

Master Subscription Agreement

This Master Subscription Agreement (“Agreement”) governs your Skoodat Subscription Services (“Skoodat Services”). If you purchase Skoodat Services, this Agreement will also govern Your purchase and ongoing use of those Skoodat Services.

Each User subscription to the Skoodat Services shall entitle one User to use the Salesforce Service via Skoodat Services, subject to the terms of **Exhibit A: SFDC Service Agreement**, together with any other terms required by Skoodat.

1. Definitions.

- 1.1 **“Affiliate”** means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, “control” means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of such entity.
- 1.2 **“Agreement”** means this Master Subscription Agreement, including terms of use, any Order Forms, whether written or submitted online, and any materials available on the Skoodat website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by Skoodat from time to time in its sole discretion.
- 1.3 **“API”** means application programming interface, as defined by industry custom.
- 1.4 **“AppExchange”** means the online directory of applications that interoperate with the Skoodat Services, located at <http://www.salesforce.com/appexchange> or at any successor websites.
- 1.5 **“Content”** means the audio and visual information, documents, software, products and services contained or made available to You in the course of using the Service.
- 1.6 **“Data”** means information submitted by You for use with the Service.
- 1.7 **“Effective Date”** means the earlier of either the date this Agreement is accepted by selecting the “I Accept” option presented on the screen after this Agreement is displayed or the date You begin using the Service.
- 1.8 **“Google API”** means the application programming interface provided by Google, Inc.
- 1.9 **“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, licenses and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.
- 1.10 **“Subscription Administrator”** means those Users designated by You who are authorized to purchase subscriptions online using the Online Order Center or by executing written Order Forms and to create User accounts and otherwise administer Your use of the Service.
- 1.11 **“Subscription Term”** means the period(s) during which a specified number of Users are licensed to use the Service pursuant to the Order Form(s).
- 1.12 **“Malicious Code”** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- 1.13 **“Online Order Center”** means our online application that allows the Subscription Administrator designated by You to, among other things, add additional Users to the Service.
- 1.14 **“Order Form”** means the form evidencing the initial subscription for the Skoodat Service and any subsequent order forms submitted online or in written form, specifying, among other things, the number of subscriptions and other Skoodat Services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail).
- 1.15 **“Purchased Skoodat Services”** means Skoodat Services that You or Your Affiliates purchase under an Order Form, as distinguished from those provided pursuant to a Thirty (30) Day Free Trial.
- 1.16 **“Skoodat Services”** means the online, Web-based applications and platform provided by Skoodat at <http://www.skoodat.com> and/or other designated websites that are ordered by You as part of a thirty (30) day Free Trial or Purchased Skoodat Services, or under an Order Form, including associated offline components, but excluding Third-Party Applications.

- 1.17 **"SFDC"** means Salesforce.com, Inc., the third-party provider of platform services and certain application services that hosts Skoodat Services in conjunction with the SFDC Service.
- 1.18 **"SFDC Service"** means the platform and/or application service being provided by SFDC with which the Skoodat Service interoperates.
- 1.19 **"Skoodat"** means Skoodat, LLC, an Arizona limited liability company and as further defined in Section 15.
- 1.20 **"Skoodat Technology"** means all of Skoodat'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 You by Skoodat in providing the Service.
- 1.21 **"Taxes"** means all taxes, whether state, federal, national or international.
- 1.22 **"Term"** means the contract term, beginning on the Effective Date and ending on the contract end date, specified on the applicable Order Form and any extension or continuation thereof.
- 1.23 **"Third-Party Applications"** means online, Web-based applications and offline software products that are provided by third parties, interoperate with the Skoodat Services, and are identified as third-party applications, including but not limited to those listed on the AppExchange.
- 1.24 **"User Guide"** means the online user guide for the Skoodat Services, accessible through <http://www.skoodat.com>, as updated from time to time. You acknowledge that You have had the opportunity to review the User Guide during the thirty (30) day Free Trial described in Section 3 (thirty (30) day Free Trial) below.
- 1.25 **"Users"** means individuals who are authorized by You to use the Skoodat Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents; or third parties with which You transact business.
- 1.26 **"We," "Us" or "Our"** means Skoodat.
- 1.27 **"You" or "Your"** means the company or other legal entity for which You are accepting this Agreement and Affiliates of that company or entity and/or the individual entering this Agreement on behalf of such entity, as indicated by the context.
- 1.28 **"Your Data"** means all electronic data or information submitted by You to the Skoodat Service in the course of using the Skoodat Service.

