

FAIRSAIL MSA – REPLACED ON 10/04/2017

FAIRSAIL TERMS OF USE

BY SIGNING A LICENSE ORDER AS PART OF THE ORDERING PROCESS, OR BY TAKING OUT A 30-DAY FREE TRIAL, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS GOVERNING YOUR USE OF FAIRSAIL'S ONLINE SERVICE. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT USE THE SERVICE.

Welcome

As part of the Service, Fairsail will provide you with use of the Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the Fairsail website incorporated by reference herein, including but not limited to Fairsail's privacy and security policies.

Fairsail is an OEM Partner of Salesforce.com and the Fairsail service is hosted and powered by Salesforce.com. This Agreement is between you and Fairsail.

It is hereby agreed that:

1. DEFINITIONS & INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

"2010 Model Clauses" means the standard contractual clauses approved by the European Commission by means of a decision on 5 February 2010, for the transfer of personal data to processors established in third countries under the Data Protection Directive;

"Agreement" shall mean this document and any documentation expressly incorporated herein by reference;

"Content" means the audio and visual information, documents, software, products and services contained or made available to the Customer in the course of using the Service, excluding Customer Data;

"Customer Data" means any data, information or material provided or submitted by the Customer to the Service in the course of using the Service;

"Data Only Record" means a data record in the Service that relates to a current employee, representative, consultant, contractor or agent of the Customer but which does not have a User license assigned to it;

"Data Only License" means a current subscription to store a Data Only Record in the Service;

"Data Protection Directive" means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

“Fairsail Technology” means all of Fairsail’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 the Customer by Fairsail in providing the Service;

“Initial Term” means the initial period during which the Customer is obligated to pay for the Service as stated in the License Order;

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

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

“License Order(s)” means the form evidencing the initial subscription for the Service and any subsequent License Orders in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such License Order 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 License Order, the terms of the License Order shall prevail);

“License Term(s)” means the period(s) during which a specified number of Users are licensed to use the Service;

“Salesforce.com” means Salesforce.com, Inc., a Delaware corporation, having its principal place of business at The Landmark @ One Market, Suite 300, San Francisco, California 94105;

“Salesforce.com Technology” means all of Salesforce.com’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 the Customer by Salesforce.com in providing the Service;

“Service Level Standards (SLS)” means the current service levels for the Support, available on <http://go.sagepeople.com/fairsail-commercial-agreements>;

“Service(s)” means the provision of those services provided to the Customer by Fairsail, to which the Customer is being granted access under this Agreement, including the Fairsail Technology and the Content, as set out in the applicable License Order;

“Support” means the level of support services as detailed in a License Order;

“User(s)” means the Customer’s employee(s), representative(s), consultant(s), contractor(s) or agent(s) who is authorized to use the Service and has been supplied user identifications and passwords by the Customer (or by Fairsail at the Customer’s request).

“User Guides” the user guides for the Service which are available through help.sagepeople.com, or any other URL as notified by Fairsail to the Customer.

1.2 Clause headings shall not affect the interpretation of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having a separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and references to one gender shall include the other gender.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force from time to time.

1.7 A reference to writing or written shall not include faxes and may include e-mail, other than in the case of notices relating to breach, termination or renewal of this Agreement.

1.8 Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words "without limitation" following them.

1.9 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.

2. LICENSE GRANT & RESTRICTIONS

2.1 Subject to the Customer paying all fees set out in License Orders, Fairsail grants the Customer a non-exclusive, non-transferable, worldwide right to use the Service for the License Term, solely for the Customer's own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to the Customer are reserved by Fairsail, Salesforce.com and their licensors.

2.2 The Customer shall not access the Service if it provides, or intends to provide, any service or functionality which competes with the Service, except with Fairsail's prior written consent. In addition, the Customer shall not access the Service to monitor its availability, performance or functionality, or for any other benchmarking or competitive purposes other than as necessary for internal use of the Service by the Customer.

2.3 The Customer shall not:

2.3.1 license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way;

2.3.2 attempt to reverse compile, disassemble, reverse engineer, modify or make derivative works based upon the Service or the Content;

2.3.3 access the Service in order to develop a similar or competitive product or service, or a product using similar ideas, features, functions or graphics of the Service, or to copy any ideas, features, functions or graphics of the Service or Content;

2.3.4 develop applications for internal use with the Service or attempt to extend the Service by using additional custom objects. Customer's use of the Service is limited to the objects and functionalities provided in the Fairsail Service, and those functionalities of the Salesforce Service strictly necessary for the operation of the Service; or

2.3.5 use the Service for any purpose other than those for which it was designed and specifically shall not use it (i) to send spam or otherwise duplicative or unsolicited messages in violation of applicable

laws or regulations; (ii) to send or store infringing, obscene, threatening, libelous, or otherwise unlawful material or material which violates the rights of a third party; (iii) to send or store material containing viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) to interfere with or disrupt the integrity or performance of the Service, Content or other data contained therein; or (v) for any other illegal or unlawful purposes, and Fairsail reserves the right, without liability or prejudice to its other rights, to disable the Customer's access to any material or aspect of the Service, or the entire Service in the event that it breaches the provisions of this clause 2.

