

KAPTIO TRAVEL SOLUTIONS – MASTER SUBSCRIPTION AGREEMENT

KAPTIO TRAVEL SOLUTIONS MASTER SUBSCRIPTION AGREEMENT (MSA)

The Services to be provided to Customer and Customer's payment obligations for subscription to the same, shall be set forth in one or more Order Forms which in each instance shall be subject to these Conditions.

These Conditions apply to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

Background

- A The agreement made between the parties on the basis of these Conditions contains the terms of Kaptio and SFDC (within Schedule 1) and applies to all Kaptio travel solutions on-demand subscription services on salesforce.com and/or force.com. If customer registers for a free trial for Kaptio services, these Conditions will also govern that free trial.
- B These Conditions apply to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and shall govern Customer's use of all Kaptio Services. If Customer is entering into this Agreement on behalf of another legal entity, Customer represents that Customer has the authority to bind such entity to these Conditions, in which case the term "Customer" shall refer to such entity.
- C As part of the Service, Kaptio will provide Customer with use of its on-demand services, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by these Conditions including any materials available on the Kaptio's website incorporated by reference herein, including but not limited to the Kaptio's privacy and security policies. For reference, a Definitions section is included at clause 37 of these Conditions.
- D As the Services are integrated with, and built upon, the SFDC platform, it is a condition of the Agreement that you accept and agree to the terms of the SFDC Service Agreement which shall take effect between Kaptio and Customer as well as between Customer and SFDC, who shall be a third party beneficiary. A copy of the SFDC Service Agreement in its current form as at the date of the Agreement is set out at Schedule 1. Your ongoing usage of the Service shall deem your acceptance of any updated version of the SFDC Service Agreement that may be issued by SFDC from time to time in accordance with clause 17.

1. Confidential Information and Privacy

- 1.1 Without prejudice to any other confidentiality arrangements that may be agreed by the parties from time to time, each party undertakes that it shall not at any time during or after the term of the Agreement disclose to any person any Confidential Information concerning the business, affairs, customers or clients of the other party, except as permitted by clause 1.2.
- 1.2 Each party may disclose the other party's Confidential Information:
 - (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Conditions. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 1.2; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 1.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Conditions.

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- 1.4 The parties will comply with any obligations imposed upon them by application of applicable Data Protection Law, it being acknowledged by Customer that it shall be the data controller of any personal data pertaining to Customer Users processed in accordance with clause 5 (as such terms are defined in the Data Protection Act 1998).
- 1.5 In the event, SFDC modifies its privacy and security policies for the relevant platform, Kaptio shall have the right to accordingly modify its privacy and security policies. Kaptio shall provide timely notification to the Customer of upcoming changes. If such changes to the privacy and security policies result in making the use of the Service by Customer illegal under applicable Data Protection Law, both parties in good faith will take commercially reasonable measures to restore compliance under Data Protection Law in accordance with clause 29.2. The legal consequences of termination for the already prepaid fees are set out in clause 14.4
- 1.6 Individual users, when they initially log in, will be asked whether or not they wish to receive marketing and other non-critical Service-related communications from Kaptio from time to time. They may opt out of receiving such communications at that time or at any subsequent time by changing their preference under Personal Setup. Note that because the Service is a hosted, online application, Kaptio occasionally may need to notify all users of the Service (whether or not they have opted out as described above) of important announcements regarding the operation of the Service. Any such notifications shall not constitute marketing materials to which a Customer's decision to opt-out of marketing content relates.
- 1.7 Customer agrees that Kaptio, subject to prior written approval by Customer, can disclose the fact that Customer is a paying customer and the edition of the Service that Customer is using and may name Customer as a reference.

2. License Grant & Restrictions

- 2.1 Kaptio hereby grants to Customer a non-exclusive, non-transferable, revocable worldwide right to use the Service, solely for Customer's own internal business usage for the purpose that it was intended by Kaptio, subject to these Conditions. Customer may grant sublicenses to affiliated companies, in which Customer owns the majority of equity shares and/or voting rights (hereinafter "**Customer Affiliates**") and subject to the provisions of this clause 2.1 and clause 2.2 may grant sublicenses to franchisees of Customer for the time they are bound by a franchise agreement with Customer (hereinafter "**Franchisees**"). Upon request by Kaptio, Customer will provide Kaptio with a list of all Customer Affiliates and Franchisees to which a sublicense has been granted as well as the number of respective Users of such Customer Affiliates and Franchisees. Under no circumstances may Customer grant a sublicense or any other use or access rights to entities which are direct or indirect competitors of Kaptio. All rights not expressly granted to Customer are reserved by Kaptio and its licensors.
- 2.2 Customer, Customer Affiliates, and Franchisees may not access the Service if the respective entity becomes a direct competitor of Kaptio, except with Kaptio's prior written consent. In addition, Customer, Customer Affiliates and Franchisees may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.
- 2.3 Subject to clause 2.1 above, Customer, Customer Affiliates, and Franchisees shall not:
- (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the content thereof ("**Content**") in any way;
 - (b) modify or make derivative works based upon the Service or the Content;
 - (c) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or
 - (d) reverse engineer or access the Service in order to:
 - (i) build a competitive product or Service,
 - (ii) build a product using similar ideas, features, functions or graphics of the Service, or
 - (iii) copy any ideas, features, functions or graphics of Service.

