

## 1. Definitions

The following words and phrases shall have the following meanings, unless the context otherwise requires:

|                                      |   |
|--------------------------------------|---|
| <b>“Agreement”</b>                   | The terms and conditions including all appendices and any other documents incorporated by reference.  |
| <b>“Client”</b>                      | The Company who has registered for SuiteCRM:OnDemand via the online registration form and has provided their payment details to Supplier.   |
| <b>“Supplier”</b>                    | <b>SalesAgility Ltd</b> (incorporated in Scotland with company number SC364788) whose registered office is at <b>The Steeple, Stirling, Scotland FK8 1DT</b>  |
| <b>“SuiteCRM”</b>                    | SuiteCRM.com / Suiteondemand.com or any associated website (hereinafter “Website”) is owned by, and the hosting and support services referenced on the Website are provided by, SalesAgility Ltd including salesagility.com |
| <b>“Fees”</b>                        | monies payable by the Client to Supplier  |
| <b>“Helpdesk”</b>                    | a web based interface for reporting and tracking Support Requests at a URL to be provided by SUPPLIER   |
| <b>“Out Of Hours”</b>                | Any time not included in a Business Day   |
| <b>“Personnel”</b>                   | officers, employees, sub-contractors, consultants and agents.   |
| <b>“Business Day”</b>                | 09:00 - 17:00 (GMT/BST) Monday to Friday excluding UK national holidays.  |
| <b>“Effective Date”</b>              | Date the Client registers for their SuiteCRM:OnDemand free trial.   |
| <b>“Initial Term”</b>                | 12 Months or 3 months depending on subscription type.   |
| <b>“Services”</b>                    | The provision of hosting and support associated with SuiteCRM.  |
| <b>“Renewal Term”</b>                | 12 Months or 3 months depending on subscription type.   |
| <b>“Hosting and Support Package”</b> | The hosting package selected on the SuiteCRM:OnDemand website which outlines the resources and number of hours included in an Initial   |

or Renewal Term.

- “Response Time”** The time taken by Supplier to allocate a case reference number to the fault, confirm the error level, and acknowledge receipt of the fault to the Client.
- “Reportable Incidents”** Any verifiable and reproducible failure of the Products to materially conform to the Specifications unless such failure (a) results from Client misuse or improper use of the Products; (b) does not materially affect the operation and use of the Products; (c) results from the modification by Client or any third party of the Software or Hardware in a fashion not contemplated by the Agreement; or (d) results from Client failure to implement in a timely manner any relevant improvements or modifications to the Products provided to Client by Supplier (e) results from an environmental issue due to a third party hosted solution.
- “Error Correction”** Either a modification or addition to, or deletion from, the Products that materially conforms to Supplier’s published Specifications, or a procedure or routine that, when observed in the regular operation of the Software, eliminates that material adverse effect on Client of such Error.
- “Severity 1 Error”** Means Client’s production server or other mission critical system(s) are down and no workaround is immediately available and (i) all or a substantial portion of Client’s mission critical data is at a significant risk of loss or corruption; (ii) Client has had a substantial loss of service; or (iii) there has been a breach in security of access to personal data. No issues with client Software or third-party software will be treated as a Severity 1 Error.
- Laboratory, demonstration systems or any system that has not completed UAT are excluded from Severity 1 Errors. SalesAgility reserves the right to downgrade
- Severity 1 Errors if Client does not provide appropriate resource to assist in there solution of the problem.
- “Severity 2 Error”** Means that major functionality is severely impaired such that (i) operations can continue in a restricted fashion, although long-term data integrity might be adversely affected; or (ii) only a temporary

workaround is available. No issues with client Software or third-party software will be treated as a Severity 2 Error.

**“Severity 3 Error”** Means a partial, non-critical loss of functionality of the software such that the operation of some component(s) is impaired but allows the user to continue using the Software. No issues with client Software or third-party software will be treated as a Severity 3 Error.

**“Severity 4 Error”** Means general usage questions and cosmetic issues, including errors in the Documentation. No issues with client Software or third-party software will be treated as a Severity 4 Error.

**“Maximum Support Hours”** The maximum number of hours of support provided within an Initial or Renewal term according to package purchased.

**“Starter Package”** Our standard performance package which includes only Severity 1 Error support and no additional support hours

**“Business Package”** Our medium performance package which includes 4 Maximum Support Hours quarterly or 16 Maximum Support Hours annually depending on your Initial Term or Renewal Term.