2.4 In relation to the Users, the Customer undertakes that:

2.4.1 the maximum number of Users that it authorises to access and use the Service or the maximum number of Data Only Licenses that it sets up in the Service shall not exceed the number of User licenses/Data Only Licenses it has purchased from time to time;

2.4.2 it shall ensure it holds (a) a User License for every User; and (b) a Data Only License for every Data Only Record;

2.4.3 it will not allow any User licenses to be shared or used by more than one individual User unless it has been reassigned from time to time to another individual User who is replacing the former User who has terminated employment or otherwise changed job status or function and no longer use the Service; and

2.4.4 each User shall keep a secure password for his use of the Service and that such password shall be kept confidential.

2.5 Fairsail reserves the right to verify Customer's compliance with clause 2.4. If it is revealed that Customer has underpaid any subscription fees, then the Customer shall promptly pay an amount equal to the underpayment to be calculated in accordance with the applicable charges set out in the License Order, or if not set out in the License Order, in the then current list price.

2.6 If the Service offers integration capabilities via an application programming interface ("API"), the number of API calls the Customer can make per account is limited to 1,000 calls/day/User (aggregated over all Users under the Customer account), up to an aggregate maximum of 1,000,000 calls/day/Customer account.

2.7 By entering into this Agreement the Customer accepts the terms and conditions of the Salesforce.com Services Agreement available at <http://www.sagepeople.com/sfdcsa>.

3. CUSTOMER RESPONSIBILITIES

3.1 The Customer is responsible for all activity occurring under the Customer's User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with the Customer's use of the Service, including but not limited to those related to data privacy, international communications and the transmission of technical or personal data.

3.2 The Customer shall:

3.2.1 notify Fairsail immediately of any unauthorized use of any password or User account or any other known or suspected breach of security, confidentiality, or any other provision of this Agreement;

3.2.2 report to Fairsail immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by the Customer or the Customer's Users; and

3.2.3 not impersonate another Fairsail user or provide false identity information to gain access to or use the Service.

3.3 The Service is hosted and powered by Salesforce.com and the Customer will be granted access to the Salesforce.com platform facilities via Fairsail and will not require a separate license with Salesforce.com. This license will be limited to use of the Salesforce.com Technology only as is necessary to use the Service.

3.4 If the Customer chooses to use its own existing Salesforce.com org (the "Customer CRM Org"), to access the Service, it will be responsible for maintaining the Customer CRM Org directly with Salesforce.com. If the Customer CRM Org expires or terminates for any reason, the Customer will be responsible for agreeing terms with Salesforce.com to remove all functionality and content from the Customer CRM Org not required for the Service. In addition, the Customer will be responsible for all settings (including administrator settings) in relation to the Customer CRM Org and how those settings will affect who within the Customer's organization can access the Service.

4. FAIRSAIL'S OBLIGATIONS

4.1 Fairsail undertakes to use all reasonable skill and care in delivering the Service.

4.2 Fairsail will use reasonable commercial endeavours to make the Service available 24 hours a day, 7 days a week, except for scheduled maintenance, of which Fairsail shall give at least 8 hours' notice via the Service.

4.3 Fairsail shall provide the Service materially in accordance with the User Guides. It is the responsibility of the Customer to ensure that its requirements are satisfied by the specification and functionality as set out in the User Guides.

4.4 Fairsail will use reasonable commercial endeavours to ensure that the Service or servers used to make the Service available are free of viruses or other harmful components, except that Fairsail shall not be responsible for detecting or removing any viruses introduced to the Service by the Customer or Users.

4.5 Other than as expressly provided in this Agreement, the Service and Content is provided on an "as is" basis and all conditions, representations and warranties, whether express, implied, statutory or otherwise, are excluded to the full extent permissible by law.

4.6 Fairsail is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Service and Content may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

4.7 Fairsail will not be responsible for (and shall have no liability for) any loss or damage resulting from the use of the Services in conjunction with or by linking to third party systems.