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- 2.4 User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.
- 2.5 Customer, Customer Affiliates, and Franchisees may use the Service only for their internal business purposes and shall not:
- (a) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws;
 - (b) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or material that violates any third party privacy rights;
 - (c) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;
 - (d) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or
 - (e) attempt to gain unauthorised access to the Service or its related systems or networks.
- 2.6 The Service is built on SFDC's platform force.com. Each of Kaptio's license includes a Force.com Platform Embedded Edition License. Customer, Customer Affiliates, and Franchisees cannot extend the Force Platform Embedded Edition product using additional custom objects. Their license to the Force Platform Embedded Edition is limited to the objects included in the Service.
- 2.7 A detailed overview about the current features and capabilities of the Service is available at: <http://www.kaptio.com/travelSolutions/features>. The above does not apply for customers which have purchased force.com or Salesforce.com CRM licenses directly from SFDC. The features and capabilities of these licenses are different from the Force Platform Embedded Edition and are documented on the SFDC website.

3. Kaptio's Responsibilities

- 3.1 Subject to Customer complying and/or performing its obligations and responsibilities set out in clause 4, Kaptio shall use reasonable endeavors to provide the Service in accordance with these Conditions in all material respects.
- 3.2 Kaptio shall use reasonable endeavours to meet any performance dates agreed in writing between the parties (whether in a Order Form or otherwise) but any such dates shall be estimates only and time for performance by Kaptio shall not be of the essence of the Agreement.
- 3.3 Kaptio shall comply with any additional responsibilities as set out in any relevant Order Form.

4. Customer's Responsibilities

- 4.1 Customer shall co-operate with Kaptio in all matters relating to the Service.
- 4.2 Customer is responsible for all activity occurring under Customer's, Customer Affiliates' and Franchisees' User accounts and Customer shall be responsible Customer, Customer Affiliates and Franchisees and their respective Users abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with their use of the Service, including those related to data privacy (including Applicable Data Laws), international communications and the transmission of technical or personal data.
- 4.3 Customer shall require that all conditions and restrictions under these Conditions pertaining to the Services will also be followed by Customer Affiliates and Franchisees and Customer will impose such conditions and restriction on such Affiliates and Franchisees in a legally binding way and make Kaptio a third party beneficiary of the respective agreements where requested to do so by Kaptio.
- 4.4 Customer shall: (i) notify Kaptio immediately of any unauthorised use of any password or account or any other known or suspected breach of security; (ii) report to Kaptio immediately and use reasonable efforts to stop immediately any copying or

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distribution of Content that is known or suspected by Customer, Customer Affiliates and Franchisees and their Users; and (iii) not impersonate another Kaptio user or provide false identity information to gain access to or use the Service.

- 4.5 Customer shall ensure that all of Customer's, Customer Affiliates' and Franchisees' outgoing email campaigns are compliant with the CAN-SPAM Act (<http://www.ftc.gov/spam>) and any additional anti-spam laws of their respective countries. Customer shall be liable to pay to Kaptio, on demand, all reasonable costs, charges or losses sustained or incurred by Kaptio (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under these Conditions, subject to Kaptio confirming such costs, charges and losses to Customer in writing.
- 4.6 If Kaptio's performance of its obligations under these Conditions is prevented or delayed by any act or omission of Customer, its agents, subcontractors, consultants or employees, Kaptio shall not be liable for any costs, charges or losses sustained or incurred by Customer that arise directly or indirectly from such prevention or delay.
- 4.7 Customer shall, by entering into the Agreement, agree to the SFDC Service Agreement in the form set out in Schedule 1, and, by its continued usage of the Services shall be deemed to have accepted all later versions of the SFDC Service Agreement that may be issued by SFDC from time to time.

5. Account Information and Data

- 5.1 Kaptio does not own any data, information or material that Customer, Customer Affiliates and Franchisees submit to the Service in the course of using the Service ("**Customer Data**").
- 5.2 Customer, Customer Affiliates, and Franchisees, not the Kaptio, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data submitted by Customer, Customer Affiliates, and Franchisees. Kaptio shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data caused by Customer, Customer Affiliates, and Franchisees.
- 5.3 In the event that the Agreement between the parties is terminated, Kaptio will make available to Customer a file of Customer Data within thirty (30) days following termination, if Customer so requests at the time of termination in writing. In the event Customer, subject to clause 16.2 below, orders Termination Support, the above stated term of thirty (30) days following termination will be extended to the term of the Termination Support, which may be a maximum period of six (6) months following termination. Termination Support by Kaptio shall be subject to clause 16.

6. Intellectual Property Ownership

- 6.1 Subject to the reservation of Kaptio alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Kaptio Travel Solutions Technology, the Content and Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer, Customer Affiliates, or Franchisees or any other party relating to the Service.
- 6.2 Nothing in these Conditions shall not convey to Customer, Customer Affiliates, or Franchisees any rights of ownership in or related to the Service, the Kaptio Travel Solutions Technology or the Intellectual Property Rights owned by Kaptio. The Kaptio Travel Solutions name, the Kaptio Travel Solutions logo, and the product names associated with the Service are trademarks of Kaptio or third parties, and no right or license is granted to use them.
- 6.3 Customer acknowledges that, where the Supplier does not own Pre-existing Materials, Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to Customer.

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7. Compliance with Laws and Policies

- 7.1 In performing their respective obligations under these Conditions;
- (a) each party shall comply with all applicable laws, statutes and regulations from time to time in force; and
 - (b) each party shall comply with the UK Bribery Act 2010.

