



1. PURPOSE

The purpose of the Agreement is to define the terms and conditions for subscribing to, accessing, and using the Cloud Services provided by Mirakl to Customer, as well as any Consulting Services relating to the Cloud Services.

2. MIRAKL'S OBLIGATIONS

2.1) Provision of Cloud Services. Mirakl agrees to make the Cloud Services available to Customer in accordance with the Agreement and the Documentation.

2.2) Assistance & Support. Mirakl will make the Support Service available to Customer, allowing Customer to report and track any Incidents reported via the web portal 24 hours a day, 7 days a week.

Mirakl will use commercially reasonable efforts to correct any Incidents reported by Customer.

In order to maximize efficiency of the Support Service, Customer agrees to provide Mirakl with the contact details (name, position, telephone, email) of up to four (4) employees and/or Services Providers designated by Customer to interact with the Support Service ("Customer Contacts"). Since Customer Contacts are the only persons authorized to interact with the Support Service, Customer must ensure that they are familiar with the Cloud Services. The Customer Contacts may be amended by Customer upon written notice to Mirakl (email permitted).

Mirakl shall not be responsible for any Incidents caused by (a) equipment, services, software, systems, or data not provided by Mirakl, or (b) acts or omissions of Customer that violate this Agreement or which are not in conformity with the Documentation.

2.3) Consulting Services. Mirakl agrees to provide the Consulting Services included in an Order Form. Customer shall cooperate with Mirakl and ensure that all stakeholders (employees, subcontractors, Sellers, contractors, etc.) will also cooperate and provide the information necessary for Mirakl to provide the Consulting Services. In particular, this may include providing Mirakl with relevant information regarding the market share of the Customer Marketplace in its global online and other channels revenues. Unless stated otherwise in an Order Form, the price of the Consulting Services is included in the fees paid by Customer for its subscription to the Cloud Services (excluding travel, meals, and accommodation expenses, which shall be reimbursed by Customer upon submission of a copy of the receipts). The Customer Success Service days included in an Order Form need to be used by Customer during the first (1st) year of said Order Form or will otherwise become void. Any Customer Success Service day not used by Customer within that 1-year timeframe will not entitle Customer to a refund. Any additional days of Consulting Services shall be subject to an additional Order Form and shall be billed in addition. Mirakl shall not be deemed in breach of its obligations regarding the Consulting Services to the extent that Mirakl is delayed or prevented from performing due to an act or omission of Customer or a third party. If the Consulting Services are delayed or postponed by Customer or a third party, then Customer shall reimburse Mirakl for any resulting additional costs.

2.4) Security. Mirakl applies and maintains appropriate technical and organizational security measures for the Cloud Services. Access is secured (encrypted) through SSL/TLS protocol to ensure the confidentiality and integrity of the Customer Data. Customer's identification requires the use of a login and password or an API key. Except as otherwise authorized herein, Customer shall not communicate the information enabling access to the Cloud Services (API key, login, password) to third parties. Any actions performed using the API key or the login and associated password shall be deemed to have been performed by Customer.

2.5) Legal Compliance. Mirakl agrees to comply with all laws and regulations applicable to Mirakl in connection with providing the Cloud Services.

3. USING THE SERVICE

3.1) Right to Access and Use. Subject to Customer's payment obligations, Mirakl grants Customer a non-exclusive and non-transferable right to access and use the Cloud Services, Mirakl Resources, and the Documentation during the Term of the Agreement in order to operate the Customer Marketplace.



3.2) Authorized Users. Customer may permit Authorized Users to access and use the Cloud Services subject to the following: (i) Customer ensures that the Authorized Users have agreed in writing to comply with the terms of this Agreement; and (ii) a breach of the Agreement by an Authorized User shall be considered a breach by Customer hereunder.