2. General Terms.

- 2.1 By accepting this Agreement, either by clicking a box indicating Your acceptance or by executing an Order Form that references this Agreement or by signing this Agreement, You agree to the terms of this Agreement. You represent that You are entering into this Agreement on behalf of an organization, a company or other legal entity, and that You have the authority to bind such entity to this Agreement. If You do not have such authority, or if You do not agree with these Terms and Conditions, You must not accept this Agreement and may not use the Skoodat Services.
- 2.2 You may not access the Skoodat Services if You are a direct competitor of Skoodat, except with the prior written consent of Skoodat. In addition, You may not access the Skoodat Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking, competitive or anti-competitive purposes.
- 2.3 This Agreement was last updated on July 1, 2013. It is effective between You and Skoodat as of the date of You accepting this Agreement.

3. Thirty (30) Day Free Trial.

- 3.1 We may make one or more Skoodat Services available to You on a trial basis free of charge until the earliest of (a) the thirtieth (30th) day after Your acceptance of this Agreement or (b) the start date of any Purchased Skoodat Services ordered by You. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.
- 3.2 Any Data You enter into the Skoodat Services, and any customizations made to the Skoodat Services by or for You, during Your thirty (30) day Free Trial will be permanently lost unless You purchase a subscription to the same Skoodat Services as those covered by the Trial, or export such Data, before the end of the thirty (30) day Trial Period.
- 3.3 You will have the right to use the Skoodat Service for up to thirty (30) days, or any other period authorized by Skoodat, for up to two (2) individual users, who must be Your employees or consultants and who cannot be employed by or providing services for competitors of Skoodat, after the Free Trial Your right to use the Service will terminate if You have not upgraded to a paid subscription via Purchased Skoodat Services.
- 3.4 Notwithstanding Section 11 (Warranties and Disclaimers), during the thirty (30) day Free Trial the Skoodat Services are provided "AS-IS" without any warranty.

- 3.5 Support Services. Skoodat may, but shall have no obligation to provide support during the Free Trial for Your use of the Skoodat Service either telephonically or on-line.

4. Purchased Skoodat Services.

- 4.1 **Provision of Purchased Skoodat Services.** We shall make the Purchased Skoodat Services available to You pursuant to this Agreement and the relevant Order Forms during the Term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.
- 4.2 **User Subscriptions.** Unless otherwise specified in the applicable Order Form:
- 4.2.1 Skoodat Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users;
- 4.2.2 Additional User subscriptions may be added during the subscription term at the same pricing as that for the preexisting subscriptions, prorated for the remainder of the Term in effect at the time the additional User subscriptions are added, and:
- 4.2.3 The added User subscriptions shall terminate on the same date as the preexisting subscriptions. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who shall have no further use of the Skoodat Services during the Term.

5. Use of the Skoodat Services.

5.1 Skoodat's Responsibilities.

- 5.1.1 We shall (i) provide basic support to You for the Purchased Skoodat Services at no additional charge, and/or upgraded support if purchased separately, (ii) provide the Purchased Skoodat Services only according to applicable laws and government regulations, and, (iii) use commercially reasonable efforts to make the Purchased Skoodat Services available 24 hours a day, 7 days a week, except for:
- 5.1.2 Planned downtime (of which SFDC shall give at least 8 hours notice and which SFDC shall schedule to the extent practicable during the weekend hours from 9:00 p.m. Eastern time Friday to 6:00 a.m. Eastern time Monday), or,
- 5.1.3 Any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), or Internet service provider failures or delays.
- 5.1.4 **Support Services.** Skoodat may, but shall have no obligation to provide support for the thirty (30) day Free Trial for Your use of the Service either telephonically or on-line. Skoodat will provide online support services to Users of Purchased Skoodat Services, and may provide telephone support to entities that purchase upgraded support options.