8. Third Party Interactions

- 8.1 During use of the Service, Customer, Customer Affiliates, and Franchisees may enter into correspondence with, purchase goods and/or the Service from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between Customer, Customer Affiliates, and Franchisees and the applicable third-party. Kaptio and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between Customer, Customer Affiliates, and Franchisees and any such third party.
- 8.2 Kaptio does not endorse any sites on the Internet that are linked through the Service. Kaptio provides these links only as a matter of convenience, and in no event shall Kaptio or its licensors be responsible for any content, products, or other materials on or available from such sites.
- 8.3 Kaptio provides the Service to Customer pursuant to these Conditions. Customer recognises, however, that certain third-party providers of ancillary software, hardware or Service may require Customer's agreement to additional or different license or other terms prior to use of or access to such software, hardware or Service and Customer acknowledges that, where the Supplier does not own any particular element of the Service being delivered, Customer's use of rights in such part of the Service is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to Customer.

9. Charges and Payment of Fees

- 9.1 In consideration of the provision of the Service by Kaptio, Customer shall pay all fees or charges to Kaptio's account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The initial charges and payment are set out in the relevant Order Form or any subsequent mutually agreed and signed Order Form, which will be equal to the current number of total User licenses (plus basic fee where applicable) multiplied by the User license fee currently in effect. Payments may be made annually in advance, except if otherwise agreed to in writing by the parties.
- 9.2 Customer is responsible for paying for all User licenses, including User licenses for Customer Users, Customer Affiliate Users and Franchisees Users, ordered for the entire License Term, whether or not such User licenses are actively used.
- 9.3 Kaptio will invoice Customer for all Services it provides pursuant to these Conditions, any relevant Order Form, and/or its Schedules to this these Conditions for the initial subscription term and any renewal subscription term(s) as set forth in clause 11. Such invoicing by Kaptio and payment by Customer shall, unless otherwise agreed under a Order Form, be made in advance, either annually or in accordance with any different billing frequency stated in these Conditions, any relevant Order Form, and/or in the Schedules to these Conditions. Unless otherwise stated herein, Customer shall pay invoiced charges in full and in cleared funds within thirty (30) days from the invoice date. Customer is responsible for maintaining complete and accurate billing and contact information in the Service.
- 9.4 Added User licenses will be subject to the following:
- (a) added licenses will be coterminous with the preexisting License Term (either Initial Term or renewal term);
 - (b) the license fee for the added licenses will be the then current, generally applicable license fee; and

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- (c) licenses added in the middle of a billing month will be charged in full for that billing month.
- 9.5 Without prejudice to clause 9.6, Kaptio reserves the right to review and increase its fees and charges to the extent that specific third party providers which provide services relevant to the Service, increase fees and charges payable to them by Kaptio. Specific third party providers in the meaning of the preceding sentence shall, unless otherwise notified by Kaptio, be SFDC and Amazon S3.
- 9.6 Without prejudice to clause 15.3, Kaptio shall have the right to modify its fees and charges by giving three (3) months' written notice to the end of the calendar month. Should an increase of fees and charges amount to more than seven (7) percent per year, Customer may, within 30 days following notification of such increase being received or deemed to have been received in accordance with clause 24, elect to terminate the Agreement. The legal consequences of termination for the prepaid fees are set out in clause 14.4.
- 9.7 All pricing terms are confidential, and Customer agrees not to disclose them to any third party.

10. Excess Data Storage Fees

The maximum disk storage space provided to Customer at no additional charge is the greater of 1 GB or an aggregate of 20 MB per User license. If the amount of disk storage required exceeds these limits, Customer will be charged the then-current storage fees. Kaptio will use reasonable efforts to notify Customer when the average storage used per license reaches approximately 90% of the maximum; however, any failure by Kaptio to so notify Customer shall not affect Customer's responsibility for such additional storage charges. Kaptio reserves the right to establish or modify its general practices and limits relating to storage of Customer Data.

11. Subscription Term, Billing and Renewal

- 11.1 Kaptio shall provide the Service to Customer in accordance with these Conditions and .
- 11.2 Kaptio shall provide the Service from the date agreed by the parties in any particular Order Form or other writing, and if no such date has been agreed, then from the date on which Kaptio first provided Services to Customer.
- 11.3 The minimum term for each Order Form and renewal thereof is one (1) year.
- 11.4 The Agreement and any existing Order Form will automatically renew for additional one (1) year periods (each a "**Renewal Term**") unless terminated by either party by providing 45 days prior written notice to the other party.
- 11.5 Kaptio charges and collects in advance for use of the Service. The renewal charge will be equal to the then-current number of total User licenses times the license fee in effect during the prior term which shall be effective upon renewal and thereafter. Fees for other usage of the Service will be charged on an as-quoted basis. Kaptio's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, in particular applicable Value Added Tax in the then current amount.
- 11.6 Customer agrees to provide Kaptio complete and accurate billing and contact information. This information includes Customer's legal company name, street address, e-mail address, and name and telephone number of an authorised billing contact and License Administrator. Customer agrees to update this information within 30 days of any change to it.
- 11.7 Customer will be billed in the currency stated on the relevant Order Form.

12. Non-Cancelable and Non-Refundable

Notwithstanding any contrary terms in these Conditions or its Schedules the annual subscription fees paid for the Service are non-cancelable and non-refundable. The number of User subscriptions specified in any Order Form cannot be decreased prior to the end of the term of the Agreement, regardless of any termination, nonpayment, non-use or other conduct or inaction.

