

# TERMS AND CONDITIONS

## Venturelytic B.V.



Version September 2022

### 1. GENERAL

#### 1.1 Applicability

- 1.1.1 These conditions are applicable to all proposals and agreements and/or legal relationships between Venturelytic and Customer.
- 1.1.2 The applicability of any of the Customer's purchase or other terms is explicitly excluded.
- 1.1.3 Venturelytic reserves the right to make alterations and/or additions to the Terms and Conditions Venturelytic. The modified Terms and Conditions Venturelytic will become applicable, unless objections against modifications are made in writing within 30 (thirty) days of the notification date of the change.
- 1.1.4 Changes in and additions to the Terms and Conditions Conditions Venturelytic and/or agreements made between Venturelytic and Customer are only valid when agreed to by Venturelytic in writing.
- 1.1.5 If the business name used by Customer denotes more than one (legal) person or organization, each will be responsible for the entire fulfilment of the obligations that may flow forth from the agreement with Venturelytic.
- 1.1.6 The headings above the clauses of these conditions are only intended to increase the legibility of this document. The content and meaning of a clause placed under a particular heading is, therefore, not limited to the meaning and content of the heading.

#### 1.2 Definitions

- 1.2.1 In the General Conditions Venturelytic the following words and expressions are capitalized. Any of the following words and expressions shown in the singular shall have the same meaning when used in the plural and vice-versa.
- 1.2.2 **Advice:**  
As further specified in clause 2.4.
- 1.2.3 **Affiliate:**  
Any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- 1.2.4 **Agreement:**  
The SaaS Subscription Agreement, including any exhibits attached thereto and to which these Terms and Conditions apply, executed by Venturelytic and Customer.
- 1.2.5 **AppExchange:**  
As further specified in Exhibit C: SFDC Service Agreement.
- 1.2.6 **As is:**  
The properties of the Subscription Services are not (fully) described and the Customer indicates that it is sufficiently aware of and / or has tested the properties of the Subscription Services and that it accepts the Subscription Services as it is offered. The Customer buys on its own profit and loss and the parties rule out an error. With a As is delivery parties waive their right to invoke the provisions of Book 7:17 of the Dutch Civil Code and waive the right to initiate (partial) dissolution, termination or cancellation of that agreement after the delivery or completion or claim this right.
- 1.2.7 **Back-up:**  
Spare copies of digital data and/or information.
- 1.2.8 **Business Days:**  
Monday to Friday from 8.30 until 17.30 CET, with the exception of Dutch public holidays.
- 1.2.9 **Customer:**  
The entity who requests and orders the delivery of Services as identified in the Agreement.
- 1.2.10 **Third Party General Conditions:**  
Conditions applicable to Third Party Products and Services.
- 1.2.11 **Documentation:**  
The (functional) description of the Services, delivered to

Customer.

#### 1.2.12 Data Loader:

A client application for the bulk import or export of data. Can be used to insert, update, delete, or export Salesforce records.

#### 1.2.13 Effective Date:

The date as defined in the Agreement.

#### 1.2.14 Errors:

The reproducible (full) non-compliance of Subscription Services with the Documentation.

#### 1.2.15 Hosting:

The provision of Maintenance of, and/or access to webspace for the purpose of saving information, data, images or Subscription Services on data centers.

#### 1.2.16 Identification Codes:

Usernames, passwords, address codes and/or other codes.

#### 1.2.17 Intellectual Property Rights:

Shall include, without limitations, patent, copyright, trademark, trade name, brand mark, brand name, logo, domain name, industrial design, trade secret and know how.

#### 1.2.18 Maintenance:

As further specified in clause 2.3.

#### 1.2.19 Managed Package:

The Venturelytic app, a collection of application components related to Venturelytic that is posted as a unit on the Salesforce AppExchange and can be downloaded and installed by many different organizations. Managed packages obfuscate certain components (like Apex) on subscribing organizations to protect the intellectual property of the developer.

#### 1.2.20 Non-Venturelytic Applications:

Online applications and services and offline software products that are provided by entities or individuals other than Venturelytic, and that interoperate with the Services, including but not limited to those provided by Salesforce.

#### 1.2.21 OEM Partnership:

A reseller type of partnership between Venturelytic and Salesforce in which Venturelytic built a Managed Package on top of the Platform Edition provided by Salesforce.

#### 1.2.22 Object Code:

The computer programming code principally in binary form. Object Code is immediately executable by a computer after processing, but without reverse engineering, compilation or assembling.

#### 1.2.23 Order Form:

An ordering document attached to the Agreement under Exhibit A or executed separately by Venturelytic and Customer specifying the Subscription Services and Professional Services to be provided under the terms and conditions of the Agreement, edition based on Enterprise, Unlimited, or Performance Edition (for an overview of editions, see: [https://help.salesforce.com/articleView?id=sf.overview\\_edition.htm&type=5](https://help.salesforce.com/articleView?id=sf.overview_edition.htm&type=5)) that does not include any of the standard Salesforce apps, such as Sales or Service & Support (for an overview of apps, see: <https://www.salesforce.com/products/#products-scroll-tab>)

#### 1.2.24 Package:

A group of Salesforce Platform components and applications that are made available to other organizations through the AppExchange. Packages are used by Salesforce partners such as Venturelytic to bundle an app along with any related components so that they can be uploaded to AppExchange together.

