



MASTER SUBSCRIPTION AGREEMENT

THIS MASTER SUBSCRIPTION AGREEMENT GOVERNS CUSTOMER'S ACQUISITION AND USE OF XCEED SERVICES.

CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

IF CUSTOMER REGISTERS FOR A FREE TRIAL OF XCEED SERVICES OR FOR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL OR THOSE FREE SERVICES.

BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (3) USING FREE SERVICES, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

XCEED's direct competitors are prohibited from accessing the Services, except with XCEED's prior written consent.

1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" or **"MSA"** means this Master Subscription Agreement, and any exhibits, schedules and addenda.

"Customer" means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Order Forms.

"Customer Data" means electronic data and information submitted by or for Customer to the Services.

"Documentation" means XCEED's published documentation, knowledge base articles and other content, and technotes that are generally made available by XCEED to all customers.

"Free Services" means Services that XCEED makes available to Customer free of charge. Free Services exclude Services offered as a free trial and Purchased Services.

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“Non-XCEEDE Application” means Web-based, mobile, offline or other software functionality that interoperates with a Service, that is provided by Customer or a third party, including, without limitation, Salesforce.com software as a service (SaaS) platform. Non-XCEEDE Applications, other than those obtained or provided by Customer, will be identifiable as such.

“Order Form” means an ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer and XCEEDE or any of their Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

“Purchased Services” means Services that Customer or Customer’s Affiliate purchases under an Order Form or online purchasing portal, as distinguished from Free Services or those provided pursuant to a free trial.

“Salesforce.com Service” means the service provided by Salesforce.com to which Customer must be a subscriber in order to obtain the Service.

“Services” means the software ordered by Customer under an Order Form or online purchasing portal, or provided to Customer free of charge (as applicable) or under a free trial, and made available by XCEEDE as a hosted set of software solutions within Customer’s Salesforce.com Service instance. All access and interactions between Customer’s Salesforce.com Service users, the Service, and Customer’s Salesforce.com Service account are managed exclusively by Customer through Customer’s Salesforce.com Service administration and security settings. “Services” exclude Non-XCEEDE Applications.

“XCEEDE” means the company described in the “XCEEDE Contracting Entity, Notices, Governing Law, and Venue” section below.

“User” means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, an individual who is authorized by Customer to use a Service, for whom Customer has purchased a subscription (or in the case of any Services provided by XCEEDE without charge, for whom a Service has been provisioned), and to whom Customer (or, when applicable, XCEEDE at Customer’s request) has supplied an active subscription license as provisioned by XCEEDE through the Salesforce License Management Application or the user management facility of the Services. Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

2. XCEEDE RESPONSIBILITIES

- 2.1. Provision of Purchased Services.** XCEEDE will (a) make the Services available to Customer pursuant to this Agreement, and the applicable Order Forms and Documentation, (b) provide applicable XCEEDE standard support for the Purchased Services to Customer at no additional charge, and/or upgraded support if purchased, (c) provide the Services in accordance with laws and government regulations applicable to XCEEDE’s provision of its Services to its customers generally (i.e., without regard for Customer’s particular use of the Services), and subject to

Customer's and Users' use of the Services in accordance with this Agreement, the Documentation and the applicable Order Form.

CUSTOMER ACKNOWLEDGES THAT THE SERVICES IS DEPENDENT THE AVAILABILITY AND PERFORMANCE OF TECHNOLOGY FROM THIRD-PARTY SOFTWARE AND HARDWARE VENDORS ("THIRD-PARTY VENDORS") INCLUDING BUT NOT LIMITED TO SALESFORCE.COM SERVICE, SALESFORCE APPEXCHANGE PRODUCTS AND CUSTOM APPLICATIONS, MICROSOFT, GOOGLE, AND THE PROVIDERS OF INTERNET BROWSERS. XCEEDE HAS NO CONTROL OVER, AND IS NOT LIABLE FOR, PERFORMANCE ISSUES OR DOWNTIME OF THE SERVICE TO THE EXTENT CAUSED BY SUCH FACTORS.

