



Professional Services Agreement

THIS AGREEMENT GOVERNS CUSTOMER'S PURCHASE AND RECEIPT OF SFDC PROFESSIONAL SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, OR (2) EXECUTING A STATEMENT OF WORK ("SOW") OR ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT RECEIVE THE PROFESSIONAL SERVICES.

SFDC's direct competitors are prohibited from receiving the Professional Services, except with SFDC's prior written consent. In addition, the Professional Services may not be received for purposes of evaluating or monitoring their quality or performance, or for any other benchmarking or competitive purposes.

This Agreement was last updated on June 1, 2019. It is effective between Customer and SFDC as of the date of Customer's accepting this Agreement.

1. DEFINITIONS

"Affiliate" means any entity that 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.

"Agreement" means this Professional Services Agreement and any exhibits, schedules and addenda.

"Change Order" means any change to an SOW or Order Form, as applicable, as described in the "Change Orders" section below. Change Orders will be deemed incorporated by reference in the applicable SOW or Order Form, as applicable in the absence of an SOW.

"Customer" means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into SOWs or Order Forms for Professional Services.

"Deliverable" means a deliverable under an SOW or Order Form.

"Online Services" means any online, web-based services and associated offline components made available by SFDC (or one or more SFDC Affiliates) to Customer under a separate agreement.

"Order Form" means an ordering document specifying the Professional Services to be provided hereunder and that is entered into between Customer and SFDC or any SFDC Affiliates, including any addenda and supplements thereto. Order Forms governed, in whole or in part, by this Agreement must have a SOW attached thereto or expressly state that the Order Form or certain Professional Services provided thereunder are governed by this Agreement. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Notwithstanding any language to the contrary in the Order Form, all Professional Services purchased under an Order Form are purchased separately from the Online Services and all references to "Order Form" herein shall not apply in any way to any Online Services, including without limitation, with respect to payment obligations and termination rights

"Professional Services" means work performed by SFDC, its Affiliates, or its or their respective permitted subcontractors under an SOW or Order Form, including the provision of any Deliverables specified in such SOW or Order Form.

"SFDC" means the salesforce.com company described in the "SFDC Contracting Entity, Notices, Governing Law, and Venue" section below.

"SOW" means a statement of work describing Professional Services to be provided hereunder, that is entered into between Customer and SFDC or any SFDC Affiliates or which is incorporated into an Order Form that is entered into between Customer and SFDC or any SFDC Affiliates. An SFDC Affiliate that executes an SOW with Customer will be deemed to be "SFDC" as such term is used in this Agreement. SOWs or Order Forms will be deemed incorporated herein by reference.

2. PROFESSIONAL SERVICES

- 2.1. Scope of Professional Services.** SFDC will provide to Customer the Professional Services specified in each SOW or Order Form (as applicable), subject to Customer's payment of all applicable fees as set forth in the "Fees" section of this Agreement.
- 2.2. Relationship to Online Services.** This Agreement is limited to Professional Services and does not convey any right to use Online Services. Any use of Online Services by Customer will be governed by a separate agreement. Customer agrees that its purchase of Professional Services is not contingent on the delivery of any future Online Service functionality or features, other than Deliverables, subject to the terms of the applicable SOW or Order Form, or on any oral or written public comments by SFDC regarding future Online Service functionality or features.

3. CUSTOMER COOPERATION

- 3.1. Cooperation.** Customer will cooperate reasonably and in good faith with SFDC in its performance of Professional Services by, without limitation:
- (a) allocating sufficient resources and timely performing any tasks reasonably necessary to enable SFDC to perform its obligations under each SOW or Order Form;
 - (b) timely delivering any Customer deliverables and other obligations required under each SOW or Order Form;
 - (c) timely responding to SFDC's inquiries related to the Professional Services;
 - (d) assigning an internal project manager for each SOW or Order Form to serve as a primary point of contact for SFDC;
 - (e) actively participating in scheduled project meetings;
 - (f) providing, in a timely manner and at no charge to SFDC, office workspace, telephone and other facilities, suitably configured computer equipment with Internet access, access to appropriate and knowledgeable employees and agents of Customer, and continuous administrative access to Customer's Online Service account, and coordination of onsite, online and telephonic meetings all as reasonably required by SFDC; and
 - (g) complete, accurate and timely information, data and feedback all as reasonably required.
- 3.2. Delays.** Any delays in the performance of Professional Services or delivery of Deliverables caused by Customer may result in additional applicable charges for resourcetime.

