

CLICKSOFTWARE EXPERT CLOUD SERVICES MASTER AGREEMENT

BY USING THE EXPERT SERVICE, OR BY CLICKING ON THE "I AGREE" BUTTON, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOU ARE ENTERING INTO A LEGAL AGREEMENT WITH CLICKSOFTWARE ("**COMPANY**"), AND AGREE TO BE BOUND BY AND TO BECOME A PARTY TO THIS CLICKSOFTWARE EXPERT CLOUD SERVICES MASTER AGREEMENT ("**AGREEMENT**"). IF YOU DO NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE "I DECLINE" BUTTON TO EXIT THE APPLICATION. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS. IF YOU ARE REPRESENTING AN ENTITY, BY ACCEPTING THIS LICENSE, YOU ARE CERTIFYING THAT YOU ARE AUTHORIZED TO LEGALLY BIND SUCH ENTITY TO THIS AGREEMENT. YOU WILL BE REFERRED TO AS "**CLIENT**" THROUGHOUT THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SOFTWARE AND SERVICES UNDER THIS AGREEMENT. You hereby waive any applicable rights to require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent not prohibited under applicable law.

1. DEFINITIONS.

- 1.1. "**Content**" means any information, documents, software, products and/or services contained or made available to Client in the course of using the Service, other than Client Data.
- 1.2. "**Client Data**" means any data, information, content, or other material provided, made available, or submitted by Client to the Service.
- 1.3. "**Documentation**" means the applicable technical documentation that is provided by Company online on its customer zone as may be updated from time to time.
- 1.4. "**Scheduled Resources**" means the number of Client employees (including either planners or shift employees), delivery vehicles and/or other unique named resources listed in the Service database as described in the ClickSoftware Order Form or in a future confirmed order.
- 1.5. "**Service(s)**" means the online software solutions offered by Company (including Content and Documentation) and identified during the ordering process, whereby Company will host and maintain certain Company software on servers owned and/or operated by Company, and Client will be granted non-exclusive electronic access thereto via the Internet, as more specifically identified herein. The term "Service(s)" applies to those ordered by Client under Order No. 1 attached hereto as the ClickSoftware Order Form or a future confirmed order.

2. ORDER PLACEMENT.

Client hereby orders the Services as specified in the ClickSoftware Order Form. Should Client place orders for additional Services or Scheduled Resources pursuant to Paragraph C of the ClickSoftware Order Form, such may be purchased at the rates set forth therein or under the then current pricing (whichever is applicable). Company will be under no obligation to provide any Services or additional Scheduled Resources under orders placed with inaccurate, new, insufficient or conflicting terms.

3. RIGHT TO USE.

- 3.1. Grant of Right to Use: Subject to payment of the applicable subscription fee (the "**Fee(s)**"), and pursuant to the terms and conditions of this Agreement, Company grants Client a limited, nonexclusive, nontransferable, non-sublicensable right to access and use the Service via the Internet in accordance with the Documentation, solely for Client's internal business purposes, during the time period and limited to the number of Scheduled Resources specified in the ClickSoftware Order Form or other relevant confirmed order. All rights not expressly granted to Client are reserved by Company.

3.2. Restrictions: Client shall not and shall not permit others to (i) modify or create derivative works based upon the Service or Content; (ii) use the Service or the Content for the benefit of a third party; (iii) license, sublicense, assign or otherwise transfer or exploit the Service or make the Service or the Content available to third parties, except as may be authorized by Company in writing; (iv) access the Service or Content for any reason other than for Client's internal business purposes and in strict accordance with the application description; or (v) interfere with the Service.

3.3. Internet Access: Client is responsible for obtaining access to the Internet using software and hardware that meet Company's minimum requirements, including security requirements.

3.4. Client Account Access. Client is responsible for the confidentiality and use of names and passwords under Client's account. Company will deem any communication, data transfer, or use of the Service received under Client's account names and passwords to be for Client's benefit and use. Client agrees to notify Company if account names or passwords are lost, stolen, or being used in an unauthorized manner. Client shall abide by all applicable laws and regulations in connection with its use of the Service.

3.5. Ownership of Client Data and license. Client retains exclusive ownership of Client Data and grants Company a non-exclusive license during this Agreement to use the Client Data in order to provide the Service to Client. Client agrees that back-up or archival copies of Client Data is not an infringement of any of Client's intellectual property rights or those of any third party. Client represents and warrants that it owns or has obtained the rights to all of the intellectual property rights subsisting in the Client Data, and Client has the right to provide Company the license granted herein to use such Client Data in accordance with this Agreement. Client agrees that it will not include in the Client Data, any data that is subject to the rights of any third parties without first obtaining all required authorizations and rights in writing from such third parties.

3.A ADDITIONAL TERMS.

3.1A. Flow Down Terms. Client acknowledges that the Services incorporates software and services provided by salesforce.com Sàrl ("SFDC") and, as required by Company's agreement with SFDC ("Click/SFDC Agreement") the terms and conditions set forth in Schedule 1 ("Flow Down Terms") are hereby incorporated into this Agreement and shall apply Client's use of the Services. Should any of the Flow Down Terms conflict with any of the terms set forth in this Agreement, the terms contained in the Flow Down Terms shall take precedence.

