

**SERVICEMAX HOSTED SERVICES AGREEMENT****TERMS AND CONDITIONS****1. DEFINITIONS.**

**“Affiliate”** means, with respect to a Party, any entity which directly or indirectly Controls, is Controlled by, or is under common Control with such Party.

**“Confidential Information”** has the meaning set forth in Section 11.

**“Control”** means ownership or control, directly or indirectly, of at least 50% of the voting interests of the subject entity or the right to appoint a majority of the board of directors of the subject entity.

**“Customer Data”** means all electronic data or information submitted to ServiceMax by Customer, or any of its Affiliates, in the course of using the ServiceMax Service.

**“Customer Equipment”** means Customer’s and its Affiliates’ computer hardware, software and network infrastructure used to access the ServiceMax Service.

**“Data Protection Laws and Regulations”** means all EU/Swiss applicable legislations with respect to the processing of personal data.

**“Deliverables”** means those tangible deliverables specified in a Statement of Work to be provided by ServiceMax as part of its performance of Professional Services. Deliverables do not include any Customer Data or Customer Confidential Information.

**“Documentation”** means the published specifications contained in the user manuals, help windows, and readme files of the ServiceMax Service, as may be updated or amended from time to time as necessary due to updates and enhancements.

**“Extension Term”** means each renewal subscription period for which the subscription

term applicable to a Sales Order Form is extended pursuant to Section 13.

**“Force Majeure Event”** means natural disasters, acts of governmental bodies, military action, terrorism, unexpected communications line failure, or an unexpected or unforeseeable event beyond the reasonable control of the affected party’s control.

**“Initial Term”** means the first subscription term period for the ServiceMax Service defined on a Sales Order Form, or if no such term period is defined, the Initial Term will be twelve (12) months, commencing on the date ServiceMax executes such Sales Order Form.

**“Sales Order Form”** means an ordering document for the ServiceMax Service signed by ServiceMax and Customer.

**“Professional Services”** means the configuration, implementation, training or other professional services provided by ServiceMax to Customer under a Statement of Work.

**“ServiceMax Service”** means the online, Web-based field service management application and platform service provided by ServiceMax that is hosted on the infrastructure of [salesforce.com](https://salesforce.com)

(“Salesforce”) via <http://www.salesforce.com/AppExchange>, and/or other designated platforms and websites, including associated offline components. Certain ServiceMax Service offerings (e.g., ServiceMax’s Optimax Hosted Service) may be hosted by Amazon or other ServiceMax third-party hosting providers.

**“Statement of Work”** or **“SOW”** means a document agreed upon by the parties that defines the Professional Services and

Deliverables, if any, to be provided by ServiceMax.

**“Subscription Fees”** mean the fees paid by Customer for the right to access and use the ServiceMax Service during the Term.

**“System Availability”** means the ability of Users to access the ServiceMax Service and submit new Customer Data or update or alter existing Customer Data, as measured against the time that the Salesforce Web-based application and platform service is available.

**“Taxes”** means any direct or indirect local, state, federal or foreign value-added, sales, use excise, income or withholding taxes.

**“Term”** as it relates to a Sales Order Form, means the Initial Term and any Extension Terms applicable to each Sales Order Form, and, as it relates to this Agreement, defined in Section 13.1 below.

**“Users”** means Customer's employees and Affiliates, agents, contractors, service providers or consultants who are authorized by Customer to use the ServiceMax Service and who have been supplied user identifications and passwords by Customer or by ServiceMax, at Customer's request. Some offerings will have a predefined allowable User set based on the specific Service.

## **2. TERMS OF SERVICEMAX SERVICE.**

**2.1** Subject to the terms of this Agreement and the applicable Sales Order Form, including Customer's timely payment of all applicable fees and costs, Customer has the nonexclusive, worldwide, limited right to use the ServiceMax Service during the Term as defined in the Sales Order Form, unless earlier terminated in accordance with this Agreement. Services may be used solely for Customer's internal business operations. Customer may allow its Affiliates to use the ServiceMax Service for this purpose, and Customer is responsible for its Affiliates' compliance