3.3) Services Providers. With Mirakl's prior written consent (email permitted), Customer may permit services providers to access the Cloud Services, Mirakl Resources and/or the Documentation solely for the purpose of providing implementation or systems/application management services to Customer in connection with the Customer Marketplace (each, a "Services Provider"), provided:

(i) Customer and Services Providers have in place a written agreement that includes provisions requiring the Services Providers' compliance with the terms of this Agreement prior to being provided access to the Cloud Services, including without limitation non-disclosure of Mirakl Confidential Information and protection of Mirakl's intellectual property rights;

(ii) Services Providers shall be permitted to access and use the Cloud Services, Mirakl Resources and/or the Documentation solely to support Customer with the implementation, configuration or management of the Customer Marketplace;

(iii) Under no circumstances may Services Providers access and use the Cloud Services, Mirakl Resources and/or the Documentation and/ to operate or provide services to any other party, or in connection with such Services Providers' own business operations or for any other purpose; and

(iv) Customer shall indemnify Mirakl, its Affiliates, officers, employees, agents and subcontractors from and against all claims, liabilities, losses, damages and costs (including reasonable attorney fees) suffered by Mirakl or its Affiliates, officers, employees, agents and subcontractors resulting from a breach by a Services Provider of the terms and conditions of this Agreement.

Upon Mirakl's request, Customer shall provide written confirmation to Mirakl that items (i)-(iii) are fulfilled. In addition, Mirakl reserves the right to suspend any Services Provider's access to the Cloud Services, Mirakl Resources and/or the Documentation if Mirakl suspects any unauthorized use of the Cloud Services and/or Mirakl Resources and/or the Documentation

3.4) Payments. Customer shall be solely responsible for the Sellers and all payments made to Sellers. In this regard, Customer shall ensure consistency between payments received from end-customers and payments made to Sellers based on data provided by the Cloud Services.

3.5) Cloud Services Usage Policy. Customer warrants to Mirakl that it will use the Cloud Services in accordance with the laws and regulations applicable to Customer and to the Customer Data. Customer agrees to comply with the Documentation and acknowledges that any use of the Cloud Services that does not comply with the Documentation or the terms of this Agreement may jeopardize the Cloud Service(s), its availability, and its security. Customer shall maintain appropriate security standards for its Authorized Users' use of the Cloud Services and shall not interfere with the Cloud Services' operation and security. In particular, Customer agrees not to perform or authorize penetration testing of the Cloud Services. Customer shall not attempt to circumvent the rules and restrictions for using the Cloud Services, including attempting to reduce the amounts owed to Mirakl by Customer for using the Cloud Services.

4. CUSTOMER AND PERSONAL DATA

4.1) Customer Data. Customer is and shall remain the owner of the Customer Data and the rights attached thereto. Customer agrees and warrants to Mirakl that the Customer Data is lawful and does not violate the rights of any third party, including intellectual property rights. Customer is solely responsible for ensuring that the personal data contained in the Customer Data is collected and processed in accordance with the laws and regulations applicable to it.

4.2) Customer Data Backup. The Customer Data is kept by Mirakl during the Term of the Agreement and is periodically backed up by Mirakl for the sole purpose of providing the Cloud Services and, if necessary, its timely



recovery. Customer shall be responsible for regularly backing up its data, files, programs, documentation, and information of any kind that it may have made available to Mirakl or that Mirakl may have had access to while providing the Cloud Services and/or the Consulting Services.

4.3) Personal Data. As required by law or as otherwise agreed by the Parties, the rights and obligations relating to personal data protection may be described in a Data Processing Agreement made supplementary to this Agreement.

4.4) Returning and/or Destroying Customer Data. Upon termination or expiration of the Agreement, upon written request by Customer, Mirakl shall return the Customer Data to Customer in an intelligible form within thirty (30) days of receipt of said request, provided that (i) Customer is current on its payments and (ii) the request is made within thirty (30) days of termination or expiration of the Agreement. In any event, Customer hereby instructs Mirakl to destroy the Customer Data no later than ninety (90) days after termination or expiration of the Agreement.

5. FINANCIAL TERMS

5.1) Prices and Payment. Customer agrees to pay all amounts due under the Agreement in accordance with the provisions of the Order Form. Except as provided in Section 7.1, payments made by Customer are non-refundable, and Customer may not withhold, deduct, or offset any amount owed to Mirakl. Unless otherwise specified on the Order Form, all payments shall be made in USD, without discount, within thirty (30) days of the invoice date. Any purchase order issued by Customer for its internal administrative procedures will be accepted by Mirakl for invoicing purposes only, and Mirakl shall be entitled to issue an invoice and collect payment without a corresponding purchase order. No purchase order, communication, or other documents issued by Customer for its internal administrative procedures shall add to or vary this Agreement.