4. DELIVERY, ACCEPTANCE AND CHANGE ORDERS

- 4.1. Delivery of Services.** SFDC will provide the Professional Services, including any Deliverables, in accordance with the Agreement and the applicable SOWs or OrderForms.
- 4.2. Acceptance.** Upon completion of each Deliverable under an SOW or Order Form, SFDC will, as applicable: (a) submit a complete copy to Customer; and (b) at Customer's request, demonstrate its functionality to Customer. Customer is responsible for reviewing and testing all Deliverables in accordance with such SOW or Order Form pursuant to any acceptance criteria or test plans mutually agreed upon in writing by the parties for such Deliverable. Customer will provide SFDC with written notification of acceptance for each Deliverable promptly upon acceptance; however, failure to reject a Deliverable, as set forth below, will be deemed acceptance. If Customer, in its reasonable and good faith judgment, determines that any submitted Deliverable does not satisfy the agreed-upon acceptance criteria as specified in the applicable SOW or as mutually agreed upon in writing by the parties for such Deliverable, Customer must so notify SFDC in writing within 10 business days after SFDC's submission of the Deliverable, specifying the deficiencies in detail. SFDC will use commercially reasonable efforts to correct such deficiencies and resubmit the Deliverable to Customer as soon as practicable. Customer will again review and test the Deliverable against the agreed-upon acceptance criteria, and detail any deficiencies to SFDC in writing within 10 business days after resubmission of the Deliverable. If a Deliverable fails to meet the functional requirements specified in the applicable SOW or Order Form after its second resubmission to Customer, Customer may either, as its sole and exclusive remedy: (i) again reject the Deliverable and return it to SFDC for further correction and resubmission in accordance with the process described above (if the Deliverable is not accepted after two resubmissions, the matter will be escalated to Customer's executive sponsor for the project associated with the SOW or Order Form and the SFDC Engagement Manager) or (ii) terminate the relevant SOW or Order Form immediately upon written notice and recover all Professional Services fees paid under such SOW or Order Form for such deficient Deliverable. If the parties determine that a Deliverable's functional requirements specified in a SOW or Order Form require modification (for example, due to incorrect assumptions or changed requirements), they will cooperate in good faith to execute a Change Order for such revised requirements.
- 4.3. No Effect on Warranty Remedies.** Acceptance of Professional Services, including a Deliverable, will not affect Customer's rights or remedies under the "Warranty" section below.
- 4.4. Change Orders.** Changes to a SOW or Order Form will require a written Change Order signed by the parties prior to implementation of the changes. Such changes may include, for example, changes to the scope of work and any corresponding changes to the estimated fees and schedule.

5. FEES, INVOICING AND TAXES

- 5.1. Fees.** Customer will pay SFDC for the Professional Services at the rates specified in the applicable SOW or Order Form, or if no

rate is specified in the SOW or Order Form, SFDC's standard rates in effect at the time the SOW or Order Form is executed. Professional Services are provided on either a time-and-materials or fixed fee basis, as provided in an SOW or Order Form. Any amount set forth in a time-and-materials SOW is solely a good-faith estimate for Customer's budgeting and SFDC's resource-scheduling purposes, and is not a guarantee that the work will be completed for that amount; the actual amount may be higher or lower. If the estimated amount is expended, SFDC will continue to provide Professional Services under the same rates and terms. SFDC will periodically update Customer on the status of the Professional Services and the fees accrued under SOWs or Order Forms.

- 5.2. **Incidental Expenses.** Customer will reimburse SFDC for reasonable travel and out-of-pocket expenses incurred in connection with Professional Services. If an estimate of incidental expenses is provided in the applicable SOW or Order Form, SFDC will not exceed such estimate without the written consent of Customer.
- 5.3. **Invoicing and Payment.** Charges for time-and-materials engagements will be invoiced monthly in arrears unless otherwise expressly stated in the applicable SOW or Order Form. Charges for fixed fee engagements will be invoiced in advance in the manner as provided in the SOW or Order Form, as applicable, unless otherwise expressly stated therein. Invoiced amounts will be due and payable net 30 days from the invoice date. Customer is responsible for providing SFDC with its complete and accurate billing and contact information and notifying SFDC of any changes to such information.
- 5.4. **Overdue Charges.** Subject to the "Payment Disputes" section, if any invoiced amount is not received by SFDC by the due date, then without limiting SFDC's rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) SFDC may condition future purchases of Professional Services on payment terms shorter than those specified in the "Invoicing and Payment" section.
- 5.5. **Suspension of Professional Services.** Subject to the "Payment Disputes" section, if any amount owing by Customer under this or any other agreement for SFDC's Professional Services is 30 days or more overdue, SFDC may, without limiting its other rights and remedies, suspend its performance of Professional Services until such amounts are paid in full.
- 5.6. **Payment Disputes.** SFDC will not exercise its rights under the "Overdue Charges" or "Suspension of Professional Services" sections above if Customer is disputing the applicable charges reasonably and in good faith and cooperating diligently to resolve the dispute.
- 5.7. **Taxes.** SFDC's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If SFDC has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, SFDC will invoice Customer and Customer will pay that amount, unless Customer provides SFDC with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, SFDC is solely responsible for taxes assessable against it based on its income, property and employees.