with this Agreement and the Sales Order Form. During the Term, ServiceMax may update the ServiceMax Service and Documentation to reflect changes in, among other things, regulations, rules, technology, industry practices, patterns of system use, availability of content, and otherwise, in its discretion. ServiceMax updates to the ServiceMax Service or Documentation will not materially reduce the level of performance or functionality of the ServiceMax Service during the Term of the Sales Order Form. The use rights granted hereunder are limited to the maximum number of Users specified in each Sales Order Form and are subject to any additional terms and conditions specified on a Sales Order Form or in Documentation. User subscriptions are for named Users, only, and cannot be shared or used by more than one individual User but may be reassigned by Customer to new Users who are replacing former Users that no longer use the ServiceMax Service. Any third-party component embedded, included or provided by ServiceMax for use with the ServiceMax Service may only be used in conjunction with the ServiceMax Service. Third-party products and services resold by ServiceMax will be subject to third-party license terms. Customer is obligated to comply with all applicable third-party license terms.

**2.2** The ServiceMax Service is hosted on the existing infrastructure and services provided by salesforce.com infrastructure and data centers. ServiceMax agrees to be bound to the same terms and conditions as Salesforce with respect to the protection, security, backup and privacy of Customer Data.

### **3. CUSTOMER RESPONSIBILITIES RELATING TO USE OF THE SERVICEMAX SERVICE.**

- 3.1** Customer is responsible for obtaining and maintaining any Customer Equipment and any ancillary services needed to connect to, access or otherwise use the ServiceMax Service. Customer is responsible for securing all necessary rights and permissions to provide Customer Data to ServiceMax (including personal information) and to use such data and information with the services under this Agreement.
- 3.2** Customer agrees to use the ServiceMax Service in compliance with applicable law, and not: (a) resell, sublicense, lease, timeshare or otherwise make the ServiceMax Service available to any third-party, other than as allowed by this Agreement; or (b) use the ServiceMax Service to intentionally send or store infringing or unlawful material or material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs.
- 3.3** Customer may not, and may not cause or permit others to (a) modify, copy or create derivative works of the ServiceMax Service; (b) reverse engineer, reverse assemble, disassemble, or decompile the ServiceMax Service; (c) access the ServiceMax Service for the purpose of building a competitive product or service; (d) do any "mirroring" or "framing" of any part of the Service, or create Internet links to the Service which include log-in information, user names, passwords, and/or secure cookies; (e) use the ServiceMax Service, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without ServiceMax's prior written consent; or (f) provide access to the ServiceMax

Service to a known direct competitor of ServiceMax.

**3.4** IF CUSTOMER FAILS TO COMPLY WITH THE OBLIGATIONS SET FORTH IN THIS SECTION 3 SERVICEMAX SHALL INFORM CUSTOMER THEREOF IN WRITING. SERVICEMAX RESERVES THE RIGHT TO SUSPEND THE SERVICEMAX SERVICE IF THE FAILURE IS NOT PROMPTLY REMEDIED. ANY RESULTING SUSPENSION MAY CONTINUE UNTIL SUCH FAILURE IS REMEDIED.

### **4. PROFESSIONAL SERVICES.**

Professional Services will be provided on the terms set forth in a mutually executed Statement of Work and at the fees specified therein.

### **5. OWNERSHIP.**

**5.1** Customer retains all ownership and intellectual property rights in and to Customer Data. Customer and its Affiliates may remove its Customer Data from the ServiceMax Service at any time during its subscription Term. ServiceMax or its licensors retains all ownership and intellectual property rights in and to the ServiceMax Service, Professional Services, Documentation, Deliverables, and anything developed or delivered by or on behalf of ServiceMax under this Agreement, including derivative works thereof. No license, right or interest in either party's respective trademarks, copyrights, trade names, service marks, or trade secrets are granted hereunder.

**5.2** Subject to the terms of this Agreement and the applicable SOW, including Customer's timely payment of all agreed upon fees, Customer has the non-exclusive, worldwide, non-transferable limited right to use the Professional Services and Deliverables defined in the SOW solely for Customer's internal business operations

used in conjunction with the ServiceMax Service.

**5.3** Customer grants ServiceMax a royalty free, fully paid-up, , exclusive, perpetual, irrevocable, worldwide, transferable license to use, copy, modify, or distribute, including by incorporating into the ServiceMax Service, any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Users relating to the operation of the ServiceMax Service (“**Suggestions**”), and ServiceMax will solely own products and services developed by or for ServiceMax and its Affiliates from such Suggestions.