5.2) Taxes. The fees set forth in an Order Form exclude taxes. The taxes shall be paid by Customer at the rate in force on the day of invoicing. If, as a result of any tax or levy, Customer is required to withhold any amount on any payment to Mirakl, then the amount of the payment to Mirakl shall be automatically increased to totally offset that tax, so that the amount actually remitted to Mirakl, net of all taxes, equals the amount invoiced or otherwise due. Customer shall promptly provide Mirakl with an official receipt for the payment of these taxes to the relevant tax authorities. Customer may provide Mirakl with an exemption certificate that is deemed acceptable by the tax authorities.

5.3) Price Increases. Mirakl reserves the right to increase its prices for each Renewal Term upon 30 days advance notice to Customer.

5.4) Dispute and Late Payments. If Customer believes in good faith that Mirakl has incorrectly billed Customer, Customer must contact Mirakl in writing within 30 days of the invoice date, specifying the error. If an undisputed invoice is not paid in accordance with the Agreement, then Mirakl may charge an interest and a late payment fee (if applicable under applicable law) on any unpaid amount due at the rate of one percent (1%) per month or at the maximum rate permitted by law, whichever is higher, from the date such payment was due until the date such overdue amount (including applicable interest) is paid in full. In the event that any action is taken to pursue collection of any fees payable hereunder, Customer will reimburse Mirakl for any costs associated with such collection, including reasonable legal fees.

5.5) Suspension and Termination. Any late or non-payment of an invoice may result in a late payment reminder/notice being sent to Customer. If Customer fails to pay within ten (10) days of the first reminder, Mirakl may suspend Customer's access to the Cloud Services until Customer has paid the outstanding balance. Customer acknowledges and agrees that temporary suspension of Customer's access to the Cloud Services shall not release it from its obligations, including payment obligations, and that Mirakl will continue to invoice for the Cloud Services during the suspension period in accordance with the fees agreed to on the Order Form. In addition, Mirakl may also terminate this Agreement, if Customer fails to pay the fees due under the Agreement within (30) days of the reminder. Any fees that are unpaid as of the date of termination or expiration of the Agreement will become immediately due and payable.



6. TERM – TERMINATION

6.1) Term and Renewal. The Agreement shall take effect on the date the Order Form is executed and will remain in force until the conclusion of the Order Form (the "Initial Term"). Each Order Form shall be renewed in accordance with the terms set forth in the Order Form (each a "Renewal Term").

6.2) Termination Due to a Breach. Either Party may terminate this Agreement upon giving written notice to the other Party if the other Party commits any material breach of the Agreement and i) has not cured such breach within thirty (30) days of its receipt of such notice or ii) immediately if such breach is non-curable. It is expressly agreed that Customer's failure to pay all or part of the invoiced fees on the due dates shall be deemed a material breach.

6.3) Effects of Termination. If the Agreement is terminated or expires, (i) Customer agrees to pay Mirakl all amounts due to it for its subscription to the Cloud Services and the Consulting Services provided or ordered until the end of the Term, (ii) Mirakl shall cease to provide the Cloud Services to Customer, and (iii) Customer shall no longer have the right to access or use the Cloud Services. Sections 4.4, 5, 6.4, 8, 9, 10, 11, 12 and 13 will survive the expiration or termination of the Agreement.

6.4) Returning Confidential Information. Each Party agrees to destroy or return all items provided by the other Party during the provision of the Cloud Services to the other Party within thirty (30) days of termination or expiration of the Agreement, including software, software packages, and documents of any kind whatsoever. Notwithstanding the foregoing, Mirakl shall not be required to destroy or return any remaining items that may have been archived during its normal archiving procedures but agrees to comply with its confidentiality obligations until they are completely deleted.

7. WARRANTIES

7.1) Cloud Services Warranty. Mirakl agrees to provide the Cloud Services in substantial compliance with the Documentation and not to reduce the Cloud Services' overall level of security when updating its technical and organizational security measures.

If Mirakl fails to comply with the above commitments, Customer may request that Mirakl modifies the Cloud Services in a compliant manner. If Mirakl is unable to do so, Customer may then request but no later than three (3) months after the impacted Cloud Service is found to be non-compliant, as its sole and exclusive remedy, that the Agreement be terminated and that it be refunded, on a pro rata basis, any Subscription Fees which were prepaid by Customer for its subscription to the Cloud Services for a period postdating termination of the Agreement.