5.2 Your Responsibilities.

- 5.2.1 **SFDC Service Relationship.** To access the Service, You agree to certain End-User terms provided by SFDC as detailed in Exhibit A.
- 5.2.2 **Responsibilities.** The Service is provided solely for Your benefit, and not, by implication or otherwise, to any parent, subsidiary or affiliate of Yours. You shall:
- 5.2.2.1 Be responsible for Users' compliance with this Agreement,
- 5.2.2.2 Be solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data,
- 5.2.2.3 Use commercially reasonable efforts to prevent unauthorized access to or use of the Skoodat Services, and notify Us promptly of any such unauthorized access or use,
- 5.2.2.4 You are solely responsible for all activity regarding Your Service account and shall abide by all applicable laws and regulations accompanying Your use of the Service, including any which address privacy and technical or personal data and the storage and transmission thereof.
- 5.2.2.5 You shall notify Skoodat of any unauthorized use of any password or account or any other known or suspected breach of security within five (5) days of Your discovery.
- 5.2.2.6 You acknowledge that the Service may experience, and Skoodat is not responsible for damages, including, but not limited to, incidental or consequential damages, arising out of, limitations, delays, and other problems commonly occurring in the use of the internet and computer communications.
- 5.2.3 **Prohibited Uses.** You may not:
- 5.2.3.1 Make the Skoodat Services available to anyone other than Users,

- 5.2.3.2 Permit access to the Service to a competitor of Skoodat, except with Skoodat's prior written consent,
- 5.2.3.3 Sell, resell, rent or lease the Skoodat Services,
- 5.2.3.4 Use the Skoodat Services to store, transmit, or publish infringing, libelous, or otherwise unlawful or tortious material, material in violation of third-party privacy rights, personal information in violation of any applicable law, financial information of Your members or constituents, or material containing computer viruses, "Trojan horse" software, logic bombs, or other malicious computer code, files, scripts, agents or programs,
- 5.2.3.5 Interfere with or disrupt the integrity or performance of the Skoodat Services or third-party data contained therein,
- 5.2.3.6 Attempt to gain unauthorized access to the Skoodat Services or their related systems or networks,
- 5.2.3.7 Create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device,
- 5.2.3.8 Access the Service to determine its uptime percentage, performance or other benchmarking metrics,
- 5.2.3.9 Reverse engineer or access the Service to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, (c) copy any ideas, features, functions or graphics of the Service; or (d) modify or make derivative works based upon the Service or the Content,

5.3 **Usage Limitations.** Skoodat and SFDC Services may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls You are permitted to make against the SFDC application programming interface, and, for SFDC Services that enable You to provide public websites, on the number of page views by visitors to those websites. Any such limitations are specified in the Salesforce.com User Guide. SFDC provides real-time information to enable You to monitor Your compliance with such limitations.

6. Third-Party Providers.

- 6.1 **Acquisition of Third-Party Products and Services.** We may offer Third-Party Applications for sale under Order Forms. Any other acquisition by You of third-party products or services, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between You and any third-party provider, is solely between You and the applicable third-party provider. We do not warrant or support third-party products or services, whether or not they are designated by Us as "certified" or otherwise, except as specified in an Order Form.
- 6.2 **Skuid Services.** Skoodat Services requires the purchase of Skuid Services (sold separately). No purchase of other third-party products or services is required to use the Skoodat Services.
- 6.3 **Third-Party Applications and Your Data.** If You install or enable Third-Party Applications for use with Skoodat Services, You acknowledge that We may allow providers of those Third-Party Applications to access Your Data as required for the interoperation of such Third-Party Applications with the Skoodat Services. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-Party Application providers. The Skoodat Services shall allow You to restrict such access by restricting Users from installing or enabling such Third-Party Applications for use with the Skoodat Services.
- 6.4 **Google Services.** Service features that interoperate with Google services depend on the continuing availability of the Google API and program for use with the Skoodat Services. If Google Inc. ceases to make the Google API or program available on reasonable terms for the Skoodat Services, We may cease providing such Service features without entitling You to any refund, credit, or other compensation.

7. Fees and Payment for Purchased Skoodat Services.

- 7.1 This section applies only to the extent You purchase subscriptions beyond the 30-Day Free Trial, or You incur excess data storage fees.
- 7.2 **User Fees.** You shall pay all fees specified in all Order Forms hereunder. You shall pay all fees or charges to Your account according to the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The initial charges will be equal to the current number of total User subscriptions requested times the User subscription fee currently in effect. Except as otherwise specified herein or in an Order Form, (i) fees are quoted and payable in United States dollars (ii) fees are based on Skoodat Services purchased and not actual usage, (iii) payment obligations are non-cancelable and fees paid are nonrefundable, and (iv) the number of User subscriptions purchased cannot be decreased during the relevant term. User subscription fees are based on periods that begin on the subscription start date and (i) every month anniversary for monthly subscriptions, (ii) every quarter anniversary for quarterly subscriptions, (iii) every year anniversary for annual subscriptions, or (iv) as otherwise mutually agreed upon.
- 7.3 **Additional Subscriptions.** An authorized Subscription Administrator may add subscriptions by executing an additional written Order Form. Added subscriptions will be subject to the following: (i) added subscriptions will be coterminous with the preexisting Subscription Term (either Initial Term or renewal term); (ii) the subscription fee for the added subscriptions will be

the then current, generally applicable subscription fee; and (iii) subscriptions added in the middle of a billing month will be charged in full for that billing month.