**5.4** Customer consents to ServiceMax’s use of Customer Data to provide the ServiceMax Service and Professional Services to Customer, and to perform ServiceMax’s obligations under this Agreement. Customer further agrees that ServiceMax and its Affiliates may use information derived from Customer Data, or generated by the ServiceMax Services or Professional Services, to maintain, protect, create, develop and improve such service offerings and other ServiceMax products and services, to the extent permitted by applicable law.

## **6. FEES.**

**6.1** Unless otherwise specified in a Sales Order Form, the Subscription Fees stated in each Sales Order Form shall be effective only for the Term specified in that Sales Order Form. Subscription Fees shall be billed on an annual basis, payable in advance. If additional User subscriptions are added under an existing Sales Order Form, the Term of the additional User subscriptions shall be coterminous with the expiration of the then-current Term applicable to such Sales Order Form, and the pricing for the additional User subscriptions shall be the same as that defined in such Sales Order Form, prorated for the remainder of the Term. Customer has the right to order an

increase or decrease in the number of User subscriptions, effective at the beginning of any Extension Term; such number of User subscriptions at the beginning of each Extension Term will remain in effect for the length of such Extension Term, and ServiceMax will invoice Customer for such number of User subscriptions ordered as set forth above. ServiceMax may modify the Subscription Fees applicable to a Sales Order Form for any Extension Term upon no less than thirty (30) days prior written notice; however, any increase in Subscription Fees noticed during an Extension Term shall not take effect until the beginning of the next Extension Term. In the event Customer issues purchase orders in its normal course of business, Customer shall provide ServiceMax with a purchase order forthwith. However, Customer’s failure to provide a purchase order will not, under any circumstances, allow Customer to postpone or delay payment. Customer authorizes ServiceMax to proceed in its normal course of billing, with or without a purchase order. No contingency in any purchase order shall be binding on ServiceMax. The terms of this Agreement and the applicable Sales Order Form will control, regardless of any additional or conflicting terms on the purchase order or other correspondence or documentation submitted by Customer to ServiceMax. Any such additional or conflicting terms are deemed rejected by ServiceMax.

**6.2** All fees shall be due and payable within thirty (30) days of the date of invoice, unless otherwise set forth in the signed Sales Order Form. Any payment not received from Customer by the due date may result in a) suspension of services until payment is made in full, and/or b) any sum not paid when due shall bear interest at the lesser monthly rate of 1.5% or the maximum rate permitted by law; provided that ServiceMax notifies Customer in writing of the delinquency and such delinquency is not corrected within ten (10)

business days. In the event of a suspension of services, all fees due and payable must be paid in full prior to reinstatement of account.

**6.3** Unless otherwise provided, ServiceMax's fees do not include any Taxes, and Customer is responsible for paying all Taxes arising from its purchases hereunder, excluding Taxes based on ServiceMax's net income, employees, or property. If ServiceMax has the legal obligation to pay or collect Taxes for which Customer is responsible, the appropriate amount of such Taxes shall be invoiced to and paid by Customer, unless Customer provides a valid tax exemption certificate authorized by the appropriate taxing authority of Customer's place of business.

**6.4** Customer shall reimburse ServiceMax for all reasonable, pre-approved and appropriately documented, out-of-pocket travel and related expenses incurred by ServiceMax in performing Professional Services at Customer's location, in each case in accordance with the terms of the Statement of Work. Customer shall be responsible for its own travel and out of pocket expenses associated with attending any training services at a ServiceMax facility. **6.5** If Customer's use of the ServiceMax Service or Professional Service is greater than that ordered, then Customer promptly must purchase and pay fees for the excess quantity.

## **7. TECHNICAL SUPPORT SERVICES.**

ServiceMax shall provide standard or premier technical support as set forth in the applicable Sales Order Form, provided that Customer is current in payment of all Subscription Fees, including the applicable support fees. Support shall be provided in accordance with the terms and conditions set forth in ServiceMax's then current technical support policy. During the Term, ServiceMax may update the technical support policy;

however, ServiceMax changes to the policy will not materially reduce the level of support services during the then-current Term of the Sales Order Form.

## **8. WARRANTIES.**

**8.1** Each Party represents and warrants that it has validly entered into this Agreement and that it has the power and authority to do so. Customer represents and warrants it has the authority to provide the Customer Data under this Agreement.