3.2A. Suspension and Termination by SFDC. Client acknowledges and understands that Client's access to the Services, or some functionality within the Services, may be suspended or terminated by SFDC due to Client's breach of the Flow Down Terms or any other agreement between Client and SFDC. Client shall remain liable Company for the fees for the Services until the expiration of the applicable subscription period, notwithstanding any such interruption or termination. In no case will any such termination or suspension by SFDC give rise to any liability of Company to Client for a refund, damages, or otherwise.

4. SERVICE FEE.

4.1. Pricing: Fees for the Service are as set forth in the applicable ClickSoftware Order Form. Fees are based on Services ordered and not on actual usage.

4.2. Payment Terms: Each installment of the Service Fee shall be due and payable in accordance with the Payment Schedule set forth in the ClickSoftware Order Form or the applicable confirmed order. All undisputed amounts not paid within thirty (30) days of the due date shall bear interest at the rate of 1.5% per month, or the highest rate allowed by law, whichever is less, from the date due until paid. Failure by Client to pay any amounts when due shall constitute sufficient cause for Company to terminate this Agreement and the rights granted herein.

4.3. Taxes: Prices are exclusive of taxes, customs, duties, use, excise, sales and value-added taxes, tariffs or withholding taxes ("**Taxes**") imposed as a result of the transactions contemplated by this Agreement. Client shall bear and be responsible for any and all applicable Taxes, customs, duties, use, excise, sales and value-added taxes, tariffs or withholding taxes imposed as a result of the transactions contemplated by this

Agreement, but shall not be responsible for taxes based on Company's income. Client acknowledges and agrees that it does not have legal residence or any other legal presence within the Commonwealth of Massachusetts and will not utilize the Services from within the Commonwealth of Massachusetts. If a taxing authority determines that Company did not collect all applicable taxes, Client shall remain liable to Company for such additional taxes, but not any interest or penalty assessed as the result of Company's failure to timely collect such additional taxes.

Client acknowledges and agrees that it does not have legal residence or any other legal presence within the Commonwealth of Massachusetts and will not utilize the Services from within the Commonwealth of Massachusetts.

5. SECURITY.

Company shall provide information security as set forth in Annex A ("**Information Security Program**").

5.A MONITORING AND RESTRICTIONS.

5.A(1) Company may, at its expense, monitor Client's compliance with the terms and conditions of this Agreement. If it is discovered that Client has underpaid applicable Fees to Company, Client shall be invoiced for such underpaid fees, which shall be due immediately upon receipt of such invoice.

5.A(2) The Services may be subject to additional restrictions and/or permissions, which are contractual in nature (i.e., the functionality itself has not been disabled as a technical matter in the Services). Company will advise Client of such restrictions and/or permissions, and Client will ensure that Client and all users of the Services abide by the same. Client agrees that SFDC may audit Client's use of the Service through SFDC's technical environment. Should any audit reveal any unauthorized use of the Service, Client agrees to pay to Company, within fifteen (15) business days of SFDC's notice of the audit results, the difference between the price charged by Company to Client for the applicable Services and Company's then-current list price for Client's actual use of the Service, beginning with the date of the first violation through the end of the then current subscription term.

6. LEGAL REQUIREMENTS.

6.1. Both parties have the right to make any announcement required by governmental or securities law.

6.2. Each Party agrees to clearly display an acknowledgment of the other party's ownership of its trademarks, logos and trade names. Client agrees to include the Company trademarks, logos and/or trade names on all advertisements, brochures, "Powered by" logon web page, and other appropriate documentation. Client shall not alter, remove, modify or otherwise impair the appearance of Company's trademark as it is displayed by Company.

7. TERM.

Unless earlier terminated in accordance with the provisions of Section 13 (*Termination*), the right to access and use the Service as set forth herein, shall become effective as of the Effective Date and shall remain in effect until the date set forth in the ClickSoftware Order Form or the relevant confirmed order.

8. INTELLECTUAL PROPERTY RIGHTS.

Client acknowledges that, all right, title and interest in the Service, as well as to Company trademarks, trade names, logos or other proprietary marks ("**Company Marks**") and other intellectual and proprietary rights therein, are and at all times shall remain the sole and exclusive property of Company, and shall be subject to the terms and conditions of this Agreement. In the event Client provides any suggestions, ideas, enhancement requests, or feedback to Company with respect to the Services, Client agrees that Company may freely use, disclose, reproduce, license, distribute and otherwise commercialize the same in any Company product or service. This Agreement is not a sale and does not convey any rights of ownership in or related to the Services

or the Content or any intellectual property rights owned by Company. Client agrees to fully comply with all federal, state, and local privacy laws in connection with use of the Services.

9. CONFIDENTIALITY.

9.1. General: Each party acknowledges that during the term of this Agreement it shall be entrusted with certain Confidential Information of the other party that should reasonably have been understood by the receiving party due to legends or other markings, the circumstances of disclosure or the nature of the information itself, to be proprietary and confidential (“**Confidential Information**”) to the disclosing party and agrees that it shall use reasonable care to protect the confidentiality thereof, using at least the same measures it would use to protect its own similar information and for a period of five (5) years after termination of this Agreement shall not (a) use such Confidential Information for any purpose except the performance of this Agreement, or (b) disclose any such Confidential Information to any person (except employees or agents on a need-to-know basis where such persons have agreed to be bound in writing to obligations of confidentiality), unless such disclosure is authorized by the other party in writing, or (c) disclose any such Confidential Information required by court or judicial order without first informing the other party and cooperating with such other party if such other party shall contest such disclosure.