#### 1.2.25 Party or Parties:

Venturelytic of Customer individually or 'Parties' when referred to jointly.

#### 1.2.26 Process-data:

The electronic data and information submitted by or for Customer to the Services.

- 1.2.27 Professional Services:** :  
The consulting, implementation, development, training and other professional services requested by Customer and delivered by Venturelytic, as laid down in the Order Form, excluding the Subscription Services.
- 1.2.28 Professional Services Fees:** :  
The fees related to the Professional Services.
- 1.2.29 Services:**  
The Subscription Services and Professional Services provided by Venturelytic in accordance with these Terms and Conditions.
- 1.2.30 Public Infrastructure:**  
The part of the Infrastructure maintained by third parties and/or delivered to Customer and over which Venturelytic has no control. The internet is part of Public Infrastructure.
- 1.2.31 Salesforce:**  
Salesforce.com EMEA Limited, a limited liability company having its registered office at Floor 26 Salesforce Tower, 110 Bishopsgate, London EC2N 4AY, United Kingdom.
- 1.2.32 Salesforce Documentation:**  
The online user guides, documentation, and help and training materials related to the use of the Salesforce Platform, that be accessed via <https://help.salesforce.com/home>. Documentation on the Salesforce Platform limits are specified by Salesforce at: [https://developer.salesforce.com/docs/atlas.en-us.210.0.salesforce\\_app\\_limits\\_cheatsheet.meta/salesforce\\_app\\_limits\\_cheatsheet/salesforce\\_app\\_limits\\_platform.htm](https://developer.salesforce.com/docs/atlas.en-us.210.0.salesforce_app_limits_cheatsheet.meta/salesforce_app_limits_cheatsheet/salesforce_app_limits_platform.htm)
- 1.2.33 Salesforce Platform:**  
A hosted platform-as-a-service made available by Salesforce of which the Force.com Platform licenses provide a basis for the Subscription Services.
- 1.2.34 Software:**  
The Object Code version of any software to which Customer is provided access as part of the Subscription Services, including any updates or new versions.
- 1.2.35 Service Orders:**  
Orders that Venturelytic places from time to time, upon request of Customer, at Salesforce to allow a certain amount of Users to access the Subscription Services for a certain period.
- 1.2.36 Service Order Expiration Date:**  
Expiry date of the Service Orders placed by Venturelytic for the Subscription Services provided to Customer, communicated by Venturelytic after placing the specific Service Orders and visible by Customer via the "Company Information" section in the back-end ("Setup") of the Salesforce Platform.
- 1.2.37 Subscription Services:**  
The Software-as-a-Service offering specified in the Order Form that is based on Venturelytic's Software and provisioned as a service by Venturelytic to Customer over a network operated by the Salesforce Platform on a term-use basis.
- 1.2.38 Subscription Fees:**  
The fees related to the Subscription Services.
- 1.2.39 Subscription Term:**  
The period specified in the Order Form during which Customer is entitled to the Subscription Services. The Subscription Term shall renew for successive 12-month periods unless either Party delivers written notice of non-renewal to the other Party at least the number of days set out in clause 1.5 prior to the expiration of the then-current Subscription Term.
- 1.2.40 Support:**  
As further specified in clause 2.5.
- 1.2.41 Source Code:**  
The computer programming code that may be displayed in a form readable and understandable by a programmer of ordinary skill. It may include related Source Code level system documentation, procedural codes and comments. Source Code does not include Object Code.
- 1.2.42 Venturelytic:**  
Venturelytic B.V.(registered at Chamber of Commerce with number 69815143), and its legal successors or affiliated organizations and partners that will enter into an agreement with Customer and have declared the General Conditions Venturelytic applicable.
- 1.2.43 Venturelytic Products and Services:**  
All products and services provided by Venturelytic and the resulting provisions and related activities, which do not originate from third parties and of which Venturelytic holds all intellectual property rights, industrial property rights and other rights .
- 1.2.44 Terms and Conditions:**  
These Terms and Conditions
- 1.2.45 Third Party Terms and Conditions:**  
The terms and conditions that apply to the Non-Venturelytic Applications.
- 1.2.46 Unmanaged Package:**  
A Package that, in contrast to a Managed Package, does not include locked components, allowing Salesforce clients to edit components themselves.
- 1.2.47 User:**  
An individual who is authorized by Customer to use a Subscription Service under these Terms and Conditions, for whom Customer have ordered the Subscription Service, and to whom Customer (or Venturelytic at Customer's request) have supplied Identification Codes. Users may include, for example, Customer's employees, consultants, contractors and agents, and third parties with which Customer transact business.
- 1.3 Confirmation**
- 1.3.1** Verbal agreements, assignments or other expressions of whatever nature by employees of Venturelytic are only valid and binding when they have been confirmed in writing by authorized representatives of Venturelytic.
- 1.4 Offers**
- 1.4.1** All Venturelytic offers made are without engagement, unless the offer explicitly indicates otherwise in writing.
- 1.4.2** Offers of Venturelytic are based on the data, information or requirements made known by Customer.
- 1.5 Term and Termination**
- 1.5.1** The Agreement commences on the Effective Date of the Agreement and continues until the 30th day after all subscriptions hereunder have expired or have been terminated.
- 1.5.2** The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified below or in an Order Form, Order Forms and all subscriptions thereunder will automatically renew for additional periods of one year, on the same terms and without entry into a new Order Form, unless either Venturelytic gives the Customer notice of non-renewal at least 90 days before the end of the relevant Subscription Term or Customer gives Venturelytic notice of non-renewal at least 60 days before the end of the relevant Subscription Term.
- 1.5.3** A Party may terminate this Agreement by written notice to the other Party if the other Party (a) materially breaches this Agreement and fails to cure the breach within 30 days after written notice by the non-breaching Party detailing the breach, or (b) becomes the subject of a petition in bankruptcy, suspension of payment (surséance van betaling), or other proceeding relating to insolvency, receivership, voluntary liquidation or assignment for the benefit of creditors, and such petition or proceeding is not dismissed within 60 days (if dismissal is legally possible) or (c) is declared bankrupt, has resolved upon liquidation or dissolution, has offered a composition with creditors (including but not limited to the WHOA procedure) or terminated its business operations. Termination of this Agreement will result in termination of all Order Forms
- 1.5.4** Upon any termination, Venturelytic will make all Customer Data available to Customer for electronic retrieval in CSV format for a period of thirty (30) days, if Customer takes the necessary measures to allow for Venturelytic to perform the aforementioned and Venturelytic will take all necessary measures to accommodate a smooth termination of Customer. Upon request of Customer, at least 45 days prior to termination, Venturelytic will make non-tabular data such as files available in a usable format with Data Loader.