**8.2** ServiceMax warrants (i) it will provide the Professional Services in a professional and workmanlike manner consistent with good industry standards and practices; and (ii) that for a period of three (3) months after delivery of the Professional Services, such Professional Services will conform to the specifications for such services set forth in the applicable Statement of Work. As Customer's sole and exclusive remedy and ServiceMax's entire liability for any breach of the foregoing warranty, ServiceMax will reperform the Professional Services to comply with the warranty.

**8.3** ServiceMax warrants that the ServiceMax Service will perform in all material respects in accordance with the Documentation. As Customer's sole and exclusive remedy and ServiceMax's entire liability for any breach of the foregoing warranty, ServiceMax will fix, provide a work around, or otherwise repair, the nonconforming ServiceMax Service, or, if ServiceMax is unable to do so, terminate the subscription for the ServiceMax Service and return to Customer the Subscription Fees paid for which Customer will no longer receive beneficial use due to the early termination.

**8.4** The target System Availability of the ServiceMax Service is 98% for each thirty

(30) day period of the Term. Should ServiceMax fail to achieve 98% System Availability in each of two (2) consecutive thirty (30) day periods, Customer shall have the right to terminate the applicable Sales Order Form, in which case ServiceMax will refund to Customer any Subscription Fees that Customer prepaid to ServiceMax under the Sales Order Form for the remainder of the Initial Term or Extension Term, as applicable, following the effective date of termination. Claims for such missed service level must be made within fifteen (15) calendar days after the end of the relevant period. For those ServiceMax Services hosted on Salesforce, Customer may access <https://servicemax.statuspage.io/> at any time to review System Availability statistics. Customer acknowledges that the ServiceMax Service is hosted on the existing infrastructure and services provided by Salesforce. ServiceMax Service (i) reliability; (ii) timeliness standards; and (iii) schedule for downtime for routine maintenance, will be the same as provided by the Salesforce Web-based application and platform service.

**8.5** The performance warranty and the System Availability service level set forth in Sections 8.2, 8.3 and 8.4, respectively, shall not apply to the extent any problem which results in the service performance or System Availability to be other than as warranted is due to: (i) Customer Equipment; (ii) failure of the external internet beyond ServiceMax's network; (iii) electrical or internet access disruptions; (iv) any actions or inactions of Customer in violation of this Agreement; (v) attacks (i.e. hacks, denial of service attacks, malicious introduction of viruses and disabling devices) caused by third parties, unless ServiceMax fails to use industry standard applications or solutions and practices to prevent such attacks; or (vi) a Force Majeure event.

**8.6** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8, NEITHER PARTY NOR ITS LICENSORS OR SUPPLIERS MAKES ANY WARRANTIES OF ANY KIND, WHETHER IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SERVICEMAX DOES NOT WARRANT THAT THE SERVICEMAX SERVICE OR PROFESSIONAL SERVICES WILL BE TIMELY, SECURE, UNINTERRUPTED, OR ERROR-FREE, THAT SERVICEMAX WILL CORRECT ALL SERVICE ERRORS, OR THAT THE SERVICEMAX SERVICE OR PROFESSIONAL SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, SPECIFICATIONS, OR EXPECTATIONS.

## **9. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY.**

**9.1** ServiceMax shall defend, or at its discretion settle, any claim brought by a third party against Customer that alleges that the ServiceMax Service infringes the United States patent, copyright, trademark, or trade secret of such third party (an "**Infringement Claim**"), and ServiceMax shall indemnify Customer from any damages, liabilities, costs and expenses awarded in the final judgment of a court of competent jurisdiction or pay any settlements entered into by ServiceMax on Customer's behalf. As a condition of ServiceMax's obligations, Customer agrees to (a) promptly give written notice of the Infringement Claim to ServiceMax (provided that the obligations under this Section 9.1 shall not be reduced by the failure to give such notice, except to the extent ServiceMax is materially prejudiced by such failure); (b) give ServiceMax sole control of the defense and settlement of the Infringement Claim (provided that ServiceMax may not settle any Infringement Claim unless it unconditionally releases Customer of all liability); and (c)

provide to ServiceMax, at ServiceMax' cost, all reasonable assistance.

**9.2** ServiceMax will, at its sole option and expense: (i) obtain a license to allow for continued use of the ServiceMax Service under the terms of this Agreement; (ii) replace or modify the ServiceMax Service to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not commercially reasonable, terminate the license for the infringing ServiceMax Service and refund Customer all prepaid fees prorated for the remainder of its subscription Term following the effective date of termination.