NOTWITHSTANDING THE "REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS" SECTION AND "INDEMNIFICATION BY XCEEDE" SECTION BELOW, NO REPRESENTATION OR WARRANTY BY SUCH THIRD-PARTY VENDORS IS BINDING ON XCEEDE NOR SHALL BREACH OF SUCH REPRESENTATION OR WARRANTY BY A THIRD PARTY VENDOR RELIEVE CUSTOMER OF ITS OBLIGATIONS TO XCEEDE AND THE CUSTOMER SHALL BE RESPONSIBLE FOR THE COSTS OF TECHNOLOGY FROM THIRD PARTY VENDORS.

- 2.2. Free Trial.** If Customer registers on XCEEDE's, an Affiliate's website for a free trial, or via the Salesforce AppExchange, XCEEDE will make the applicable Services available to Customer on a trial basis free of charge until the earlier of (a) the end of the free trial period for which Customer registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by Customer for such Service(s), or (c) termination by XCEEDE in its sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

ANY DATA CUSTOMER ENTERS INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR CUSTOMER, DURING CUSTOMER'S FREE TRIAL WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASES APPLICABLE UPGRADED SERVICES, OR EXPORTS SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD.

NOTWITHSTANDING THE "REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS" SECTION AND "INDEMNIFICATION BY XCEEDE" SECTION BELOW, DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND XCEEDE SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICES FOR THE FREE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE XCEEDE'S LIABILITY WITH RESPECT TO THE SERVICES PROVIDED DURING THE FREE TRIAL SHALL NOT EXCEED \$1,000.00. WITHOUT LIMITING THE FOREGOING, XCEEDE AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL MEET CUSTOMER'S REQUIREMENTS, (B) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED DURING THE FREE TRIAL PERIOD WILL BE ACCURATE. NOTWITHSTANDING

ANYTHING TO THE CONTRARY IN THE “LIMITATION OF LIABILITY” SECTION BELOW, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO XCEED AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF CUSTOMER’S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER’S INDEMNIFICATION OBLIGATIONS HEREUNDER. CUSTOMER SHALL REVIEW THE APPLICABLE SERVICE’S DOCUMENTATION DURING THE TRIAL PERIOD TO BECOME FAMILIAR WITH THE FEATURES AND FUNCTIONS OF THE SERVICES BEFORE MAKING A PURCHASE.

- 2.3. Free Services.** XCEED may make Free Services available to Customer. Use of Free Services is subject to the terms and conditions of this Agreement. In the event of a conflict between this section and any other portion of this Agreement, this section shall control. Free Services are provided to Customer without charge up to certain limits as described in the Documentation. Usage over these limits requires Customer’s purchase of services. Customer agrees that XCEED, in its sole discretion and for any or no reason, may terminate Customer’s access to the Free Services or any part thereof. Customer agrees that any termination of Customer’s access to the Free Services may be without prior notice, and Customer agrees that XCEED will not be liable to Customer or any third party for such termination. Customer is solely responsible for exporting Customer Data from the Free Services prior to termination of Customer’s access to the Free Services for any reason, provided that if XCEED terminates Customer’s subscription, except as required by law XCEED will provide Customer a reasonable opportunity to retrieve its Customer Data.

NOTWITHSTANDING THE “REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS” SECTION AND “INDEMNIFICATION BY XCEED” SECTION BELOW, THE FREE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY AND XCEED SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE FREE SERVICES UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE XCEED’S LIABILITY WITH RESPECT TO THE FREE SERVICES SHALL NOT EXCEED \$1,000.00. WITHOUT LIMITING THE FOREGOING, XCEED AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER’S USE OF THE FREE SERVICES WILL MEET CUSTOMER’S REQUIREMENTS, (B) CUSTOMER’S USE OF THE FREE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED THROUGH THE FREE SERVICES WILL BE ACCURATE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE “LIMITATION OF LIABILITY” SECTION BELOW, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO XCEED AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF CUSTOMER’S USE OF THE FREE SERVICES, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER’S INDEMNIFICATION OBLIGATIONS HEREUNDER.

