SALESFORCE COMMERCE CLOUD LINK PARTNER INTEGRATION AGREEMENT

THIS AGREEMENT GOVERS PARTNER’S ACQUISITION AND USE OF SFDC SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN. IF A PARTNER REGISTERS FOR A FREE TRIAL FOR SFDC SERVICES OR FOR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL OR THOSE FREE SERVICES. BY ACCEPTING THIS AGREEMENT, (1) BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT OR (2) USING FREE SERVICES, PARTNER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “PARTNER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

SFDC’S DIRECT COMPETITORS ARE PROHIBITED FROM ACCESSING THE SERVICES, EXCEPT WITH SFDC’S PRIOR WRITTEN CONSENT. IN ADDITION, THE SERVICES MAY NOT ACCESSED FOR PURPOSES OF MONITORING THEIR AVAILABILITY, PERFORMANCE OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES.

THIS AGREEMENT WAS LAST UPDATED ON JANUARY 8, 2019.

SECTION 1: DEFINITIONS

Section 1.1 Certain Defined Terms.

“Affiliate” means any entity that 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.

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

“Commerce Cloud APIs” means the Commerce Cloud application program interfaces and supporting documentation made generally available to the Commerce Cloud LINK Partner Community.

“Commerce Cloud Services” means the Services currently branded as Commerce Cloud.

“Commerce Cloud XChange Collaboration Center” means the site used for communicating to the Commerce Cloud LINK Partner Community, which provides access to the Commerce Cloud Product Documentation, Commerce Cloud APIs, all code and documentation for previous integrations that are available to the Commerce Cloud LINK Partner Community, a forum for sharing ideas, code and community expertise and Commerce Cloud developer monitoring boards.

“Commerce Cloud Product Documentation” means the technical documentation regarding the Commerce Cloud Services generally made available to customers, system integrators, developers and other third parties to facilitate development work related to the Commerce Cloud Services.

“Commerce Cloud Sandbox” means the Commerce Cloud environment made available to Partner for the purposes of developing the Integration and extending functionality of the Commerce Cloud Services.
“Commerce Cloud LINK Partner Community” means the community of entities providing technologies that are complementary to the Commerce Cloud Services and who have completed or are creating certified integrations to the Commerce Cloud Services.

“Commerce Cloud LINK Technology Partner Program” means the program described in the LINK Technology Partner Program Guide (the “Partner Program Guide”) located at https://partners.salesforce.com/0693A0000067xvQAE as the same may be amended or updated from time to time.

“Commerce Cloud TOUs” has the meaning ascribed to it in Section 4.2.

“Content” means information obtained by SFDC from publicly available sources or its third party content providers and made available to Partner through the Services, Beta Services or pursuant to an Order Form, as more fully described in the Documentation.

“Documentation” means the applicable Service’s Trust and Compliance documentation, and its usage guides and policies, as updated from time to time, accessible via help.salesforce.com or login to the applicable Service.

“Effective Date” means the date that this Agreement goes into effect, which shall be the date that Partner executes an order form that references this Agreement or, for Free Services, uses such Free Services.

“Free Services” means Services that SFDC makes available to Partner free of charge. Free Services exclude Services offered as a free trial and Purchased Services.

“Integration” means integrations from the Commerce Cloud Services to the Partner’s Products.

“Mark” means the name, logos, graphics, trade names, service names, trademarks, slogans and other marks of a party.

“Marketplace” means an online directory, catalog or marketplace of applications that interoperate with the Services, including, for example, the AppExchange located at http://www.salesforce.com/appexchange or the Heroku add-ons catalog located at https://elements.heroku.com/, and any successor websites.

“Materials” means marketing materials, graphics and other materials in paper or electronic format relating to each party’s respective products and/or services and includes the Commerce Cloud Product Documentation.

“Non-SFDC Application” means a Web-based, mobile, offline or other software application functionality that is provided by Partner or a third party and interoperates with a Service, including, for example, an application that is developed by or for Partner, is listed on a Marketplace, or is identified as Salesforce Labs or by a similar designation.

