

Foundation Certification Program Certification Mark License Agreement

This Certification Mark License Agreement (“**Agreement**”) is entered into effective as of its full execution by the parties (“**Effective Date**”) by and between CloudFoundry.org Foundation, a Delaware not-for-profit corporation (“**Foundation**”), and the entity named in the signature block below (“**Licensee**”).

BACKGROUND

This Agreement describes the terms and conditions for use of the mark shown on **Exhibit A** (“**Certification Mark**”) which the Foundation licenses as a certification mark to identify products, services or systems that have been certified for conformance and interoperability under the applicable Foundation specifications. Licensee wishes to participate in the applicable certification program and to obtain a license to use the Certification Mark and the Foundation is willing to grant the license, subject to the terms and conditions herein.

AGREEMENT

1. **Definitions.** For purposes of this Agreement:

“**Certification Requirements**” are the technical or business certification requirements set by the Foundation for participants in the applicable certification program, as described in **Exhibit A**. Such requirements may be updated from time to time, subject to Section 3.2.

“**Certified Offering**” means Licensee’s product, service or system that has successfully completed the Certification process for the applicable period.

“**Certification Mark**” means the mark or marks identified in **Exhibit A**.

“**Renewal Term**” is defined in Section 8.

“**Usage Guidelines**” means the guidelines regarding display and reproduction of the Certification Mark, as published on the Foundation’s website, which may be updated from time to time by the Foundation.

2. **Certification Mark License.**

2.1 License Grant. Subject to Licensee paying all amounts due hereunder, complying with the terms of Section 3, and complying with the Certification Requirements, the Foundation hereby grants to Licensee a limited, non-exclusive, worldwide, non-transferable, non-sublicenseable, license to, during the term of this Agreement, (1) use the Certification Mark on or in connection with its Certified Offerings; and (2) display the Certification Mark on Licensee’s website and other marketing or promotional materials to indicate Licensee’s participation in the applicable certification program.

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2.2 Foundation Platform. Licensee acknowledges that the use of the trademark CLOUD FOUNDRY to identify the platform and software stewarded by the Foundation is governed separately by the trademark display and usage guidelines promulgated by the Foundation.

2.3 Reservation of Rights. Except for the limited license rights granted herein, the Foundation reserves all right, title and interest in and to the Certification Mark.

3. **License Requirements and Limitations.** The licenses granted pursuant to Section 2 are granted subject to the following requirements and limitations:

3.1 Compliance with Trademark Policies. Licensee shall comply with the Usage Guidelines.

3.2 Certification Requirements. Licensee shall at all times comply with all Certification Requirements. In the event the Foundation revises the Certification Requirements during the term of this Agreement, Licensee will not be obligated to adhere to any changes therein (except to the extent such change is necessary for safety, health, security, or other concerns to protect the public interest) until the commencement of the next Renewal Term.

3.3 Offering Name Changes. Licensee shall notify the Foundation in writing of any change to the name of the Certified Offering.

3.4 Offering Modification. Licensee shall provide Foundation with no less than 30 days prior written notice of any modification to the Certified Offering that results in a material change in features, functionality, or performance, and that would affect the compliance by the Certified Offering with the Certification Requirements. The Foundation may require that the Certified Offering be re-submitted for certification in accordance with this Agreement in the event of such material change to the Certified Offering.

3.5 Specific Use Restrictions. Licensee shall not use the Certification Mark, or any confusingly similar variation thereof, as a domain name, including, without limitation, as a sub-domain name. Licensee shall not use the Certification Mark in any manner that is likely to reduce, diminish or damage the goodwill, value or reputation associated with the Certification Mark.

3.6 Inspection. Licensee shall, promptly upon the Foundation's request and at no charge to the Foundation, provide the Foundation with information and materials, and cooperate with the Foundation in any other manner reasonably requested by the Foundation, as necessary to review the adherence of the Certified Offering to the Certification Requirements.

3.7 Third-Party Infringement. Licensee shall use commercially reasonable efforts to promptly notify the Foundation if it becomes aware of any infringement of the Certification Mark by a third party. Licensee shall have neither the right nor the obligation to prosecute any infringement claims against third-party infringers.

4. **License Fees and Royalties.** The licenses granted hereunder are subject to payment of annual certification program fees as set forth in **Exhibit A**. The Foundation may revise the fees associated with the applicable Certification Mark from time to time, and such revised fees will be applicable to Licensee's next Renewal Term.

5. **Foundation Ownership of the Certification Mark.** Nothing in this Agreement will be construed to license or transfer any rights in the Certification Mark except as otherwise expressly so provided. Licensee acknowledges that all use of the Certification Mark and the goodwill generated thereby in the Certification Mark will inure solely to the benefit of the Foundation. Should the Foundation, in its sole discretion, deem it necessary to record Licensee as a registered licensee of the Certification Mark in any jurisdiction, Licensee shall cooperate with the Foundation to effect such recordation. Licensee shall not (a) challenge the Foundation's right, title, or interest in the Certification Mark or the validity the Certification Mark or any registration thereof; (b) shall not do or cause to be done or omit to do anything, the doing, causing, or omitting of which would contest or in any way impair or tend to impair the rights of the Foundation in the Certification Mark; and (c) shall not, either during or subsequent to the term of this Agreement, adopt, use, or register any certification mark, trademark, service mark, trade name, insignia or logo that is confusingly similar to the Certification Mark.

