

Salesforce EULA

Although the Master Subscription and Service Agreement ("MSSA") is between You and Reseller, the Solution is hosted by SFDC. By agreeing to the terms of the MSSA, You are accepting the Salesforce EULA set out below.

This Salesforce EULA is effective between You and SFDC as of the Effective Date.

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

"Effective Date" has the meaning set out in the MSSA.

"Reseller" means Xactium Ltd incorporated and registered in England and Wales (company registration number 04683891) whose registered office address is at 28 Kenwood Park Road, Sheffield, S7 1NF;

"Reseller Application" means the Solution.

"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.

"SFDC" means Salesforce.com, EMEA Limited incorporated and registered in England and Wales (company registration number 05094083) whose registered office is at Floor 26 Salesforce Tower, 110 Bishopgate, London EC2N 4AY;

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

"Solution" has the meaning set out in the MSSA.

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

"Users" means Your employees, representatives, consultants, contractors or agents and third parties with whom You conduct business who are authorised to use the Platform subject to the terms of this Salesforce EULA 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).

"You" and "Your" has the meaning set out in the MSSA, being the person or entity contracted to purchase subscriptions to use the Reseller Application subject to the conditions of this Salesforce EULA, together with any other terms required by Reseller as set out in the MSSA.

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

1. Use of Platform.

- (a) Each User subscription to the Reseller Application shall entitle one User to use the Platform via the Reseller Application, subject to the terms of this Salesforce EULA, together with any other terms required by Reseller as set out in the MSSA. 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 SFDC Platform). For clarity, Your subscription to use the Platform hereunder does not include a subscription to use the SFDC Service generally or to use it in connection with applications other than the Reseller Application. If You wish to use the SFDC Service or any of its functionalities or services other than those included in the Reseller Application, 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 of the functionality described in the Reseller Application's user guide, and You have not separately subscribed under a written contract with SFDC for such access, then You agree to not access 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 Salesforce EULA.
 - (b) If your subscription to use the Platform hereunder includes Salesforce Mobile, You understand that prior to purchasing Salesforce Mobile, You should refer to the Mobile Device list located at <https://www.salesforce.com/mobile/devices/> for information on mobile devices that are supported by SFDC. You agree that SFDC will not provide any refunds, credits or other compensation or remedies in connection with your purchase of Salesforce Mobile for any mobile devices that are not supported by SFDC. Third party mobile device, operating system and network connectivity providers may, at any time, cease distribution of, interrupt, deinstall and/or prevent use of Salesforce Mobile clients on supported mobile devices without entitling You to any refund, credit or other compensation or remedies.
 - (c) Notwithstanding any access You may have to the Platform or the SFDC Service via the Reseller Application, Reseller is the sole provider of the Reseller Application and You are entering into a contractual relationship in relation to the Reseller Application solely with Reseller. In the event that Reseller ceases operations or otherwise ceases or fails to provide the Reseller Application, SFDC has no obligation to provide the Reseller Application or to refund You any fees paid by You to Reseller.
 - (d) You: (i) are responsible for all activities occurring under Your User accounts; (ii) are responsible for the content of all Your Data; (iii) shall use commercially reasonable efforts to prevent unauthorised access to, or use of, the Platform and the SFDC Service, and shall notify Reseller or SFDC promptly of any such unauthorised 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.
 - (e) You shall use the Platform and the SFDC Service solely for Your internal business purposes and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform or the SFDC Service available to any third party, other than to Users or as otherwise contemplated by this Salesforce EULA; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libellous, or otherwise unlawful or tortuous 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 unauthorised access to the Platform or the SFDC Service or its related systems or networks.
 - (f) You shall not: (i) modify, copy or create derivative works based on the Platform or the SFDC Service; (ii) frame or mirror any content forming part of the Platform or the SFDC Service, other than on Your own intranets or otherwise for Your own internal business purposes; (iii) reverse engineer the Platform or the SFDC Service; or (iv) access the Platform or the SFDC Service in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Platform or the SFDC Service.
2. Third-Party Providers. Reseller and other third-party providers, some of which may be listed on pages within SFDC's website and including providers of Third Party Applications, offer products and services related to the Platform, the SFDC Service, and/or the Reseller Application, including implementation, customisation and other consulting services related to customers' use of the Platform and/or the SFDC Service, and applications (both offline and online) that interoperate with the Platform and/or the SFDC Service, 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 and/or 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 Salesforce EULA.