“Order Form” means the ordering documents, entered into by the parties from time to time which are labeled “Order Form,” indicate the LINK partner tier selected by Partner and applicable fees, and reference this Agreement.

“Partner” means, in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity which have entered into Order Forms.

“Partner Community” means a dedicated instance of SFDC’s Community product that SFDC makes available to certain participants in the Partner Program (which may have varying levels of access based on the Partner’s assigned Program type and Partner tier) at https://partners.salesforce.com/ (as such URL may be updated from time to time) to facilitate their participation in the Partner Program, including the ability to access online training courses, log support cases, and collaborate with SFDC employees and other SFDC Partners via shared Chatter groups.
“Partner’s Products” means the products and or services provided to Partner’s customers by Partner and for which the parties desire Partner to create the Integration.

“Purchased Services” means Services that Partner or Partner’s Affiliate purchases under an Order Form or online purchasing portal, as distinguished from Free Services or those provided pursuant to a free trial.

“Services” means the products and services that are ordered by Partner under an Order Form and made available online by SFDC, including associated SFDC offline or mobile components, as described in the Documentation. “Services” exclude Content and Non-SFDC Applications.

“SFDC” means salesforce.com, inc., a Delaware corporation with its principal place of business at The Salesforce Tower, 415 Mission Street, 3rd Floor, San Francisco, California 94105. Demandware, LLC, a Delaware corporation, is an Affiliate of SFDC and the successor-in-interest to Demandware, Inc.

“User” means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, an individual who is authorized by Partner to use a Service, for whom Partner has purchased a subscription (or in the case of any Services provided by SFDC without charge, for whom a Service has been provisioned), and to whom Partner (or, when applicable, SFDC at Partner’s request) has supplied a user identification and password (for Services utilizing authentication). Users may include, for example, employees, consultants, contractors and agents of Partner, and third parties with which Partner transacts business.

SECTION 2: OBLIGATIONS

Section 2.1 Development and Maintenance.

a. Subject to the terms and conditions of this Agreement, including without limitation Section 4.2 (Terms of Use) below, during the term of the Agreement, SFDC will provide or make available the Commerce Cloud Product Documentation, Commerce Cloud APIs, one Commerce Cloud Sandbox and access to the Partner Community and Commerce Cloud XChange Collaboration Center, as described herein. Partner shall be entitled to the benefits applicable to the tier it subscribes to in the Order Form, as described in more detail in the Partner Program Guide, and otherwise agrees to abide by the terms of the Partner Program Guide.

b. Partner will devote such resources and undertake such development work as may be necessary to integrate the Commerce Cloud Services with Partner’s Products within sixty (60) days of the effective date of this Agreement, including the development of written documentation regarding the functionality and other relevant aspects of the integration.

c. Partner will continue to support the Integration to ensure the continued efficacy of the Integration for the greater of one year after the term of this Agreement or the duration of the certification, as outlined below in Section 2.3, “Certification”, as applicable.

Section 2.2 Integration Support and Training. SFDC provides remote technical support by telephone to assist Partner in completing the Integration, in accordance with the Partner Program Guide, as may be updated from time to time. SFDC will also make available online training, through the Partner Community, regarding the Commerce Cloud Services and use of the Partner Community.

Section 2.3 Certification. Upon completion of an Integration, Partner shall submit the Integration to SFDC for certification review. Upon receipt of the foregoing, SFDC will then review each Integration with reasonable cooperation and assistance from Partner. SFDC will determine, in its sole discretion, whether any Integration shall be considered a certified Integration to be made available to the Commerce Cloud LINK Partner Community. Should SFDC certify an Integration, Partner shall maintain the Integration in accordance with SFDC’s certification requirements for the duration of the certification. Partner’s failure to do so may result in decertification of the Integration.

SFDC Commerce Cloud LINK Partner Integration Agreement 01-08-2019
Section 2.4 Beta Services. From time to time, SFDC may make Beta Services available to Partner at no charge. Partner may choose to try such Beta Services or not in its sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. SFDC may discontinue Beta Services at any time in its sole discretion and may never make them generally available. SFDC will have no liability for any harm or damage arising out of or in connection with a Beta Service.