7.2) Cloud Services Availability. Mirakl agrees to ensure the availability of the Production Environment of the Cloud Services 99.5% of the time, as calculated below (hereinafter the "Service Availability").

Unless otherwise agreed by the Parties, Maintenance Operations shall be carried out between midnight and 9:00am (based on the data center location). Except in the case of an emergency Maintenance Operation, Mirakl shall make its best efforts to notify Customer in writing at least forty-eight (48) hours in advance of an upcoming Maintenance Operation.

The Service Availability percentage is calculated as follows:

$$\text{Service Availability percentage} = \left[\frac{\text{Total Number of Minutes in the Month} - \text{Maintenance Operations Window} - \text{Downtime}}{\text{Total Number of Minutes in the Month} - \text{Maintenance Operations Window}} \right] \times 100.$$

In the event of a failure by Mirakl to meet the Service Availability, the Parties agree to meet to discuss in good faith the actions to be taken in order to correct the Service Availability problem. Mirakl shall also provide an invoice credit to Customer in accordance with the following table, upon Customer's written request:

- Second consecutive month of Service Availability not being met: ten percent (10%) credit.
- Third consecutive month of Service Availability not being met: twenty percent (20%) credit.
- Fourth consecutive month of Service Availability not being met: thirty percent (30%) credit.



- Fifth consecutive month of Service Availability not being met: forty percent (40%) credit.
- Sixth consecutive month or more of Service Availability not being met: fifty percent (50%) credit.

The credit is calculated based on the Subscription Fees paid by Customer for the Cloud Services for the month affected by the downtime period and is applied to the next invoice.

The issuance of the credit is final and constitutes Customer's sole and exclusive remedy and Mirakl's sole liability for any failure by Mirakl to meet the Service Availability.

7.3) Exclusions. Mirakl's obligations under this section do not apply (i) if the impacted Cloud Service has not been used in accordance with the Agreement, Mirakl Resources, or the Documentation, or (ii) if the impacted Cloud Service's non-compliance or unavailability is not attributable to Mirakl, or (iii) if the impacted Cloud Service is provided for free.

7.4) DISCLAIMER. EXCEPT AS EXPRESSLY INDICATED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MIRAKL PROVIDES THE CLOUD SERVICES AND CONSULTING SERVICES ON AN "AS-IS" BASIS AND MIRAKL, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING REPRESENTATIONS, GUARANTEES OR WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR ACCURACY. MIRAKL ALSO EXPRESSLY DOES NOT WARRANT OR REPRESENT THAT THE CLOUD SERVICES WILL OPERATE SECURELY, CONTINUOUSLY, OR WITHOUT ERRORS, AND MAKES NO REPRESENTATION OR PROMISE THAT THE CLOUD SERVICES WILL MEET THE NEEDS OF CUSTOMER OR ANY THIRD PARTY OR THAT ANY FUTURE FEATURE WILL BE MADE AVAILABLE, EVEN IF IT IS INCLUDED IN ANY OF MIRAKL'S COMMUNICATIONS OR IN ITS ROADMAP, WHICH CUSTOMER ACKNOWLEDGES AND AGREES TO.

8. THIRD-PARTY CLAIMS

8.1) Claims brought against Customer. Subject to the provisions of this section, Mirakl agrees to:

- (i) Defend Customer against any legal action or claim brought against Customer by a third party alleging that Customer's use of the Cloud Services in accordance with this Agreement infringes such third party's patent, trademark, or copyright, and
- (ii) Indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement Mirakl enters into) with respect to these claims.

If a Cloud Service is or, in Mirakl's reasonable opinion, may be subject to a legal action or claim, Mirakl may at its discretion and expense (i) obtain the right to permit Customer to continue to use the Cloud Services, (ii) modify the relevant Cloud Service so that it is non-infringing while remaining substantially functionally equivalent, or, (iii) if Mirakl finds that options (i) and (ii) are not commercially reasonable, terminate the Agreement upon written notice and refund any Subscription Fees which were prepaid by Customer for its subscription to the Cloud Services for a period postdating termination of the Agreement

Mirakl's obligations under this section will not apply if the legal action or claim results from (i) the combination, operation, or use of the Cloud Services with other products, services, or materials not provided by Mirakl, or (ii) use of the Cloud Services otherwise than in compliance with the Agreement, Mirakl Resources, or the Documentation or (iii) if the Cloud Services are provided for free.