## 1.6 Confidentiality/Non-competition

1.6.1 "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. Customer's Confidential Information includes Process-Data, whereas Venturelytic's Confidential Information includes the Services. Confidential Information of each Party includes the terms of the 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.

1.6.2 The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to 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, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither Party shall disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other Party's prior written consent.

1.6.3 Customer and its clients will not enter into any direct or indirect commercial, employment, or other such relations with employees from Venturelytic during the Agreement and for a period of 12 (twelve) months after termination or dissolution of the Agreement, without the written consent of Venturelytic. Customer will ensure that its clients will comply with the foregoing obligation.

1.6.4 In the event that Customer breaches clause 1.6.3, Customer will be charged, without further notification required, a fine of € 50,000.- (fifty thousand euros) for each breach, undiminished the right of Venturelytic to claim full compensation for damages incurred.

## 1.7 Liability

1.7.1 Venturelytic's total liability shall be limited, in accordance with clauses 1.7.2 and 1.7.3 to compensation for direct damage and to a maximum of the amount received by Venturelytic of the price stipulated in the agreement (excluding VAT) to a maximum of € 250,000.- (two hundred and fifty thousand euros), whereby a sequence of events is regarded as one event.

1.7.2 If the Agreement is mainly a continuing performance contract ('duurovereenkomst') with a term of more than 1 (one) year and Venturelytic's liability flows forth from the Agreement over time, the stipulated price will be calculated on the basis of the total amount (excluding VAT) as actually paid by Customer to Venturelytic on the basis of the Agreement over time for 1 (one) year (this being the year in which the damage occurred) to a maximum of € 250,000.- (two hundred and fifty thousand euros).

1.7.3 Venturelytic's total liability for damage resulting from death or physical injury will in no event amount to more than € 1,000,000.- (one million euros), whereby a sequence of events is regarded as one event.

1.7.4 Direct damage is exclusively understood as:

a) The reasonable costs made in determining the cause

and extent of the damage;

b) The reasonable costs incurred in prevention or limitation of the damage, to the degree that Customer can demonstrate that these costs have led to the limitation of the damage.

c) reasonable costs incurred to repair damage, insofar as Customer demonstrates that these costs have led to the repair of damage and Venturelytic, upon written request, is unable to offer a timely solution to repair damage itself.

1.7.5 Venturelytic's liability for indirect damage, including consequential damage, loss of profit, loss of savings, mutilated and/or lost data, delays, losses, damage as a result of a failure of Customer to provide the required information or assistance, damage through corporate inactivity and/or claims from third parties against Customer, is expressly rejected.

1.7.6 With the exception of the cases mentioned in clause 1.7, Venturelytic has no liability for damage compensation regardless of what an action towards compensation is based upon.

1.7.7 Venturelytic's liability exists solely when Customer immediately and appropriately notifies Venturelytic of the deficiency in writing, proposing therein a reasonable time period for correction of the deficiency and Venturelytic then culpably fails to meet the aforesaid obligations. The notification of deficiency ought to be as detailed a description of the deficiency as possible so that Venturelytic is able to react adequately.

1.7.8 The condition for the existence of any right to compensation is always that Customer notifies Venturelytic in writing by registered mail within 60 (sixty) days after the damage came into existence and takes the necessary measures to limit the damage as much as possible.