6. PROPRIETARY RIGHTS AND LICENSES

- 6.1. **Customer Intellectual Property.** Customer does not grant to SFDC any rights in or to Customer's intellectual property except such licenses as may be required for SFDC to perform its obligations hereunder.
- 6.2. **Confidential Information.** As between the parties, each party retains all ownership rights in and to its Confidential Information.
- 6.3. **License for Contract Property.** Upon Customer's payment of fees due under an applicable SOW or Order Form, SFDC grants Customer a worldwide, perpetual, non-exclusive, non-transferable, royalty-free license to copy, maintain, use and run (as applicable) solely for its internal business purposes associated with its use of SFDC's online and offline services anything developed by SFDC for Customer, including Deliverables, under this Agreement ("**Contract Property**"). SFDC and Customer each retains all right, title and interest in its respective intellectual property and SFDC retains all ownership rights in the Contract Property.

7. CONFIDENTIALITY

- 7.1. **Definition of Confidential Information.** "**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. Confidential Information of each party includes the terms and conditions of this Agreement and all SOWs or Order Forms (including pricing), as well as business and marketing plans, strategies, data, 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.
- 7.2. **Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not 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, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates'

employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any SOW or Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section.

- 7.3. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

- 8.1. **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 8.2. **Warranty.** SFDC warrants that the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For any breach of the above warranty, Customer's exclusive remedy and SFDC's entire liability will be the re-performance of the applicable Professional Services. If SFDC is unable to re-perform the Professional Services as warranted, Customer will be entitled to recover the Professional Services fees paid to SFDC for the deficient Professional Services. Customer must make any claim under the foregoing warranty to SFDC in writing within 90 days of performance of such Professional Services in order to receive warranty remedies.
- 8.3. **Disclaimer.** THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. INDEMNIFICATION

- 9.1. **Indemnification by SFDC** SFDC will defend Customer against any claim, demand, suit or proceeding ("**Claim**") made or brought against Customer by a third party arising out of death, personal injury or damage to tangible property to the extent caused by SFDC personnel in their performance of the Professional Services, and will indemnify Customer for any damages, attorneys fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved in writing by SFDC of, any such Claim, all of the foregoing to the extent caused by SFDC personnel, provided that Customer: (a) promptly gives SFDC written notice of the Claim; (b) gives SFDC sole control of the defense and settlement of the Claim (except that SFDC may not settle any Claim unless it unconditionally releases Customer of all liability); and (c) gives SFDC all reasonable assistance, at SFDC's cost. The above defense and indemnification obligations do not apply to the extent a Claim arises from Customer's breach of this Agreement or applicable SOWs or Order Forms.
- 9.2. **Mutual Indemnity.** Each party (the "**Provider**") will defend the other party (the "**Recipient**") against any Claim made or brought against the Recipient by a third party alleging that any information, design, specification, instruction, software, data or material furnished by the Provider hereunder ("**Material**") infringes or misappropriates such third party's intellectual property rights, and will indemnify the Recipient from any damages, attorneys fees and costs finally awarded against the Recipient as a result of, or for amounts paid by Recipient under a settlement approved in writing by Provider of, any such Claim, provided that the Recipient: (a) promptly gives the Provider written notice of the Claim; (b) gives the Provider sole control of the defense and settlement of the Claim (except that the Provider may not settle any Claim unless it unconditionally releases the Recipient of all liability); and (c) gives the Provider all reasonable assistance, at the Provider's cost. The Provider will have no liability for any such Claim to the extent that (i) it arises from specifications or other Material provided by the other party, or (ii) such claim is based on the Recipient's use of a superseded or altered version of Material if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered version of the Material that was provided to the Recipient. In the event that some or all of the Material is held or is reasonably believed by the Provider to infringe or misappropriate, the Provider may in its discretion and at no cost to the Recipient (A) modify or replace the Material so it is no longer claimed to infringe or misappropriate, (B) obtain a license for the Recipient's continued use of the Material in accordance with this Agreement, or (C) require return of the affected Material and all rights thereto from the Recipient. If the Provider exercises option (C), either party may terminate the relevant SOW or Order Form upon 10 days' written notice given within 30 days after the Provider's exercise of such option, subject to the "Payment Upon Termination" section below.
- 9.3. **Exclusive Remedy.** This "Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this section.