9.2. Exceptions: The obligations of each party under this Section 9 (*Confidentiality*) shall not apply to information that (i) was in a party’s possession without confidentiality restriction prior to disclosure; (ii) was generally known in the trade or business in which it is practiced by the receiving party at the time of disclosure, or becomes so generally known after such disclosure, through no act of the receiving party; (iii) has come into the possession of the receiving party rightfully from a third party without obligation of confidentiality; or (iv) was developed by the receiving party independently of and without reference to Confidential Information.

10. WARRANTIES.

10.1. Power and Authority: Each party warrants to the other party that it has sufficient right and authority to enter into this Agreement, and to grant the rights and assume all of their respective rights and obligations set forth herein.

10.2. Service Warranties and Limitations:

10.2.1. Company warrants that the Services shall perform substantially in accordance with the online technical documentation that is provided by Company to Client in connection with the Service or any modifications thereto as made available by Company from time to time during the relevant term. In the event that Client notifies Company in writing specifying in reasonable detail how the Service fails to meet such warranty, Company shall use reasonable commercial efforts to correct the defect at no additional charge. Company shall not be liable to the extent any defect or error is caused, or contributed to, by use of the Service contrary to the applicable technical Documentation.

10.2.2. Company does not warrant that the use of the Service will be uninterrupted, error-free or completely secure. Client acknowledges that there are certain risks inherent in internet connectivity that could result in the loss of privacy, Confidential Information and property.

10.2.3. Company warrants during the term of this Agreement that it will use commercially reasonable efforts to safeguard and accurately maintain the integrity of Client Data, utilizing at a minimum industry standard security and backup procedures. In case of data corruption or loss, Company will use commercially reasonable efforts to correct the Client’s data or restore the Client Data as quickly as possible but in any case not to exceed 24 hours. Company warrants that the Service shall be free of viruses, Trojan horses, worms, spyware, or other malicious code or components, excluding documents and/or components uploaded by Client which the Service does not scan for viruses.

10.2.4. Company provides support for the Service via various communication channels including web based customer zone, hotline and email. Company will (i) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which Company shall give at least 8 hours’ notice via the Services and which Company shall schedule to the extent practicable during the

weekend hours from 6:00 p.m. Pacific time Friday to 3:00 a.m. Pacific time Monday), or (b) any unavailability caused by circumstances beyond Company's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Company employees), or Internet service provider failures or delays, and (ii) provide the Services only in accordance with applicable laws and government regulations.

“**Scheduled Downtime**” means the time during which Client is not able to access the Services, as hosted by Company, due to planned system maintenance performed by Company including without limitation scheduled maintenance, updates of hardware or software, or upgrades to increase storage capacity. Except for downtime required by SFDC, Company will only schedule and perform Scheduled Downtime during low usage or low traffic times (for example, from Saturday at 10:00 PM to Sunday at 10:00 AM. United States Eastern Time).

Company will notify the Client of Scheduled Downtime at least seventy two (72) hours before downtime occurs where at all practical when Scheduled Downtime will be expected to be over one hour. Any downtime that does not conform strictly to this definition will not be Scheduled Downtime.

The Company will use reasonable commercial efforts to provide at least two (2) hours' notice for any downtime that is not Scheduled Downtime (e.g., urgent security updates).

10.2.5. Company provides support and training for the Service via various communication channels including web based customer zone, hotline and email, all at an additional cost.

10.3. THE SERVICE IS NOT DESIGNED OR INTENDED FOR USE IN HIGH RISK ACTIVITIES OR HAZARDOUS ENVIRONMENTS THAT REQUIRE FAIL-SAFE PERFORMANCE WHERE FAILURE OF THE SERVICE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY OR ENVIRONMENTAL DAMAGE (SUCH AS IN DIRECT LIFE-SUPPORT MACHINES AND COMMUNICATION SYSTEMS). COMPANY EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF FITNESS OF THE SERVICE FOR ANY OF THE FOREGOING ACTIVITIES

10.4. No Other Warranties: THE FOREGOING WARRANTIES OF COMPANY ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE SERVICE SHALL OPERATE UNINTERRUPTED OR ERROR FREE.

11. INTELLECTUAL PROPERTY INFRINGEMENT.

11.1. Indemnity: Company shall indemnify and defend Client, at its sole expense, against all liability and expenses, including reasonable attorney fees and costs, in any judgment arising from a third party claim that the Services as authorized herein infringes upon a duly issued patent, copyright or trade secret of a third party in the country in which the Client is located, provided that Client promptly notifies Company in writing of such action. (i) If all or any part of the Service is, or in the opinion of Company may become, the subject of any claim or suit for infringement of any Intellectual Property Right, or (ii) in the event of any adjudication that the Service or any part thereof does infringe, or (iii) if Client's use of the Service or any part thereof is enjoined, Company, at its option and expense, shall either:

- (a) procure for Client the right to continue using said Service; or
- (b) replace same with an equivalent non-infringing Service, and extend this indemnity thereto; or
- (c) modify the infringing Service to make it non-infringing; or
- (d) remove the infringing portion of the Service.

If in Company's opinion none of these options is available to Company on reasonable economic terms, then the applicable Order or this Agreement may be terminated by Company subject to

Company refunding to Client the applicable pro-rata amount of the fees paid for the unused portion of the relevant Service.