1.7.9 Customer indemnifies Venturelytic from all liability regarding third parties due to allegations as a consequence of deficiency in a product, system or service provided by Customer to third parties that consisted of a delivery made by Venturelytic.

1.7.10 Venturelytic is not liable for damage regardless of its nature caused by Third Party Products and Services which Venturelytic has delivered to Customer. If possible Venturelytic will transfer its rights for damage compensation from the supplier of the Third Party Product in question to Customer.

1.7.11 Unless otherwise agreed upon in a service level agreement, Venturelytic is not liable for any damage regardless of its nature, which is the result of a failure to provide Support, Maintenance and/or warranty on time. Venturelytic is not liable for damage of any kind that is the result of the fact that Venturelytic must comply with certain, changing and new legislation and other regulations.

## 1.8 Transfer of rights

1.8.1 The Agreement between Venturelytic and Customer and the rights and obligations, which flow forth from this Agreement, cannot be transferred to a third party by Customer without the prior written consent from Venturelytic.

1.8.2 Customer gives Venturelytic in advance the right, without needing the explicit approval of Customer, to transfer the whole Agreement or parts thereof to:

a) holding-, sister- and/or subsidiary companies;

b) a third party in the case of merger or acquisition of Venturelytic.

In the event this happens, Venturelytic will inform Customer.

## 1.9 Force Majeure ("niet-toerekenbare tekortkoming")

1.9.1 Neither Party is obligated to fulfil any obligation, including any statutory and/or agreed guarantee obligation, if they are prevented from doing so as a result of circumstances, which can be considered beyond their control, and for which a Party cannot be held accountable by law, legal act, or generally accepted practices. The aforementioned circumstances include circumstances that are beyond Venturelytic's power as well as business risks of Venturelytic, these include but are not limited to failure to perform by a supplier of

Venturelytic, the late or non-availability of required information and specifications and/or changes in such information, incorrect functional specification of Third Party Products and Services and/or products delivered by a third party, bad weather conditions, fire, explosions, electricity failures, (D)Dos-attacks, hacking, cracking or any downtime or unavailability caused by unlawful conduct by third parties, the destruction, damaging or disabling of any automated system or any system for telecommunication by whoever, causing interference in the course or the working of such system, or frustrating by whoever of a security measure taken with respect to such system, interference in networks, floods, illness, lack-of-staff, strike or other employment conflicts, accidents, actions by the government, not being able to obtain required licenses and/or permits, lack of materials, theft, traffic disruptions and/or transportation problems.

**1.9.2** When force majeure is of a temporary nature, Venturelytic has the right to suspend its commitments until the force majeure has ceased to exist without being obliged to any form of damage compensation.

**1.9.3** Venturelytic reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.

**1.9.4** In the event that the force majeure of either party surpasses a 90 (ninety) days, either party has the right to terminate the Agreement without being obliged to any form of damage compensation regarding such termination.

## **1.10 General Provisions**

**1.10.1** If one or more terms (or part of a term) of the Agreement are nullified, declared to be nullified, annihilable or have lost their validity in another way, the other terms (or part of the term in question) of this Agreement will remain in force undiminished.

**1.10.2** With regard to terms (or part of the term) that are nullified, declared to be nullified, annihilable or lose their validity in another way, Parties shall consult with each other to try to reach a substitute arrangement with which the Parties shall strive for the maintenance of the gist of this Agreement (or the remainder of the term in question) in its totality.

**1.10.3** This Agreement (including all Exhibits) contains the entire agreement of the Parties and supersedes all previous oral and written communications by the Parties, concerning the subject matter of this Agreement. This Agreement may be amended solely in a writing signed by both Parties.

**1.10.4** Either Party may publicly identify the other Party as a customer or vendor, as applicable, using the other Party's name and logo. Either Party may issue a press release announcing Customer's selection of the Services, the text of which will be subject to the other Party's prior written approval, not to be unreasonably withheld or delayed. Customer will use commercially reasonable efforts to act as a sales reference for Venturelytic upon request, provided Customer is satisfied with the Services.

## **1.11 Applicable Law and Dispute Resolution**

**1.11.1** All Agreements made between Venturelytic and Customer are governed by the laws of The Netherlands, without regard to the conflict of laws provisions, and both Parties hereby consents to the exclusive jurisdiction of the District Court of The Hague, unless otherwise agreed upon in writing. Parties explicitly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.

## **2. SUBSCRIPTION SERVICES**

### **2.1 User Rights**

**2.1.1** User rights for Subscription Services are limited to the Object Code. Rights to the Source Code are not provided, unless explicitly agreed upon otherwise in writing and / or unless the right of use concerns a reproduction that takes place in the context of loading, displaying or correcting errors.

**2.1.2** User rights on the Subscription Services cannot be

transferred to any third party (third parties also include holding-, sister- and/or subsidiary companies) by the Customer.

**2.1.3** Customer does not have the right to make the Subscription Services available, whether or not for a fee, under any title or in any way whatsoever, to any third party (third parties also include holding-, sister- and/or subsidiary companies of Customer).