4.8 Fairsail warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement.

4.9 Fairsail will provide Support to Customer in accordance with the Service Level Standard (SLS).

5. CUSTOMER DATA

5.1 For the purposes of this Agreement, the Customer shall be the Data Controller and Fairsail shall be the Data Processor in relation to those elements of the Customer Data that constitute Personal Data. "Data Controller", "Data Processor", "Personal Data" and "Data Subjects" shall all have the meanings given to them in the Data Protection Act 1998.

5.2 Customer exclusively owns all rights, title and interest in and to all Customer Data. The Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and for obtaining the right to use all Customer Data.

5.3 The platform operated by Salesforce.com includes backup functionality to maintain resilience of the platform. These backups are not available to the Customer. The Service includes functionality for the Customer to undertake its own backup of Customer Data as set out in the User Guides. It is the Customer's responsibility to store, maintain and back-up its Customer Data.

5.4 Fairsail shall not access Customer's User accounts, including Customer Data, except to respond to service or technical problems or at Customer's request. Customer consents to Fairsail provisioning, at no additional cost to the Customer, a license to the Service for the Fairsail support team in order to provide Support.

5.5 Upon request by Customer made within 30 days before the effective date of termination ("Retention Period"), Fairsail will make available to Customer for download a file of Customer Data in comma separated value (.csv) format along with attachments in their native format. After the Retention Period, Fairsail shall have no obligation to maintain or provide any Customer Data and may destroy the Customer Data in accordance with Fairsail's document retention and destruction policies.

5.6 The Customer warrants that it has obtained all rights and consents necessary for Fairsail to process the Customer Data in accordance with this Agreement.

5.7 Fairsail shall:

5.7.1 only carry out processing of any Customer Data on the instructions of the Customer;

5.7.2 implement appropriate technical and organisational measures to protect any Customer Data against unauthorised or unlawful processing and accidental loss or damage;

5.7.3 for Customers falling within the scope of the Data Protection Directive, transfer Customer Data to countries outside the European Economic Area: (a) if there has been a European Commission finding of adequacy pursuant to Article 25(6) of the Data Protection Directive in respect of the country or territory to which the Customer Data is being transferred; or (b) if it has in place an agreement covering such transfer which is intended to use the principles and safeguards of the 2010 Model Clauses to provide adequate protection for the rights of Data Subjects whose personal data is being transferred as part of the Customer Data; or (c) upon the written instructions of the Customer. This clause 5.7.3 relates only to the hosting (and associated mirroring/backup) of the Customer Data by Fairsail (and its subcontractors) and not the access of the Customer Data through a browser by the Users.

5.7.4 not subcontract any processing of the Customer Data without the prior written authorisation of the Customer. The Customer agrees that Fairsail may subcontract the hosting of the Service and provision of the cloud platform to Salesforce.com;

5.7.5 ensure that access to the Customer Data is limited to those employees or authorised subcontractors who need access in order to meet Fairsail's obligations under this Agreement and that all such employees and authorised subcontractors are informed of the confidential nature of the Customer Data;

5.7.6 promptly notify the Customer in writing of any notices it receives in connection with the processing of any Customer Data, including subject access requests, and provide such information and assistance as the Customer may reasonably require; and

5.7.7 promptly notify the Customer in writing if any Customer Data has been disclosed in breach of this Clause.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Subject to the limited rights expressly granted hereunder, Fairsail alone (and its licensors, where applicable) reserves all rights, title and interest in and to the Service, including all related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service, Fairsail Technology or the Intellectual Property Rights owned by Fairsail. The Fairsail name, the Fairsail logo and the product names associated with this Service are trademarks of Fairsail or third parties and no right or license or granted to use them.

6.2 Fairsail shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Users relating to the operation of the Service.

7. CHARGES AND PAYMENT

7.1 All fees and other applicable charges will be as set out on the License Order.

7.2 Unless stated otherwise on the License Order all fees and charges due will be invoiced in advance and payable within 14 days of the invoice date.

7.3 All payment obligations are non-cancellable and all amounts paid are non-refundable other than as set out in this Agreement.

7.4 The Customer is responsible for paying for all License Orders for Users/Data Only Records for the entire License Term, whether or not such User accounts are actively used.

7.5 A License Administrator may add Users/Data Only Records by executing an additional written License Order. Added User licenses/Data Only Records shall:

7.5.1 be coterminous with the pre-existing License Term;

7.5.2 be chargeable at the applicable rates as set out in the License Order; and

7.5.3 if requested in the middle of a calendar month, be charged in full for that calendar month.

7.6 Fairsail's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and the Customer shall be responsible for payment of all such taxes, levies, or duties in addition to the fees.