3. Integration with Third Party Applications. If You install or enable Third-Party Applications for use with the Platform or SFDC Service, You acknowledge that SFDC may allow providers of those Third-Party Applications to access Your Data as required for the interoperation of such Third-Party Applications with the Platform or SFDC Service. SFDC shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-Party Application providers. In addition, the Platform and SFDC Service may contain features designed to interoperate with Third-Party Applications (e.g. Google, Facebook or Twitter applications). To use such features, You may be required to obtain access to such Third Party Applications from their providers. If the provider of any such Third Party Application ceases to make the Third-Party Application available for interoperation with the corresponding Platform or SFDC Service features on reasonable terms, SFDC may cease providing such Platform or SFDC Service features without entitling You to any refund, credit or other compensation.
4. Access by Reseller. To the extent Reseller serves as the administrator of the Reseller Application for You, You acknowledge that your use of the Reseller Application may be monitored by Reseller and Reseller may access Your Data submitted to the SFDC Service or Reseller Application. By agreeing to this Salesforce EULA, You are consenting to such monitoring and access by Reseller.
5. Processing of Your Data. SFDC's processing of Your Data is limited to the extent and in such a manner as is necessary, for the performance of SFDC's obligations under its agreement with Reseller with regard to provisioning the Platform in connection with the Reseller Application and shall not include processing Your Data for any other purpose without Your or Reseller's written instruction as appropriate. For clarity, the following processing is deemed an instruction by Reseller and/or You: (a) processing necessary for the performance of SFDC's obligations under its agreement with Reseller with regard to provisioning the Platform in connection with the Reseller Application; and (b) processing initiated by Your Users in their use of the Reseller Application.
6. Return of Your Data. You have thirty (30) days from the date of termination your Reseller Application subscription term in which to request a copy of Your Data, which will be made available to You in a .csv format. Any modifications to such Your Data made by the Reseller Application outside of the Platform (if any) will not be captured in Your Data as returned and the return of any such modified data shall be the responsibility of Reseller.
7. Proprietary Rights. Subject to the limited rights expressly granted hereunder, SFDC reserves all rights, title and interest in and to the Platform and the SFDC Service, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth in this Salesforce EULA. 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 Salesforce EULA.
8. Compelled Disclosure. If either You or SFDC is compelled by law to disclose confidential information of the other party, it shall provide the other party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.
9. Suggestions. You agree that SFDC shall have a royalty-free, worldwide, transferable, sub licensable, irrevocable, perpetual license to use or incorporate into any SFDC products or services any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the Platform and/or the SFDC Service.
10. Suspension and Termination. Your use of the Platform and the SFDC Service may be immediately terminated and/or suspended upon notice due to (a) a breach of the terms of this Salesforce EULA 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 Salesforce EULA. If You use the Reseller Application in combination with a SPDC Service org other than the org provisioned solely for use with the Reseller Application (A "Shared Org") You acknowledge and understand that (i) access to such org, including the Reseller Application used in connection with such org, may be suspended due to your non-payment to SFDC or other breach of your agreement with SFDC and (ii) in the event your relationship with SFDC is terminated as a result of non-payment or other material breach of your agreement with SFDC, your platform subscriptions would also be terminated. In no case will any such termination or suspension give rise to any liability of SFDC to You for a refund or other compensation.
7. Subscriptions Non-Cancellable. Subscriptions for the Platform and the SFDC Service are non-cancellable during a subscription term, unless otherwise specified in Your Agreement with Reseller.
8. 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.
9. Google AdWords Program. SFDC Service features that interoperate with the Google AdWords program depend on the continuing availability of the Google AdWords application programming interface ("API") and program for use with the SFDC Service. If Google Inc. ceases to make the Google AdWords API or program available on reasonable terms for the SFDC Service, the Reseller may cease providing such SFDC Service features without entitling You to any refund, credit, or other compensation.
10. No Warranty. SFDC MAKES NO WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SFDC DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE AND/OR THE RESEARCH APPLICATION, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.
11. No Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW IN NO EVENT SHALL SFDC HAVE ANY LIABILITY TO YOU OR ANY USER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, COST OF PROCUREMENT, REPLACEMENT GOODS OR SERVICES, LOST BUSINESS, LOSS OF USE, LOSS OF OR CORRUPTION OF DATA, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
12. Further Contact. SFDC may contact You regarding new Platform and SFDC service features and offerings.
Third Party Beneficiary. SFDC shall be a third party beneficiary to the agreement between You and Reseller (I.e. the MSSA) solely as it relates to this Salesforce EULA.

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