10. LIMITATION OF LIABILITY

- 10.1. **Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL

OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE STATEMENT OF WORK OR ORDER FORM OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION.

- 10.2. Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL COVER, BUSINESS INTERRUPTION, OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT, AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11. TERM AND TERMINATION

- 11.1. Term.** This Agreement commences on the Effective Date and will remain in effect until terminated in accordance with this section.
- 11.2. Termination for Convenience.** Either party may terminate this Agreement at any time for convenience upon 10 days' written notice to the other. To the extent there are SOWs or Order Forms in effect when a party terminates this Agreement, such SOWs or Order Forms shall continue to be governed by this Agreement as if it had not been terminated. Customer may terminate an individual SOW or Order Form for convenience to the extent set forth in such SOW or Order Form.
- 11.3. Termination for Cause.** A party may terminate this Agreement and/or any SOW or Order Form for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 11.4. Payment Upon Termination.** Upon any termination of an SOW or Order Form, Customer will pay, in accordance with the "Invoicing and Payment" section of this Agreement, any unpaid fees and expenses incurred on or before the termination date (such Professional Services fees to be paid on a time-and-materials or percent-of-completion basis, as appropriate). In the event that Customer terminates an SOW or Order Form for cause and Customer has pre-paid any fees for Professional Services not yet received, SFDC will refund such pre-paid fees. In the event that SFDC terminates an SOW or Order Form for cause, any pre-paid fees for Professional Services charged on a fixed-fee basis are non-refundable, unless expressly stated otherwise in an SOW or Order Form.
- 11.5. Surviving Provisions.** The sections titled "Contract Property," "Confidentiality," "Representations, Warranties, Exclusive Remedies and Disclaimers," "Fees, Invoicing and Taxes," "Indemnification," "Limitation of Liability," "Term and Termination" and "General" will survive any termination or expiration of this Agreement.

12. INSURANCE

Each party will maintain, at its own expense during the term of this Agreement, insurance appropriate to its obligations under this Agreement, including as applicable general commercial liability, errors and omissions, employer liability, automobile insurance, and worker's compensation insurance as required by applicable law.

13. GENERAL

- 13.1. Compliance with Laws.** Customer will comply with all laws and governmental rules and regulations that apply to Customer in its performance of its obligations and exercise of its rights, under this Agreement.
- 13.2. Export Compliance.** The Professional Services, including Deliverables SFDC makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Neither party will access or use any Deliverables or Confidential Information provided to it hereunder in a U.S.-embargoed country or region (currently the Crimea region, Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or governmental regulation.
- 13.3. Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.
- 13.4. Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between Customer and SFDC regarding the provision and receipt of Professional Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in Customer's purchase order or in any other Customer order documentation will be incorporated into or form any part of this Agreement, and all such terms or conditions will be void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable SOW or Order Form, (2) any exhibit, schedule or addendum to this Agreement and (3) the body of this Agreement.

- 13.5. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.
- 13.6. No Third-Party Beneficiaries.** There are no third-party beneficiaries u this Agreement.
- 13.7. Subcontractors.** SFDC may, in its reasonable discretion, use subcontractors inside or outside the United States to perform any of its obligations hereunder. SFDC will be responsible for the performance of Professional Services by its personnel (including employees and contractors) and their compliance with SFDC's obligations under this Agreement, except as otherwise specified herein.
- 13.8. Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 13.9. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- 13.10. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld), provided however, either party may assign this Agreement in its entirety (including all SOWs or Order Forms, as applicable), without the other party's consent, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. A party's sole remedy for any purported assignment by the other party in breach of this paragraph will be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 13.11. SFDC Contracting Entity, Notices, Governing Law, and Venue.** The SFDC entity entering into this Agreement, the address to which Customer should direct notices under this Agreement, the law that will apply in any lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such lawsuit, depend on where Customer is domiciled.