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13. Non-Payment and Suspension

- 13.1 In addition to any other rights granted to Kaptio herein and under applicable statutory law, Kaptio reserves the right to suspend or terminate the Agreement and access to the Service if Customer's account falls into arrears in the amount of more than five (5) percent of the annual fees and charges. Wherever reasonably practicable, prior to suspension, Kaptio will inform Customer of the impending suspension by sending a warning letter and granting Customer a final deadline for payment of thirty (30) calendar days.
- 13.2 Without prejudice to any other right or remedy that it may have, if Customer fails to pay Kaptio on the due date:
- (a) Customer shall pay interest on the overdue amount at the rate of 4% above the then current base rate of the Bank of England per month on any outstanding balance, or the maximum permitted by law, whichever is the lesser, plus all expenses of collection. Customer will continue to be charged for User licenses during any period of suspension.
 - (b) Kaptio may suspend the Service until payment has been made in full.
- 13.3 All sums payable to Kaptio under the Agreement shall become due immediately on its termination, despite any other provision. Customer will be obligated to pay the balance due on Customer's account computed in accordance with clause 9. Customer agrees that Kaptio may bill Customer for such unpaid fees. Kaptio reserves the right to impose a reconnection fee in the event Customer is suspended and thereafter requests access to the Service. This clause is without prejudice to any right to claim for interest under the law, or any such right under these Conditions.
- 13.4 Customer agrees and acknowledges that Kaptio has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if Customer's account is 30 days or more in arrears.
- 13.5 All amounts due under these Conditions shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

14. Termination

- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Agreement (including the SFDC Service Agreement) which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - (b) the other party repeatedly breaches any of the terms of the Agreement (including the SFDC Service Agreement) in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
 - (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

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- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
 - (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
 - (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in sub-clause 14.1(c) to clause 14.1(i) (inclusive); or
 - (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 14.2 Any breach of Customer's payment obligations or unauthorised use of the Kaptio Travel Solutions Technology or the Service will be deemed a material breach of these Conditions. Without prejudice to its rights of termination of clause 14.1 Kaptio, in its sole discretion, may terminate User passwords, account or use of the Service if Customer breaches or otherwise fails to comply with these Conditions. In addition, Kaptio may terminate a free account at any time in its sole discretion.
- 14.3 Without affecting any other right or remedy available to it, Kaptio may terminate the Agreement with immediate effect by giving written notice to Customer if:
- (a) Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
 - (b) there is a change of Control of Customer in accordance with clause 31 .
- 14.4 If Customer rightfully terminates the Agreement due to a material breach of Kaptio or on the basis of any other termination right set out in clause 14.1, within the Term of the Agreement, Customer's obligation to pay the fees shall cease as from the date of such termination. Any fees prepaid for a specific period of time shall be refunded on a pro rata basis for the time remaining after termination within fourteen (14) days of termination.
- 14.5 On termination or expiry of the Agreement, the following clauses shall continue in force: clause 1 (Confidential Information and Privacy), clause 6 (Intellectual property rights), clause 21 (Limitation of liability), clause 27 (Conflict), clause 34 (Governing law) and clause 35 (Jurisdiction).
- 15. Term and Renewal of Purchased Subscription**
- 15.1 User subscriptions purchased by Customer commence on the start date specified Order Form and continue for the subscription term specified therein.
- 15.2 Except as otherwise specified, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either Party gives the other notice of non-renewal at least 45 days before the end of the relevant subscription term.
- 15.3 The per-unit pricing during any such renewal term shall be the same as that during the prior term unless Kaptio has given Customer written notice of a pricing increase at least 90 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed 10% over the pricing for the Service in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.
- 15.4 In the case of free trials, notifications provided through the Service indicating the remaining number of days in the free trial shall constitute notice of termination.

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16. Effect of Termination to Customer Data

- 16.1 In the event that the Agreement is terminated pursuant to clause 14, Kaptio will make available to Customer a file of Customer's Data within 30 days of termination if Customer so requests at the time of termination in writing. In the event Customer, subject to clause 16.2, orders Termination Support, the above stated term of sixty (60) days following termination will be extended to the term of the Termination Support, which may be a maximum period of six (6) months following termination.
- 16.2 In the event that the Agreement is terminated (other than by reason of Customer's breach and a termination for cause under clause 14.4), Kaptio may, upon Customer's request, for a maximum period of six months following termination:
- (a) submit an offer for consulting services with regard to migrating Customer Data to another service on a times and material basis;
 - (b) agree to reduce payable User Licenses to a minimum number of administrator licenses required for migration;
 - (c) agree to renew the Term for a short term usage in order to support migration and parallel usage with the new system.