11.2. Defence Against Action: Company shall have the right to control the defence and/or settlement of such action and Client shall provide reasonable assistance to Company in its defence thereof. Notwithstanding the foregoing, Company shall have no obligation toward Client for any claim arising from the foregoing infringement indemnity if any Service has been used by Client other than as authorized by Company and/or as provided herein.

11.3. Disclaimer: THE FOREGOING STATES THE ENTIRE LIABILITY OF COMPANY AND CLIENT'S SOLE REMEDY, FOR INFRINGEMENT OF ANY COPYRIGHT, PATENT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT WITH RESPECT TO ANY SERVICES FURNISHED HEREUNDER.

11.4. Indemnification by Client. Client shall indemnify and defend Company, at its sole expense, against all liability and expenses, including reasonable attorney fees and costs, in any action or proceeding brought by a third party arising from a claim that (i) the Client Data and/ or (ii) use of the Services in violation of this Agreement and/or Company's instructions, infringes or misappropriates a duly issued patent, copyright or trade secret of a third party, provided that Company promptly notifies Client in writing of such action, gives Client the right to control the defence and/or settlement of such action and provides reasonable assistance to Client in its defence thereof.

12. LIMITATION OF LIABILITY.

12.1. SUBJECT TO THE PROVISIONS OF SECTION 12.3, IN NO EVENT SHALL COMPANY OR ITS AFFILIATES AND/OR THIRD PARTY LICENSORS BE LIABLE TO CLIENT FOR ANY REASON, WHETHER ARISING OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY OR TERM OR CONDITION, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, TORT OR OTHERWISE, FOR ANY DIRECT LOSS OR DAMAGES ARISING OUT OF USE OF THE SERVICE OR OTHERWISE, IN THE AGGREGATE, IN EXCESS OF THE AMOUNTS RECEIVED FOR THE SPECIFIC SERVICE GIVING RISE TO SUCH LIABILITY DURING THE TWELVE MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

12.2. SUBJECT TO THE PROVISIONS OF SECTION 12.3, UNDER NO CIRCUMSTANCES WILL COMPANY OR ITS AFFILIATES AND/OR THIRD PARTY LICENSORS BE LIABLE FOR ANY OF THE FOLLOWING, WHETHER ARISING OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY OR TERM OR CONDITION, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, TORT OR OTHERWISE, WHETHER FORESEEABLE OR UNFORESEEABLE:

- (a) INDIRECT LOSS OR DAMAGES,
- (b) CONSEQUENTIAL LOSS OR DAMAGES,
- (c) PUNITIVE DAMAGES,
- (d) SPECIAL DAMAGES,
- (e) LOSS OF GOODWILL,
- (f) LOSS OF PROFITS,
- (g) LOSS OF USE OF MONEY OR USE OF THE PRODUCTS,
- (h) INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS.

12.3. THE EXCLUSIONS IN SECTIONS 12.1 AND 12.2 SHALL APPLY TO THE FULLEST EXTENT PERMISSIBLE AT LAW, BUT COMPANY DOES NOT EXCLUDE ANY LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR FOR FRAUD OR FRAUDULENT MISREPRESENTATION.

13. TERMINATION.

13.1. Default: Either party may terminate this Agreement with immediate effect if the other party materially breaches this Agreement and such breach remains uncured (to the extent that the breach can be cured) thirty (30) days after having received written notice thereof. Notwithstanding the foregoing, upon a material breach of the terms and conditions contained in Sections 3 (*Right to Use*), 3.A (*Additional Terms*), or 8 (*Intellectual Property Rights*), Company shall have the right to terminate this Agreement and the rights granted hereunder effective -upon written notice.

13.2. Due to Termination or Expiration of the Click/SFDC Agreement: Client acknowledges and agrees that, upon termination or expiration of the Click/SFDC Agreement, Company will no longer be able to provide the Service to Client. Company's inability to provide the Service following such event shall not constitute a breach of Company's obligations set forth in this Agreement. Company will endeavor to provide Client as much advanced notice as possible in the event Company anticipates the Click/SFDC Agreement will expire or terminate prior to the end of a particular subscription period and, if so, will meet with Client to discuss in good faith whether and how to transition and/or accommodate the Client.

13.3. Termination by Mutual Consent: Company and Client may terminate the service and this Agreement by mutual consent upon such terms as they may agree upon in writing.

13.4. Consequences: In the event of termination of this Agreement, Client shall promptly return to Company all Confidential Information provided by Company in the Client's possession. Company will provide Client with a full export of the Client Data in Company's possession in a standard format (e.g., SQL). Client acknowledges and agrees that some Client Data may be held by SFDC. To obtain Client Data held by SFDC, Client has thirty (30) days from the date of expiration or termination of the applicable subscription period to request a copy of such Client Data. SFDC will make the Client Data held by SFDC available to Client in a .csv format.

13.5. Survival: Sections 1 (*Definitions*), 3A (*Additional Terms*), 4 (*Service Fee*), 5A (*Monitoring and Restrictions*), 8 (*Intellectual Property Rights*), 9 (*Confidentiality*), 10.4 (*No Other Warranties*), 11 (*Intellectual Property Infringement*), 12 (*Limitation of Liability*), 13 (*Termination*), 14 (*Assignment*), 15 (*General*), 16 (*Notices*) and 17 (*Cloud Service Privacy Policy*) hereof shall survive any termination of this Agreement.

