

FAIRSAIL MASTER SUBSCRIPTION AGREEMENT (MSA) – REPLACED ON 14/06/2017

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.

This agreement was updated on April 10, 2017. Archived versions of this agreement are available [here](#) for reference.

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:

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

"Affiliate" means any company that directly or indirectly controls, is controlled by, or is under common control of the Customer. An entity shall be regarded as in control of another company or entity if it owns or directly or indirectly controls more than 50% of the voting rights of that company or entity;

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

"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 authorised 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;

“Personal Data” has the meaning given to it in the data processing addendum set out in Exhibit A;

“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 and its Affiliate’s employee(s), representative(s), consultant(s), contractor(s) or agent(s) who is authorised to use the Service and has been supplied user identifications and passwords by the Customer (or by Fairsail at the Customer’s request); and

“User Guides” means 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 and paragraph 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, including any statute or statutory provisions which modify, consolidate, re-enact or supersede it, except to the extent that they come into force after the date of this Agreement and would impose any new or extended obligation, liability or restriction on or otherwise adversely affect the rights of any party.

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, paragraphs and schedules are to the clauses of this Agreement; references to paragraphs and schedules are to paragraphs and schedules of the Exhibit.

2. LICENSE GRANT & RESTRICTIONS

2.1 Subject to the Customer paying all fees set out in License Orders, Fairsail grants the Customer and its Affiliates a non-exclusive, non-transferable, worldwide right to use the Service for the License Term, solely for the Customer's and its Affiliate'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 User licenses/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 (i) a User license for every User; and (ii) 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 uses 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 applicable Data Protection Laws, international communications and the transmission of technical or Personal Data.

3.2 The Customer shall:

3.2.1 notify Fairsail immediately of any unauthorised 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 these 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. This shall not relieve Fairsail of responsibility in respect of the operation of its internal communications networks and 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 Standards (SLS).

5. CUSTOMER DATA

5.1 The Customer exclusively owns all rights, title and interest in and to all Customer Data.

5.2 The Customer warrants that it has obtained all rights and consents necessary for Fairsail to process the Customer Data in accordance with this Agreement and shall ensure, and have sole responsibility for ensuring, the accuracy, quality, integrity, legality, reliability, relevance, and appropriateness of 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 Fairsail shall ensure that access to the Customer Data (including any Personal Data) is limited to those employees or authorised sub-contractors who need access to it, and that all such employees and authorised sub-contractors are subject to obligations of confidentiality in relation to the Customer Data.

5.6 Upon request by the Customer, made within 30 days before the effective date of termination ("Retention Period"), Fairsail shall make available to the Customer for download a file of Customer Data in comma separate value (.csv) format along with attachments in their native format. Fairsail recommends that the Customer downloads a copy of this file before the expiry of the Retention Period.

5.7 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 customer retention and destruction policies (which reflect Salesforce's policies from time to time, a current copy of which is available at <https://help.salesforce.com/HTViewSolution?id=000003594>). The foregoing shall not prevent Fairsail from retaining a copy of any Customer Data where it is required to do so under applicable law.

5.8 The processing of Personal Data shall be governed by the terms of Exhibit A.

5.9 Fairsail may record, retain and use Customer Data for monitoring, statistical analysis, benchmarking or marketing purposes, provided that Fairsail only undertakes those activities on an aggregated basis which cannot be linked back to the Customer or any living individual.

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 is 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 authorised 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 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 2.1 shall immediately terminate; and

9.7.2 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 5.2.

provided in any such case that Fairsail (i) gives written notice of the claim promptly to the Customer; (ii) 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); (iii) provides to the Customer all available information and assistance; and (iv) has not compromised or settled such claim.

10.2 Fairsail shall indemnify and hold the Customer and its Affiliates 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 (i) promptly gives written notice of the claim to Fairsail; (ii) 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); (iii) provides to Fairsail all available information and assistance; and (iv) 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.