17. Restrictions on Customer when using SFDC Services

- 17.1 Customer shall not develop applications for internal use with SFDC services made available by Kaptio. Customer may develop applications for internal use with SFDC services only when purchased directly from SFDC and in accordance with any terms that may be applicable to such directly services. Customer cannot extend the SFDC services using additional custom objects, and their use of the SFDC services in connection with the Service and is limited to the objects and functionalities included in the Service, and those functionalities of the Force Platform strictly necessary for the operation of the Service. Subscriptions to the Service cannot be joined with an existing SFDC Org. Where such a combination is required, Customer must procure the necessary subscriptions directly from SFDC to support, operate and run the Service. Should Customer wish to upgrade its SFDC service subscriptions contained as a part of the Service to full SFDC Force.com Edition subscriptions, such upgrade subscriptions shall be made available directly by SFDC.
- 17.2 Wherever Customer uses the SFDC Services, it shall do so in accordance with the SFDC Service Agreement, which it hereby accepts by entering into this Agreement. Customer shall be deemed to have accepted any updated version of the SFDC Service Agreement introduced by SFDC from time to time which shall take effect between Kaptio and Customer as well as between Customer and SFDC, who shall be a third party beneficiary.
- 17.3 Customer agrees to the following provisions of the SFDC Service Agreement which shall take effect between Kaptio Travel Solutions and Customer as well as between Customer and SFDC, which shall be a third party beneficiary. Prior to granting access to the Kaptio Travel Solutions On-Demand Service, Customer shall impose the terms and conditions of the SFDC Service Agreement also on Customer Affiliates and Franchisees in a way that Kaptio Travel Solutions and SFDC are third party beneficiaries. The SFDC Service Agreement only applies to customers who are direct customers of Kaptio Travel Solutions and have purchased all licenses including the Force.com Platform Embedded Edition licenses from Kaptio Travel Solutions. Customers who have purchased Force.com Platform or CRM licenses from Salesforce.com directly come under the Salesforce.com Master Service Agreement which can be found on the Salesforce.com website.

18. Indemnification

- 18.1 Customer shall indemnify and hold Kaptio, its licensors and each such party's parent organisations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) arising out of or in connection with:

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- (a) a claim alleging that use of Customer Data infringes the rights of, or has caused harm to, a third party;
 - (b) a claim, which if true, would constitute a violation by Customer of Customer's representations and warranties contained in clause 19; or
 - (c) a claim arising from the breach, negligent performance or non-performance by Customer or Customer Users of the Agreement, provided in any such case that Kaptio;
 - (i) gives written notice of the claim promptly to Customer;
 - (ii) where Kaptio considers it reasonable to do so having referred to the nature of the particular claim, gives Customer sole control of the defense and settlement of the claim (provided that Customer may not settle or defend any claim unless Customer unconditionally releases Kaptio from all liability and such settlement does not affect Kaptio's business or the Service);
 - (iii) provides to Customer all available information and assistance; and
 - (iv) has not compromised or settled such claim.
- 18.2 Subject to clause 21, Kaptio shall indemnify and hold Customer and Customer's parent organisations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against such liabilities, costs, expenses, damages and losses arising out of or in connection with:
- (a) a claim, which if true, would constitute a violation by Kaptio of its representations or warranties contained in clause 19; or
 - (b) a claim arising from breach of the Agreement by Kaptio; provided that Customer;
 - (i) gives written notice of the claim to Kaptio;
 - (ii) gives Kaptio sole control of the defense and settlement of the claim (provided that Kaptio may not settle or defend any claim unless it unconditionally releases Customer from all liability);
 - (iii) provides to Kaptio all available information and assistance; and
 - (iv) has not compromised or settled such claim.
- 18.3 Kaptio shall have no indemnification obligation, and Customer shall indemnify Kaptio pursuant to these Conditions, for claims arising from any infringement arising from the combination of the Service with any of Customer and/or third party products, hardware or business process(s).

19. Warranties

- 19.1 Each Party warrants that it has the legal power to enter into the Agreement.
- 19.2 Kaptio warrants that;
- (a) it will provide the Service in a manner consistent with general industry standards applicable to the provision thereof;
 - (b) the Service shall perform materially in accordance with the User Guide; and
 - (c) it owns or otherwise has sufficient rights in the Service to grant to Customer the rights to use the Service granted herein.

20. Disclaimer

EXCEPT AS EXPRESSLY PROVIDED HEREIN, KAPTIO MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN ACCORDANCE WITH CLAUSE 21.4.

21. Limitation of Liability

- 21.1 Nothing in these Conditions shall limit or exclude Kaptio's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation; or

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- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 21.2 Save in connection with any indemnity given in clause 18.1 for which liability shall be unlimited, and subject to clause 21.1, neither party or its licensors shall be liable to anyone, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise (including loss of data, revenue, profits, use or other economic advantage, arising under or in connection with the Agreement) for:
 - (a) the use or inability to use the Service;
 - (b) for any content obtained from or through the Service;
 - (c) any interruption, inaccuracy, error or omission, regardless of cause in the content;
 - (d) loss of or damage to goodwill;
 - (e) loss of use or corruption of software, data or information and;
 - (f) any indirect or consequential loss,even if the party from which damages are being sought or such party's licensors have been previously advised of the possibility of such damages.
- 21.3 Kaptio's total liability to Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to the amounts actually paid by and/or due from Customer in the twelve (12) month period immediately preceding the event giving rise to such claim.
- 21.4 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 21.5 The United Nations Convention on the International Sales of Goods shall not apply.

22. Third Party Rights

Save as set out herein, the Agreement is for the sole benefit of the parties and their successors and permitted assigns. There are no third party beneficiaries to the Agreement with the exception that SFDC shall be a third party beneficiary solely as it relates to the SFDC Service Agreement.

23. Force Majeure

- 23.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
 - (a) acts of God, flood, drought, earthquake or other natural disaster;
 - (b) epidemic or pandemic;
 - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (d) nuclear, chemical or biological contamination or sonic boom;
 - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
 - (f) collapse of buildings, fire, explosion or accident;
 - (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
 - (h) non-performance by Kaptio or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
 - (i) interruption or failure of utility services.
- 23.2 Provided it has complied with clause 23.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of these Conditions or otherwise liable for any such failure or delay in the performance of such

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obligations. The time for performance of such obligations shall be extended accordingly.