**9.3** ServiceMax shall have no liability for any Infringement Claim to the extent the Infringement Claim is based upon (i) the use of the ServiceMax Service in combination with any other product, service or device not furnished by ServiceMax, if such Infringement Claim would have been avoided by the use of the ServiceMax Service without such product, service or device; (ii) Customer's use of the ServiceMax Service other than in accordance with this Agreement; (iii) a modification to the ServiceMax Service not provided or performed by ServiceMax; (iv) Customer Data or customer designs or specifications; or (v) use of an infringing ServiceMax Service after ServiceMax has provided a non-infringing alternative or terminated the license or subscription for it.

**9.4 THE PROVISIONS OF THIS SECTION 9 SET FORTH SERVICEMAX'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND. INDEMNIFICATION BY CUSTOMER.** Customer shall defend, or at its discretion settle, any claim brought by a third party against ServiceMax, any of its Affiliates, or any of their respective officers, directors,

employees and licensors (collectively, "**ServiceMax Group**") and indemnify the ServiceMax Group from the damages, liabilities, costs and expenses awarded by the court to the third party claimant or pay the settlement agreed to by Customer, where such claim alleges that any Customer Data, information, design, specification, instruction, software, service, data, hardware or material furnished by Customer in connection with this Agreement or any Sales Order Form for Statement of Work hereunder (i) violates any applicable law or regulation, or (ii) infringes any patent, copyright or other intellectual property right of a third party. ServiceMax agrees to (a) promptly give written notice of the claim to Customer (provided that the obligations under this Section 10 shall not be reduced by the failure to give such notice except to the extent Customer is materially prejudiced by such failure); (b) give Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless it unconditionally releases ServiceMax of all liability and obligation); and (c) provide to Customer, at Customer's cost, all reasonable assistance Customer needs to defend against or settle the claim.

## **10. CONFIDENTIALITY; DATA PROTECTION.**

**10.1** As used herein, "**Confidential Information**" means all confidential and proprietary 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, including the terms and conditions of this Agreement (including pricing and other terms reflected in Sales Order Forms), Customer Data, business and marketing plans, technology and technical information, product designs, and business

processes. Confidential Information (except Customer Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any confidentiality obligation owed to Disclosing Party; (iii) was independently developed by Receiving Party without reference to Disclosing Party's Confidential Information; or (iv) is received from a third party without breach of any confidentiality obligation owed to Disclosing Party. **11.2** Receiving Party shall not disclose any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except as allowed by the terms of this Agreement or with Disclosing Party's prior written consent. Receiving Party shall protect the confidentiality of Disclosing Party's Confidential Information 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). ServiceMax will not disclose Customer Data to any third party for any purpose other than to provide the ServiceMax Service or Professional Services to Customer, provided however, that ServiceMax may compile anonymized and/or aggregated data related to Customer's usage of the ServiceMax Service, and may use such data for its internal business purposes and disclose such data to third parties to the extent that Customer is not identified as the source of such data and as long as the data does not reveal the identity, whether directly or indirectly, of any individual, or specific data entered by or relating to any individual. ServiceMax acknowledges and agrees that anonymized and/or aggregated data is provided as-is and without warranties of any kind. Each Party agrees that it will collect, maintain and handle all personal data in compliance with all Data Protection Laws and Regulations applicable to the services and its respective role under this Agreement. Receiving Party shall promptly notify

Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information.

**10.2** If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it shall provide Disclosing Party with (a) prior written notice of such compelled disclosure (to the extent legally permitted) and (b) reasonable assistance in contesting the disclosure, at Disclosing Party's option and cost. Any actual disclosure shall be limited to the minimum amount of information necessary to comply with the disclosure demand as advised by legal counsel.

**10.3** If Receiving Party discloses (or threatens to disclose) any Confidential Information of Disclosing Party in breach of confidentiality protections hereunder, Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts.

**10.4** Upon any termination of this Agreement, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party's Confidential Information and, upon request and to the extent practicable, return to the Disclosing Party, render inaccessible, or destroy all such Confidential Information.