Section 2.5 Marketing. Partner shall use commercially reasonable efforts to market and promote the Commerce Cloud Services to its customers, provided, that such marketing and promotion shall (i) be consistent with the Commerce Cloud Product Documentation and any Materials or other information provided by Commerce Cloud with respect to same, (ii) otherwise accurately portray the Commerce Cloud Services and (iii) be in compliance with applicable law. Additional marketing activities may be set forth in one or more Exhibits to this Agreement.

Section 2.6 Customer Support. Each party will be responsible for all customer service for its respective products or services and will refer to the other party's customer service organization all questions relating to the other party's products or services.

SECTION 3: FEES; PAYMENTS

Section 3.1 Fees. Partner will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.

Section 3.2 Invoicing and Payment. Fees will be invoiced in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, fees are due net 30 days from the invoice date. Partner is responsible for providing complete and accurate billing and contact information to SFDC and notifying SFDC of any changes to such information.

Section 3.3 Overdue Charges. If any invoiced amount is not received by SFDC by the due date, then without limiting SFDC’s rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

Section 3.4 Suspension of Service. If any charge owing by Partner is 30 days or more overdue, SFDC may, without limiting its other rights and remedies, suspend Partner’s access to the applicable sandbox until such amounts are paid in full, provided that, other than for Partners paying by credit card or direct debit and whose payment has been declined, SFDC has given Partner at least 10 days’ prior notice that its account is overdue in accordance with the “Notices” section below.

Section 3.5 Payment Disputes. SFDC will not exercise its rights under the “Overdue Charges” or “Suspension of Service” section above if Partner is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

Section 3.6 Taxes. SFDC’s fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). Partner is responsible for paying all Taxes associated with its purchases hereunder. If SFDC has the legal obligation to pay or collect Taxes for which Partner is responsible under this section, SFDC will invoice Partner and Partner will pay that amount unless Partner provides SFDC with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, SFDC is solely responsible for taxes assessable against it based on its income, property and employees.

Section 3.7 Future Functionality. Partner agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by SFDC regarding future functionality or features.

Section 3.8 Expenses. Except as otherwise set forth herein or mutually agreed by the parties in writing, each party will bear its own costs and expenses of its performance under this Agreement.
SECTION 4: INTELLECTUAL PROPERTY; TERMS OF USE; LICENSES

Section 4.1 IP Ownership. Except as specifically set forth herein, each party shall retain all intellectual property rights in its intellectual property and for any works or materials which it creates in connection with this Agreement. Except as explicitly licensed herein, this Agreement does not transfer any intellectual property rights between the Parties. For clarification purposes (i) Partner retains all right, title and interest in the Partner’s Products and (ii) SFDC retains all right, title and interest in and to its products and services, including without limitation, the Commerce Cloud Services, Commerce Cloud APIs, Commerce Cloud XChange Collaboration Center, Commerce Cloud Product Documentation, Commerce Cloud Sandboxes and all improvements and modifications thereto and all derivative works thereof. Other than as expressly set forth in this Agreement, no license or other rights in or to a party’s products, services or intellectual property is granted, and all such licenses and rights are hereby expressly reserved.

Section 4.2 Terms of Use. Partner’s access to the Partner Community and participation in the Salesforce Partner Program is governed by the terms of the Salesforce Partner Program Agreement located at https://www.salesforce.com/content/dam/web/en_us/www/documents/legal/Agreements/alliance-agreements-and-terms/salesforce_partner_program_agreement.pdf. Partner’s participation in the Commerce Cloud XChange Community and Partner’s use of the Commerce Cloud Sandbox, Commerce Cloud APIs, Commerce Cloud Product Documentation, and Commerce Cloud XChange Collaboration Center shall comply with the Commerce Cloud XChange Community Terms of Use located at https://www.salesforce.com/tos. Any reference to “Demandware, Inc.” in the Commerce Cloud XChange Community Terms of Use shall be deemed to refer to “Demandware, LLC, a Delaware corporation.” Partner’s use of any Commerce Cloud APIs is also subject to the Commerce Cloud API License Agreement located at https://partners.salesforce.com/0693A00000067XvdQAE, and Partner’s use of any Commerce Cloud Sandboxes is governed by the terms of the salesforce.com Master Subscription Agreement found at https://www.salesforce.com/company/msa.jsp, unless Partner has a written master subscription agreement executed by SFDC for such Commerce Cloud Sandboxes as referenced in the Documentation, in which case such written salesforce.com master subscription agreement will govern (as applicable, the “MSA”) and for purposes of this Agreement, such Commerce Cloud Sandboxes shall be deemed “Services” as defined in the applicable MSA. Each such aforementioned document may be updated from time to time by SFDC or redirected to a successor URL (collectively, the “Commerce Cloud TOUs”).