10.4 If the Service infringes, or Fairsail reasonably believes it may infringe, third party rights, Fairsail may, at its own expense and sole discretion (i) procure for Customer the right to continue use of such Services; or (ii) modify such Service so that it becomes non-infringing. The indemnification obligations set forth above are each party's entire obligation and liability from or related to third party claims.

10.5 In the event that Customer wishes to bring a claim or other civil proceeding arising out of or in connection with Agreement, Customer represents and warrants that the involvement of Customer or its Affiliates in such a claim or proceeding shall not give rise to any increase in or multiplication of any cap placed on Fairsail's liability.

11. LIMITATION OF LIABILITY

11.1 Other than Customer's obligations to pay fees as set out in License Orders, in no event shall either party's aggregate liability under this Agreement, 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.

11.2 In no event shall either party be liable to the other for any:

11.2.1 loss of data (other than as expressly set out in Clause 11.3), revenue, business, or profits; or

11.2.2 any other indirect, punitive, special, exemplary, incidental or consequential damages or losses.

11.3 Subject to Clause 11.1, Clause 11.2.1 shall not exclude or limit Fairsail's liability for:

11.3.1 any unauthorised disclosure of Personal Data arising from a breach of Exhibit A; or

11.3.2 any loss of Customer Data (other than a loss falling within Clause 11.3.1) which is caused solely by Fairsail, in which case the Customer's sole and exclusive remedy for any such loss of Customer Data shall be for Fairsail to use its reasonable endeavours to restore the affected Customer Data from the most recently available back-up.

11.4 The exclusions and limitations apply to all causes of action (in each case whether direct or indirect and howsoever arising), whether arising from any breach of contract, tort (including negligence) or any other legal theory, even if such loss was reasonably foreseeable or if one party had advised the other of the possibility of such loss, save that nothing in this Agreement shall be construed so as to limit or exclude the liability of either party arising for (i) death or personal injury caused by its negligence; or (ii) fraud or fraudulent misrepresentation.

11.5 The parties acknowledge and agree that the allocation of risk in this Agreement is reflected in the level of fees payable under this Agreement.

11.6 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 either party without the prior written approval of the other but may be assigned by either party without the other's consent 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 acts 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 and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.

19.2 This Agreement, together with its Exhibits, Schedules and 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 either party 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 the other party 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.

EXHIBIT A

DATA PROCESSING ADDENDUM

1. DEFINITIONS & INTERPRETATION

1.1 In this Exhibit, unless the context otherwise requires:

“Approved Sub-Contractor” has the meaning given to it in paragraph 4.2;

“Data Controller” means the person who, alone or jointly with others, determines the purposes for which and the manner in which any Personal Data are processed;

“Data Processor” means any person (other than an employee of a Data Controller) who processes Personal Data on behalf of a Data Controller;

“Data Protection Laws” means all applicable EU laws and regulations governing the use or processing of Personal Data, including (where applicable) the European Union Directive 95/46/EC (until and including 24 May 2018), European Union Regulation 2016/679 (from and including 25 May 2018) and any national laws implementing or supplementing the foregoing;

“Data Subject” has the meaning given to it in the definition of “Personal Data”;

“Personal Data” means all Customer Data: (i) which relates to an identified or identifiable natural person (the “Data Subject”); and (ii) in respect of which the Customer is the Data Controller; and (iii) which will be processed by Fairsail in connection with this Agreement, as more particularly described in Schedule 1 (Specification of processing).

1.2 Where there is any inconsistency between the terms of this Exhibit and any other term of this Agreement, the terms of this Exhibit shall take precedence.

2. PROCESSING PERSONAL DATA

2.1 The parties acknowledge that, for the purposes of this Agreement, the Customer shall be the Data Controller and Fairsail shall be the Data Processor in relation to the Personal Data.

2.2 Each party warrants that it shall:

2.2.1 maintain such records in relation to the processing of the Personal Data as may be required under applicable Data Protection Laws, and, on request, make those records available to any supervisory authority or government authority;

2.2.2 provide such information as may reasonably be required by the other party to comply with its obligations under paragraph 2.2.2; and

2.2.3 on request, co-operate with any supervisory authority or government authority in relation to the processing of Personal Data pursuant to this Agreement.

