

## SUBSCRIPTION SERVICE AGREEMENT

### 1. PROVISION OF SERVICES

ServiceNow will make the following purchased services available to Customer, subject to the terms and conditions of this Agreement and each use authorization provided by ServiceNow's authorized reseller ("**Reseller**") to Customer (each, a "**Use Authorization**") and the product overview attached thereto or referenced therein ("**Product Overview**"), including without limitation: (a) use of the Subscription Service (as defined below); (b) professional services and training services ("**Professional Services**"); and (c) any additional services. "**Subscription Service**" means the ServiceNow platform and ServiceNow applications (set forth in a Use Authorization) which are made available by ServiceNow as a software as a service (SaaS) offering online via web access designated by ServiceNow. Each Use Authorization is hereby incorporated into and made a part of this Agreement for that order.

### 2. ORDERING

2.1. **RESELLER ORDERS.** Customer shall order and purchase the Subscription Service, Professional Services and other ServiceNow services directly from Reseller pursuant to a separate agreement specifying price, payment and other commercial terms. ServiceNow is not a party to such separate agreement but will provide the purchased services pursuant to this Agreement. Reseller is not authorized to make any changes to this Agreement (including any Use Authorization issued hereunder) or bind ServiceNow to any additional or different terms and conditions.

2.2. **USE AUTHORIZATION.** For each order, Reseller will provide Customer with a Use Authorization and a Product Overview issued by ServiceNow that specify the services that Customer has purchased from Reseller. Customer shall promptly sign the Use Authorization and return it to ServiceNow. ServiceNow shall have no obligation to provide services unless and until it has received the applicable Use Authorization as signed by Customer.

2.3. **SUBSCRIPTION SERVICE.** When Customer has ordered the Subscription Service, the Use Authorization associated with that order shall specify the term of authorized use of the Subscription Service ("**Subscription Term**"), the scope of use, and the numbers, types and identifiers of permitted users, applications, servers, devices, capacity and locations at or through which Customer is permitted to use the Subscription Service. Customer may not use or otherwise access the Subscription Service in a manner that exceeds Customer's authorized use as set forth in this Agreement and the applicable Use Authorization. If Customer exceeds its permitted use of the Subscription Service, then Customer will promptly notify ServiceNow and within thirty (30) days thereafter: (i) disable unpermitted use; or (ii) purchase additional subscriptions. ServiceNow or Reseller may review Customer's use of the Subscription Service, and Customer shall provide any reasonable assistance, to verify Customer's compliance with the Agreement. ServiceNow or Reseller may suspend Customer's use of the Subscription Service after giving thirty (30) days' written notice of non-compliance identified in such review or of failure of ServiceNow to receive payment for Customer's use, in addition to any other rights or remedies ServiceNow may have.

2.4. **PROFESSIONAL SERVICES.** When Customer has ordered Professional Services, the Use Authorization associated with that order shall specify either or both of: (a) ServiceNow packaged professional services (each offering, a "**Packaged Service**"), as described in one or more service descriptions (if not attached to the Use Authorization, then as set forth on [www.servicenow.com/schedules.do](http://www.servicenow.com/schedules.do)) ("**Service Description**"), or (b) other Professional Services described in one or more written statements of work ("**SOW**") signed by ServiceNow and Customer.

2.5. **PAYMENT; CUSTOMER CLAIMS.** Customer shall pay Reseller for the services provided hereunder at such prices and other terms upon which Customer and Reseller have agreed. Any warranty claim or claim for partial or total refund of fees paid hereunder, or for service credits or service extensions under the service level agreement, must be made to the Reseller, not ServiceNow.

2.6. **ADDITIONAL ORDERS.** Customer may place additional orders for ServiceNow services through either Reseller or ServiceNow. If Customer places additional orders through ServiceNow, Customer shall sign an addendum to this Agreement which sets forth the price, payment and other commercial terms between Customer and ServiceNow.

### 3. GRANT OF USE RIGHTS; OWNERSHIP; CUSTOMER RESTRICTIONS

3.1. **SERVICENOW APPLICATIONS.** The Product Overview describes the business processes supported within the ServiceNow applications (collectively, "**ServiceNow Applications**"). To the extent set forth under a Use Authorization, ServiceNow hereby grants to Customer a non-exclusive, non-transferable, worldwide right during the Subscription Term to access, configure, customize, and use the purchased ServiceNow Applications to automate the business processes supported within the purchased ServiceNow Applications.