If Customer is domiciled in:	The SFDC entity entering into this Agreement is:	Notices should be addressed to:	Governing law is:	Courts with exclusive jurisdiction are:
The United States of America, Mexico or a Country in Central or South America or the Caribbean	salesforce.com, inc., a Delaware corporation	Salesforce Tower, 415 Mission Street, 3rd Floor, San Francisco, California, 94105, U.S.A., attn: VP, Worldwide Sales Operations, with a copy to attn: General Counsel.	California and controlling United States federal law	San Francisco, California, U.S.A.
Canada	salesforce.com Canada Corporation, a Nova Scotia corporation	Salesforce Tower, 415 Mission Street, 3rd Floor, San Francisco, California, 94105, U.S.A., attn: VP, Worldwide Sales Operations, with a copy to attn: General Counsel.	Ontario and controlling Canadian federal law	Toronto, Ontario, Canada
France	salesforce.com France S.A.S, a simplified joint-stock company (Société par Actions Simplifiée) incorporated in France	Salesforce.com Sarl, Route de la Longeraie 9, Morges, 1110, Switzerland, attn: Director, EMEA Sales Operations, with a copy to attn.: Legal Department - Service Juridique, 3 Avenue Octave Gréard, 75007 Paris, France.	France	Paris, France
Germany	salesforce.com Germany GmbH, a limited liability company, incorporated in Germany	Salesforce.com Sarl, Route de la Longeraie 9, Morges, 1110, Switzerland, attn: Director, EMEA Sales Operations, with a copy to attn.: Legal Department - Erika-Mann-Strasse 31-37, 80636 München, Germany.	Germany	Munich, Germany
A Country in Europe, the Middle East or Africa, other than France and Germany	salesforce.com EMEA Limited, a limited liability company incorporated in England	Salesforce.com Sarl, Route de la Longeraie 9, Morges, 1110, Switzerland, attn: Director, EMEA Sales Operations, with a copy to attn: General Counsel.	England	England

Japan	Kabushiki Kaisha Salesforce.com, a Japan corporation	JP Tower 12F, 2-7-2 Marunouchi, Chiyoda-ku, Tokyo 100-7012, Japan, attn: Senior Director, Japan Sales Operations, with a copy to attn: General Counsel.	Japan	Tokyo, Japan
A Country in Asia or the Pacific region, other than Japan, Australia or New Zealand	Salesforce.com Singapore Pte Ltd, a Singapore private limited company	5 Temasek Boulevard #13-01, Suntec Tower 5, Singapore, 038985, attn: Director, APAC Sales Operations, with a copy to attn: General Counsel.	Singapore	Singapore
Australia or New Zealand	SFDC Australia Pty Ltd	201 Sussex Street, Darling Park Tower 3, Level 12, Sydney NSW 2000, attn: Senior Director, Finance with a copy to attn: General Counsel.	New South Wales, Australia	New South Wales, Australia

13.12. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to Customer shall be addressed to the relevant billing contact designated by Customer. All other notices to Customer shall be addressed to the relevant Services system administrator designated by Customer.

13.13. Agreement to Governing Law and Jurisdiction. Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

13.14. Local Law Requirements: France. With respect to Customers domiciled in France, in the event of any conflict between any statutory law in France applicable to Customer, and the terms and conditions of this Agreement, the applicable statutory law shall prevail.

13.15. Local Law Requirements: Germany. With respect to Customers domiciled in Germany, Section 4 “DELIVERY, ACCEPTANCE AND CHANGE ORDERS”, Section 8 “REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS”, Section 9.3 “Exclusive Remedy”, and Section 10 “LIMITATION OF LIABILITY” of this Agreement are replaced with the following sections respectively:

4. DELIVERY, TEST PROCEDURE AND CHANGE ORDERS

4.1. Delivery of Services. SFDC will provide the Professional Services, including any Deliverables, in accordance with the Agreement and the applicable SOWs or Order Forms.

4.2. Test Procedure.

(a) Customer is responsible for reviewing and testing all Deliverables in accordance with any functional criteria or test plans mutually agreed upon in writing by the parties for such Deliverable. Upon Customer’s request, SFDC shall demonstrate the functionality of a Deliverable to Customer.

(b) Customer shall confirm in writing if the Deliverable was provided materially in compliance with this Agreement and the SOW or Order Form, promptly upon testing.

(c) If Customer, in its reasonable and good faith judgment, determines that any Deliverable does not pass the agreed-upon test criteria as specified in the applicable SOW or Order Form, Customer must so notify SFDC in writing within 10 business days after SFDC’s submission of the Deliverable, specifying the deficiencies in detail.