23.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

23.4 The Affected Party shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 Business Days from its start, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

(b) use all reasonable endeavors to mitigate the effect of the Force Majeure Event on the performance of its obligations.

23.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 12 weeks, the party not affected by the Force Majeure Event may terminate the Agreement by giving 5 Business Day's written notice to the Affected Party.

24. Notices

24.1 If Customer is domiciled in: Europe, Middle East, Africa, The United States of America, Canada, Mexico or a Country in Central or South America or the Caribbean, Bermuda, Australia, Asia, or a country in the Pacific Region Customer will be contracting with Kaptio.

24.2 Notices should be addressed to: KAPTIO EHF, Hlidasmari 2, 201 Kopavogur, Iceland ("**Notice Address**").

24.3 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at the Notice Address in the case of the Kaptio and its registered address (if a company) or its principal place of business (in any other case) in the case of Customer; or

(b) sent by email to the main email address of the other party.

24.4 Any notice or communication shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt;

(b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service; and

(c) if sent by email, at 9.00am on the next Business Day after transmission.

24.5 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

25. Waiver

25.1 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

25.2 A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

25.3 A party that waives a right or remedy provided under the Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

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26. Entire Agreement

- 26.1 The Agreement (inclusive, for the avoidance of doubt, of any Order Form entered into by the parties from time to time and any documents or materials referred to in these Conditions) constitutes the entire agreement between the parties, with respect to the subject matter hereof and supersedes and extinguishes all prior and contemporaneous agreements, proposals, representations, promises, assurances, warranties and understandings between them, whether written or oral, concerning its subject matter.
- 26.2 Each party agrees that it shall have no remedies and no claim in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.
- 26.3 Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of the Agreement, and all such terms or conditions shall be null and void.

27. Conflict

To the extent of any conflict or inconsistency between the provisions in the body of these Conditions; any schedule or addendum hereto; and any Order Form, the terms of the body of this Agreement shall prevail, followed by the SFDC Service Agreement, followed by the Order Form.

28. Modification to Terms

- 28.1 Kaptio reserves the right to modify these Conditions or its policies relating to the Service at any time provided that SFDC modifies its terms and conditions for the SFDC Platform and/or the SFDC Services either generally in the market or towards Kaptio and such modification requires Kaptio to modify the Service and/or the respective terms and conditions vis a vis Customer.
- 28.2 If such changes result in making the use of the Service by Customer illegal under applicable Law, including but not limited to Data Protection Law, both parties in good faith will take commercially reasonable measures to restore compliance under applicable law in accordance with clause 29.2.

29. Severance

- 29.1 If any provision or part-provision of these Conditions are or become invalid, illegal or unenforceable, they shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Conditions.
- 29.2 If any provision or part-provision of these Conditions are invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

30. Assignment and Other Dealings

- 30.1 The Agreement is personal to Customer and Customer shall not assign, transfer, mortgages, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement without the prior written approval of Kaptio which will not be unreasonably withheld.
- 30.2 This Agreement may be assigned without Customer's consent by Kaptio to (i) a parent or subsidiary, (ii) an acquirer of Kaptio's assets, or (iii) a successor by merger. Any purported assignment in violation of this clause 30 shall be void.

31. Change in Control

Any actual or proposed change in control of Customer that results or would result in a direct competitor of Kaptio directly or indirectly owning or controlling 50% or more of Customer shall entitle Kaptio to terminate the Agreement for cause immediately upon written notice.

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32. Rights and Remedies

The rights and remedies provided under these Conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

33. Dispute Resolution Procedure

33.1 The parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between senior executives of the parties, who have authority to settle the same.

33.2 If the matter is not resolved by negotiation within 14 days of receipt of a written 'invitation to negotiate' the parties agree to enter into mediation to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (ADR notice) to the other party to the dispute referring the dispute to mediation. A copy of the referral should be sent to CEDR.

33.3 The mediation will start not later than 28 days after the date of the ADR notice. The commencement of a mediation will not prevent the parties commencing court proceedings where a delay in such commencement would materially prejudice a party's position.

34. Governing Law

The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

35. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

36. Service of Proceedings

Kaptio hereby appoints Oury Clark Solicitors, with address at 10 John Street, London WC1N 2EB as its agent for receipt of proceedings issued in the English courts in respect of the Agreement.

37. Agreed Terms

The following definitions and rules of interpretation apply in these Conditions, Order Forms between the parties, and any schedule to these Conditions now or hereafter associated herewith:

"Agreement" the agreement formed between the parties for the provision and acceptance of the Services on the basis of these Conditions, the Schedules to these Conditions and any Order Form entered into by the parties from time to time;

"Business Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

"Conditions" shall mean these online terms of use and any schedule, whether written or submitted online, and any materials available on the Kaptio's website specifically incorporated by reference herein.