**2.1.4** The user rights shall go into effect after Customer has made the required payments and fulfilled its other obligations.

### **2.2 Verification**

**2.2.1** Venturelytic is entitled to incorporate technical limitations and control mechanisms in the Subscription Services in order to prevent and/or verify that the actual number of Users, servers and/or workstations does not surpass the agreed upon number of simultaneous Users, servers and/or workstations.

**2.2.2** If, on the basis of the above described verification procedure or otherwise, it appears that the actual number of users, servers and/or workstations surpasses the number of simultaneous users, servers and/or workstations agreed upon, Customer will be obligated to immediately acquire the missing number of Users, servers and/or workstations licenses and pay an additional fine of 25% over the amount due.

### **2.3 Maintenance**

**2.3.1** Depending on the Subscription Services, Venturelytic may offer Customer the option of acquiring Maintenance. Customer is explicitly not permitted to perform Maintenance on the Subscription Services itself.

**2.3.2** Maintenance includes providing updates and documentation of Subscription Services, which either contain a qualitative (e.g. error fix) or a functional improvement of the Subscription Services that have been made available. Venturelytic is not obliged to actively keep Customer up to date concerning possible updates.

**2.3.3** If Maintenance results in a functional improvement, Venturelytic will have the right to charge extra payment to compensate for this functional improvement.

**2.3.4** Venturelytic is authorized to refuse the provision of Maintenance if the Subscription Services provided by Venturelytic or the environment in which the Venturelytic Subscription Services operate are altered by Customer in any way or form.

**2.3.5** If Customer refuses to install updates that are offered by Venturelytic to Customer, then Venturelytic reserves the right to terminate the Agreement or to adjust the Agreement in accordance with the refusal to install updates.

### **2.4 Advice**

**2.4.1** All Services that can be considered advice or which can be described as Advice, such as but not limited to Support (clause 2.5), will only be given to the best of Venturelytic's knowledge and capability.

**2.4.2** Venturelytic is not responsible and/or liable if the activities that flow forth from Advice result in Customer's failure to carry out a project within allocated budgets, time schedules and other agreed upon conditions.

**2.4.3** Venturelytic will provide Advice on the basis of the conditions required by Venturelytic and information received from Customer as mentioned. If it appears that not all relevant information has been received and/or other problems and/or insights may arise, such as but not limited to incompatibility problems (products are unable to interoperate with each other), the given advice may be adjusted to the new circumstances.

### **2.5 Support**

**2.5.1** Support is further specified in the Service Level Agreement. It consists of providing written (e-mail) advice concerning the use and operation of the Subscription Services.

**2.5.2** Venturelytic will only provide Support on the most current updates of the Subscription Services. Venturelytic is entitled at its sole discretion to provide Support on older versions, releases, etc. of the Subscription Services.

## 2.6 Installation and Implementation

- 2.6.1** Venturelytic will only install and/or implement the Subscription Services immediately after entering into an Agreement with Customer or have them installed and/or implemented if agreed upon in writing.
- 2.6.2** Prior to installation and/or implementation Customer will see to it, at its own expense, that all conditions required by Venturelytic have been met in order to ensure a successful installation and/or implementation.
- 2.6.3** Customer will ensure and is entirely responsible for fulfilling the necessary Third Party General Conditions in order to let installation and/or implementation take place legally.
- 2.6.4** If implementation and/or installation has not been performed within the agreed upon time schedule due to Customer's fault, Customer will make payments as if implementation and/or installation has been performed, undiminished the obligations of Venturelytic to proceed with installation and/or implementation at a later time period.

## 2.7 Back-ups

- 2.7.1** Customer is responsible for making Back-ups in time. Upon Customer's request, Venturelytic will inform Customer of the procedures and security measures necessary regarding securing data and the realization of Back-ups.
- 2.7.2** Only if and insofar as it has been expressly agreed in writing that Venturelytic will provide for the making of Back-ups in whole or in part, Venturelytic will make Back-ups. Venturelytic is in no way liable for these Backups in respect of but not limited to the total or partial loss of Backups and / or errors in the Backups or any other loss or becoming unusable of data. Customer is at all times fully responsible for regularly checking and testing the integrity, readability and usability of the Backups.

## 2.8 Activities

- 2.8.1** All activities, Maintenance, Support and other Services under the Agreement will take place without interruption on Business Days and under normal working conditions.
- 2.8.2** Activities that are performed outside of Business Days are considered as overtime. The applicable rate will be increased with 50% for overtime after or before Business Days. The applicable rate will be increased with 100% for overtime on weekends and public holidays.
- 2.8.3** If parties agree that activities will take place in phases, Venturelytic will be entitled to postpone activities for the following phase until Customer has accepted in writing activities performed in the previous phase.
- 2.8.4** Venturelytic is entitled, without the explicit consent of Customer, to make use of third parties when performing activities.