3. USE OF SERVICES

- 3.1. Subscriptions.** Unless otherwise provided in the applicable Order Form or Documentation, (a) Purchased Services and access to Content are purchased as subscriptions for the term stated in the applicable Order Form or in the applicable online purchasing portal, (b) subscriptions for Purchased Services may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the

time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by XCEEDE regarding future functionality or features.

- 3.2. Customer Data.** The Services does not store Customer Data. Customer acknowledges that when Customer uses the Services, Customer can make permanent changes and edits to Customer's data in Customer's Salesforce.com Service instance, including mass updates and mass deletions, just as Customer can do directly through Customer's Salesforce.com Service. Customer is solely liable and responsible for the results and outcomes of Customer's use of the Service.
- 3.3. Customer Responsibilities.** Customer will (a) be responsible for Users' compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Non-XCEEDE Applications with which Customer uses Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services, (d) use Services only in accordance with this Agreement, Documentation, Order Forms and applicable laws and government regulations, and (e) comply with terms of service of any Non-XCEEDE Applications with which Customer uses Services, including Customer's Salesforce.com Service. Any use of the Services in breach of the foregoing by Customer or Users that in XCEEDE's judgment threatens the security, integrity or availability of XCEEDE's services, may result in XCEEDE's immediate suspension of the Services, however XCEEDE will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.
- 3.4. Usage Restrictions.** Customer will not (a) make any Service available to anyone other than Customer or Users, or use any Service for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or its related systems or networks, (g) permit direct or indirect access to or use of any Services in a way that circumvents a contractual usage limit, or use any Services to access, copy or use any of XCEEDE intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (h) modify, copy, or create derivative works of a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent.

4. FEES AND PAYMENT

- 4.1. Fees.** Customer will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.
- 4.2. Invoicing and Payment.** Customer will provide XCEEDE with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to XCEEDE. If Customer provides credit card information to XCEEDE, Customer authorizes XCEEDE to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in the “Term of Purchased Subscriptions” section below. Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, XCEEDE will invoice Customer in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced fees are due Net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to XCEEDE and notifying XCEEDE of any changes to such information.
- 4.3. Overdue Charges.** If any invoiced amount is not received by XCEEDE by the due date, then without limiting XCEEDE’s rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) XCEEDE may condition future subscription renewals and Order Forms on payment terms shorter than those specified in the “Invoicing and Payment” section above.
- 4.4. Suspension of Service and Acceleration.** If any charge owing by Customer under this or any other agreement for services is 30 days or more overdue, (or 10 or more days overdue in the case of amounts Customer has authorized XCEEDE to charge to Customer’s credit card), XCEEDE may, without limiting its other rights and remedies, accelerate Customer’s unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that, other than for customers paying by credit card or direct debit whose payment has been declined, XCEEDE will give Customer at least 10 days’ prior notice that its account is overdue, in accordance with the “Manner of Giving Notice” section below for billing notices, before suspending services to Customer.
- 4.5. Payment Disputes.** XCEEDE will not exercise its rights under the “Overdue Charges” or “Suspension of Service and Acceleration” section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.
- 4.6. Taxes.** XCEEDE’s fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). Customer is responsible for paying all Taxes associated with its purchases hereunder. If XCEEDE has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, XCEEDE will invoice Customer and Customer will pay that amount unless Customer provides XCEEDE with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, XCEEDE is solely responsible for taxes assessable against it based on its income, property and employees.