7.7 The Customer agrees to provide Fairsail with complete and accurate billing and contact information, including its business name, registered company name, address, and contact details of an authorized billing contact and License Administrator. The Customer shall notify Fairsail of any change to this information.

7.8 If the Customer believes the Customer's bill is incorrect, the Customer must contact Fairsail in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit. Notwithstanding this, the Customer shall not be entitled to set-off or withhold any payments due to Fairsail under this Agreement.

7.9 In addition to any other rights it may have, Fairsail reserves the right to suspend the Customer's access to the Service if the Customer fails to pay any invoice within 30 days of receiving notice that payment is overdue. Interest of 4% above the base rate of the Bank of England shall be payable on any overdue balance. The Customer will continue to be charged for User licenses during any period of suspension. Fairsail reserves the right to impose a reconnection fee of up to the equivalent of 1 month's license fee in the event the Customer is suspended and thereafter requests access to the Service.

8. EXCESS DATA STORAGE FEES

8.1 The maximum data storage space provided to the Customer at no additional charge is the greater of 1 GB or an aggregate of 20 MB per User license. The maximum file storage space provided to the Customer at no additional charge is 2 GB per User license. If the amount of data storage or file storage required exceeds these limits, the Customer will be charged storage fees at Fairsail's then current list price. Fairsail will use reasonable efforts to notify the Customer when the average storage used per license reaches approximately 90% of the maximum; however, any failure by Fairsail to so notify the Customer shall not affect the Customer's responsibility for such additional storage charges. Fairsail reserves the right to establish or modify its general practices and limits relating to storage of Customer Data.

9. TERM & TERMINATION

9.1 This Agreement commences on the Effective Date and shall continue for the Initial Term set out in the License Order unless terminated in accordance with this Agreement.

9.2 Thereafter, unless terminated in accordance with this Agreement, the License Term will continue for a period of one year at the then current standard price list.

9.3 Either party may terminate this Agreement or reduce the number of licenses, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least forty-five (45) days prior to the expiry of the License Term.

9.4 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

9.4.1 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if remediable) fails to remedy that breach within 45 days of being notified in writing to do so;

9.4.2 an order is made or a resolution is passed for the winding up of the other party, a provisional liquidator is appointed in respect of the other party, an administration order is made in respect of the other, a receiver is appointed in respect of the other or all or any of its assets, or the other is unable to pay any of its debts within the meaning of Section 123 of the Insolvency Act 1986, or any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the aforementioned events; or

9.4.3 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

9.5 Fairsail may terminate this Agreement with immediate effect by giving written notice to the Customer if;

9.5.1 there is a change in control of the Customer which results in the Customer being controlled by a competitor of Fairsail; or

9.5.2 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.

9.6 Fairsail may suspend or terminate the Service at any time if the Customer chooses to use its own existing Salesforce.com org to access the Service, and this org expires or terminates for any reason.

9.7 On termination of this Agreement for any reason:

9.7.1 all applicable User licenses and the license granted in clause 1 shall immediately terminate;

9.7.2 subject to clause 5.5, Fairsail may destroy or otherwise dispose of any Customer Data in its possession; and

9.7.3 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before termination shall not be affected or prejudiced.

9.8 If this Agreement is terminated by the Customer for material breach in accordance with this clause 9, Fairsail will refund Customer any prepaid fees covering the remainder of the term after the effective date of termination. If this Agreement is terminated by Fairsail in accordance with this Termination section, Customer will pay any unpaid fees covering the remainder of the License Term. In no event will termination relieve the Customer of its obligation to pay any fees payable to Fairsail for the period prior to the effective date of termination.

10. INDEMNIFICATION

10.1 The Customer shall indemnify and hold Fairsail, its licensors and each such party's parent organisations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with:

10.1.1 a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; or

10.1.2 a breach of clause 5.6 provided in any such case that Fairsail (a) gives written notice of the claim promptly to the Customer; (b) gives the Customer sole control of the defence and settlement of the

claim (provided that the Customer may not settle or defend any claim unless the Customer unconditionally release Fairsail of all liability and such settlement does not affect Fairsail's business or Service); (c) provides to the Customer all available information and assistance; and (d) has not compromised or settled such claim.

10.2 Fairsail shall indemnify and hold the Customer harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with a claim alleging that the Service directly infringes the Intellectual Property Rights of a third party, provided that the Customer (a) promptly gives written notice of the claim to Fairsail; (b) gives Fairsail sole control of the defence and settlement of the claim (provided that Fairsail may not settle or defend any claim unless it unconditionally releases the Customer of all liability); (c) provides to Fairsail all available information and assistance; and (d) has not compromised or settled such claim.