"Confidential Information" shall mean all confidential or proprietary information disclosed orally or in writing by one Party to the other that is identified as confidential or whose confidential nature is reasonably apparent. Confidential Information shall not include information which: (a) is or becomes a part of the public domain through no fault of the receiving Party; (b) was in the receiving party's lawful possession prior to the disclosure; (c) is lawfully disclosed to the receiving Party without restriction on disclosure or any breach of confidence; (d) is independently developed by the receiving party; or (e) is required to be disclosed by law. Each Party agrees to hold the other's Confidential Information in confidence, and not to use or disclose such Confidential Information other than in connection with performance of its obligations hereunder;

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“**Content**” means the audio and visual information, documents, software, products and Services contained or made available to Customer, Customer Affiliates or Franchisees in the course of using the Service;

“**Customer Affiliate**” means companies affiliated with Customer, in which Customer owns the majority of shares and/or voting rights;

“**Customer Data**” means any data, information or material provided or submitted by Customer, Customer Affiliates, and Franchisees to the Service in the course of using the Service;

“**Customer Data**” has the meaning given in clause 5.1;

“**Data Protection Law**” means all laws, regulations, legislative and regulatory requirements, and codes of practice applicable to the processing of personal data in the course of or in connection with this Agreement including, without limitation, all the provisions of the UK Data Protection Act 1998 and any regulations or instruments thereunder and of Directive 95/46/EC of the European Parliament, and the General Data Protection Regulation;

“**Franchisee**” means franchisees of Customer for the time they are bound by a franchise agreement with Customer;

“**Initial Term**” means the initial period as set out in relevant Order Form;

“**Intellectual Property Rights**” means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, Service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world;

“**License Administrator(s)**” means those Users designated by Customer who are authorised to purchase licenses by executing Order Form and to create User accounts and otherwise administer Customer’s use of the Service;

“**License Term(s)**” means the period(s) during which a specified number of Users are licensed to use the Service pursuant to a Order Form and its amendments;

“**Online Order Center**” means Kaptio’s online application that allows the License Administrator designated by Customer to, among other things, add additional Users to the Service;

“**Order Form**” shall mean the written order completed by Customer for Kaptio’s provision of Services setting out, amongst other things, the specific scope of Services; the number of Users; the Services Start Date and any other terms specifically associated with the Services to be provided by Kaptio in conjunction with, and subject to, these Conditions.

“**Kaptio**” means Kaptio ehf. and Icelandic-based incorporation, having its principal place of business at Hlidasmari 5, 201 Kopavogur, Iceland;

“**Kaptio Travel Solutions Technology**” means all of Kaptio’s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Customer by Kaptio in providing the Service;

“**Service(s)**” means the products and/or services that are ordered by the Customer via an Order Form, inclusive of any ancillary online or offline products and services provided to Customer by Kaptio, to which Customer is granted access under this Agreement;

“**SFDC**” means salesforce.com.

“**SFDC Services**” means the services provided by SFDC in connection with the Services.

“**SFDC Service Agreement**” the SFDC terms and conditions applicable to the SFDC Services, a copy of which can be found at Schedule 1.

“**Termination Support**” shall have the meaning as set out in clause 5.3.

“**User(s)**” means Customers, Customer Affiliates’ and Franchisees’ employees, representatives, consultants, contractors or agents who are authorised to use the Service and have been supplied user identifications and passwords by Customer (or by Kaptio at Customer’s request).

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Schedule 1 SFDC Service Agreement

Customer agrees to the following provisions of the SFDC Service Agreement which shall take effect between Kaptio Travel Solutions and Customer as well as between Customer and SFDC, which shall be a third party beneficiary. Prior to granting access to the Kaptio Travel Solutions On-Demand Service, Customer shall impose the terms and conditions of the SFDC Service Agreement also on Customer Affiliates and Franchisees in a way that Kaptio Travel Solutions and SFDC are third party beneficiaries. For the purpose of clarification: The termination right pursuant to Section 6 hereunder shall be interpreted as a termination right on the part of SFDC but not as a termination right of Kaptio Travel Solutions. The SFDC Service Agreement only applies to customers who are direct customers of Kaptio Travel Solutions and have purchased all licenses including the Force.com Platform Embedded Edition licenses from Kaptio Travel Solutions. Customers who have purchased Force.com Platform or CRM licenses from Salesforce.com directly come under the Salesforce.com Master Service Agreement which can be found on the Salesforce.com website. “**AppExchange**” means the online directory of on-demand applications that work with the Service, located at <http://www.appexchange.com> or at any successor websites.

“**Reseller**” means Kaptio ehf. and its subsidiaries.

“**Reseller Application**” means the Kaptio Travel Solutions On-Demand Service

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

“**SFDC CRM Service**” means the online, Web-based application and platform service generally made available to the public via <http://www.salesforce.com> and/or other designated websites, including associated offline components but excluding AppExchange applications.

“**SFDC**” means salesforce.com.

“**Users**” means Customer’s employees, representatives, consultants, contractors or agents who are authorized to use the Service 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 Customer (or by Salesforce.com or Reseller at Your request).

“**You**” and “**Your**” means customer 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 Customer as and to the extent it resides in the Service.

1. Use of Service.

(a) Each User subscription to the Reseller Application shall entitle one User to use the Service 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 Customer or otherwise changed job status or function and no longer require use of the Service). For clarity, Customer’s license to use the Service hereunder does not include a license to use the SFDC CRM Service. If Customer wishes to use the SFDC CRM Service or any of its functionalities or services it must, visit www.salesforce.com to contract directly with SFDC for such services. In the event Customer access to the Reseller Application provides Customer with access to the SFDC CRM Service generally or access to any SFDC CRM Service functionality within it that is in excess to the functionality described in the Reseller Application’s user guide, and Customer has not separately subscribed under a written contract with SFDC for such access, then Customer agrees to not access and use such functionality, and Customer agrees that its use of such functionality would be a material breach of this Agreement. (b) Notwithstanding any access Customer may have to the Service via the Reseller Application, Reseller is the sole provider of the Reseller Application and Customer is entering into a contractual relationship solely with Reseller. In the event that Reseller ceases operations or otherwise ceases or fails to provide