Section 4.3 License. Subject to the terms of this Agreement, Partner grants SFDC a perpetual, worldwide, transferable, non-exclusive license, together with the right to sublicense, to use, distribute (directly and indirectly), modify, extend, and make derivative works from the Integration, solely in connection with enabling customers to use the Commerce Cloud Services as integrated with Partner’s Products, including without limitation as necessary to certify the Integration, to support or facilitate Partner’s Integration with, and delivery of Partner’s Products via the Commerce Cloud Services and to make the Integration publicly available via the Commerce Cloud XChange Collaboration Center. Nothing herein shall permit SFDC to sell or license the Integration for any fee.

Section 4.4 Sales and Marketing Materials License. Each party grants to the other a limited, non-exclusive, personal, non-transferable, non-sublicensable right and license: (a) to use the Materials solely in conjunction with the marketing, promotion and resale of the other party’s products or services, subject to the other party’s discretion and written approval, and (b) to modify certain of the Materials expressly designated for such purpose by incorporating such party’s trademarks and/or brand features, subject to the other party’s prior written approval. All such modified materials will be deemed Materials of the original party under this Agreement. Each party agrees that it will not at any time during or after this Agreement assert or claim any interest in or do anything that may adversely affect the validity of the other party’s Materials or any other materials, trademark, trade name or product designation belonging to or licensed to the other party and used by the other party in connection with such party’s products or services during the term of this Agreement.

Section 4.5 Mark Usage Rights. Each party grants the other party a limited, nonexclusive, personal, non-transferable and non-sublicensable license to use its Marks solely for the purpose of promoting either Commerce Cloud or Partner, upon prior written
approval, and as contemplated herein. Each party shall retain all right, title, goodwill and interest in and to its Marks and shall cease use of the other party's Marks within five (5) days after written request from the other party, but shall not be obligated to return tangible or intangible copies of materials containing such Marks that are previously distributed as permitted herein.

Section 4.6 Suggestions. Partner grants to SFDC and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Partner relating to the operation of the Salesforce Commerce Cloud Services.

SECTION 5: CONFIDENTIALITY

Section 5.1 Definition of Confidential Information. “Confidential Information” means all 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 Partner includes data submitted to the Commerce Cloud Sandbox; Confidential Information of SFDC includes the Commerce Cloud API and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does 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.

Section 5.2 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 or any Order Form 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.

Section 5.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the 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 that Confidential Information.

SECTION 6: REPRESENTATIONS AND WARRANTIES; DISCLAIMER

Section 6.1 Partner Representations and Warranties. Partner represents and warrants (a) the Integration will perform materially in accordance with the relevant documentation as amended from time to time by Partner and as provided to Partner's customers; (b) it will not materially decrease the overall features and functionalities of any Integration during the Term; (c) it has the legal power to enter into and perform its obligations under this Agreement; and (d) it will not make any representations or warranties on SFDC’s behalf.

SFDC Commerce Cloud LINK Partner Integration Agreement 01-08-2019
Section 6.2 DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. 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.

SECTION 7: INDEMNIFICATION

Section 7.1 Partner will defend SFDC against any claim, demand, suit or proceeding made or brought against SFDC by a third party alleging that any Partner Products, the Partner Materials or the Integration infringes or misappropriates such third party’s intellectual property rights, or arising from Partner’s breach of the Agreement or applicable law, or from the Partner’s action or inaction (including negligence, gross negligence or willful misconduct), each to the extent allowable by applicable law (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 Partner in writing of, a Claim Against SFDC, provided SFDC (a) promptly gives Partner written notice of the Claim Against SFDC, (b) gives Partner sole control of the defense and settlement of the Claim Against SFDC (except that Partner may not settle any Claim Against SFDC unless it unconditionally releases SFDC of all liability), and (c) gives Partner all reasonable assistance, at Partner’s expense.

