

Foundation 2019 Certification Program Certification Mark License Agreement

This Certification Mark License Agreement (“**Agreement**”) is entered into effective as of the date of full execution (“**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**”). In exchange for the mutual obligations set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

BACKGROUND

This Agreement describes the terms and conditions for use of a combination trademark based on the Foundation’s certification 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 such combination trademark 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 Period**” means the calendar year to which a particular Certification Mark and set of Certification Requirements corresponds.

“**Certification Requirements**” means the technical and marketing 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.

“**Cloud Foundry Mark**” means the CLOUD FOUNDRY trademark and logo.

“**Licensee Mark**” means a compound trademark that includes the Certification Mark and Licensee’s logo for the Certified Offering, as determined under Section 3.3.

“**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. **License.**

2.1 License Grant. Subject to Licensee paying all amounts due hereunder, complying with the terms of Section 3, complying with the Certification Requirements, and Licensee remaining a member of the Foundation in good standing, the Foundation hereby grants to Licensee, under the Foundation’s rights in the Certification Mark a perpetual, subject to termination as described in

Section 8, limited, non-exclusive, worldwide, non-transferable, non-sublicensable, license to, (1) use the Licensee Mark on or in connection with Licensee's Certified Offerings; and (2) display the Licensee Mark on Licensee's website and other marketing or promotional materials to indicate Licensee's participation in the applicable certification program.

2.2 Foundation Platform. Licensee acknowledges that the use of the Cloud Foundry Mark 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 and the Cloud Foundry 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 applicable 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 90 days after the effective date of the change.

3.3 Licensee Mark Use. Prior to any use of the Licensee Mark, Licensee shall submit the Licensee Mark to the Foundation for approval of consistency with the Foundation's requirements for its members branding for certified offerings. Licensee shall use Licensee Mark in connection with all Certified Offerings marketed or sold by Licensee during the term of this Agreement. If Licensee desires to change the Licensee Mark, Licensee must submit the revised Licensee Mark to the Foundation for approval as described above prior to marketing or sale of any Certified Offering with such revised Licensee Mark.

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 or should additional Certification Periods be desired.

3.5 Specific Use Restrictions. Licensee shall not use the Certification Mark or the Licensee 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 or the Licensee 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 and verify 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 certification program fee as set forth in **Exhibit A**. The Foundation may revise the fee associated with the applicable Certification Mark from time to time.

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 cooperate with Foundation in connection with any registration of the Licensee Mark by Licensee. 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 until terminated as set forth herein. Providing this Agreement has not been terminated by the Foundation, the Agreement shall continue for as long as the Licensee pays the applicable certification program fee.

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 and

Licensee 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, (b) if the Foundation reasonably determines that Licensee's business practices relating to the Licensee Product will negatively impact the reputation associated with the Certification Mark; (c) registers or attempts to register any certification mark, trademark, service mark, trade name, insignia or logo that is confusingly similar to the Certification Mark or Cloud Foundry Mark; or (d) materially or repeatedly fails to comply with the guidelines for the Cloud Foundry Mark referenced in Section 2.2; and Licensee fails to cure such condition within such 10-day period. The Foundation may also terminate this Agreement with respect to any Certified Offering by providing notice of the Foundation's intention to so terminate, if Licensee ceases to make such Certified Offering Generally Available, and Licensee does not provide evidence, reasonably acceptable to the Foundation, that such Certified Offering is Generally Available, within 30 days after notice of such intention by the Foundation. For purposes of the foregoing, "Generally Available" means the Licensee makes generally commercially available either (x) sales or licenses or subscriptions to the Certified Offering, or (y) support for the Certified Offering. In the event all Certified Offerings are terminated as described above, this Agreement will terminate.

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 and Licensee 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:

(Company 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 and applicable Licensee Mark:

Certification Marks:

CLOUD FOUNDRY CERTIFIED



Certification Requirements: The Certification Requirements are (i) the Cloud Foundry PaaS Certification 2019 Requirements as published on the Foundation’s website, which may be updated from time to time in accordance with the Agreement and the Foundation’s bylaws, and (ii) the Cloud Foundry Marketing Certification Requirements as set forth on **Addendum #1** hereto.

As of the Effective Date, the program for the Certified Offering and Licensee Mark specified above will be self-certification, subject to review and verification by the Foundation as described in this Agreement.

Certification program fee: \$100,000.00

Addendum #1

Cloud Foundry Certification Marketing Requirements

The following constitute the marketing requirements for Cloud Foundry certification:

- Upon initial certification:
 - Licensee to publish its own press release or blog announcing its Cloud Foundry certification that includes a quote from a senior executive from Company and one from Cloud Foundry Foundation.
 - Every Licensee certified offering must have a standalone webpage dedicated to the offering, highlighting the benefits of using Cloud Foundry, which links back to key pages on cloudfoundry.org as suggested by Cloud Foundry. This page must remain available for the duration of the use of the 2019 certification mark.
- Ongoing throughout the use of the 2019 certification mark:
 - Licensee must allow the Cloud Foundry Foundation to publish a “certified tile” (including logo) on the Cloudfoundry.org certified provider’s page that links to the explicit provider’s product offering and standalone page.
 - Licensee must publish a blog post mentioning Cloud Foundry at least once per month and share with content@cloudfoundry.org.
 - Licensee to field bi-annual Cloud Foundry Foundation-drafted survey to users which will ask about information including but not limited to: size and type of company, type of programming languages and frameworks used, and other pertinent topics to create anonymized market size data. This will include at least one email to licensees Cloud Foundry user database and one blog on a Cloud Foundry related corporate site.
 - Licensee must provide the Foundation a quarterly report on results as pertains to marketing requirements for certification.
 - Licensee must be willing to do at least one joint analyst briefing call per quarter.