14. ASSIGNMENT.

This Agreement (and the rights granted hereunder) may not be assigned directly or by operation of law without the written consent of the non-assigning party, which consent shall not be unreasonably withheld, except that a party may assign this Agreement (and the rights granted hereunder) to (i) a subsidiary or parent of the assigning party, (ii) a successor corporation related to the assigning party by merger, consolidation, non-bankruptcy reorganization or governmental action, or (iii) a purchaser of substantially all of the assigning party's assets, provided, however, that in the case of Client, the assignee shall expressly assume in writing all rights, obligations and duties of Client under this Agreement. Any attempt to assign this Agreement in contravention of the preceding sentence is void. The Client shall give prompt written notice of the assignment to the Company. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of Company and Client.

15. GENERAL

15.1. Waiver: The failure of either party to enforce in any one or more instances any of the terms and conditions of this Agreement shall not be construed as a waiver of future performance of any such term or condition. Waiver of any term or condition shall only be deemed to have been made if expressed in writing by the party granting such waiver.

15.2. Severability: If any provision of this Agreement shall be held by a court of law of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be reformed, construed and enforced to the maximum extent permissible, and the remaining provisions shall remain in full force and effect.

15.2A Changes: Company shall be entitled to make changes in the content of the Service or to discontinue any Service upon reasonable prior written notice to Client. If Company chooses to discontinue the Service or any material portion thereof, then Company shall provide Client with a pro rata refund of the pre-paid Subscription Fee for the unused remainder of the subscription period for the discontinued Service or portion thereof.

15.3. Force Majeure: Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or its Appendices or interruption of services resulting directly or indirectly from acts of God, civil or military authority, war, riots, civil disturbances, accidents, fire, earthquakes, floods, strikes, lock-outs, labor disturbances, foreign or governmental order, or any other cause beyond the reasonable control of such party.

15.4. Governing Law: This Agreement will be governed by, interpreted, and construed in accordance with the substantive laws of the Commonwealth of Massachusetts.

15.5. Binding Arbitration: Without limiting any of the parties rights to seek injunctive relief in any court of competent jurisdiction, any controversy or claim arising out of or relating to this Agreement or the breach of this Agreement, or the respective rights and responsibilities of the parties hereunder shall be settled by binding arbitration before a sole arbitrator administered by the American Arbitration Association in accordance with its commercial arbitration rules (the “**Rules**”) and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitration shall be held and the award made in the Commonwealth of Massachusetts. The decision of the arbitrator shall be final and binding on both parties. The arbitrator shall be chosen by agreement of the parties from a panel of persons with knowledge of computer software industry practices and contracts. In the event the parties cannot agree on an arbitrator, the arbitrator shall be selected from the aforementioned panel pursuant to the Rules. The parties, their representatives and participants and the arbitrator shall hold the existence, content and result of the arbitration in confidence, except to the limited extent necessary to enforce a final settlement agreement or to obtain or enforce a judgment on an arbitrator decision and award, except to the extent disclosure is deemed necessary or advisable in the opinion of the Company General Counsel under any federal or state securities laws.

15.6. Entire Agreement: This Agreement together with its Annexes, constitute the entire understanding between the parties, and supersede all prior discussions, representations, understandings or agreements, whether oral or in writing, between the parties with respect to the subject-matter of this Agreement. The preprinted provisions of any Client Purchase Order issued hereunder shall not apply and shall be deemed to be for administrative purposes only.

15.7. Modifications and Amendments: . Company may modify or amend this Agreement from time to time, effective 30 days following delivery of an email notice thereof to Client. Client’s continued use of the Service thereafter shall be deemed to constitute Client’s acceptance of those changes.

15.8. Currency: All amounts are in the currency denominated in the Order.

16. NOTICES.

Any notice that is required to be given hereunder shall be in writing and delivered by courier service or mailed by pre-paid registered mail addressed to the parties’ respective addresses. Any such notice so delivered shall be deemed to have been received by the addressee at the time and date when actually delivered or in any event within ten (10) days after sending in the manner provided herein. The addresses provided herein may be changed at any time on prior written notice.

17. CLOUD SERVICE PRIVACY POLICY.

Company shall use any personally identifiable information that is collects or obtains while providing the Service in accordance with the Company Cloud Service Privacy Policy, which is available at www.clicksoftware.com/cloud-service-privacy-policy (“**Cloud Service Privacy Policy**”).

18. GOVERNMENT USE.



If Client is part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Service is restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement as applied to military agencies. The Service is a "commercial item", "commercial computer software" and "commercial computer software documentation". In accordance with such provisions, any use of the Service by the Government shall be governed solely by the terms of this Agreement.

Schedule 1

“**AppExchange**” means the online directory of on-demand applications that work with the SFDC Service, located at <http://www.appexchange.com> or at any successor websites.

“**Platform**” means the online, Web-based platform service provided by SFDC to Reseller in connection with Reseller’s provision of the Reseller Application to You.

“**Reseller**” means Company.

“**Reseller Application**” means the online software solutions identified in this Agreement, hosted and maintained by Company on servers owned and/or operated by Company, to which You will be granted non-exclusive electronic access via the Internet.

“**SFDC Service**” means the online, Web-based service generally made available to the public via <http://www.salesforce.com> and/or other designated websites, including associated offline components but excluding Third-Party Applications. For purposes of this SFDC Service Agreement, the SFDC Service does not include the Platform.