- 7.4 **Invoicing and Payment.** You will provide Us with valid and updated credit card information; or with a valid purchase order or alternative documents reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit for all Skoodat Services listed in the Order Form Term. Such charges shall be made in advance, either annually or according to any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise according to the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net thirty (30) days from the invoice date. You are responsible for maintaining complete and accurate billing and contact information in the Skoodat Services.
- 7.4.1 **Billing and Renewal.** You agree to provide Us with complete and accurate billing and contact information. This information includes Your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and Subscription Administrator. You agree to update this information within thirty (30) days of any change to it. If the contact information You have provided is false or fraudulent, We reserve the right to terminate Your access to the Service in addition to any other legal remedies.
- 7.4.2 **We charge and collect in advance for use of the Service.** We will automatically renew and bill Your credit card or issue an invoice to You (a) every month for monthly subscriptions, (b) every quarter for quarterly subscriptions, (c) each year for annual subscriptions, or (d) as otherwise mutually agreed upon. The renewal charge will be equal to the then-current number of total User subscriptions times the subscription fee in effect during the prior term, unless We have given You at least thirty (30) days prior written notice of a fee increase, which shall be effective upon renewal and thereafter. Fees for other Skoodat Services will be charged on an as-quoted basis. Your fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and You shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Our income.
- 7.5 **Overdue Charges.** If any charges are not received from You by the due date, then at Our discretion, (a) such 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, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 7.4 (Invoicing and Payment).
- 7.6 **Suspension of Service and Acceleration.** If any amount owing by You under this or any other Agreement for Skoodat Services is thirty (30) or more days overdue (or ten (10) or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations so that all such obligations become immediately due and payable, and suspend Skoodat Services until such amounts are paid in full.
- 7.7 **Payment Disputes. If You believe Your bill is incorrect,** You must contact Us in writing within 30 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit. We shall not exercise Our rights under Section 7.5 (Overdue Charges) or 7.6 (Suspension of Service and Acceleration) if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.
- 7.8 **Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If we pay or collect Taxes for which You are responsible, any amount paid by Us, plus all costs and expenses incurred by Us relative to such Taxes shall be invoiced to and paid by You.
- 7.9 **Additional Service Fees.** Additional Service Fees are nonrefundable. You will pay all Service fees, and related travel and other reasonable out-of-pocket expenses incurred by Us. Fees for Skoodat Services not listed herein will be performed at Skoodat's standard rates or as otherwise set forth in an applicable schedule to this Agreement or Order Form.
- 7.10 **Modification of Fees.** We reserve the right to modify Our fees and charges and to introduce new charges at any time, upon at least thirty (30) days prior notice to You, which notice may be provided by e-mail.
- 7.11 **Reconnection Fee.** We reserve the right to impose a reconnection fee in the event You are suspended and thereafter request access to the Service. You agree and acknowledge that We have no obligation to retain Your Data and that Your Data may be irretrievably deleted if Your account is thirty (30) days or more delinquent.

8. Proprietary Rights.

- 8.1 **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Skoodat Services and the Intellectual Property Rights, including all related Intellectual Property Rights. No rights are granted to You hereunder other than as expressly set forth herein. We alone (and Our licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to Our technology, content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or any other party relating to the Service. This Agreement is not a sale and does not convey to You any rights of ownership in or related to the Service, Our technology or the Intellectual Property Rights owned by Us. The Skoodat name, logo, and product names associated with the Service are trademarks of Skoodat and no right or license is granted to use them.