## 3. USE OF SUBSCRIPTION SERVICES

### 3.1 Changes in the Subscription Services

- 3.1.1** Venturelytic is entitled, following a written notification taking into account a reasonable notification period and without any compensation to Customer, to make adjustments to and/or changes in the Subscription Services offered such as but not limited to:
- entrance procedures, such as:
    - procedures regarding operational rules, and
    - security procedures.
  - changes in a third party provider/supplier, location, hardware, software and other facilities necessary for the provision of Subscription Services.
- 3.1.2** If any changes made have a significant negative impact on Customer's business or the functionality of Subscription Services, Customer may, after providing relevant proof of the deterioration in writing, request in writing that Venturelytic provide an alternative. If Venturelytic then fails to provide an alternative, Customer will have the right to terminate the use of Subscription Services, without any damage compensation required by Venturelytic and/or third party or restitution of amounts paid.

### 3.2 Data Traffic to and from Customer

- 3.2.1** Venturelytic does not have any influence on or any insight in the data traffic from and/or to Customer. Venturelytic is merely a passive channel. Venturelytic does not give any warranties with regard to content of data such as but not limited to reliability and completeness.
- 3.2.2** Customer is responsible for the content of data traffic originating from Customer. Where applicable the Code of Conduct as set out in clause 3.4 will apply to Customer and its users.
- 3.2.3** Customer indemnifies and will keep Venturelytic free from any damage compensation regarding any claim, accusation or court procedure from a third party with regard to the (content of) the data traffic or the information originating from Customer.
- 3.2.4** Contrary to the terms of clause 7, Process-data will remain the (intellectual) property of Customer. Customer grants Venturelytic, without charge, a perpetual user and revision right of the Process-data. Process-data may only be distributed to a third party if not directly traceable to Customer.
- 3.2.5** All costs connected to the transfer of Process-data and/or other data at the request of Customer to another application will be fully for the account of Customer.

### 3.3 Personal Data

- 3.3.1** If Customer is the 'controller' ('verantwoordelijke') in terms of the General Data Protection Regulation (GDPR) and Venturelytic is the processor of personal data in terms of GDPR for Customer, Parties will enter into a Data Processing Agreement.

### 3.4 Code of Conduct

- 3.4.1** Customer will make use of Subscription Services in a responsible manner. It is prohibited to use Subscription Services in a manner that will result in:
- damage in the system of Venturelytic and/or third parties; or
  - interference with its use.
- 3.4.2** Customer will ensure that such damage and/or interference is not the result of misconfiguration on Customer's part.
- 3.4.3** It is not permitted to use Subscription Services that are illegal and/or in violation of the agreement. The foregoing includes amongst others the following activities:
- violation of a third party's rights or facilitating the violation of a third party rights, such as but not limited to intellectual property rights and privacy rights;
  - noncompliance to law and other applicable regulations;
  - spamming (unrequested distribution (or creating the possibility for third parties) of advertisement and/or other messages);
  - storage/distribution of (child) pornography;
  - causing danger to the functioning of the computer systems or the network of Venturelytic or third parties and/or for the services through the network, in particular caused by excessive sending of email or other data, badly secured systems or activity of viruses, Trojans or similar software;
  - sexual intimidation, racial prejudice and/or the harassment of individuals in any other manner;
  - distribution or making available to third parties in any other manner of obscene, insulting and tormenting material and/or other material of similar nature;
  - threats;
  - storage and distribution of viruses, worms and/or other destructive activities;
  - unauthorized access (hacking) of accounts, systems and/or networks of third parties and/or Venturelytic and/or the performance or non-performance of any other act that makes hacking possible.
- 3.4.4** Venturelytic reserves the right, at Venturelytic's sole discretion, if forced by law or a court order; and/or a third party informs Venturelytic and/or a suspicion exists that through Subscription Services a violation is made of the rights of a third party; there is a breach of the Terms and Conditions and/or the Agreement and the resulting

obligations in question have not been met wholly or partially, to bar access to Subscription Services, to remove the information in question and/or suspend its other obligations until Customer meets its obligations.

- 3.4.5** Venturelytic and/or third parties will never be liable for damage of whatever nature suffered by Customer or third parties for measures taken by and/or on behalf of Venturelytic on the basis of clause 3.4.4 Customer indemnifies Venturelytic from third parties for liability as a consequence of these measures. Payment obligations will remain in effect during the time period in which measures are undertaken by and/or on behalf of Venturelytic on the basis of clause 3.4.4.
- 3.4.6** If the actions and/or failure to act of Customer justifies this and/or the actions and/or failure to act of Customer continues regardless of the measures under taken by Venturelytic, as set out in clause 3.4.4, Venturelytic will be entitled in accordance with clause 1.6 to terminate the Agreement, without any damage compensation or restitution of amounts paid being required.