5. PROPRIETARY RIGHTS AND LICENSES

- 5.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, XCEEDE, its Affiliates, its licensors reserve all of their right, title and interest in and to the Services, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
- 5.2. License by Customer to XCEEDE.** Customer will retain all right, title and interest in and to Customer's documents, messages, graphics, images, files, data and Confidential Information, transmitted to, or collected by, XCEEDE in connection with the Services. Client grants to XCEEDE a non-exclusive royalty-free, license to use the foregoing solely for the purposes of providing the Services to the Client during the Subscription Term. Such rights shall include permission for XCEEDE to generate and publish aggregate, anonymized reports on system usage, trends and type, provided they do not conflict with the "Confidentiality" section below.
- 5.3. License by Customer to Use Feedback.** Customer grants to XCEEDE and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and make and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of XCEEDE's or its Affiliates' services.
- 5.4. Third-Party Components.** XCEEDE Services may contain or be provided with components which are licensed from third parties including components subject to open source software licenses ("Third-Party Components"). Third-Party Components may be identified in the Documentation, or in a list of the Third-Party Components provided to Customer upon written request. To the extent required by the license that accompanies the Third-Party Components, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Third-Party Components, including, without limitation, any provisions governing access to source code, modification or reverse engineering.

6. CONFIDENTIALITY

- 6.1. Definition of Confidential Information.** "Confidential Information" means all information disclosed by a party ("Disclosing Party") 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. Confidential Information of Customer includes Customer Data; Confidential Information of XCEEDE includes the Services and Content, and the terms and conditions of this Agreement and all Order Forms (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does 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) is received from a third party without knowledge of any breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the non-disclosure obligations set forth in this "Confidentiality" section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional XCEEDE services.

- 6.2. Protection of Confidential Information.** As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, XCEEDE may disclose the terms of this Agreement and any applicable Order Form to a contractor or Non-XCEEDE Application Provider to the extent necessary to perform XCEEDE's obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.
- 6.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the 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. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.
- 7. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**
- 7.1. Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 7.2. XCEEDE Warranties.** XCEEDE warrants that during an applicable subscription term (a) this Agreement, the Order Forms and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (b) XCEEDE will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation. For any breach of a warranty above, Customer's exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections below.
- 7.3. Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SERVICES PROVIDED FREE OF CHARGE ARE PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

8. MUTUAL INDEMNIFICATION

- 8.1. Indemnification by XCEEDE.** XCEEDE will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Purchased Service infringes or misappropriates such third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by XCEEDE in writing of, a Claim Against Customer, provided Customer (a) promptly gives XCEEDE written notice of the Claim Against Customer, (b) gives XCEEDE sole control of the defense and settlement of the Claim Against Customer (except that XCEEDE may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives XCEEDE all reasonable assistance, at XCEEDE's expense. If XCEEDE receives information about an infringement or misappropriation claim related to a Service, XCEEDE may in its discretion and at no cost to Customer (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching XCEEDE's warranties under "XCEEDE Warranties" above, (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that Service upon 30 days' written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (I) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer; (II) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by XCEEDE, if the Services or use thereof would not infringe without such combination; (III) a Claim Against Customer arises from Services under an Order Form for which there is no charge; or (IV) a Claim against Customer arises from a Non-XCEEDE Application or Customer's breach of this Agreement, the Documentation or applicable Order Forms.
- 8.2. Indemnification by Customer.** Customer will defend XCEEDE and its Affiliates against any claim, demand, suit or proceeding made or brought against XCEEDE by a third party (a) alleging that the combination of a Non-XCEEDE Application or configuration provided by Customer and used with the Services, infringes or misappropriates such third party's intellectual property rights, or (b) arising from (i) Customer's use of the Services in an unlawful manner or in violation of the Agreement, the Documentation, or Order Form, (ii) any Customer Data or Customer's use of Customer Data with the Services, or (iii) a Non-XCEEDE Application provided by Customer (each a "Claim Against XCEEDE"), and will indemnify XCEEDE from any damages, attorney fees and costs finally awarded against XCEEDE as a result of, or for any amounts paid by XCEEDE under a settlement approved by Customer in writing of, a Claim Against XCEEDE, provided XCEEDE (A) promptly gives Customer written notice of the Claim Against XCEEDE, (B) gives Customer sole control of the defense and settlement of the Claim Against XCEEDE (except that Customer may not settle any Claim Against XCEEDE unless it unconditionally releases XCEEDE of all liability), and (C) gives Customer all reasonable assistance, at Customer's expense. The above defense and indemnification obligations do not apply if a Claim Against XCEEDE arises from XCEEDE's breach of this Agreement, the Documentation or applicable Order Forms.
- 8.3. Exclusive Remedy.** To the fullest extent permitted by law, and except for (i) monetary or injunctive relief for breaches of a party's obligations with respect to proprietary rights, licenses and confidentiality under Sections 5 or 6 above, (ii) enforcement of Your obligations for payment as provided for in this Agreement, or (iii) contractual remedies for warranties or service levels as