- 8.2 **Restrictions.** You shall not (i) permit any third party to access the Skoodat Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Skoodat Services, (iii) copy, frame or mirror any part or content of the Skoodat Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Skoodat Services, or (v) access the Skoodat Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Skoodat Services.
- 8.3 **Ownership of Your Data.** As between You and Skoodat, You will retain all right, title and interest in and to any data, information or materials provided by You as well as all information processed by the Service regarding individuals ("Your Data"). You grant to Skoodat a nonexclusive license to use, copy, store, modify and display Your Data to the extent necessary to provide the Service to You. You, not Skoodat, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Your Data, and Skoodat shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any of Your Data. Skoodat reserves the right to withhold, remove and/or discard Your Data without notice for any breach, including, without limitation, Your nonpayment. Upon termination for any reason, Your right to access or use Your Data immediately ceases, and Skoodat shall have no obligation to maintain or forward Your Data.
- 8.4 **Suggestions.** We shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Skoodat Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the Skoodat Services.
- 8.5 **Federal Government End Use Provisions.** We provide the Skoodat Services, including related software and technology, for ultimate federal government end use solely according to the following: Government technical data and software rights related to the Skoodat Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided according to FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data — Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or Agreement.
- 8.6 **Infringement.** You will promptly notify Us if You learn of a violation of any of Our Intellectual Property Rights. We may, but will not be obligated to, prosecute such violation at Our expense and to retain the full amount of any sums recovered as damages. You will provide Us with reasonable cooperation in any such action at Our expense. Provided, however, if any violation relates to Your or any of Your User's actions or failure to act, You shall be responsible for all expenses, including attorney fees associated therewith.

9. Intellectual Property Claims.

- 9.1 **We Will Defend Certain Claims.** We will defend You against a claim that the Skoodat Services infringe a third-party patent or copyright enforceable in the country of initial Acceptance of the Service, and pay any final judgment or settlement agreed to by Us relating to such claim. We shall have no obligation to You to the extent such claim is caused by (i) any modification of the Skoodat Services not performed by Us, (ii) any failure to use corrections or enhancements made available to You, (iii) any use of the Skoodat Services in combination with any product or information not supplied by Us, or (iv) any modifications of a Service to meet Your user interface or processing requirements.
- 9.2 **Our Options.** If an injunction is issued against the use of the Service by You due to a covered infringement, or if in Our judgment any Service is likely to become the subject of a successful claim of infringement, We may at its option and expense: (i) procure for You the right to use the Service as provided in this Agreement, (ii) replace or modify the Service so it becomes non-infringing, or if options (i) and (ii) are not available despite Our commercially reasonable efforts, (iii) terminate the licenses granted hereunder, accept the return of all copies of the Service in Your possession and refund to You an amount equal to the depreciated Subscription Fee paid by You calculated over a three-year life and provide reasonable assistance to You, at Our standard rates, in migrating to other providers. The remedies under Section 6.1 and Section 6.2 are Your sole and exclusive remedy in the event of any infringement of third party rights by the Service or other materials or services furnished by Us or the use thereof by You or Your Users.
- 9.3 **Your Requirements.** Our obligations in this Section 9 are void if You fail to (i) give Us prompt written notice of any claim; (ii) provide Us with sole control and conduct of the defense of any such claim; or (iii) fully cooperate in the defense or settlement of any such claim.

10. Confidentiality.

- 10.1 **Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential 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. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Skoodat Services and all pricing terms, and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data)

shall 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 without the breach of any obligation owed to the Disclosing Party.

- 10.2 **Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.
- 10.3 **Protection of Your Data.** Without limiting the above, We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not (i) modify Your Data, (ii) disclose Your Data except as compelled by law according to Section 10.5 (Compelled Disclosure) or as expressly permitted in writing by You, or (iii) access Your Data except to provide the Skoodat Services or prevent or address service or technical problems, or at Your request in connection with customer support matters.
- 10.4 **Privacy and Disclosure.** Our privacy policy may be viewed at <http://skoodat.com/privacy>. Skoodat reserves the right to modify its privacy policy in its reasonable discretion from time to time. Users may be asked whether or not they wish to receive marketing and other noncritical Service-related communications from Us from time to time. Users 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, We 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. You agree that We can disclose the fact that You are a customer and the edition of the Service that You are using.
- 10.5 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such 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 or criminal 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 such Confidential Information.

11. Warranties and Disclaimers.

- 11.1 **No Warranty.** You understand and agree that the Service is provided "as is" and Skoodat, its affiliates, and suppliers, and SFDC expressly disclaim all warranties of any kind, express or implied, including without limitation any warranty of merchantability, fitness for a particular purpose or non-infringement. Skoodat, its affiliates, suppliers and SFDC make no warranty or representation regarding the results that may be obtained from the use of the Service, regarding the accuracy or reliability of any information obtained through the Service, or that the Service will meet Your requirements, or be uninterrupted, timely, secure or error free. Use of the Service is at Your sole risk. Any material and/or Data downloaded or otherwise obtained through the use of the Service is at Your own discretion and risk. You will be solely responsible for any damage to You resulting from the use of the Service. The entire risk arising out of use or performance of the Service remains with You. You agree to indemnify, defend and hold harmless Skoodat, its affiliates, officers, directors, employees, consultants, agents, suppliers and resellers from any and all third-party claims, liability, damages and/or costs (including, but not limited to, attorneys fees) arising from Your use of the Service.
- 11.2 **Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) it will not transmit to the other party any Malicious Code.
- 11.3 **Disclaimer.** Except as expressly provided herein, neither party makes any warranties of any kind, whether express, implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including any warranties of merchantability or fitness for a particular purpose, to the maximum extent permitted by applicable law.