10.3 In no event shall Fairsail, its employees, agents and sub-contractors be liable to the Customer pursuant to clause 10.2 to the extent that the alleged infringement is based on:

10.3.1 a modification of the Service or Content by anyone other than Fairsail; or

10.3.2 the Customer's use of the Service or Content in a manner contrary to the instructions given to the Customer by Fairsail, including such instructions given in the User Guides; or

10.3.3 the Customer's use of the Service or Content after notice of the alleged or actual infringement from Fairsail or any appropriate authority.

11. LIMITATION OF LIABILITY

11.1 Subject to Clause 11.3 below neither party shall be liable to the other for any:

a) loss of data, revenue, business, or profits; or

b) any other indirect, punitive, special, exemplary, incidental or consequential damages or losses,

(in each case whether direct or indirect and howsoever arising) in any way arising out of or in connection with this Agreement, whether arising from any breach of contract or tort (including negligence), even if such loss was reasonably foreseeable or if one party had advised the other of the possibility of such loss.

11.2 Subject to Clause 11.3 below and other than Customer's obligations to pay fees as set out in License Orders, either party's aggregate liability under this Agreement shall not exceed the value of the fees paid or payable from the Customer in the twelve (12) month period immediately preceding the event giving rise to such claim.

11.3 Nothing in this Agreement shall be construed so as to limit or exclude the liability of:

a) either party arising for death or personal injury caused by its negligence;

b) either party arising for fraud or fraudulent misrepresentation.

11.4 Each party shall make commercially reasonable efforts to mitigate any loss, damage or liability it may suffer or incur as a result of a breach by the other party of this Agreement or in respect of which it seeks indemnification from the other party under this Agreement.

12. LOCAL LAWS AND EXPORT CONTROL

12.1 The Services and Content may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. The Customer shall not permit Users to access or use any Service or Content in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

12.2 The Service is accessible through the public cloud. Fairsail and its licensors make no representation or warranty that the Service is appropriate or available for use in jurisdictions not compatible with accessibility through the public cloud.

12.3 The Service has been designed to be highly configurable as set out in the User Guides. It is the responsibility of the Customer to ensure that the configuration of the Service it adopts is appropriate for use in each local territory where the Service is used.

13. NOTICE

13.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes.

13.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by e-mail shall be deemed to have been received at the time of transmission.

14. AMENDMENT

14.1 Fairsail reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement at <http://go.sagepeople.com/fairsail-commercial-agreements>. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

15. ASSIGNMENT

15.1 This Agreement may not be assigned by the Customer without the prior written approval of Fairsail but may be assigned without the Customer's consent by Fairsail to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger.

16. PUBLICITY

16.1 Fairsail may display the name and logo of the Customer on its website identifying the Customer as a subscriber of Fairsail.

16.2 Subject to the prior written consent of the Customer, not to be unreasonably withheld or delayed, Fairsail may issue a press release identifying the Customer as a subscriber of Fairsail.

17. FORCE MAJEURE

17.1 Neither party shall be liable in respect of any breach of this Agreement due to any cause beyond its reasonable control including but not limited to act of God, inclement weather, flood, lightning, fire, industrial action, any act or omission of government or any other competent authority, war, military operations, riot or the act or omission of any party for whom Fairsail or Customer (as appropriate) is not responsible.

18. CONFIDENTIALITY

Definition of Confidential Information. As used herein, “**Confidential Information**” means all confidential information of a party (“**Disclosing Party**”) disclosed 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, which shall include the existence and terms of this Agreement (including pricing and other terms reflected in all License Orders hereunder), the Customer Data, the Service, Content, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information 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) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

18.1 Confidentiality. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party’s prior written permission.

18.2 Protection. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care).

18.3 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with 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.

18.4 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

19. GENERAL

19.1 This Agreement shall be governed by English law without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the English courts.

19.2 This Agreement, together with any applicable License Order, comprises the entire agreement between the Customer and Fairsail and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. No text or information set forth on any other purchase order, pre-printed form or document (other than an License Order, if applicable) shall add to or vary the terms and conditions of this Agreement.

19.3 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

19.4 The failure of Fairsail to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Fairsail in writing.

19.5 This Agreement does not confer any rights on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999, or otherwise.

19.6 Customer agrees that its purchase of subscriptions is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Fairsail with respect to future functionality or features.

19.7 No joint venture, partnership, employment, or agency relationship exists between the Customer and Fairsail as a result of this agreement or use of the Service.