expressly provided in Section 7 above or in any Order Form, this Section 8 sets for each party's sole liability to, and the its exclusive remedy against, the other party for any damage, claim, loss or expense arising out of or in connection with this Agreement, regardless of the manner, nature or legal theory of claim.

9. LIMITATION OF LIABILITY

9.1. Limitation of Liability. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT THE PARTIES OBLIGATIONS UNDER SECTION 6, CONFIDENTIALITY, OR CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

9.2. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

10. TERM AND TERMINATION

10.1. Term of Agreement. This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.

10.2. Term of Purchased Subscriptions. The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional one year terms, unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant subscription term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at XCEED's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.

10.3. Termination. A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

- 10.4. Refund or Payment upon Termination.** If this Agreement is terminated by Customer in accordance with the “Termination” section above, XCEEDE will refund Customer any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by XCEEDE in accordance with the “Termination” section above, Customer will pay any unpaid fees covering the remainder of the term of all Order Forms to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to XCEEDE for the period prior to the effective date of termination.
- 10.5. Surviving Provisions.** The sections titled “Free Services,” “Fees and Payment,” “Proprietary Rights and Licenses,” “Confidentiality,” “Disclaimers,” “Mutual Indemnification,” “Limitation of Liability,” “Refund or Payment upon Termination,” “Surviving Provisions” and “General Provisions” will survive any termination or expiration of this Agreement, and the section titled “Protection of Customer Data” will survive any termination or expiration of this Agreement for so long as XCEEDE retains possession of Customer Data.
- 11. GENERAL PROVISIONS**
- 11.1. Export Compliance.** The Services, other XCEEDE technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. XCEEDE and Customer each represents that it is not on any U.S. government denied-party list. Customer will not permit any User to access or use any Service or Content in a U.S.-embargoed country or region (currently the Crimea, Luhansk or Donetsk regions, Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.
- 11.2. Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.
- 11.3. Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between XCEEDE and Customer regarding Customer’s use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.
- 11.4. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.
- 11.5. Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 11.6. Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

- 11.7. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- 11.8. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, XCEED will refund Customer any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 11.9. XCEED Contracting Entity, Notices, Governing Law, and Venue.** The XCEED entity entering into this Agreement, the address to which Customer should direct notices under this Agreement, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, is provided below:

You are contracting with:	Notices should be address to:	The governing law is:	The courts having exclusive jurisdiction are:
Xceede Solutions Inc., a District of Columbia Corporation	5301 Alpha Rd, Suite 66-209, Dallas, TX 75240, U.S.A., Attn.: Worldwide Sales Operations	Commonwealth of Virginia and controlling United States federal law	Fairfax County (Virginia, U.S.A.) Circuit Court or, if applicable, United States District Court for the Eastern District of Virginia (Alexandria Division)

- 11.10. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant Services system administrator designated by Customer.
- 11.11. Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.