12. Mutual Indemnification.

- 12.1 **Indemnification by Us.** We shall defend You against any claim, demand, suit, or proceeding ("Claim") made or brought against You by a third party alleging that the use of the Skoodat Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify You for any damages finally awarded against, and for reasonable attorney's fees incurred by, You in connection with any such Claim; provided, that You (a) promptly give Us written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (provided that We may not, without Your prior approval, settle any Claim unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense.
- 12.2 **Indemnification by You.** You shall defend Us against any Claim made or brought against Us by a third party alleging that Your Data, or Your use of the Skoodat Services inconsistent with this Agreement, infringes or misappropriates the intellectual

property rights of a third party or violates applicable law, and shall indemnify Us for any damages finally awarded against, and for reasonable attorney's fees incurred by, Us in connection with any such Claim; provided, that We (a) promptly give You written notice of the Claim; (b) give You sole control of the defense and settlement of the Claim (provided that You may not, without Our prior approval, settle any Claim unless the settlement unconditionally release Us of all liability); and (c) provide to You all reasonable assistance, at Your expense.

- 12.3 **Exclusive Remedy.** This Section 12 (Mutual Indemnification) 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.

13. Limitation of Liability.

- 13.1 **LIMITATION OF LIABILITY.** Skoodat and its suppliers will not be liable to You for any claim arising under or relating to the Agreement, the Skoodat Services or any other services provided by Skoodat under any theory of liability including contract, strict liability, indemnity, tort (including negligence), or otherwise, or for any special, indirect, incidental, exemplary, punitive, consequential damages, loss of revenues or loss or inaccuracy of Data or cost of procurement of substitute goods, services or technology. You acknowledge that Your Data will be transmitted outside of the SFDC Service and SFDC's system and to that extent, SFDC is not responsible for the privacy, security or integrity of Your Data. Because some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to You.
- 13.2 **EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES.** In no event shall either party have any liability to the other party for any lost profits or revenues or for any indirect, special, incidental, consequential, cover or punitive damages however caused, whether in contract, tort or under any other theory of liability, and whether or not the party has been advised of the possibility of such damages. The foregoing disclaimer shall not apply to the extent prohibited by applicable law.

14. Term and Termination.

- 14.1 **Term of Agreement.** This Agreement commences on the date You accept it and continues until all User subscriptions granted according to this Agreement have expired or have been terminated. If You elect to use the Skoodat Services for a thirty (30) day Free Trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the thirty (30) day Free Trial period. In addition, Skoodat may terminate a Free Trial at any time for any reason or no reason in Skoodat's sole discretion. If You fail to comply with any provision of this Agreement, Skoodat may terminate this Agreement immediately without notice.
- 14.2 **Term of Purchased User Subscriptions.** User subscriptions purchased by You commence on the Effective Date and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, 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 thirty (30) days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 30 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 7% over the pricing for the relevant Skoodat Services 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."
- 14.3 **Termination for Cause.** A party may terminate this Agreement for cause: (i) upon thirty (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.
- 14.4 **Refund or Payment upon Termination.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the Term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.
- 14.5 **Return of Your Data.** Upon request by You made within thirty (30) days after the effective date of termination of a Purchased Skoodat Services subscription, We will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such thirty (30) day period, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.
- 14.6 **Surviving Provisions.** Section 7 (Fees and Payment for Purchased Skoodat Services), 8 (Proprietary Rights), 10 (Confidentiality), 11.3 (Disclaimer), 12 (Mutual Indemnification), 13 (Limitation of Liability), 14.4 (Refund or Payment upon Termination), 14.5 (Return of Your Data), 15 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction) and 16 (General Provisions) shall survive any termination or expiration of this Agreement.

15. Who You Are Contracting with, Notices, Governing Law and Jurisdiction.

15.1 **General.** Who You are contracting with under this Agreement, who You should direct notices to under this Agreement, what law will apply in any lawsuit arising out of or in connection with this Agreement, and which courts can adjudicate any such lawsuit relative to this Agreement are as follows:

You are contracting with:	Notices should be addressed to:	The governing law is:	The courts having exclusive jurisdiction are:
Skoodat, LLC 3001 Broad Street, Suite 208 Chattanooga TN 37408	CEO Fax: 423-244-0204	Tennessee and controlling United States federal law	The Courts of Hamilton County, Tennessee

15.2 **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). Notices to You shall be addressed to the system administrator designated by You for Your relevant Skoodat Services account, and in the case of billing-related notices, to the relevant billing contact designated by You.

15.3 **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.

15.4 **Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

16. General Provisions.

16.1 **Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Skoodat Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, (ii) You shall not permit Users to access or use Skoodat Services in violation of any U.S. export embargo, prohibition or restriction, and (iv) You will not export, re-export, divert, transfer or disclose any portion of the Service or any related technical information or materials, directly or indirectly, in violation of any applicable export law or regulation.

16.2 **Encryption Technology.** This site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/200D.

16.3 **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.

16.4 **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

16.5 **Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

16.6 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

16.7 **Attorney Fees.** You shall pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 7.4 (Invoicing and Payment) and for any other breach of this Agreement.

16.8 **Language and Headings.** This Agreement has been prepared in the English Language and such version shall be controlling in all respects and any non-English version of this Agreement is solely for accommodation purposes. The captions and headings appearing in this Agreement are for reference only and will not be considered in construing this Agreement.

16.9 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- 16.10 **Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties 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 shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibitor addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.
- 16.11 **Force Majeure.** Neither party shall be liable to the other for any loss or damage due to delay or failure to perform due to a force majeure event.

Authorized Signatures

By their execution below, the parties hereto have agreed to all the terms and conditions of this Master Subscription Agreement, and each signatory represents that it has the full authority to enter into this Agreement and to bind her/his respective party to all the terms and conditions herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

For You

By	Date
Name	Title
Address	

For Us

By	Date
Name Kenneth McElrath	Title Chief Executive Officer
Address 3001 Broad Street, Suite 208, Chattanooga, TN 37408	

Exhibit A: SFDC Service Agreement

1. Definitions.

- 1.1 **"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.
- 1.2 **"Reseller"** means Skoodat.
- 1.3 **"Reseller Application"** means Skoodat solutions.
- 1.4 **"Platform"** means the online, Web-based platform service provided by SFDC to Reseller in connection with Reseller's provision of the Reseller Application to You.
- 1.5 **"SFDC 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.
- 1.6 **"SFDC"** means salesforce.com.
- 1.7 **"Users"** means Your 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 You (or by Salesforce.com or Reseller at Your request).
- 1.8 **"You" and "Your"** means the customer entity which has contracted to purchase subscriptions to use the Reseller Application subject to the conditions of this SFDC Service Agreement, together with any other terms required by Reseller.
- 1.9 **"Your Data"** means all electronic data or information submitted by You as and to the extent it resides in the Service.

2. Use of Service.

- 2.1 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 You or otherwise changed job status or function and no longer require use of the Service). For clarity, Your subscription to use the Platform hereunder does not include a subscription to use the SFDC Service or to use it in connection with applications other than the Reseller Application. If You wish to use the SFDC Service or any of its functionalities or services, to use another application other than the Reseller Application, or to create or use additional custom objects beyond those which appear in the Reseller Application in the form that it has been provided to You by Your Reseller, visit www.salesforce.com to contract directly with SFDC for such services. In the event Your access to the Reseller Application provides You with access to the SFDC Service generally or access to any SFDC Service functionality within it that is in excess to the functionality described in the Reseller Application's user guide, and You have not separately subscribed under a written contract with SFDC for such access, then You agree to not access and use such functionality, and You agree that Your use of such functionality, Your use of applications other than the Reseller Application, or Your creation or use of additional custom objects in the Reseller Application beyond that which appears in the Reseller Application in the form that it has been provided to You by your Reseller, would be a material breach of this Agreement.
- 2.2 Notwithstanding any access You may have to the Platform or the SFDC Service via the Reseller Application, Reseller is the sole provider of the Reseller Application and You are entering into a contractual relationship solely with Reseller. In the event that Reseller ceases operations or otherwise ceases or fails to provide the Reseller Application, SFDC has no obligation to provide the Reseller Application or to refund You any fees paid by You to Reseller.
- 2.3 You (i) are responsible for all activities occurring under Your User accounts; (ii) are responsible for the content of all Your Data; (iii) shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Platform and the SFDC Service, and shall notify Reseller or Salesforce.com promptly of any such unauthorized use You become aware of; and (iv) shall comply with all applicable local, state, federal and foreign laws and regulations in using the Platform and the SFDC Service.
- 2.4 You shall use the Platform and the SFDC Service solely for Your internal business purposes and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform or the SFDC Service available to any third party, other than to Users or as otherwise contemplated by this SFDC Service Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Platform or the SFDC Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Platform or the SFDC Service or its related systems or networks.

- 2.5 You shall not (i) modify, copy or create derivative works based on the Platform or the SFDC Service; (ii) frame or mirror any content forming part of the Platform or the SFDC Service, other than on Your own intranets or otherwise for Your own internal business purposes; (iii) reverse engineer the Platform or the SFDC Service; or (iv) access the Platform or the SFDC Service in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Platform or the SFDC Service.
3. **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 Platform, the SFDC Service, and/or the Reseller Application, including implementation, customization and other consulting services related to customers' use of the Platform and/or the SFDC Service, and applications (both offline and online) that interoperate with the Platform, SFDC Service, and/or the Reseller Application, such as by exchanging data with the Platform, the SFDC Service, and/or the Reseller Application, or by offering additional functionality within the user interface of the Platform, the SFDC Service, and/or the Reseller Application through use of the Platform and/or SFDC Service's application programming interface. SFDC does not warrant any such third-party providers or any of their products or services, including but not limited to the Reseller Application or any other product or service of Reseller, whether or not such products or services are designated by SFDC as "certified," "validated" or otherwise. Any exchange of data or other interaction between You and a third-party provider, including but not limited to the Reseller Application, and any purchase by You of any product or service offered by such third-party provider, including but not limited to the Reseller Application, is solely between You and such third-party provider. In addition, from time to time, certain additional functionality (not defined as part of the Platform or SFDC Service) may be offered by SFDC or Reseller to You, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by You in connection with a separate purchase by You of such additional functionality. Your use of any such additional functionality shall be governed by such terms, which shall prevail in the event of any inconsistency with the terms of this SFDC Service Agreement.
4. **Proprietary Rights.** Subject to the limited rights expressly granted hereunder, SFDC reserves all rights, title and interest in and to the Platform and the SFDC Service, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth in this SFDC Service Agreement. The Platform and the SFDC Service is deemed SFDC confidential information, and You will not use it or disclose it to any third party except as permitted in this SFDC Service Agreement.
5. **Compelled Disclosure.** If either You or SFDC is compelled by law to disclose confidential information of the other party, it shall provide the other party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.
6. **Suggestions.** You agree that SFDC shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into any SFDC products or services any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the Platform and/or the SFDC Service.
7. **Termination.** Your use of the Platform and the SFDC Service may be immediately terminated and/or suspended upon notice due to (a) a breach of the terms of this SFDC Service Agreement by You or any User, (b) the termination or expiration of Reseller's agreement with SFDC pursuant to which Reseller is providing the Platform as part of the Reseller Application to You, and/or (c) a breach by Reseller of its obligations to SFDC with respect to the subscriptions it is providing to You in connection with this SFDC Service Agreement.
8. **Subscriptions Non-Cancelable.** Subscriptions for the Platform and the SFDC Service are non-cancelable during a subscription term, unless otherwise specified in Your agreement with Reseller.
9. **Data Storage.** The Platform and SFDC Service includes a certain cumulative amount of storage per User subscription for no additional charge. Contact Your Reseller for additional information. Additional storage may be available for purchase from the Reseller.
10. **No Warranty.** SALESFORCE.COM MAKES NO WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, 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.

11. **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 OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
12. **Further Contact.** SFDC may contact You regarding new SFDC service features and offerings.
13. **Google Programs and SFDC Services.** Platform or SFDC Service features that interoperate with Google programs and services depend on the continuing availability of applicable Google application programming interfaces ("APIs") and programs for use with the Platform and the SFDC Service. If Google Inc. ceases to make such APIs and/or programs available on reasonable terms to SFDC, SFDC may cease providing such features without entitling You or Reseller to any refund, credit, or other compensation.
14. **Third Party Beneficiary.** SFDC shall be a third party beneficiary to the agreement between You and Reseller solely as it relates to this SFDC Service Agreement.