The provisions of this section state the sole, exclusive, and entire liability of Mirakl, its Affiliates, licensors and subcontractors to Customer, and is Customer's sole remedy, with respect to covered third-party claims alleging infringement or misappropriation of third-party intellectual property rights.

8.2) Claims brought against Mirakl. Customer will defend Mirakl against claims brought against Mirakl, its Affiliates, officers, employees, agents and subcontractors by any third party related to the Customer Data. Customer will indemnify Mirakl, its Affiliates, officers, employees, agents and subcontractors from and against all legal actions, claims, liabilities, losses, damages and costs (including reasonable attorney fees) suffered by Mirakl with respect to these claims.



8.3) Applicable Procedure. The Party against whom a third-party claim is brought (the “Indemnified Party”) will: i) promptly notify the other Party (the “Indemnifying Party”) in writing of any claim; ii) reasonably cooperate and provide with all information and assistance necessary in the defense and may participate in the defense (at its own expense). The Indemnifying Party will have sole control of the defense and settlement, provided that any such settlement will not include a financial or specific performance obligation on, or admission of liability on behalf of the Indemnified Party.

9. LIABILITY

9.1) Limitation of Liability. To the maximum extent permitted by applicable law, the total liability of Mirakl (and its Affiliates, officers, employees, agents, and subcontractors) for any and all causes of action arising out of or relating to this Agreement shall be limited to the total amount of the Subscription Fees paid by Customer to Mirakl for the Cloud Services (excluding taxes) during the six (6) months prior to the first event out of which the liability arose.

9.2) Excluded Damages. To the maximum extent permitted by applicable law, in no event shall Mirakl, whether in contract, extra-contractual liability, tort (including negligence), breach of statutory duty, or otherwise, be liable for (A) any special, incidental, exemplary, punitive, indirect or consequential damages, (B) loss of profits, (C) loss of use or corruption of software, data or information, (D) loss of data, (E) loss of sales or business, (F) loss of or damage to goodwill or reputation, (G) the cost of replacing the Cloud Services, the inability to use the Cloud Services, performance or non-performance of the Agreement, even if Mirakl has been notified of the possibility of such damages.

9.3) Exclusions. Nothing in this Agreement excludes or limits either Party’s liability resulting from (i) the Parties’ obligations pursuant to Sections 8.1 and 8.2, (ii) gross negligence or willful misconduct, (iii) Customer’s failure to pay any amounts due under the Agreement, (iv) death or personal injury resulting from a Party’s negligence, (v) fraud or fraudulent misrepresentation, and (iv) any other liability which may not lawfully be excluded.

9.4) Liability and third parties. Mirakl makes no commitments to third parties under this Agreement. The access and use of the Cloud Services by a third party or the direct or indirect use by a third party of all or part of the Cloud Services shall be Customer’s exclusive liability. In particular, Mirakl excludes all liability for all products and services sold on the Customer Marketplace. It is Customer’s responsibility to take the necessary steps to manage the risks with respect to third parties.

9.5) Limitation of Time to File Claims. No claim or action, regardless of form, arising out of this Agreement shall be brought by Customer more than twelve (12) months after the events giving rise to the cause of action occurred.

10. INTELLECTUAL PROPERTY RIGHTS; RESTRICTIONS

All intellectual property rights in the Cloud Services (and the underlying software), Mirakl Resources, and the Documentation are and shall remain the property of Mirakl and/or its licensors.

Except to the extent that Customer is expressly permitted to and Mirakl is not allowed to restrict it under applicable law, Customer shall not:

- Use the Cloud Services, Mirakl Resources, and the Documentation to design, develop, distribute, or market similar, equivalent, or substitute services;
- Adapt, modify, transform, or change the Cloud Services, Mirakl Resources, or the Documentation in any way, for any reason whatsoever, including to correct malfunctions;
- Decompile, reverse engineer, or disassemble all or part of the Cloud Services;
- Transcribe or translate the Cloud Services, Mirakl Resources, or the Documentation into other languages;
- Change or circumvent the security measures such as access codes or usernames; and
- Sell, transfer, or rent all or part of the Cloud Service(s), Mirakl Resources, or the Documentation, or right to use it whether for payment or free of charge, by any process or derivative work unless otherwise stipulated in this Agreement.