**“Premium Package”** Our high performance package which includes 8 Maximum support hours quarterly or 32 Maximum Support Hours annually depending on your Initial Term or Renewal Term.

## **2. Agreement Commencement and Duration**

2.1 This agreement is effective from the Effective Date for the Initial Term unless earlier terminated by either Party in writing in accordance with the terms of this Agreement. Following the Initial Term the Agreement will automatically renew for additional periods of the Renewal Term on a rolling basis subject to Termination by either party in accordance to Clause 9.

2.2 When the Maximum Support Hours have been reached then Client will have the option to purchase this Agreement early to access additional Support Hours.

## **3. Basis of the Agreement**

3.1 This Agreement constitutes the complete and final expression of the entire and only understanding of the provision of Services from the Supplier to the Client regarding the subject matter of this Agreement and supersedes any prior written or oral representations.

3.2 Client agrees not to use the Services for any unlawful, fraudulent or abusive purpose. Supplier has the right to interrupt, suspend or terminate Services if it suspects that the Client is engaging in unlawful, fraudulent or abusive activity.

3.3 Supplier will use commercially reasonable efforts to keep its Services operational. There will be periods of downtime for maintenance, upgrades and other unexpected reasons. Supplier will attempt to provide at least 24 hours notice for scheduled maintenance or downtime.

3.4 Hosting infrastructure will be supplied by supplier partner Hutchinson Networks Limited and all data will be hosted in the United Kingdom.

3.6 Supplier makes no guarantees or warranties as to uptime or availability of its services however it is anticipated that uptime will be around 99.9%

3.7 Client affirms that they are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into, abide by and comply with the terms and obligations of this agreement.

3.8 Supplier will make commercially reasonable efforts to provide an Error Correct designed for resolving a Reportable Incident in accordance with the table below (Severity Levels). Due to the varied nature and complexity of problems associated with software, Supplier does not guarantee Errors will be fixed in a certain period of time. The Response Times are for diagnosing problems only. Errors will be resolved in line with severity, access, diagnosing and resourcing and any other terms as outlined within this Service Level Agreement.

| Severity   | Response Time within Business Hours |                  |                  |
|------------|-------------------------------------|------------------|------------------|
|            | Starter                             | Business         | Premium          |
| Severity 1 | 2 Business Hours                    | 2 Business Hour  | 1 Business Hour  |
| Severity 2 |                                     | 6 Business Hours | 5 Business Hours |
| Severity 3 |                                     | 2 Working Days   | 2 Working Days   |
| Severity 4 |                                     | 10 Working Days  | 5 Working Days   |

3.9 Supplier is under no obligation to correct errors or provide help desk support once the Maximum Support Hours has been consumed.

3.10 Client may purchase more hours in bundles of 15, 30 or 50 at the rate of £100 per hour. Larger bundles can be purchased on written agreement with Supplier.

3.11 Supplier must reproduce Client errors in order to resolve such issues. Client agrees to fully cooperate and to allocate necessary time in order to work closely with Supplier to reproduce errors, including conducting diagnostic or troubleshooting activities as reasonably requested and appropriate.

3.12 Client shall be responsible for using the appropriate method of raising Reportable Incidents to the Supplier. The Client is obligated to provide accurate and reliable information as well as providing as much detail as possible to assist with diagnosing the Reportable Incident.

3.13 Reportable Incidents which have been updated by Supplier but no response has been provided by Client within 5 business days will be treated as closed.

3.14 Feature requests and other Change Requests or Enhancements will not be completed under this agreement. The Supplier reserves the right to use it's knowledge and expertise in order to define what is deemed to be a Reportable Incident and thus covered under the terms of this Agreement.

#### 4. Payment

4.1 Fees will be paid either annually or quarterly in advance.

4.2 All payments shall be made in GBP (Sterling)

4.3 In the event client fails to pay or payment is disputed or reversed then Supplier may discontinue the services and terminate this agreement.

4.4 Fees are exclusive of Value Added Tax and governmental or other charges, which shall be added to Fees if applicable and shall be included and itemised separately on order summary where appropriate.

#### 5. Data Protection

5.1 Both parties shall observe all their obligations under the General Data Protection Regulation (GDPR) or other data protection law of the United Kingdom which arise out of or in connection with this Agreement

5.2 The Client hereby acknowledges its obligations as a data controller in terms of GDPR and warrants and represents to the Supplier that it has discharged and shall discharge its obligations in terms thereof and the Client shall hold the Supplier harmless from any claims by any third party relating thereto.

