower, 110 Bishopsgate, London, EC2N 4AY, United Kingdom, attn: VP, 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 UK Limited, Floor 26 Salesforce Tower, 110 Bishopsgate, London, EC2N 4AY, United Kingdom, attn: VP, Sales Operations, with a copy to attn.: Legal Department	Italy	Milan, Italy

Spain	Salesforce Systems Spain, S.L., a limited liability company incorporated in Spain	Salesforce UK Limited, Floor 26 Salesforce Tower, 110 Bishopsgate, London, EC2N 4AY, United Kingdom, attn: VP, 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, a limited liability company incorporated in England	Salesforce UK Limited, Floor 26 Salesforce Tower, 110 Bishopsgate, London, EC2N 4AY, United Kingdom, attn: VP, Sales Operations, with a copy to attn: Legal Department, Salesforce UK Limited , Floor 26 Salesforce Tower, 110 Bishopsgate, London, EC2N 4AY, United Kingdom	England	London, England

For Partners domiciled in Asia or the Pacific Region				
If Partner is domiciled in:	The SFDC entity entering into this Agreement is:	Notices should be addressed to:	Governing law is:	Courts with exclusive jurisdiction are:
Any country other than Australia, India, Japan, 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	Singapore	Singapore
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	New South Wales, Australia	New South Wales, Australia
India	salesforce.com India Private Limited, a company incorporated under the provisions of the Companies Act, 1956 of India	salesforce.com India Private Limited Torrey Pines, 3rd Floor, Embassy Golflinks Software Business Park Bangalore Karnataka 560071, India	India	Bangalore, India
Japan	Salesforce Japan Co., Ltd. (f/k/a Kabushiki Kaisha Salesforce.com), a Japan corporation	1-1-3, Marunouchi, Chiyoda-ku, Tokyo 100-0005, Japan, attn: Senior Director, Japan Sales Operations, with a copy to attn: General Counsel	Japan	Tokyo, Japan

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. 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 5.5 "Refunds and Invoices" 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. **5.5. Refunds and Invoices.**

**5.5.1. Refund and Invoices.** The parties acknowledge that invoices from SFDC 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 payment term provided in the "Refund and Invoices" Section of the Agreement..

**5.5.2. Electronic Invoicing.** Invoices by SFDC 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 "Refund and Invoices" Section of the Agreement, 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.

**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.

**11.9.8 Law Requirements: India.** With respect to Providers domiciled in India, the following shall apply:

#### 11.9.8.1 Venue and Arbitration

A. Subject to the “Arbitration” Section below, the courts located in Bangalore, India shall have exclusive jurisdiction over any dispute relating to this Agreement, and each Party hereby consents to the exclusive jurisdiction of such courts. Without prejudice to the generality of the foregoing, the courts at Bengaluru, India shall have exclusive jurisdiction on matters arising from, relating to, or in connection with an award made under the “Arbitration” Section below.

B. Arbitration. In the event of any dispute, controversy or claim between the Parties hereto arising out of or relating to this Agreement, the Parties shall first seek to resolve the dispute in good faith through informal discussion. If such dispute, controversy, or claim cannot be resolved informally within a period of 10 (ten) business days from the date on which the dispute arose, the Parties agree that it shall be settled by binding arbitration to be held before a panel consisting of 3 (three arbitrators), where each Party shall appoint an arbitrator and such arbitrators shall appoint the third and presiding arbitrator. The arbitration shall be conducted in accordance with provisions of the (Indian) Arbitration and Conciliation Act, 1996, as amended from time to time (Arbitration Act). The seat and venue of the arbitration shall be Bangalore, India. The language of the arbitration shall be English. The Parties agree that any of them may seek interim measures under section 9 of the Arbitration Act, including injunctive relief in relation to the provisions of this Agreement or the Parties' performance of it from courts in Bengaluru, India, without prejudice to any other right the Parties may have under the Arbitration Act and other applicable laws. The arbitration panel's decision shall be final, conclusive and binding on the parties to the arbitration. The Parties shall each pay one-half of the costs and expenses of such arbitration, and each shall separately pay its respective counsel fees and expenses. The prevailing Party may, in the judgment of the arbitration panel, be entitled to recover its fees and expenses. All dispute resolution proceedings, all matters pertaining to such proceedings and all documents and submissions made pursuant thereto shall be strictly confidential and subject to the provisions of “Confidentiality” Section of this Agreement.

#### 11.9.8.2 Payments. The following provisions supplement Section 5.5 (“Refunds and Invoices”):

5.5.1 Payment. The Parties acknowledge that invoices from SFDC are also to be submitted electronically by SFDC in accordance with the “Electronic Invoicing” section below through the Government of India’s e-invoicing system (“GST Portal”) and any delay due to such submission shall not affect the payment term provided in the “Refunds and Invoice” Section of the Agreement. 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.

5.5.2 Electronic Invoicing. Provider shall provide to SFDC at least the following information in writing to facilitate electronic invoicing: Provider’s full registered company/legal entity name, registered office address, goods and services tax identification number, address and/or relevant information required under applicable law. In any event, the Parties shall cooperate diligently to enable such electronic invoicing process. Any error/delay in issuance of the electronic invoice due to: (a) the provision by Provider of incorrect or insufficient invoicing information preventing SFDC from successfully submitting the electronic invoice to the GST Portal; or (b) the GST Portal and/or any other government authority (or their designated agent/agency) not being able to duly and effectively process such invoice; or (c) any event which requires SFDC to issue an invoice again; shall not result in an extension of the payment term set out in the “Refunds and Invoices” section of the Agreement, 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.