11. CONFIDENTIALITY

The Party receiving Confidential Information agrees that, for the duration of the Agreement and five (5) years after its termination or expiration for any reason, the Confidential Information provided by the disclosing Party shall:

- Be protected and kept strictly confidential and be handled by the receiving Party with the same level of care and protection as it uses to protect its own Confidential Information provided that it is at least a reasonable degree of care and protection;
- Be disclosed only to the receiving Party's employees, agents and subcontractors who need to access it and shall only be used by them for performing the Agreement;
- Not be used in whole or in part by the receiving Party for any purpose other than performing its contractual obligations herein without the disclosing Party's prior, written consent. In particular, the Confidential Information shall not be sold, transferred, rented, or commercially exploited; and
- Not be copied, reproduced, or duplicated, in whole or in part, except (i) for the purpose of performing its contractual obligations herein and/or (ii) if expressly approved in writing by the disclosing Party.

In case of disclosure to a Party's employee, agent or subcontractor, such Party shall have its employee, agent or subcontractor sign a confidentiality agreement containing obligations at least as stringent as those stipulated in this Agreement.

Each Party shall ensure that its employees, agents, and subcontractors comply with the obligations set out in this section and shall be liable for any disclosure made in breach hereof by them. If Confidential Information is disclosed in breach of this section, the Party who has knowledge of it must immediately notify the other Party in writing.

The confidentiality obligations stipulated in this section shall not apply to Confidential Information that:

- is or becomes publicly disclosed through no fault or breach of the provisions of this section by the Party that disclosed it;
- was already known by the receiving Party prior to its disclosure, and which can be demonstrated by the existence of documents pre-existing the disclosure;
- was lawfully received from a third party without restrictions and not in breach of the provisions of this section;
- was independently developed by the receiving Party without using and/or relying on any of the disclosing Party's Confidential Information, which can be demonstrated by the existence of written records; and
- whose use or disclosure has been authorized in writing by the disclosing Party.

In addition, on a strictly confidential basis, each Party may disclose the Confidential Information of the other Party to:

- For Mirakl: Affiliates of Mirakl SAS (parent company of Mirakl); and
- For each Party: a) to its advisers, investors, insurance broker and insurers, statutory auditors, tax and social security agencies in the event of an audit; or b) when ordered to do so by a court of law; or c) when such disclosure is necessary to enable enforcement or prove the existence of rights under the Agreement. In the case of (b) and (c), the disclosing Party will provide reasonable advance notice to the other Party and provide reasonable assistance to limit the scope of the disclosure, unless prohibited by law or regulation.

12. AGGREGATED DATA

In order to provide Customer with the latest upgrades to the Cloud Services, Mirakl may use anonymized and aggregated Customer Data and information derived from Customer's and its Authorized Users' use of the Cloud Services and Consulting Services to a) improve its products and services (including product features and functionality, workflows, and user interfaces) and develop new products and services, b) maximize resource and



support allocation, c) develop learning algorithms, and d) identify industry trends and developments, indexing and anonymous benchmarking. Unless expressly agreed by Customer, the personal data contained in the Customer Data shall only be used to provide the Cloud Services and the Consulting Services.

13. GENERAL PROVISIONS

13.1) Relationship of the Parties. Each Party shall be deemed to be an independent contractor. Nothing in this Agreement shall be deemed to create a partnership, joint venture, or agency relationship between the Parties.

In addition, each Party shall retain its status as an employer with respect to its own personnel. When Consulting Services are provided at Customer's premises, Mirakl's personnel shall comply with the health and safety regulations in effect at said premises as communicated to Mirakl in writing by Customer.