5.3 In the event that the provision of the Services will require the Supplier to access, process or use Personal Data (as defined in the Act) on behalf of the Client, the Supplier will do

so only in accordance with this Agreement, subject to any reasonable specific instructions from the Client amending or superseding the same.

5.4 Without prejudice to the generality of the obligation set out in sub-clause 5.3, the Supplier warrants that it will:

5.4.1 take appropriate technical and organisational measures to protect any such Personal Data against unauthorised or unlawful processing and against accidental loss, destruction or damage;

5.4.2 without prejudice to the generality of sub-clause 5.4.1 ensure that the contractual arrangements with its sub-contractors impose obligations on the sub-contractors equivalent to those set out in this clause 5;

5.4.3 notify the Client promptly of any proposed changes to the technical and organisational measures referred to in sub-clause 5.4.1, unless such changes are minor or inconsequential;

5.4.4 within the timescales required by any regulator, permit such regulator to conduct its own audit of the processing of any such Personal Data and documented security procedures;

5.4.5 and will ensure that its agents and sub-contractors will not, transfer Personal Data to any country outside the European Economic Area without the prior written consent of the Client;

5.4.6 assist the Client, within such timescales as may be reasonably required by the Client with all subject information requests which may be received from the data subjects of the Personal Data. Should the Supplier receive any such requests from the data subject, the Supplier will immediately inform the Client and forward the request forthwith to the Client. The Supplier will not respond to any such request except on instruction from the Client; and

5.4.7 only process such data to the extent absolutely necessary to provide the Services in accordance with this Agreement and as required by law;

5.4.8 submit to audits and inspections as required to provide the Client in order to ensure that they are both meeting with Article 28 obligations as defined in the GDPR;

5.4.9 inform the Client if they request a service from the Supplier which infringes the GDPR or other data protection law;

5.5 Any Personal Data (as defined in the GDPR) provided by the Client to the Supplier shall at all times remain the Client's property and the Supplier shall take all reasonable precautions to preserve the integrity of such Personal Data and to prevent any corruption or loss, damage or destruction of such Personal Data.

5.6 The Supplier shall immediately notify the Customer in the event that it becomes aware of any breach of this Agreement or the GDPR by the Supplier or its agents or sub-contractors.

### 6. Intellectual Property

6.1 SuiteCRM is governed by the Affero General Purpose License 3 (AGPL3) an open source license.

6.2 SuiteCRM software is provided 'As Is' and without warranties of any kind, either express or implied including without limitation the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement.

6.3 Unless expressly provided in this Agreement, each Party agrees that it neither has nor will obtain any rights in or to any of the other party's Intellectual Property Rights or Confidential Information.

6.4 Each Party will defend and hold the other Party harmless against any claim, suit or proceeding brought against that Party so far as it is based on any actual or threatened infringement of any Intellectual Property Rights by it, provided that it is given prompt notice in writing of any such claim and is given full authority and such information and assistance as is reasonably necessary for the defence of such claim.

6.5 The Supplier shall have no liability in respect of any alleged infringement which is based on the sale or use of any Services in combination with any other products or services not supplied by the Supplier (unless expressly agreed by the Supplier).

6.6 The Supplier shall have no liability in respect of any unauthorised modifications, changes or alterations by the Customer or its agents of the Services supplied by the Supplier, other than in respect of modifications, changes or alterations carried out by the Supplier.

### 7. Disclaimer of Warranties

7.1 The services are provided "as is" and without warranties of any kind, either express or implied. to the fullest extent permissible pursuant to applicable law, the Supplier disclaims all warranties, express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. The Supplier does not warrant that the services will be uninterrupted or error-free, that defects will be corrected, or that the website or servers are free of viruses or other harmful components. The Supplier does not warrant or make any representations regarding the use or the results of the services, the content passing through its services, or the accuracy or quality of information obtained through the services. Client assumes all risk for any damage to Client resulting from Client's

use of the services. The Supplier does not authorise anyone to make any warranties on its behalf, and Client should not rely on any warranties made by third parties. applicable law may not allow the exclusion of implied warranties, so the above exclusion may not apply to Client.

### 8. Disclaimer of Liability

8.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Client in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Client to which the claim relates.

8.2 In no event shall the Supplier be liable to the Client for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Client incurring such a loss.