#### **4. NON-VENTURELYTIC APPLICATIONS**

##### **4.1 Non-Venturelytic Applications**

- 4.1.1** Venturelytic or third parties may from time to time make available to Customer Non-Venturelytic Applications and implement the aforementioned and other consulting services, except as expressly provided herein regarding the Salesforce Platform. Any acquisition by Customer of such non-Venturelytic Application, and any exchange of data between Customer and any Non-Venturelytic provider, is solely between Customer and the applicable Non-Venturelytic provider. Venturelytic not warrant or support Non-Venturelytic Applications, except as specified in an Order Form.
- 4.1.2** If Customer installs or enables Non-Venturelytic Applications for use with Services, Customer acknowledges that Venturelytic may allow providers of those Non-Venturelytic Applications to access Process-Data as required for the interoperation of such Non-Venturelytic Applications with the Services. Venturelytic is not responsible for any disclosure, modification or deletion of Process-data resulting from any such access by Non-Venturelytic Application providers.
- 4.1.3** Subscription Services may contain features designed to interoperate with Non-Venturelytic Applications. To use such features, Customer may be required to obtain access to Non-Venturelytic Applications from their providers, and may be required to grant Venturelytic access to Customers' account(s) on the Non-Venturelytic Applications. Venturelytic will not be deemed to be in breach of this Agreement to the extent any such Subscription Service features cease to function because the provider of the corresponding Non-Venturelytic Application, other than the Salesforce Platform, ceased to make their Non-Venturelytic Application available for interoperation with such Service features on reasonable terms.
- 4.1.4** If Venturelytic delivers Non-Venturelytic Applications to Customer, the Third Party Terms and Conditions apply to the Agreement in addition to these Terms and Conditions.
- 4.1.5** Venturelytic will deliver rights for Non-Venturelytic Applications under the same conditions as indicated in the Third Party Terms and Conditions.
- 4.1.6** No Maintenance, Support or other services will be carried out by Venturelytic on Non-Venturelytic Applications, unless agreed upon otherwise in writing.
- 4.1.7** With regard to delivered Non-Venturelytic Applications Venturelytic provides:
- The service on Non-Venturelytic Applications, under no more than the same conditions as set out in the Third Party Terms and Conditions.
  - The guarantee for the term and under no more than the same conditions as stated in the Third Party Terms and Conditions.

##### **4.2 Third Party Terms and Conditions**

- 4.2.1** Third Party Terms and Conditions that are declared applicable in these Terms and Conditions shall, when available to Venturelytic, be provided on request. Third Party Terms and Conditions will be delivered in the same format and language as received by Venturelytic.
- 4.2.2** The Terms and Conditions will have priority over Third Party Terms and Conditions unless indicated otherwise. When there is conflict between the Terms and Conditions and Third Party Terms and Conditions, Venturelytic has the right to declare the conflicting terms of the Third Party Terms and Conditions inapplicable or applicable.
- 4.2.3** Venturelytic has the right to deliver Third Party Products and Services or make use of Third Party Products and Services in fulfilling its obligations flowing forth from the agreement. Venturelytic is not responsible for Third Party Products and Services, unless agreed upon otherwise in writing.
- 4.2.4** If Venturelytic delivers Third Party Products and Services to Customer, the Third Party General Conditions will be applicable to the agreement in addition to these General Conditions Venturelytic.
- 4.2.5** Venturelytic will deliver rights for Third Party Products and Services under the same conditions as indicated in the Third Party General Conditions.

#### **5. DELIVERY**

##### **5.1 (Delivery) Dates**

- 5.1.1** All (delivery) dates which may be named by and may be applicable to Venturelytic are determined to the best of Venturelytic's knowledge on the basis of information made known to Venturelytic and will be taken into consideration as much as possible.
- 5.1.2** (Delivery) dates shall therefore not be considered to be target (delivery) dates ('fatale termijn') within which must be delivered, but an indicative period within which Venturelytic shall strive with best efforts to deliver the agreed upon items. If it is not possible to keep to the (delivery) date, then Venturelytic and Customer will consult with each other to agree on a substitute (delivery) date.
- 5.1.3** Exceeding a given (delivery) date which may be applicable never constitutes an attributable shortcoming by Venturelytic. Venturelytic does not accept liability under any circumstances in cases where the (delivery) date may be exceeded.

##### **5.2 Representations and Warranties**

- 5.2.1** Each Party represents that it has validly entered into this Agreement and has the legal power to do so.
- 5.2.2** Commencing upon the Effective Date, Venturelytic shall use reasonable efforts consistent with prevailing industry standards to maintain the Subscription Services in a manner which minimizes Errors and interruptions in the Services and shall perform the Professional Services in a professional and workmanlike manner. Subscription Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Venturelytic or by Non-Venturelytic Application providers, or because of other causes beyond Venturelytic's reasonable control, but Venturelytic shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.
- 5.2.3** Venturelytic is entitled to invoice its usual prices and the costs for repair, modification or replacement of the Subscription Services if the Error is deemed to be caused by mistakes made by Customer, the result is of improper and non-careful use, the result is of other causes that may not be attributed to Venturelytic or if Customer could have reasonably detected the error during the acceptance period.
- 5.2.4** The warranty as set forth in this clause, does not cover the reconstruction and/or repair of mutilated and/or lost data and/or information. Venturelytic does not warrant that the Subscription Services shall function without interruption or without Errors, are suitable for every intended use of Customer and/or will lead to results

desired by Customer during or after the Warranty period. The Warranty obligation is void if Customer alters the Subscription Services, or has them altered, without the written permission of Venturelytic, as required in this Agreement. Customer acknowledges that Venturelytic will not be responsible or liable for acts or omission of Salesforce.