3.2. **SERVICENOW PLATFORM.** The Product Overview describes the ServiceNow platform ("**ServiceNow Platform**"). To the extent set forth under a Use Authorization, ServiceNow hereby grants to Customer a non-exclusive, non-transferable, worldwide right during the Subscription Term to access, configure and use the purchased access of the ServiceNow Platform to create custom applications solely to automate business processes not supported within the ServiceNow Applications (each such automated business process, a "**Custom Application**"). Customer is required to purchase authorized use of the applicable ServiceNow Application in order to automate a business process supported within that ServiceNow Application.

3.3. **DOCUMENTATION.** ServiceNow hereby grants to Customer a non-exclusive, non-transferable, worldwide right during the Subscription Term to access and use the user documentation relating to the operation and use of the Subscription Service that is provided by ServiceNow to Customer under the Agreement, as updated by ServiceNow from time to time ("**Documentation**").

3.4. **CUSTOMER DATA.** Customer hereby grants ServiceNow a non-exclusive, non-transferable, worldwide right to use the electronic data specifically pertaining to Customer and/or its users that is processed using the Subscription Service (collectively "**Customer Data**") strictly for the limited purpose of providing the Subscription Service to Customer.

3.5. **SOFTWARE.** ServiceNow may provide ServiceNow software products ("**Software**") for use in connection with the Subscription Service. Any Software is licensed and not sold (even if for convenience ServiceNow makes reference to words such as "sale" or "purchase"), and ServiceNow grants Customer a limited, personal, worldwide, non-sublicensable, non-transferable, non-exclusive license to install and execute the Software on machines operated by or for Customer solely to permit Customer to use the Subscription Service during the Subscription Term in accordance with the terms and conditions of this Agreement. The Software or Deliverables (as defined in Section 3.9) may include code that is licensed under third party license agreements, including open source, made available or provided with the Software or Deliverables as applicable.

3.6. **DEVELOPMENT TOOLS.** ServiceNow hereby grants to Customer a non-exclusive, non-transferable, worldwide right during the Subscription Term to download and make a reasonable number of copies of the Development Materials (as defined below) for Customer's internal use only; and to use, copy, modify and create derivative works of the Development Materials, in each case solely for Customer's own internal use, in: (A) using, implementing and integrating the ServiceNow Applications with other software and systems; and (B) developing Custom Applications to the extent that Customer is permitted under Section 3.2 and the applicable Use Authorization. "**Development Materials**" are APIs, development tools, specification, documentation, sample Software code or other development materials that ServiceNow may from time to time make available to Customer for the express purpose of facilitating development of Custom Applications or customizing ServiceNow Applications.

3.7. **OWNERSHIP.** As between ServiceNow and Customer, all rights, title, and interest in and to all intellectual property rights in the Subscription Service, Software, Development Materials, Documentation and/or ServiceNow Core Technology (as defined in Section 3.9) are owned exclusively by ServiceNow. Except as expressly provided in this Agreement, ServiceNow does not grant Customer (and expressly reserves) any rights, express or implied, or ownership in the Subscription Service, Software, Development Materials, Documentation, and/or ServiceNow Core Technology. ServiceNow shall have a royalty-free, worldwide, non-exclusive, transferable, sub-licensable, irrevocable, perpetual right to make, use, sell, offer for sale, import, or otherwise incorporate into the Subscription Service, Software, Development Materials, Documentation and/or ServiceNow Core Technology, any suggestions, enhancements, recommendations or other feedback provided by Customer relating to the Subscription Service, Software, Development Materials, Documentation and/or ServiceNow Core Technology. As between ServiceNow and Customer, all rights, title and interest in and to all intellectual property rights in any Custom Application made solely by Customer shall be owned by Customer, other than intellectual property rights in the Subscription Service, Software, Development Materials, Documentation and ServiceNow Core Technology.

3.8. **RESTRICTIONS.** Customer shall not (and shall not permit others to): (i) license, sub-license, sell, resell, rent, lease, transfer, distribute, or time share the Subscription Service, Software, Development Materials or Documentation, or make any of them available for access by third parties, including without limitation, in the manner of a service bureau or hosted application; (ii) create derivative works based on or otherwise modify the Subscription Service, Software, Development Materials (except as provided in Section 3.6 (Development Tools) or Documentation); (iii) disassemble, reverse engineer or decompile the Subscription Service or Software; (iv) access the Subscription Service, Software, Development Materials or Documentation in order to develop a competing product or service, including a Custom Application that automates or otherwise addresses a business process automated by a ServiceNow Application; (v) use the Subscription Service or Development Materials to provide a service for others; (vi) use the ServiceNow Platform to operate more or different type of applications than permitted under the applicable Use Authorization; (vii) use or send viruses or other harmful computer code; (viii) interfere with the integrity of the Subscription Service or its data; (ix) remove or modify a copyright or other proprietary rights notice on or in the Subscription Service, Software, Development Materials or Documentation; (x) use the Subscription Service or Custom Applications to reproduce, distribute, display, transmit or use material protected by copyright or other intellectual property right (including the rights of publicity or privacy) without first obtaining the permission of the owner; (xi) use a computer or computer network to cause physical injury to the property of another; (xii) violate any law or regulation of the United States, any state thereof or other government authority; (xiii) disable, hack or otherwise interfere with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the Subscription Service; (xiv) include, send, store or run software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs from the Subscription Service or Custom Application; (xv) disrupt the integrity of the Subscription Service; (xvi) temporarily or permanently remove, copy, add, modify, halt or disable any computer data, computer programs or computer software from a computer or computer network without authorization; (xvii) cause a computer to malfunction, regardless of how long the malfunction persists; or (xviii) alter, disable, or erase any computer data, computer programs or computer software without authorization.