6. **No Warranty by Foundation.** The Foundation provides the licenses granted hereunder without warranty of any kind. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE FOUNDATION DISCLAIMS ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES.

7. **Liability.** Licensee shall defend the Foundation, its representatives, employees, officers, directors, and agents against any third party claims caused by, arising from, or relating to any breach of this Agreement by Licensee and will pay any amounts finally awarded by a court or included in a settlement approved by Licensee provided that Licensee is (i) promptly notified in writing of the claim, (ii) is supplied information requested by Licensee to defend the claim, and (iii) provided control and reasonable cooperation by the defended parties in the defense and settlement, including mitigation efforts.

8. **Term and Termination.**

8.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue for a period of 12 months. On each anniversary of the Effective Date, providing this Agreement has not been terminated by the Foundation, Licensee may renew this Agreement for an additional 12-month period (each, a "**Renewal Term**") for the Certified Offering by paying the applicable annual fee, and conducting the Foundation's then-current Certification Requirements for the Certified Offering. Any such renewal will be subject to the then-current terms and conditions for certification licensing, as promulgated by the Foundation.

8.2 Termination.

8.2.1 Termination by Licensee. Licensee may terminate this Agreement at any time by providing notice to the Foundation and by discontinuing all use of the Certification Mark. For clarity no such termination will entitle Licensee to any refund of any fees. Termination in this manner shall be effective upon receipt of the notice by the Foundation.

8.2.2 Termination by the Foundation. The Foundation may terminate this Agreement upon 30 days' notice if Licensee breaches any provision of this Agreement and fails to cure such breach within such 30-day period. In addition, the Foundation may terminate this Agreement upon 10

business days' notice in the event Licensee: (a) fails to comply with all applicable laws, regulations, ordinances, rules and orders that are applicable to it in connection with its manufacture and sale of the Certified Offering, if the Foundation determines that such non-compliance will negatively impact the reputation associated with the Licensed Marks; (b) registers or attempts to register any certification mark, trademark, service mark, trade name, insignia or logo that is confusingly similar to any Foundation trademark; or (c) materially or repeatedly fails to comply with the guidelines for Foundation trademarks referenced in Section 2.2; and Licensee fails to cure such condition within such 10-day period.

8.2.3 Consequences of Termination. Upon termination of this Agreement, the licenses granted hereunder will immediately terminate and Licensee shall immediately discontinue all use of the Certification Mark.

9. **Miscellaneous.** This Agreement is the entire agreement between the parties on the subject matter hereof. No amendment or modification hereof will be valid or binding upon the parties unless made in writing and signed by the duly authorized representatives of both parties. The relationship of the parties hereunder is that of independent contractors, and this Agreement will not be construed to imply that either party is the agent, employee, or joint venturer of the other. In the event that any provision of this Agreement is held to be unenforceable, this Agreement will continue in full force and effect without said provision and will be interpreted to reflect the original intent of the parties. This Agreement will be governed by the laws of the State of California, without regard to its conflict of laws principles. The parties consent to the personal and exclusive jurisdiction of courts located in California. Waiver by either party of a breach of any provision of this Agreement or the failure by either party to exercise any right hereunder will not operate or be construed as a waiver of any subsequent breach of that right or as a waiver of any other right. Licensee may not transfer its rights or obligations under this Agreement in whole or in part to any third party without the prior written consent of the Foundation and any attempt to do so is void. This Agreement will be binding upon and will inure to the benefit of the parties permitted successors and/or assignees.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date last set forth below.

Foundation Certification Program Certification Mark License Agreement

Signature page

Licensee:

Foundation:

(Name)

CloudFoundry.org Foundation

(Signature)

(Signature)

(Print Signatory Name)

(Print Signatory Name)

(Print Title)

(Print Title)

(Date)

(Date)

E-Mail: _____

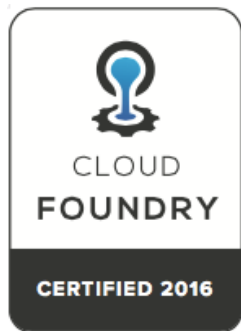
E-Mail: _____

Exhibit A

Certified Offering: _____

Certification Marks:

CLOUD FOUNDRY CERTIFIED



Certification Requirements: The Certification Requirements are set forth in the Cloud Foundry PaaS Certification 2016 Requirements, revision 1, published October 28, 2015. As of the Effective Date, the program for the mark specified above will be self-certification, subject to review by the Foundation as described in this Agreement.

Annual Fees: \$ 30,000.00