**10.5** ServiceMax shall not use Customer Data other than to provide the ServiceMax Service and Professional Services pursuant to and in accordance with this Agreement and applicable Sales Order Forms and SOWs or disclose Customer Data to anyone other than to Users and ServiceMax Affiliates for such purpose. To the extent Customer Data comprises "personal data" within the meaning of applicable Data Protection Laws and Regulations, it is acknowledged that ServiceMax is acting on behalf of Customer as Data Processor. As Data Processor, ServiceMax shall: (a) process such personal data solely in accordance with this Agreement (including any Sales Order Form, Statement of Work, and Customer's



documented instructions), and applicable Data Protection Laws and Regulations, (b) take and maintain appropriate organizational, administrative, physical and technical safeguards for the protection of the security, confidentiality, availability, resiliency and integrity of such personal data, (c) not access Customer's User accounts, including such personal data, except as to respond to service or technical problems, perform the services ordered, or otherwise at Customer's request, (d) require that personnel used by ServiceMax to provide the ServiceMax Service are under strict confidentiality provisions and are aware of and are suitably trained in any such technical, organizational and security measures, and (e) in compliance with the Data Protection Laws and Regulations, notify Customer without undue delay after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, such personal data transmitted, stored or otherwise processed by ServiceMax. The Parties may amend this Agreement at any time during the Term, including by entering into a separate data processing addendum, if required to comply with any applicable Data Protection Laws and Regulations or as necessary to account for changes to the processing of personal data pursuant to this Agreement (e.g., cross border data transfers). Upon Customer's written request and no more than once per year, and subject to applicable confidentiality obligations, ServiceMax shall make available to Customer a copy of the then most recent third-party audit report of the controls applicable to the ServiceMax Services.

## **11. LIMITATION OF LIABILITY.**

**11.1** EXCEPT (i) FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS; (ii) EITHER PARTY'S MATERIAL BREACH OF SECTION 11 (CONFIDENTIALITY); OR (iii)

EITHER PARTY'S WILLFUL MISCONDUCT, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY, INCLUDING ITS AFFILIATES AND LICENSORS, ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE SUBSCRIPTION FEES PAID OR PAYABLE TO SERVICEMAX DURING TWELVE MONTHS PRIOR TO THE CLAIM.

**11.2** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES, LICENSORS OR SUPPLIERS HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOSS OF PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), DATA, DATA USE, GOODWILL OR REPUTATION, OR FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **13. TERM AND TERMINATION.**

**13.1** This Agreement commences on the Effective Date and will expire One (1) year after the Effective Date, provided that this Agreement shall remain in effect with respect to any Sales Order Forms or Statements of Work then in effect until the termination or expiration thereof (including any renewals or extensions). The Initial Term applicable to each Sales Order Form commences upon Customer's execution of such Sales Order Form and upon expiration of the Initial Term, the ServiceMax Service subscription term applicable to such Sales Order Form shall continue to renew for Extension Terms equal to the Term of the most Initial or then-current Renewal Term,

as applicable, unless either Party notifies the other in writing at least sixty (60) days before the end of the Initial or then-current Renewal Term that it does not want to renew the ServiceMax Services. Termination of Professional Services may only be terminated pursuant to Section 13.2.

**13.2** A Party may terminate this Agreement for cause: (i) upon 30 days written notice to the other Party of a material breach of this Agreement if such breach remains uncured at the expiration of such period; (ii) immediately upon written notice if the other Party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; or (iii) as otherwise provided herein. Upon any termination for cause by Customer, and unless otherwise expressly stated, all Sales Order Forms and Statements of Work will automatically terminate, and the licenses and rights granted to Customer thereunder will cease. ServiceMax will refund Customer any fees Customer prepaid to ServiceMax prorated for the remainder of its subscription Term following the effective date of termination.

**13.3** The Parties' rights and obligations with respect to the fees and payment terms, audit rights, title and protection, confidentiality, patent and copyright indemnification, warranty disclaimers, limitation of liability, attorney's fees, governing law, and other provisions of this Agreement, which by their nature are intended to survive, shall survive termination of this Agreement.

**13.4** Upon the end of the Term of a Sales Order Form, Customer's right to use the ServiceMax Service will cease. Upon request by Customer, provided that such request is made within 30 days of the effective date of termination, ServiceMax will make available to Customer for download a file of Customer Data in comma separated value (.csv) format. After such 30-day period,

ServiceMax will have no obligation to maintain any Customer Data and will not retain copies or records of Customer Data in the ServiceMax Service.