**5.2.5** After expiry of the Warranty period, Venturelytic shall not be bound to repair, modify and/or replace the Subscription Services, unless parties have agreed otherwise.

**5.2.6** The Warranty provided on Non-Venturelytics Applications is limited to the Third Party Terms and Conditions .

## **6. FEES/PAYMENTS**

### **6.1 Fees and Payments**

**6.1.1** All fees exclude VAT and other levies imposed by the authorities. All fees quoted by Venturelytic are quoted in the currency stated within the Order Form and Customer must pay in the aforementioned currency. The amounts invoiced to Customer will include applicable VAT and other levies possibly imposed by the government.

**6.1.2** Customer shall pay all Subscription Fees specified in the Order Form. Except as otherwise specified herein or in an Order Form, (i) fees are based on Subscription Services 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.

**6.1.3** Customer shall pay all Professional Services Fees specified in the Order Form.

**6.1.4** Subscription Fees will be invoiced quarterly in advance and otherwise in accordance with the relevant Order Form. Unless otherwise expressly provided in the Order Form(s), Venturelytic will invoice Professional Services fees on a periodic basis, with each invoice setting forth the charges related to the previous period. Unless otherwise stated in the Order Form, fees are due 30 days from the invoice date, and invoices may be sent electronically. Customer is responsible for the payment of all invoices. These payments will not be subject to compensation, set-off ("verrekening") or suspending of obligations ("opschorting"). Complaints about the invoice must be brought to Venturelytic in writing and with proper arguments. Disputing a part of the invoice, whether well-founded or not, leaves unhindered the obligation to pay the undisputed part in accordance with this clause. Furthermore, Customer is responsible for providing complete and accurate billing and contact information to Venturelytic and notifying Venturelytic of any changes to such information.

**6.1.5** Should Customer fail to fulfil any payment obligation, Customer is in breach without any further notification of breach being required. Venturelytic reserves the right to charge all incurred costs to Customer, including judicial and extra-judicial expenses, with regard to the collection of debts from Customer.

**6.1.6** Until full payment has been made, Venturelytic has the right to suspend all services and obligations to Customer. Customer's obligation to meet Customer's commitments remains unchanged.

**6.1.7** Above mentioned paragraphs leave all the legal rights of Venturelytic unhindered, when Customer fails to meet Customer's commitments.

### **6.2 Price Changes**

**6.2.1** The Prices agreed upon by Venturelytic and Customer are among other things based on the costs of energy and salaries, social premiums, materials and travel and accommodation costs, etc., as well as the rate of exchange between the currencies as applicable at the time of entering into the Agreement. As of the first anniversary of the Effective Date, Venturelytic is authorized, for instance in case of changes to one or more of the cost items (for instance Non-Venturelytic Applications) and/or changes in the rate of exchange, changes to the Netherlands Consumer Price Index

(CPI)) or the CBS index for business services (CBS Prijnsindex 6202 Computeradviesing), to adjust prices to these changes. Changes will be rounded off upwards to a multiple of € 2,50.-.

**6.2.2** For information purposes only, Venturelytic will notify the Customer of such increase in the relevant invoice.

## **7. INTELLECTUAL PROPERTY RIGHTS**

### **7.1 Rights of Venturelytic and Customer**

**7.1.1** Venturelytic has the exclusive right to further develop the Services and place them at the disposal of third parties by means of licenses.

**7.1.2** Except where Non-Venturelytic Applications are concerned, all Intellectual Property Rights and other rights resulting from all activities carried out by Venturelytic, regardless of where and when carried out and regardless of whether it concerns the delivery of an existing Service or service to be developed in the future, reside with Venturelytic.

**7.1.3** Customer acknowledges that all present and future Intellectual Property Rights and other rights and the registration and/or application of the foregoing rights and/or similar rights for the whole term thereof and all renewals or extensions thereof, now or at any time in the future worldwide at all times shall be and are hereby assigned or will be transferred to Venturelytic.

**7.1.4** Customer is not permitted to remove or alter any designation concerning Intellectual Property Rights from the Services or to have such changes made by third parties.

**7.1.5** The Intellectual Property Rights or other rights of a Service, or a part thereof, can only be transferred to Customer by means of a written deed, if Venturelytic has these rights.

**7.1.6** In the event that Customer, a third party acting on Customer's behalf, or a User creates non-derivative applications or program code for use with the Services, Customer authorizes Venturelytic to host, copy, transmit, display and adapt such applications and program code, solely as necessary for Venturelytic to provide the Services in accordance with this Agreement. Venturelytic acquires no right, title or interest from Customer under this Agreement in or to such applications or program code, including any Intellectual Property Rights therein.

**7.1.7** All Intellectual Property Rights or other rights of course material and/or other documentation will remain with Venturelytic. Customer is explicitly not permitted to duplicate and/or transfer such to a third party for permanent or temporary use. Customer will ensure that its employees and/or third parties will comply to the foregoing obligation.

**7.1.8** Venturelytic has a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer.