

## SFDC Terms of Service

### 1. DEFINITIONS

“**Content**” means information obtained by SFDC from publicly available sources or its third party content providers and made available to Customer through the SFDC Services, or pursuant to an Order Form, as more fully described in the Documentation.

“**Customer**” means the entity that has contracted with Reseller to purchase subscriptions to use the SFDC Services, subject to the conditions of these SFDC Service Terms. Where Reseller is using the SFDC Services for its own purposes, Customer also includes Reseller.

“**Customer Data**” means any electronic data or information submitted by or for Customer to the SFDC Services, excluding Content and Non-SFDC Applications.

“**Documentation**” means the applicable Marketing Cloud Service’s [Trust and Compliance](#) documentation, and its usage guides and policies, as updated from time to time, accessible via [help.salesforce.com](http://help.salesforce.com) or login to the applicable SFDC Service.

“**Malicious Code**” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“**Marketplace**” means an online directory, catalog or marketplace of applications that interoperate with the SFDC Services, including, for example, the AppExchange located at <http://www.salesforce.com/appexchange>, the HubExchange located at <https://hubexchange.exacttarget.com/>, the Heroku add-ons catalog located at <https://addons.heroku.com/>, and any successor websites.

“**Non-SFDC Applications**” means any mobile, Web-based, offline or other software application that is provided by Reseller, Customer, or a third party and interoperates with a SFDC Service, including, for example, an application that is developed by or for Customer, is listed on a Marketplace, or is identified as Salesforce Labs or by a similar designation.

“**Order Form**” means the ordering document entered into between Reseller and Customer specifying the SFDC Services to be provided pursuant to these SFDC Service Terms, together with any additional product specific terms for the SFDC Services as required by SFDC.

“**Reseller**” means the entity that has contracted directly with SFDC to resell SFDC Services to its Customers and the entity that has contracted directly with Customer for the sale of a subscription to SFDC Services.

“**SFDC**” means salesforce.com, inc. located at The Landmark @ One Market, Suite 300, San Francisco, CA 94105 USA.

“**SFDC Services**” means the products and services offered by SFDC that are ordered by Customer under an Order Form and made available online by SFDC including associated offline components, as described in the Documentation. “SFDC Services” exclude Content and Non-SFDC Applications.

“**User**” means an individual who is authorized by Customer to use the SFDC Services on behalf of Customer, and to whom Customer (or, when applicable, SFDC at Reseller’s request), has supplied a user identification and password. Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

## 2. ADDITIONAL TERMS OF SERVICE FOR MARKETING CLOUD SERVICES

Customer acknowledges that if it purchases Marketing Cloud Services from SFDC that it agrees and consents to additional terms of service particular to such services set forth at <http://www.salesforcemarketingcloud.com/reseller-terms-of-service/> or at another URL communicated from time to time by SFDC. For informational purposes, GSA has not reviewed the Trust and Compliance documentation, or its usage guides or policies.

## 3. SUPPORT

Customer acknowledges and agrees that all support inquiries and matters must be made through SFDC. As Customer support requests will come directly to SFDC, Reseller should not have access to Customer's instance of the SFDC Services, including without limitation, Customer Data, for the purposes of providing such support. Notwithstanding the foregoing, should Reseller be granted access to Customer's instance of SFDC Services and any Customer Data for any reason, Customer hereby consents to such access by Reseller. Any additional access required by Reseller and requested by Customer shall be agreed to by the parties.

## 4. USE OF SFDC SERVICES AND CONTENT

**4.1. Usage Limits.** SFDC Services and Content are subject to usage limits specified in Order Forms or the Documentation. Unless otherwise specified, (a) a quantity in an Order Form refers to Users, and the SFDC Services or Content may not be accessed by more than that number of Users, (b) a User's password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the SFDC Services.

**4.2. Customer Responsibilities** Customer will (a) be responsible for Users' compliance with the SFDC Service Terms, Order Forms and the Documentation, (b) be responsible for the accuracy, quality, and legality of Customer Data and the means by which Customer acquires Customer Data, (c) submit Customer Data only in accordance with the Documentation and applicable laws and government regulations, (d) use commercially reasonable efforts to prevent unauthorized access to or use of the SFDC Services, and notify SFDC or Reseller promptly of any such unauthorized access or use, and (e) use the SFDC Services only in accordance with these SFDC Service Terms, the Documentation, Order Forms and applicable laws and government regulations, and (f) comply with terms of service of Non-SFDC Applications with which Customer uses SFDC Services or Content.

**4.3. Usage Restrictions.** Customer will not (a) make the SFDC Services or Content available to, or use SFDC Services or Content for the benefit of, anyone other than Users, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease the SFDC Services or Content, or include any SFDC Service or Content in a service bureau or outsourcing offering, (c) use the SFDC Services or Non-SFDC Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights, (d) use the SFDC Services or Non-SFDC Applications to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the SFDC Services or third-party data contained therein, (f) attempt to gain unauthorized access to the SFDC Services or Content or their related systems or networks, (g) permit direct or indirect access to or use of SFDC Services or Content in a way that circumvents a contractual usage limit, or use any SFDC Services to access or use any of SFDC's intellectual property except as permitted under these SFDC Service Terms, an Order Form, or the Documentation, (h) copy SFDC Services or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) access the SFDC Services or Content in order to build a product or service or to benchmark with a non-SFDC competitive product or service, (k) frame or mirror any part of the SFDC Services or Content, other than copying or framing on Customer's own intranets or otherwise for its own internal business purposes, (l) access the SFDC Services or Content in order to build a competitive product or service, or (m) reverse engineer the SFDC Services. Customer's or a User's intentional violation of the foregoing, or any use of the SFDC Services in breach of these SFDC Service Terms, Documentation or Order Forms, by Customer or Users that in SFDC's judgment imminently threatens the security, integrity or availability of SFDC's services, may result in SFDC's immediate suspension of the SFDC Services.

**4.4. External-Facing Services.** If Customer subscribes to an SFDC Service for sending electronic messages or for the creation and hosting of, or for posting content on, external-facing websites, Customer will comply with, and be responsible for Users' compliance with, SFDC's External-Facing Services Policy at <http://www.salesforce.com/company/legal/agreements.jsp> as may be applicable to an SFDC Service, and be solely responsible for complying with applicable law in any use of cookies or other tracking technologies.

**4.5. Removal of Content and Non-SFDC Applications.** If SFDC is required by any third party rights holder to remove Content, or receives information that Content provided to Customer may violate applicable law or third-party rights, SFDC may discontinue Customer's access to such Content through the SFDC Services and/or may on notice to Reseller or to Customer require Customer to discontinue all use of such Content and, to the extent not prohibited by law, promptly remove such Content from its systems. If SFDC receives information that a Non-SFDC Application used with an SFDC Service by Customer may violate the External-Facing Services Policy or applicable law or third-party rights, SFDC may so notify Customer and in such event Customer will promptly disable such Non-SFDC Application or modify the Non-SFDC Application to resolve the potential violation. If Customer does not take required action in accordance with the above, SFDC may disable the applicable Content, SFDC Service and/or Non-SFDC Application until the potential violation is resolved. If so requested by SFDC, Customer shall certify such deletion and discontinuance of use in writing and SFDC shall be authorized to provide a copy of such certification to any such third party claimant or governmental authority, as applicable.

## **5. NON-SFDC PROVIDERS**

If Customer chooses to use a Non-SFDC Application with the SFDC Services, Customer grants SFDC permission to allow the Non-SFDC Application and its provider to access Customer Data as required for the interoperation of that Non-SFDC Application with the SFDC Services. SFDC is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by the provider of such Non-SFDC Application or its provider. The SFDC Services may contain features designed to interoperate with such Non-SFDC Applications. To use such features, Customer may be required to obtain access to such Non-SFDC Applications from their providers and may be required to grant SFDC access to Customer's account(s) on such Non-SFDC Applications. SFDC cannot guarantee the continued availability of such SFDC Service features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-SFDC Application ceases to make the Non-SFDC Application available for interoperation with the corresponding SFDC Service features in a manner acceptable to SFDC.

## **6. PROPRIETY RIGHTS AND LICENSES**

**6.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, SFDC, its licensors and Content providers reserve all rights, title and interest in and to the SFDC Services and Content, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**6.2. Access to Content.** Access to Content is subject to the terms of applicable Order Forms, these SFDC Service Terms and the Documentation.

**6.3. License by Customer to Host Customer Data and Applications.** Customer grants SFDC, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Customer Data, and any Non-SFDC Applications and program code created by or for Customer using the SFDC Services or for use by Customer with the SFDC Services, as necessary for SFDC to provide the SFDC Services in accordance with these SFDC Service Terms and the Documentation. Subject to the limited licenses granted herein, SFDC acquires no right, title or interest from Customer or its licensors under these SFDC Service Terms in or to any Customer Data, Non-SFDC Application or such program code.

**6.4. License by Customer to Use Feedback.** Customer grants to SFDC and its Affiliates a worldwide, perpetual, irrevocable, royalty-free, license to use and incorporate into its services any suggestions, enhancement, requests, recommendations, correction, or other feedback provided by Customer or its Users, relating to the operation of SFDC's or its Affiliates' services.

**6.5. Federal Government End Use Provisions.** SFDC provides the SFDC Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the SFDC Services include only those rights customarily provided to the public as defined in these SFDC Service Terms. This customary commercial license is provided in accordance with 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 SFDC 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.

## **7. SUBSCRIPTIONS, TERM AND TERMINATION**

**7.1. Termination.** As permitted by applicable law, Customer’s use of the SFDC Services may be immediately terminated and/or suspended at SFDC’s option, upon notice due to: (a) a breach of the terms of these SFDC Service Terms, the Documentation or Order Forms by Customer or any Customer User; or (b) a breach by Reseller of its payment obligations to SFDC with respect to the subscription it is providing to Customer in connection with these SFDC Service Terms. Following any termination or expiration of Reseller’s agreement with SFDC pursuant to which Reseller is providing the SFDC Services to Customer, each Customer subscription to the SFDC Services outstanding at the time of such termination or expiration shall remain in effect for the duration of its subscription term and shall continue to be governed by these SFDC Service Terms as if it had not been terminated (“**Legacy Orders**”), provided that Customer is not in breach of these SFDC Service Terms and SFDC has received all payments due in connection with such Legacy Orders. In no case will any termination, expiration or suspension hereunder give rise to any liability of SFDC to Customer for a refund or damages. Except as provided herein, SFDC is under no obligation to provide the SFDC Services to Customer, or to assume the relationship with Customer.

## **8. WARRANTY DISCLAIMER**

AS BETWEEN SFDC AND CUSTOMER, SFDC MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT IS PROVIDED “AS IS,” AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

## **9. INDEMNIFICATION**

This Indemnification section shall only be enforceable as permitted by applicable law. Customer will defend SFDC against any claim, demand, suit or proceeding made or brought against SFDC by a third party alleging that any Customer Data infringes or misappropriates such third party’s intellectual property rights, or arising from Customer’s use of the SFDC Services or Content in breach of these SFDC Service Terms, the Documentation, an Order Form, or applicable law (each a “**Claim Against SFDC**”), and will indemnify SFDC for any damages, attorney fees and costs finally awarded against SFDC as a result of, or for any amounts paid by SFDC under a settlement approved by SFDC in writing of, a Claim Against SFDC; provided that SFDC: (i) promptly gives Customer written notice of the Claim Against SFDC, (ii) gives Customer sole control of the defense and settlement of the Claim Against SFDC (provided that Customer may not settle or defend any Claim Against SFDC unless it unconditionally releases SFDC of all liability), and (iii) provides to Customer all reasonable assistance, at Customer’s expense.

## 10. NO LIABILITY

IN NO EVENT SHALL SFDC HAVE ANY LIABILITY TO CUSTOMER 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 CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SFDC DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

## 11. GENERAL

**11.1. Notice.** Any notice or other obligations that SFDC has to customers generally under the Documentation shall not apply as between SFDC and Customer. Any notices that SFDC is required to provide under the Documentation shall be provided by SFDC to the Reseller or Customer based on the circumstances and designated contact information for notices available to SFDC in the SFDC Services.

**11.2. Waiver.** No failure or delay by SFDC in exercising any right under these SFDC Service Terms will constitute a waiver of that right.

**11.3. Severability.** If any provision of these SFDC Service Terms is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of these SFDC Service Terms will remain in effect.

**11.4. Further Contact.** SFDC may contact Customer regarding new SFDC service features and offerings.

**11.5. Third Party Beneficiary.** SFDC shall be a third party beneficiary to the agreement between Customer and Reseller solely as it relates to these SFDC Service Terms.

**11.6. Customer Communication with Reseller.** Customer shall communicate directly with Reseller for any contractual terms and additions.