13.2) Non-solicitation of Personnel. Unless Mirakl has given its prior, written consent, Customer shall refrain from directly or indirectly making job offers to Mirakl employees or attempting to employ them in any capacity whatsoever. This non-solicitation obligation shall remain valid during the Term and for a period of twelve (12) months after the expiration or termination of this Agreement for any reason whatsoever. If Customer breaches this obligation, Customer shall compensate Mirakl by paying an amount equal to two times the gross salary received by the employee who was hired during the twelve (12) months prior to such employee's departure.

13.3) Sub-contracting. Mirakl may freely subcontract all or part of the Cloud Services and/or Consulting Services and assumes liability for any breach of the Agreement by its subcontractors.

13.4) Assignment. Neither Party may assign the Agreement without the other Party's prior written consent, provided that each Party may assign this Agreement in its entirety without the other Party's consent to an Affiliate or in connection with a merger, acquisition, or sale of all or substantially all of its assets. Notwithstanding the foregoing, Customer may not assign the Agreement to a company that competes with Mirakl.

13.5) Publicity. Customer authorizes Mirakl to identify Customer as a reference on its websites, in press releases issued by Mirakl, and in any other promotional material.

13.6) Entire Agreement. The Agreement expresses all of the Parties' obligations with respect to its subject matter and supersedes and replaces any and all prior declarations, negotiations, undertakings, verbal or written communications, acceptances, agreements and understandings, having the same subject matter as this Agreement, including any confidentiality agreement signed by the Parties prior to this Agreement. No other general or specific condition communicated by either Party may be enforced against the other Party.

13.7) Notifications. Any business notifications in connection with this Agreement may be sent by email. Any legal notices sent pursuant to the Agreement must be made in writing and (i) delivered by hand, or (ii) sent by registered letter with acknowledgment of receipt to the address indicated in the Agreement, or to any other address communicated by either Party for this purpose. Notification sent by registered letter with acknowledgment of receipt shall be deemed to be received on the date it was delivered. However, Mirakl's notifications regarding the Cloud Services' operation may be made electronically.

13.8) Force Majeure. Neither Party will be liable for any delay in performance or failure to perform its obligations under this Agreement (except for payment obligations) due to any cause or event outside its reasonable control, including acts of God, civil or military authority, acts of war, accidents, third-party communication or computer failures, epidemic or pandemic, natural disasters or catastrophes, strikes or other work stoppages, interruption or failure of utility services or any other cause beyond the reasonable control of the affected Party.

13.11) Miscellaneous. The fact that a Party does not invoke a breach by the other Party of one of its obligations shall not be interpreted as a waiver of that obligation in the future.

Any modifications to the Agreement must be made in writing and signed by an authorized representative of each Party. Any terms or conditions in Customer's purchase order or any other related documentation submitted by or on behalf of Customer to Mirakl do not form part of this Agreement and are void, unless otherwise expressly agreed in writing and signed by both Customer and Mirakl.



If one or more of the provisions of the Agreement is or becomes null, void, illegal, unenforceable or inapplicable in any manner whatsoever, the validity, legality, or enforceability of the remaining provisions of the Agreement shall not be affected or impaired in any way. However, in this case, the Parties agree to consult each other and to make every effort to include a new clause in the Agreement that restores the intent of the Parties as expressed in the initial clause, in compliance with the applicable legal provisions and regulations.

13.12) Governing Law and Jurisdiction. This Agreement and any disputes hereunder will be governed by the laws of the State of Delaware, without regard to its conflict of law principles, and any litigation shall be submitted to and resolved by a court of competent jurisdiction in Delaware. Each party hereby waives its respective rights to a jury trial of any claim or cause of action relating to or arising out of this Agreement. This waiver is intended to encompass any and all disputes that may be filed in any court and that relate to the subject matter of this Agreement, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims.

13.13) Electronic Records and signature. The Parties agree that the records stored by Mirakl (e.g., transaction log used for the calculation of the Business Volume) as well as the electronic communications between the Parties shall be admissible as evidence between the Parties in accordance with applicable law. For this purpose, it is expressly agreed that all technical information concerning Customer and any electronic communications of any nature whatsoever with Customer (including, but not limited to, email, internal messages from the Cloud Services, etc.) may be stored and archived by Mirakl for evidentiary purposes. Both parties agree that their signature can be established in electronic form (sending by facsimile, scanned copy sent via e-mail, or electronic signature) and that, when in electronic form, this Agreement shall be deemed original.