(d) SFDC will use commercially reasonable efforts to correct such deficiencies and resubmit the Deliverable to Customer within a reasonable period of time. Customer will again review and test the Deliverable against the agreed-upon test criteria, and detail any deficiencies to SFDC in writing within 10 business days after resubmission of the Deliverable.

(e) If a Deliverable fails to meet the test procedures specified in the applicable SOW or Order Form after its second resubmission to Customer, Customer may either, as its sole and exclusive remedy:

(i) again reject the Deliverable and return it to SFDC for further correction and resubmission in accordance with the process described above (if the Deliverable is not accepted after two resubmissions, the matter will be escalated to Customer’s executive sponsor for the project associated with the SOW or Order Form and the SFDC Engagement Manager) or

(ii) claim remedies in accordance with section 8.3 „Remedies“ below.

(f) The Deliverables shall be deemed to comply with this Agreement and the SOW or Order Form, if Customer is not rejecting the Deliverable within the 10 day period as defined in section 4.2(c) and 4.2(d) above.

4.3. Change Orders. Changes to an SOW or Order Form will require a written Change Order signed by the parties prior to implementation of the changes. Such changes may include, for example, changes to the scope of work and any corresponding changes to the estimated fees and schedule. Notwithstanding the foregoing, if the parties determine that a Deliverable's functional requirements specified in a SOW or Order Form require modification (for example, due to incorrect assumptions or changed requirements), they will cooperate in good faith to execute a Change Order for such revised requirements.

8. BREACH OF DUTY

8.1 Duty to Perform. The Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards ("**Duty to Perform**").

8.2 Reporting and Re-Performance. Customer shall report any deviation of the Professional Services from the Duty to Perform to SFDC in writing without undue delay during the SOW period and shall submit a detailed description of such deviation. SFDC shall re-perform the Professional Services within a reasonable period of time. Customer shall forward to SFDC any useful information available to Customer for the re-performance of the Professional Services.

8.3. Remedies. If the re-performance described in the above section fails, Customer may terminate the respective SOW or Order Form by written notice, provided that SFDC had enough time for the re-performance. Section 11.4 "Payment upon Termination" sentence 1 and sentence 2 shall apply accordingly. If SFDC is responsible for the deviation of the Professional Services from the Duty to Perform and is in default with the re-performance, Customer may assert claims for the damage caused in the scope specified in section 10 "Limitation of Liability".

8.4 Defects in Title. Defects in title of the Professional Services shall be handled in accordance with the provisions of section 9 "Indemnification".

9.3. Restriction. The Limitation of Liability in accordance with section 10 "Limitation of Liability" shall apply to any claims according to this section 9 "Indemnity".

10. LIMITATION OF LIABILITY

10.1. Unlimited Liability. The Parties shall be mutually liable without limitation

- (a) in the event of wilful misconduct or gross negligence,
- (b) within the scope of an expressed guarantee taken over by the respective party,
- (c) in the event that a defect is maliciously concealed,
- (d) in case of an injury to life, body or health,
- (e) according to the German Product Liability Law.

10.2. Liability for Breach of Cardinal Duties. If cardinal duties are infringed due to slight negligence and if, as a consequence, the achievement of the objective of this Agreement including any applicable SOW or Order Form is endangered, or in case of a slightly negligent failure to comply with duties, the very discharge of which is an essential prerequisite for the proper performance of this Agreement (including any applicable SOW or Order Form), the parties' liability shall be limited to foreseeable damage typical for the contract. In all other respects, any liability for damage caused by slight negligence shall be excluded.

10.3. Liability Cap. Notwithstanding the foregoing, the parties' liability for damages with respect to any single incident arising out of or related to this Agreement shall not exceed the amount paid by Customer hereunder to SFDC in the 12 months preceding the damaging event.

10.4. Limitation Period. To the extent that the parties are not liable in accordance with section 10.1 "Unlimited Liability", the limitation period shall be 60 days for remedy claims of Customer in accordance with section 8.3 "Remedies" and 2 years for the parties' claims for damages from the point in time they arose and the claiming party became aware thereof. Regardless of the claiming party's awareness, the limitation period shall be 3 years from the damaging event.

10.5. Scope. With the exception of liability in accordance with section 10.1 "Unlimited Liability", the above limitations of liability shall apply to all claims for damages, irrespective of the legal basis including claims for damages due to tort. The above limitations of liability also apply in case of claims for damages of a party against the respective other party's employees, agents or bodies.