3. FAIRSAIL WARRANTIES

3.1 Fairsail warrants that it shall:

3.1.1 only process the Personal Data in accordance with the reasonable lawful instructions of the Customer, including those set out in this Agreement;

3.1.2 implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks that are presented by processing (in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data), taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of Personal Data, as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects;

3.1.3 provide to the Customer, on request, a written description of the technical and organisational measures implemented pursuant to paragraph 3.1.2;

3.1.4 in the case of any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data arising from any act or omission of Fairsail or any of its sub-contractors (a "**Security Breach**"):

3.1.4.1 notify the Customer without undue delay and, where feasible, not later than 72 hours after having become aware of the Security Breach, unless the Security Breach is unlikely to result in a risk to the rights and freedoms of the Data Subjects (as reasonably determined by Fairsail); and

3.1.4.2 provide the Customer, on request, with such information and co-operation as may reasonably be required in relation to such Security Breach, provided that such notification and co-operation is required under applicable Data Protection Laws.

3.1.5 promptly notify the Customer in writing if it receives:

3.1.5.1 any complaint, notice or communication from any supervisory or government body which relates directly to the processing of the Personal Data or to either party's compliance with applicable Data Protection Laws; and

3.1.5.2 any request made by a Data Subject which relates to the Personal Data and is pursued in accordance with their rights under Data Protection Laws, which may include any Data Subject request to know whether their Personal Data is being processed, for access to their Personal Data or for rectification, deletion or erasure of their Personal Data;

3.1.6 subject to paragraph 3.2, provide the Customer, on request, with such information and co-operation, as may reasonably be required in relation to any complaint, notice, communication or request which is notified to the Customer pursuant to paragraph 3.1.5; and

3.1.7 subject to paragraph 3.2, provide to the Customer, on request, such other assistance as may reasonably be required by the Customer to comply with its own obligations under applicable Data Protection Laws in relation to their use of the Services.

3.2 Any assistance provided by Fairsail to the Customer pursuant to paragraphs 3.1.6 and 3.1.7 shall be subject to payment of a separate fee, as agreed between the parties.

4. USE OF SUB-CONTRACTORS

4.1 Fairsail may subcontract its processing of the Personal Data, provided that Fairsail shall make available to the Customer on request, a current list of those sub-contractors which are used by

Fairsail in its performance of its obligations under this Agreement, and the purposes for which they are used.

4.2 By entering into this Agreement, the Customer is deemed to have approved the use of those sub-contractors set out in Schedule 2 ("Approved Sub-Contractors"). The rights afforded to the Customer in paragraph 4.3 shall not apply in relation to Approved Sub-Contractors.

4.3 Following the date of this Agreement:

4.3.1 Fairsail shall notify the Customer of its intention to appoint or use a new sub-contractor (which is not an Approved Sub-Contractor), or to use an Approved Sub-Contractor for a materially different purpose, prior to transferring, or continuing to transfer, any Personal Data to such sub-contractor;

4.3.2 If the Customer has a reasonable basis to object to Fairsail's use of such sub-contractor, and such objection directly relates to the Customer's obligations under Data Protection Laws, the Customer shall notify Fairsail promptly in writing within 10 working days after receipt of Fairsail's notice;

4.3.3 If the Customer makes an objection in accordance with the requirements of paragraph 4.3.2, Fairsail will use reasonable efforts to make available to the Customer an alternative solution or arrangement to avoid the processing of Personal Data by the relevant sub-contractor, provided that:

4.3.3.1 Fairsail shall not be required to implement an alternative solution or arrangement which unreasonably burdens Fairsail; and

4.3.3.2 Fairsail shall be entitled to make a reasonable charge to cover the costs of implementing and operating the alternative solution or arrangement;

4.3.4 If Fairsail is unable to make available an alternative solution or arrangement within a reasonable period of time (which shall not exceed 60 days) or the Customer is unwilling to pay any charge by Fairsail to cover the costs of implementing and operating the alternative solution or arrangement, the Customer may, by written notice to Fairsail:

4.3.4.1 discontinue its use of that part of the Service which is impacted by the Customer's objection; or

4.3.4.2 terminate the Agreement, but only in such circumstances as it is not technically possible to discontinue only part of the Service pursuant to paragraph 4.3.4.1, and in either case the Customer shall be entitled to receive a pro rata refund of any prepaid fees and other applicable charges for the period following the effective date of the relevant part of the Service being discontinued or termination (as applicable).