14. DEFINITIONS

The terms defined in this section apply to capitalized words in the Agreement.

"Affiliate": means any legal entity in which Customer or Mirakl SAS (Mirakl parent company) directly or indirectly, holds more than fifty percent (50%) of such entity's shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.

"Agreement": means in order of prevalence, (i) the Order Form, (ii) these Terms of Use and, where applicable, (iii) its appendices.

"Authorized User": means any individual to whom Customer grants authorization to use the Cloud Services.

"Channel": means a technical feature allowing Customer for the purpose of operating the Customer Marketplace to distinguish its Sellers' products and services according to the criteria proposed by the Cloud Services.

"Cloud Service": means each of the hosted services that are provided by Mirakl that have been subscribed to by Customer in the Order Form, as further described in the Service Description.

"Confidential Information": means any information from a disclosing Party communicated to, entrusted to, or obtained in any form whatsoever, verbally or in writing, by the receiving Party, including but not limited to: (i) any technical, operational, or commercial information relating to the Cloud Services or the Consulting Services, including Mirakl Resources and the Documentation; (ii) solutions, products, technologies, software, know-how, tangible or intangible research results, information about customers and/or prospects, business strategies; (iii) any information identified as "confidential"; and (iv) any information that is confidential in nature or the receiving Party knows, or ought reasonably to know, is confidential.

"Consulting Services": means technical or business consulting services ordered by Customer in the Order Form.

"Customer": means the legal entity identified as the customer in the Order Form.

"Customer Data": means all data entered into a Production Environment of the Cloud Services by Customer and/or its Authorized Users.



"Customer Marketplace": means an online marketplace operated by Customer for its business needs as identified in the Order Form, in particular by the URL of the website from which Customer operates its marketplace business and/or a clear description of Customer's marketplace including at least the geographical area concerned (otherwise it shall be deemed to be the country where Customer is domiciled) as well as the type of business (B2B, B2C) operated via the Cloud Services.

"Development Environment/Sandbox/Pre-production Environment": means test environment(s) made available to Customer for this sole purpose as further specified in the Documentation.

"Documentation": means the latest updated version of Mirakl's online documentation for the Cloud Services covering its technical, functional, and operational aspects. The Documentation is accessible via the Cloud Services.

"Downtime": means the total number of minutes during the Month in which the Production Environment of the applicable Cloud Services is unavailable, excluding Maintenance Operation Windows.

"Incident": means an error, malfunction or anomaly directly attributable to the Cloud Services encountered by Customer and/or its Authorized Users on the Cloud Services that is the subject of a support request to Mirakl and that is defined by Mirakl based on its criticality for resolution.

"Maintenance Operation": means a planned maintenance operation that is necessary for the servers and/or the Cloud Services to function properly and/or to correct any malfunctions.

"Maintenance Operation Window": means the total number of minutes during the Month in which the Production Environment of the impacted Cloud Service is unavailable due to Maintenance Operations.

"Mirakl": means the Mirakl entity identified in the Order Form.

"Mirakl Resources": means any item developed and/or provided by Mirakl in connection with the performance of the Agreement, including in connection with providing Consulting Services.

"Month": means a calendar month for the purpose of calculating the Cloud Services' availability.

"Order Form": means a contractual document containing all of the specific terms of the Agreement including Customer's identity, the Cloud Services and/or the Consulting Services subscribed by Customer, as well as any specific commercial or legal terms agreed upon between the Parties.

"Party/Parties": means Customer and Mirakl, either collectively or individually.

"Production Environment": means the only Cloud Services environment that can be used for production purposes (i.e., generate revenue with the Customer Marketplace).

"Seller": means any individual or legal entity using the Cloud Services with Customer's authorization in order to offer products and/or services for sale on the Customer Marketplace.

"Service Description": means the document describing the Cloud Services' features, located at: <https://help.mirakl.net/Customers/topics/Mirakl/features/list-of-features.htm>. The Service Description is included in the Documentation.

"Support Service" means the support provided by Mirakl through its web portal in order to correct any reproducible Incidents affecting the Cloud Services.

"Term" means the Initial Term or any then-current subsequent Renewal Term.

"Total Number of Minutes in the Month": means the number of minutes in a given Month, which are measured 24 hours at 7 days a week.