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the Reseller Application, SFDC has no obligation to provide the Reseller Application or to refund Customer any fees paid by Customer to Reseller. (c) Customer (i) is responsible for all activities occurring under Customer 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 Service, and shall notify Reseller or Salesforce.com promptly of any such unauthorized use it becomes aware of; and (iv) shall comply with all applicable local, state, federal and foreign laws and regulations in using the Service. (d) Customer shall use the Service solely for its 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 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 Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Service or its related systems or networks. (e) Customer shall not (i) modify, copy or create derivative works based on the Service; (ii) frame or mirror any content forming part of the Service, other than on its own intranets or otherwise for its own internal business purposes; (iii) reverse engineer the Service; or (iv) access the Service in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the 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 AppExchange applications, offer products and services related to the Service, the SFDC CRM Service, and/or the Reseller Application, including implementation, customization and other consulting services related to customers' use of the Service and/or the SFDC CRM Service, and applications (both offline and online) that interoperate with the Service, SFDC CRM Service, and/or the Reseller Application, such as by exchanging data with the Service, the SFDC CRM Service, and/or the Reseller Application, or by offering additional functionality within the user interface of the Service, the SFDC CRM Service, and/or the Reseller Application through use of the Service and/or SFDC CRM 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 Customer and a third-party provider, including but not limited to the Reseller Application, and any purchase by Customer of any product or service offered by such third-party provider, including but not limited to the Reseller Application, is

solely between Customer and such third-party provider. In addition, from time to time, certain additional functionality (not defined as part of the Service) may be offered by SFDC or Reseller to Customer, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by Customer in connection with a separate purchase by Customer of such additional functionality. Customer's 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. Proprietary Rights.

Subject to the limited rights expressly granted hereunder, SFDC reserves all rights, title and interest in and to the Service, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth in this SFDC Service Agreement. The Service is deemed SFDC Confidential Information, and Customer will not use it or disclose it to any third party except as permitted in this SFDC Service Agreement.

4. Compelled Disclosure.

If either Customer 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

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legally permitted) and reasonable assistance, at the other Party's cost, if the other Party wishes to contest the disclosure.

5. Suggestions.

Customer agrees 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 Customer or Customer's Users relating to the operation of the Service and/or the SFDC CRM Service.

6. Termination.

Customer's use of the Service may be immediately terminated and/or suspended upon notice due to (a) a breach of the terms of this SFDC Service Agreement by Customer or any User, that is either (i) deemed to be irretrievable by Reseller and/or SFDC, or (ii) where such breach is capable of remedy has not been remedied within 14 days of notice, (b) the termination or expiration of Reseller's agreement with SFDC pursuant to which Reseller is providing the Service as part of the Reseller Application to You, and/or (c) a breach by Reseller of its obligations to SFDC with respect to the licenses it is providing to You in connection with this SFDC Service Agreement. For the avoidance of doubt this provision shall have no impact on Reseller's obligations arising out of the Master Service Agreement between Reseller and Customer, except the use of the Service is terminated and/or suspended upon notice due to a breach of the terms of this SFDC Service Agreement by You or any User.

7. Subscriptions Non-Cancelable.

Subscriptions for the Service are non-cancelable during a subscription term, unless otherwise specified in Customer's agreement with Reseller. 8. Data Storage. The Service includes a certain cumulative amount of storage per User subscription for no additional charge as indicated by Reseller. Additional storage may be available for purchase from the Reseller. 9. No Warranty. SALESFORCE.COM MAKES NO WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WITH RESPECT TO THE SERVICE, THE SFDC CRM SERVICE, AND/OR THE RESELLER APPLICATION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. SALESFORCE.COM MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE RESELLER APPLICATION. SALESFORCE.COM DOES NOT REPRESENT OR WARRANT THAT (A) THE RESELLER APPLICATION WILL BE AVAILABLE, SECURE, TIMELY, UNINTERRUPTED OR ERRORFREE OR OPERATE IN COMBINATION WITH THE SALESFORCE.COM SERVICE OR ANY OTHER APPLICATION, SOFTWARE, HARDWARE, SYSTEM OR DATA, (B) THE RESELLER APPLICATION OR THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS,

(C) ANY DATA STORED USING THE RESELLER APPLICATION WILL BE ACCURATE, RELIABLE, OR SECURE, (D) ERRORS OR DEFECTS IN RESELLER APPLICATION OR THE SERVICE WILL BE CORRECTED, OR (E) THE RESELLER APPLICATION OR THE SYSTEMS USED BY RESELLER TO MAKE RESELLER APPLICATION AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE IS PROVIDED STRICTLY ON AN "AS IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SALESFORCE.COM DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO RESELLER APPLICATION AND THE SERVICE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. 10. NO LIABILITY. 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, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT

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OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. Further Contact.

SFDC may contact Customer regarding new SFDC service features and offerings.

9. Google Programs and Services.

Service features that interoperate with the Google programs and services depend on the continuing availability of applicable Google application programming interfaces (“APIs”) and programs for use with the Service. If Google Inc. ceases to make such APIs and/or programs available on reasonable terms for the Service, SFDC may cease providing such Service features without entitling You or Reseller to any refund, credit, or other compensation.

10. Third Party Beneficiary.

SFDC shall be a third party beneficiary to this Agreement between Customer and Reseller solely as it relates to this SFDC Service Agreement.

11. Governance

This SFDC Service Agreement will be governed exclusively by, and construed exclusively in accordance with, the laws of England, without regard to its conflict of law provisions.