4.4 Fairsail shall procure that any sub-contractors engaged pursuant to this paragraph 4 shall enter a written contract with Fairsail which contains obligations for the protection of the Personal Data which are no less onerous than those set out in this Exhibit.

5. TRANSFERS OF PERSONAL DATA OUTSIDE THE EEA

5.1 For Customers falling within the scope of (until and including 24 May 2018) European Union Data Protection Directive 95/46/EC (or any implementing national laws) or (from and including 25 May 2018) the European Union Regulation (EU) 2016/679, Fairsail shall only transfer Personal Data to

countries outside the European Economic Area, if it has provided appropriate safeguards, as required by such Directive or Regulation (as applicable).

5.2 The Customer acknowledges and agrees that Fairsail shall not be responsible for any transfers of Personal Data outside the European Economic Area, which occur when Users access the Service through a browser from a country, or territory outside the European Economic Area.

6. RIGHTS OF AUDIT

6.1 At the Customer's reasonable request and subject to the Customer entering into adequate confidentiality agreements (as required by Fairsail), Fairsail shall:

6.1.1 make available to the Customer such information as may reasonably be necessary to demonstrate compliance with its obligations under this Exhibit, including copies of any audit reports demonstrating compliance with paragraph 3.1.2; and

6.1.2 subject to the restrictions in paragraph 6.2 below, allow the Customer (or an independent, third-party professional auditor engaged by it) to conduct an audit, including inspection, of Fairsail's processing of Personal Data pursuant to this Agreement.

6.2 When exercising its rights under paragraph 6.1.2 above, the Customer shall:

6.2.1 promptly provide Fairsail with information regarding any non-compliance discovered during the course of an audit;

6.2.2 conduct such audits during reasonable times and for a reasonable duration, which shall not unreasonably interfere with Fairsail's day-to-day operations; and

6.2.3 if an audit requires the equivalent of more than one business day of time expended by one or more of Fairsail's employees (or other personnel), the Customer agrees to reimburse Fairsail for any additional time expended at Fairsail's then current professional services rates.

6.3 In relation to any sub-contractors that are engaged pursuant to paragraph 4, the Customer acknowledges and agrees that it is sufficient, for the purposes of satisfying the requirements of paragraph 4.4, that Fairsail has a right to audit those sub-contractors on behalf of the Customer, subject to reasonable restrictions.

SCHEDULE 1
SPECIFICATION OF PROCESSING

Subject matter and duration of the processing of Personal Data:

Subject matter: the Fairsail human resources management software.

Duration: the Term of this Agreement.

Nature and purpose of the processing of Personal Data:

Personal Data submitted by the Customer during its use of the Service.

Type of Personal Data (including any special categories of Personal Data):

First and last name, Title, Position, Employer, Contact information (company, email, phone, physical business address), ID data, Professional life data, Connection data, and Localisation data.

Categories of data subjects:

Prospects, customers, business partners and vendors of Controller (who are natural persons);

Employees or contact persons of Controller's prospects, customers, business partners and vendors;

Employees, agents, advisors, freelancers of Controller (who are natural persons); and

Controller's users authorised by Controller to use the services under this Agreement.

SCHEDULE 2

AUTHORISED SUB-CONTRACTORS

Sub-contractor	Specification of processing
Salesforce.com EMEA Limited	Hosting of the Service and provision of the cloud platform to Salesforce.com.
Salesforce.com, Inc.	Hosting of the Service and provision of the cloud platform to Salesforce.com.
Sovren	Resume parsing (only applicable to the extent Customer uses Fairsail Recruit)