Section 7.2 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 type of claim described in this section.

SECTION 8: LIMITATION OF LIABILITIES

Section 8.1 Limitation of Liability. IN NO EVENT SHALL SFDC’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED $500.

Section 8.2 Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY’S OR ITS AFFILIATES’ REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

SECTION 9: TERM AND TERMINATION

Section 9.1 Term of Agreement. This Agreement commences on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated. For clarity, program memberships by LINK partner tier ordered in an Order Form hereunder are sold as subscriptions.

Section 9.2 Term of Subscriptions. The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any renewal term will increase by up to 7% above the applicable pricing in the prior term, unless SFDC provides Partner notice of different pricing at least 60 days prior to the applicable renewal term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at SFDC’s applicable list price in effect at the time of the applicable renewal.

Section 9.3 Termination. A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a
petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

Section 9.4 Refund Upon Termination. If this Agreement is terminated by Partner in accordance with the “Termination” section above, SFDC will refund Partner any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by SFDC in accordance with the “Termination” section above, Partner will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve Partner of its obligation to pay any fees payable to SFDC for the period prior to the effective date of termination.

SECTION 10: MISCELLANEOUS

Section 10.1 Relationship of the Parties, Third Party Beneficiaries. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries under this Agreement.

Section 10.2 Non-exclusive. Nothing contained in this Agreement shall be construed as creating an exclusive relationship between Partner and SFDC.

Section 10.3 Governing Law, Venue. This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. The state and federal courts located in San Francisco County, California will have exclusive jurisdiction over any dispute relating to this Agreement, and each party consents to the exclusive jurisdiction of those courts.

Section 10.4 Public Announcements. All media releases, public announcements or public disclosures (including, but not limited to, promotional or marketing material) by either Party relating to this Agreement are prohibited without the prior written consent of both Parties.

Section 10.5 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party’s prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party’s consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, SFDC will refund Partner any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

Section 10.6 Waiver; Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

Section 10.7 Entire Agreement and Order of Precedence. This Agreement is the entire agreement between SFDC and Partner and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Partner purchase order or in any other Partner order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) any exhibit, schedule or addendum to this Agreement, (3) the body of this Agreement, (4) Documentation, (5) the Commerce Cloud TOUs, and (6) the Commerce Cloud Product Documentation.

Section 10.8 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.
Section 10.9 Survival. Section 1 (Definitions), Section 2.1(c) (Development and Maintenance), Section 3 (Fees; Payments), Section 4 (Intellectual Property; Terms of Use; Licenses), Section 5 (Confidentiality), Section 6 (Representations and Warranties; Disclaimer), Section 7 (Indemnification), Section 8 (Limitation of Liabilities), Section 9 (Term and Termination), and this Section 10 (Miscellaneous) shall survive any termination or expiration of this Agreement.

Section 10.10 Notices. Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, (c) the second business day after sending by confirmed facsimile, or (d), except for notices of termination or an indemnifiable claim ("Legal Notices"), the day of sending by email. Notices to SFDC will be addressed to the attention of Sales Operations, with a copy to SFDC’s General Counsel, at salesforce.com, inc., The Salesforce Tower, 415 Mission Street, 3rd Floor, San Francisco, California 94105; fax (415) 901-7040; legal@salesforce.com; or as updated by SFDC via written notice to Partner. Billing-related notices to Partner and notices other than Legal Notices will be addressed to the relevant billing contact designated by Partner, and Legal Notices to Partner will be addressed to Partner and be clearly identifiable as Legal Notices.

Section 10.11 Anti-corruption. Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

Section 10.12 Export Compliance. The Commerce Cloud Services, Content, other SFDC technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. SFDC and Partner each represents that it is not named on any U.S. government denied-party list. Partner will not permit any User to access or use any Service or Content in a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. export law or regulation.