3.9. **DELIVERABLES.** Subject to the provisions of this Section 3.9, ServiceNow shall assign to Customer any Newly Created IP (as defined below) in Deliverables upon payment in full by Customer of all amounts due for the Professional Service under which the Deliverable was created. A "**Deliverable**" is a deliverable that is identified in the applicable SOW or Service Description and that is created by ServiceNow for Customer in the performance of the Professional Services. "**Newly Created IP**" means intellectual property in any inventions or works of authorship that are made by ServiceNow specifically for Customer in the course of performing Professional Services for Customer, other than ServiceNow Core Technology. "**ServiceNow Core Technology**" means: (a) ServiceNow technology, methodologies and intellectual property (including, without limitation, products, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects and documentation (both printed and electronic) existing as of the Effective Date of this Agreement or otherwise arising in whole or in part outside of work under a Professional Service for Customer; (b) any derivatives, improvements, enhancements or extensions of the foregoing, whether or not conceived, reduced to practice or developed during the term of this Agreement or in performance of Professional Services, as applicable; and (c) any intellectual property anywhere in the world relating to any of the foregoing. To the extent (if at all) any ServiceNow Core Technology is incorporated into a Deliverable, ServiceNow grants to Customer a non-exclusive, royalty-free, non-transferable, non-sublicensable worldwide license to use the ServiceNow Core Technology solely to use the Deliverable in connection with the Subscription Service as contemplated under this Agreement during the Subscription Term. Nothing in this Agreement shall be deemed to restrict or limit ServiceNow's right to perform similar Professional Services for any other party or to assign any employees or subcontractors to perform similar Professional Services for any other party or to use any information incidentally retained in the unaided memories of its employees providing Professional Services.

3.10. **CUSTOMER CONDUCT.** Customer is responsible for, without limitation, the following: (a) Customer's implementation of the Subscription Service; (b) protecting the names and passwords of the users to the Subscription Service and preventing and notifying

ServiceNow of unauthorized use of the Subscription Service; (c) appointing up to five (5) designated support contacts for purposes of contacting ServiceNow support regarding questions and/or technical issues ("**Authorized Customer Support Contacts**") and ensuring that the Authorized Customer Support Contacts' information is current in the ServiceNow support portal; (d) the lawfulness of, and results obtained from, all Customer Data submitted by users to the Subscription Service and each user's acts and omissions; (e) using the Subscription Service's available encryption feature for all Customer Data containing sensitive information; (f) using the Subscription Service within the permitted scope and only in accordance with the numbers, types and identifiers of permitted users, applications, servers, devices, capacity and locations at or through which Customer is permitted to use the Subscription Service as set forth in the Use Authorization; and (g) using the Subscription Service only in accordance with the Documentation.

#### 4. WARRANTIES

4.1. **LIMITED SUBSCRIPTION SERVICE WARRANTY.** ServiceNow warrants that during the Subscription Term the Subscription Service, exclusive of Custom Applications and Development Materials, will operate without a Defect, as defined in the Subscription Service Guide, which is attached hereto and incorporated into this Agreement by this reference, that causes a material failure of Customer's production instances of the Subscription Service to perform in accordance with the Product Overview. Customer's exclusive remedy for breach of this warranty is for Reseller and ServiceNow to correct or work around the Defect upon request, subject to and in accordance with the procedures and limitations for receiving Support, as defined in the Subscription Service Guide. If the Defect persists in causing a material failure in Customer's production instances of the Subscription Service to conform to the Product Overview without correction or work-around forty-five (45) days after written notice to Reseller and ServiceNow of a warranty claim under this Section 4.1, then Customer may terminate the affected Subscription Service and submit to Reseller a claim for refund of any prepaid subscription fees covering the remainder of the Subscription Term of the affected Subscription Service after the date of termination. This Section 4.1 sets forth Customer's exclusive rights and remedies (and ServiceNow's sole liability) in connection with any Defect or other failure of the Subscription Service to perform in accordance with the Product Overview or any other manner. Notwithstanding any other provision in this Agreement, ServiceNow shall have no obligation to support and shall have no liability or obligation due to unavailability, malfunction or degradation of performance in the Subscription Service that is due to a Custom Application, Development Materials, or modifications of the ServiceNow Applications by any person other than ServiceNow or a person acting at ServiceNow's direction.