## **14. General**

**14.1** If Customer is a federal government entity, ServiceMax provides the ServiceMax Service, including related technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the ServiceMax Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in this Agreement.

**14.2** The purchase of the ServiceMax Service contains certain Salesforce components that are sublicensed by ServiceMax, as further identified in the Sales Order Form and that are subject to the Salesforce service agreement, with which Customer must comply at all times ("**SFDC Service Agreement**"). The SFDC Service Agreement is available on ServiceMax's website at <http://www.servicemax.com/pdfs/titaniumterms.pdf>. Any references in the SFDC Service Agreement to "Titanium" shall be deemed to refer to "Enterprise Edition", and any references to "Titanium Pro" shall be deemed to refer to "Standard Edition."

**14.3** The Parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or

employment relationship between the Parties is created hereby. There are no thirdparty beneficiaries to this Agreement.

**14.4** Any notices required under this Agreement shall be in writing and delivered by nationally recognized overnight delivery service or certified or registered U.S. Mail, and are effective upon receipt.

**14.5** No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by Customer and ServiceMax. To the extent of any conflict between this Agreement and any other schedule or attachment, this Agreement shall prevail unless expressly stated in the Sales Order Form or otherwise. In addition to the terms of Section 6.1 related to purchase orders, no terms stated in a purchase order or similar ordering document (other than a statement of work or other mutually executed order document expressly incorporated herein) shall be incorporated into this Agreement, and all such terms shall be void. This Agreement, which includes the SFDC Service Agreement, represents the entire agreement of the Parties, and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

**14.6** Neither Party may issue press releases relating to this Agreement without the other Party's prior written consent. Either Party may include the other's name or logo in customer or vendor lists in accordance with the other's standard guidelines. In addition, ServiceMax may refer to Customer's intended use of the ServiceMax Service in its marketing materials and on its websites as well as in discussions with ServiceMax customers, prospective customers, and industry and financial analysts.

**14.7** No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a

Party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

**14.8** Except for the Customer's payment obligations, which shall remain due and owing, neither party shall be liable for any delay or non-monetary performance obligations due to a Force Majeure Event. The time for performance of the obligations and rights of the defaulting party shall be extended for a period equal to the duration of the Force Majeure event.

**14.9** Except for actions for nonpayment or breach of ServiceMax's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either Party more than two years after the cause of action has accrued.

**14.10** Upon twenty (20) days written notice, ServiceMax may audit Customer's compliance with the terms of this Agreement including Sales Order Forms and SOWs hereunder. Customer agrees to cooperate with ServiceMax's audit and to provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Customer's normal business operations.

**14.11** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, either Party may assign this Agreement in its entirety (including all Sales Order Forms and SOWs hereunder), upon written notice to the other Party, to an Affiliate or, to its successor in interest resulting from a merger, reorganization, or sale of all or substantially all assets or equity not involving a direct competitor of the other Party. Any

attempted assignment in breach of this section shall be void. This Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

**14.12** Customer agrees that it will not sell, distribute, disclose, release or otherwise transfer any item or technical data provided under this Agreement to: (i) any country designated as a "State Sponsor of Terrorism" by the U.S. Department of State including, for this Agreement, the countries of Cuba and North Korea (ii) any entity located in, or owned by an entity located in, a "State Sponsor of Terrorism" country, Cuba, or North Korea, (iii) the region of Crimea or (iv) any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce, the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury or any other applicable prohibited party list of the US Government. This clause will apply regardless of the legality of such a transaction under local law. Except as otherwise agreed in writing between the parties, each party shall be responsible for obtaining and maintaining any authorization required for its performance under this Agreement (including the transfer any item or technical data under this Agreement), such as export license, import license, exchange permit or other required government export or import authorization. Each party shall provide the reasonable assistance necessary for the other party to secure and comply with such authorizations as may be required. Each Party shall not be liable if any government export authorization is delayed, denied, revoked, restricted or not renewed despite reasonable efforts by the party. Additionally, such delay, denial, revocation or non-renewal shall not constitute a breach of this Agreement.

**14.13** This Agreement shall be governed exclusively by the internal laws of the state of California, without regard to its conflicts of laws rules. Any dispute arising hereunder shall be brought exclusively in the courts located in Alameda County. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.