8.3 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub- contractors.

### 9. Termination

9.1 The Client may terminate this Agreement by giving the Supplier a minimum of 30 days written notice prior to the end of the Initial Term or Renewal Term.

9.2 Supplier may terminate this Agreement or suspend Client access to Services at any time, without notice, for any or no reason, including, but not limited to, non-payment or breach of this Agreement.

9.3 On termination of this Agreement for any reason:

9.3.1 all sums due to the Supplier up to the date of termination shall become immediately due and payable to the Supplier.

9.3.2 Supplier shall immediately cease provision of services but may provide Exit or other Services to Client

9.3.3 The Supplier shall destroy and dispose any of the Customer Data in its possession as well as from any back-ups at the next scheduled rotation. It is the responsibility of the client to obtain a back-up of data prior to termination.



## 10. Amendment of Agreement

10.1 The Supplier reserves the right to amend this Agreement at any time and without notice, and it is the Client responsibility to review this Agreement for amendments. Use of the Services following any amendments of this Agreement by Supplier will signify Client's assent to and acceptable of its revised terms.

10.2 The Client has no right to amend or alter this Agreement.

10.3 Client may not assign this Agreement without Supplier's prior written consent.

## 11. Force Majeure

Neither Party shall be liable for any failure to perform its obligations under this Agreement if such failure results from circumstances beyond the affected Party's reasonable control, including but not limited to, Acts of God, fire, lightening, explosion, war, disorder, flood, industrial dispute (whether or not involving our employees), failures or interruptions of electricity supplies, weather of exceptional severity or acts of local or central government or other authorities.

## 12. Non-Solicitation

The Parties agree that during the Term, neither Party shall directly or indirectly solicit for employment any officers or employees employed then by the other Party who is or was involved in the provision or management of the provision of the Services without the prior written consent of the Party whose personnel are to be solicited. In the event that a Party employs or hires any of the other Party's personnel in breach of this Clause 12 the breaching Party shall pay to the injured Party upon demand as liquidated damages a sum equal to the annual salary of such personnel at the time of breach. Nothing in this Clause 12 shall restrict either Party from employing any individuals who apply unsolicited in response to general advertising or other general recruitment campaigns.

## 13. Relationship

Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or Customer and agent between the Parties and neither the Supplier nor the Customer shall have the right to bind the other (other than as set out in this Agreement) without the other's express prior written consent.

## 14. No Waiver

Failure or delay by either party in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement. Any waiver by a Party of any breach of, or any default under, any provision of the Agreement by the other Party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement.

## 15. Severability

If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.

## 17. Indemnification

Client agrees to defend, indemnify, and hold harmless Supplier, its parents, subsidiaries, licensors, licensees, distributors, and all of the foregoing entities' respective officers, directors, owners, employees, agents, representatives, and assigns from and against any and all claims, damages, obligations, losses, liabilities, costs, attorneys' fees, and expenses arising out of or in connection with (i) Client's use of the Services, (ii) Client's violation of this Agreement, and (iii) Client's violation of any third party right, including, but not limited to, copyright, trademark, or privacy right. Client shall cooperate as fully as reasonably required in the defense of any claim. SalesAgility reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Client. Client shall not enter into any settlement agreement that affects the rights of Supplier without Supplier prior written approval.

## 18. Survival

All provisions of this Agreement that, by their nature, should survive the termination of this Agreement shall continue in full force and effect and survive the termination of this Agreement, including, but not limited to, the intellectual property, disclaimer of warranties, limitation of liability, indemnification, severability, and governing law provisions.

## 19. Contract (Right of Third Parties) Act 1999

The parties to this Agreement do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Acts 1999, by any person who is not a party to this Agreement.

## 20. Jurisdiction

This Agreement shall be governed by the laws of Scotland, without respect to its conflict of laws principles. Any claim or dispute between Client and Supplier that arises in whole or in part from Client's use of the Services or Website shall be decided exclusively by Scottish Law and Client agrees to the jurisdiction of Scottish courts.

## 21. Notices

Any notices or other communications under this Agreement to Supplier shall be in writing and shall be delivered by first class mail or email to

SalesAgility Ltd.

The Steeple

65 King Street

Stirling FK8 1DT

Scotland

"info@salesagility.com"

Any notices or other communications under this Agreement to Client shall be in writing and shall be delivered by first class mail or email to the address or email on file.