“**SFDC**” means salesforce.com Sàrl.

“**Third-Party Applications**” means online, Web-based applications and offline software products that are provided by third parties and are identified as third-party applications, including but not limited to those listed on the AppExchange and the Reseller Application.

“**Users**” means Your employees, representatives, consultants, contractors, agents and third parties with whom You conduct business who are authorized to use the Platform subject to the terms of this SFDC Service Agreement as a result of a subscription to the Reseller Application having been purchased for such User, and have been supplied user identifications and passwords by You (or by SFDC or Reseller at Your request).

“**You**” and “**Your**” means the Client (i.e, the customer entity which has contracted to purchase subscriptions to use the Reseller Application subject to the conditions of this SFDC Service Agreement, together with any other terms required by Reseller.)

“**Your Data**” means all electronic data or information submitted by You as and to the extent it resides in the Platform or SFDC Service.

1. Use of Platform.

- (a) Each User subscription to the Reseller Application shall entitle one User to use the Platform via the Reseller Application, subject to the terms of this SFDC Service Agreement, together with any other terms required by Reseller. User subscriptions cannot be shared or used by more than one User (but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment with You or otherwise changed job status or function and no longer require use of the Platform). For clarity, Your subscription to use the Platform hereunder does not include a subscription to use the SFDC Service generally or to use it in connection with applications other than the Reseller Application. If You wish to use the SFDC Service or any of its functionalities or services other than those included in the Reseller Application, or to create or use additional custom objects beyond those which appear in the Reseller Application in the form that it has been provided to You by Your Reseller, visit www.salesforce.com to contract directly with SFDC for such services. In the event Your access to the Reseller Application provides You with access to the SFDC Service generally or access to any Platform or SFDC Service functionality within it that is in excess of the functionality described in the Reseller Application’s user guide, and You have not separately subscribed under a written contract with SFDC for such access, then You agree to not access or use such functionality, and You agree that Your use of such functionality, or Your creation or use of additional custom objects in the Reseller Application beyond that which appears in the Reseller Application

in the form that it has been provided to You by your Reseller, would be a material breach of this Agreement.

- (b) If Your subscription to use the Platform hereunder includes Salesforce Mobile, You understand that prior to purchasing Salesforce Mobile, You should refer to the Mobile Device list located at <http://www.salesforce.com/mobile/devices/> for information on mobile devices that are supported by SFDC. You agree that SFDC will not provide any refunds, credits or other compensation or remedies in connection with Your purchase of Salesforce Mobile for any mobile devices that are not supported by SFDC. Third party mobile device, operating system and network connectivity providers may, at any time, cease distribution of, interrupt, deinstall and/or prevent use of Salesforce Mobile clients on supported mobile devices without entitling You to any refund, credit or other compensation or remedies.
 - (c) Notwithstanding any access You may have to the Platform or the SFDC Service via the Reseller Application, Reseller is the sole provider of the Reseller Application and You are entering into a contractual relationship solely with Reseller. In the event that Reseller ceases operations or otherwise ceases or fails to provide the Reseller Application, SFDC has no obligation to provide the Reseller Application or to refund You any fees paid by You to Reseller.
 - (d) You (i) are responsible for all activities occurring under Your User accounts; (ii) are responsible for the content of all Your Data; (iii) shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Platform and the SFDC Service, and shall notify Reseller or SFDC promptly of any such unauthorized use You become aware of; and (iv) shall comply with all applicable local, state, federal and foreign laws and regulations in using the Platform.
 - (e) You shall use the Platform and the SFDC Service solely for Your internal business purposes and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform or the SFDC Service available to any third party, other than to Users or as otherwise contemplated by this SFDC Service Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Platform or the SFDC Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Platform or the SFDC Service or its related systems or networks.
 - (f) You shall not (i) modify, copy or create derivative works based on the Platform or the SFDC Service; (ii) frame or mirror any content forming part of the Platform or the SFDC Service, other than on Your own intranets or otherwise for Your own internal business purposes; (iii) reverse engineer the Platform or the SFDC Service; or (iv) access the Platform or the SFDC Service in order to (a) build a competitive product or service, or (b) copy any ideas, features, functions or graphics of the Platform or the SFDC Service.
2. **Third-Party Providers.** Reseller and other third-party providers, some of which may be listed on pages within SFDC's website and including providers of Third-Party Applications, offer products and services related to the Platform, the SFDC Service, and/or the Reseller Application, including implementation, customization and other consulting services related to customers' use of the Platform and/or the SFDC Service, and applications (both offline and online) that interoperate with the Platform and/or the SFDC Service such as by exchanging data with the Platform and/or the SFDC Service or by offering additional functionality within the user interface of the Platform and/or the SFDC Service through use of the Platform and/or SFDC Service's application programming

- interface. SFDC does not warrant any such third-party providers or any of their products or services, including but not limited to the Reseller Application or any other product or service of Reseller, whether or not such products or services are designated by SFDC as “certified,” “validated” or otherwise. Any exchange of data or other interaction between You and a third-party provider, including but not limited to the Reseller Application, and any purchase by You of any product or service offered by such third-party provider, including but not limited to the Reseller Application, is solely between You and such third-party provider. In addition, from time to time, certain additional functionality (not defined as part of the Platform or SFDC Service) may be offered by SFDC or Reseller to You, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by You in connection with a separate purchase by You of such additional functionality. Your use of any such additional functionality shall be governed by such terms, which shall prevail in the event of any inconsistency with the terms of this SFDC Service Agreement.
3. **Integration with Third-Party Applications.** If You install or enable Third-Party Applications for use with the Platform or SFDC Service, You acknowledge that SFDC may allow providers of those Third-Party Applications to access Your Data as required for the interoperation of such Third Party Applications with the Platform or SFDC Service. SFDC shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-Party Application providers. In addition, the Platform and SFDC Service may contain features designed to interoperate with Third-Party Applications (e.g., Google, Facebook or Twitter applications). To use such features, You may be required to obtain access to such Third-Party Applications from their providers. If the provider of any such Third-Party Application ceases to make the Third-Party Application available for interoperation with the corresponding Platform or SFDC Service features on reasonable terms, SFDC may cease providing such Platform or SFDC Service features without entitling You to any refund, credit, or other compensation.
 4. **Access by Reseller.** To the extent Reseller serves as the administrator of the Reseller Application for You, You acknowledge that your use of the Reseller Application may be monitored by Reseller and Reseller may access Your Data submitted to the SFDC Service or Reseller Application. By agreeing to this SFDC Service Agreement, you are consenting to such monitoring and access by Reseller.
 5. **Processing of Your Data.** SFDC’s processing of Your Data is limited to the extent, and in such a manner as is necessary, for the performance of SFDC’s obligations under its agreement with Reseller with regard to provisioning the Platform in connection with the Reseller Application and shall not include processing Your Data for any other purpose without Your or Reseller’s written instruction as appropriate. For clarity, the following processing is deemed an instruction by Reseller and/or You: (a) processing necessary for the performance of SFDC’s obligations under its agreement with Reseller with regard to provisioning the Platform in connection with the Reseller Application; and (b) processing initiated by Your Users in their use of the Reseller Application.
 6. **Return of Your Data.** You have thirty (30) days from the date of termination your Reseller Application subscription term in which to request a copy of Your Data, which will be made available to You in a .csv format. Any modifications to such Your Data made by the Reseller Application outside of the Platform (if any) will not be captured in Your Data as returned and the return of any such modified data shall be the responsibility of Reseller.
 7. **Proprietary Rights.** Subject to the limited rights expressly granted hereunder, SFDC reserves all rights, title and interest in and to the Platform and the SFDC Service, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth in this SFDC Service Agreement. The Platform and the SFDC Service is deemed SFDC confidential information, and You will not use it or disclose it to any third party except as permitted in this SFDC Service Agreement.

8. **Compelled Disclosure.** If either You or SFDC is compelled by law to disclose confidential information of the other party, it shall provide the other party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.
9. **Suggestions.** You agree that SFDC shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into any SFDC products or services any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the Platform and/or the SFDC Service.
10. **Suspension and Termination.** Your use of the Platform and the SFDC Service may be immediately terminated and/or suspended upon notice due to (a) a breach of the terms of this SFDC Service Agreement by You or any User, (b) the termination or expiration of Reseller's agreement with SFDC pursuant to which Reseller is providing the Platform as part of the Reseller Application to You, and/or (c) a breach by Reseller of its obligations to SFDC with respect to the subscriptions it is providing to You in connection with this SFDC Service Agreement. If You use the Reseller Application in combination with a SFDC Service Org other than the Org provisioned solely for use with the Reseller Application (a "Shared org") You acknowledge and understand that (i) access to such Org, including the Reseller Application used in connection with such Org, may be suspended due to Your non-payment to SFDC or other breach of Your Agreement with SFDC, and (ii) in the event Your relationship with SFDC is terminated as a result of non-payment or other material breach of Your agreement with SFDC, Your Platform subscriptions would also be terminated. In no case will any such termination or suspension give rise to any liability of SFDC to You for a refund or other compensation.
11. **Subscriptions Non-Cancelable.** Subscriptions for the Platform are non-cancelable during a subscription term, unless otherwise specified in Your agreement with Reseller.
12. **No Warranty.** SFDC MAKES NO WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SFDC DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.
13. **No Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SFDC HAVE ANY LIABILITY TO YOU OR ANY USER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, COST OF PROCUREMENT OF REPLACEMENT GOODS OR SERVICES, LOST BUSINESS, LOSS OF USE, LOSS OF OR CORRUPTION OF DATA, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Further Contact.** SFDC may contact You regarding new Platform and SFDC Service features and offerings.
15. **Third Party Beneficiary.** SFDC shall be a third party beneficiary to the agreement between You and Reseller solely as it relates to this SFDC Service Agreement.

ANNEX A

Information Security Program

1. General. Company utilizes, either itself or through a third party provider an information security program (the “**Information Security Program**”) that uses reasonable efforts in accordance with industry standards to provide for the security and confidentiality of Client Data contained therein, to protect against any anticipated threats or hazards to the security or integrity of the same, and to protect against unauthorized access to the Service or Client Data that could result in harm to Client. Notwithstanding the foregoing, Client acknowledges and agrees that, use of or connection to the Internet provides the potential opportunity for illegal access to the Service and Client Data by unauthorized third parties. Details with respect to Company’s Information Security Program, and Client’s obligations and undertakings in connection with network security, and access to Client’s system by Company, are more fully set forth in this Annex A, which shall constitute an integral part of this Agreement. The Information Security Program shall, if applicable, (i) store Client Data in a secure format that is separate from data of other customers of Company and is accessible only by Client’s Authorized Users and those Personnel of Company who have a need to access Client Data to enable Company to perform its obligations hereunder, and who are bound by obligations of confidentiality sufficient to protect Client Data in accordance with the terms of this Agreement (each, an “**Authorized Personnel**”); (ii) require Company to train Company’s Authorized Personnel regarding their confidentiality obligations hereunder; and (iii) ensure that transmission of all Client Data provided or made accessible to Company under this Agreement uses industry-standard encryption.
2. Requirements. Company’s Information Security Program shall include, without limitation, (i) adequate physical security of all premises in which Client Data will be processed and/or stored; and (ii) using commercially available, industry standard anti-virus software applications designed to prevent (and, if applicable, mitigate) disabling devices. Company shall also have a network security program which shall include, without limitation, (i) appropriate access controls and data integrity controls; (ii) testing of all controls; and (iii) appropriate corrective action and incident response plans.
3. Confidentiality. Company shall use the same efforts to enforce the confidentiality obligations of Authorized Personnel as Company uses to enforce such obligations with respect to its own Confidential Information, provided that Company shall not use less than reasonable efforts in such enforcement.
4. Security Breach. In order to (i) facilitate that both Parties have the ability to address, contain and mitigate risks stemming from any actual, alleged or potential unauthorized disclosure, compromise or theft of Client’s Confidential Information (including but not limited to, the unauthorized use of Client Data), and (ii) provide a consistent process for identifying, reporting, investigating and closing information security incidents, Company and SFDC shall develop, implement, document and maintain an information security incident reporting process (hereinafter a “SIRP”). At a minimum, the SIRP must (a) mandate that relevant Company and SFDC personnel notify their management in the event that any Company and SFDC personnel become aware of any action which indicates that there has been or may be an information security incident, and (b) mandate that an officer of Client must be contacted as soon as reasonably practicable in the event of any actual or imminent disclosure of Client Confidential Information, in accordance with the aforementioned escalation procedure.
5. Disaster Recovery. Company warrants that it shall implement and maintain a disaster recovery plan that reasonably ensures that all Client Data in Company’s possession or control at a given time is capable of being recovered, and that the integrity of all such recovered Client Data is retained, in the event of a Security Breach or of any significant interruption or impairment of operation of Company equipment or any material loss, deletion, corruption or alteration of data (“**Disaster Recovery Plan**”).
6. Equipment and Network Security. Any equipment or hardware that Company shall use to provide the Services shall remain the property of Company and/or its subsidiaries, affiliates, partners or contractors. If Client or an Affiliate provides Company with remote access to Client’s (or an Affiliate’s) computer systems, other equipment or personal property (“**Client’s Systems**”), then any and all information relating to

such remote access shall be considered Client's Confidential Information and shall be subject to the obligations of confidentiality set forth in Section 9 (*Confidentiality*) of the Agreement. Company shall not download, install or access any software application on Client's Systems without Client's written permission (which written permission can take the form of an email from the Client project manager designated on the applicable order).

7. Access to Client's Systems. In addition, any and all access to Client's Systems by Company shall be subject to the following: (i) Client's Systems shall be used solely to perform services for Client, and shall not be used for any purpose other than the legitimate business purposes of Client; (ii) Access to Client's Systems shall be restricted to Company's personnel or sub-contractors, who need access in order for Company to fulfill its obligations under this Agreement; and (iii) Company will ensure that its Personnel do not attempt to break, bypass or circumvent Client's security systems, or attempt to obtain access to any hardware, programs or data beyond the scope of the access granted by Client in writing. Without limiting any of its other rights, Client reserves the right to restrict and monitor the use of Client's Systems, and to access, copy and disclose any information, data or files developed, processed, transmitted, displayed, reproduced or otherwise accessed in conjunction with such use; provided, however, that any such restriction that affects Company's ability to comply with SLA will relieve Company of its obligations under the SLA. Client may exercise its rights reserved hereunder: (a) to verify the performance of services via the dashboard provided by the Company; (b) to assure compliance by Company's Personnel with Client's policies and procedures; or (c) to investigate conduct that may be illegal or may adversely affect Client or its employees. Company will advise its Personnel concerning Client's rights hereunder. Finally, Client reserves the right to request Company to either discipline or remove any of its Personnel who fails to comply with any applicable laws, ordinances, regulations, codes, or with Client's security or work place policies and procedures in connection with performance of the Services.

8. Assessments. Company warrants that it will perform code inspections for every Major Version of the applicable components of the Service. "**Major Version**" means a new version which contains major architectural, functional or technological changes and is identified by incremental changes in the version number to the immediate left of the decimal point such as 2.1 to 3.1. Company shall address any issues noted in the inspections with corrective actions. The Parties agree that, if applicable and subject to confidentiality obligations, Company will provide information regarding its subcontractors as reasonably requested by Client.

9. Vulnerability Assessments. Company will perform periodic vulnerability assessments of its Service and network.

10. Client Data Transmitted Outside of SFDC's Systems. The Service may transmit Client Data outside SFDC's systems. SFDC is not responsible for the privacy, security or integrity of Client Data outside of SFDC's systems.

11. Administration. In the event Company requires access to Client's account or Client Data in order to administer or configure the Services as an Admin User or by other means, Company shall notify Client that Company will have access to the Client's Data and account.