4.2. **LIMITED PROFESSIONAL SERVICES WARRANTY.** ServiceNow warrants that the Professional Services will be performed in a competent and workmanlike manner in accordance with accepted industry standards and practices and all material requirements set forth in the Service Description or SOW, as applicable. Customer's exclusive remedy for breach of this warranty is to notify Reseller and ServiceNow in writing of the breach within forty-five (45) days after performance of the non-conforming Professional Services. Upon receipt of such notice, ServiceNow, at its option, shall either use commercially reasonable efforts to re-perform the Professional Services in conformance with these warranty requirements or shall terminate the affected Professional Services, whereupon Customer may submit to Reseller a claim for refund of any amounts paid for the affected Professional Services not performed. This Section 4.2 sets forth Customer's exclusive rights and remedies (and ServiceNow's sole liability) in connection with the performance of Professional Services.

4.3. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT ALLOWED BY LAW, SERVICENOW DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES ARISING UNDER STATUTE, WARRANTIES OF MERCHANTABILITY, ACCURACY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SERVICENOW SPECIFICALLY DOES NOT WARRANT THAT THE SERVICES, DELIVERABLES, OR DEVELOPMENT MATERIALS WILL MEET THE REQUIREMENTS OF CUSTOMER OR OTHERS OR THAT THEY WILL BE ACCURATE OR OPERATE WITHOUT INTERRUPTION OR ERROR. CUSTOMER ACKNOWLEDGES THAT IN ENTERING THIS AGREEMENT IT HAS NOT RELIED ON ANY PROMISE, WARRANTY OR REPRESENTATION NOT EXPRESSLY SET FORTH HEREIN OR INCORPORATED INTO THIS AGREEMENT BY REFERENCE.

#### 5. CONFIDENTIALITY AND NON-USE RESTRICTIONS

5.1. **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 the disclosure, including without limitation: each party's respective business plans and processes; financial and employee data; proprietary technology and product information and designs; the Subscription Service and Software; Development Materials and Customer Data. The terms of this Agreement and Use Authorization(s) are Confidential Information of ServiceNow. Confidential Information excludes information that: (i) is or becomes generally known to the public; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation to the Disclosing Party; (iii) is received from a third party without any obligation of confidentiality to a third party or breach of any obligation of confidentiality to the Disclosing Party; or (iv) was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.

5.2. **PROTECTION.** The Receiving Party shall: (i) at all times protect the confidentiality of the Disclosing Party's Confidential Information with the same degree of care that it uses to protect its own confidential information, and in no event using less than reasonable care; and (ii) not use Confidential Information of the Disclosing Party except to the extent necessary to exercise its rights or fulfill its obligations under this Agreement. To the extent necessary under this Agreement, the Receiving Party may disclose the Confidential Information of the Disclosing Party to the Receiving Party's employees or contractors who are bound by written obligations of confidentiality and non-use and non-disclosure restrictions at least as protective as those set forth herein. In the event of a court order or government regulation compelling disclosure of any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice thereof, and shall reasonably cooperate with the Disclosing Party to seek confidential or other protective treatment. Each party's obligations set forth in this Section 5 shall remain in effect during the term and three (3) years after termination of this Agreement. The Receiving Party shall promptly return to the Disclosing Party or destroy (with certification of such destruction provided by the Receiving Party upon request) all Confidential Information of the Disclosing Party in its possession or control upon request from the Disclosing Party. Provisions for the return of Customer Data are set forth in Section 8.3 (Return of Customer Data).

## 6. INDEMNIFICATION

6.1. **SERVICENOW OBLIGATION.** Subject to the exclusions set forth below, ServiceNow shall: (i) defend Customer, its officers, directors and employees against any third party suit, claim, action or demand ("**Claim**") alleging that Customer's use of the Subscription Service in accordance with this Agreement infringes any valid patent, copyright, or trademark of a third party that is issued or registered in the United States, Canada, Australia, the European Union or Switzerland; and (ii) pay any court-ordered award of damages or settlement amount, and reasonable attorney fees, to the extent caused by such Claim. If any portion of the Subscription Service becomes the subject of a Claim, ServiceNow may: (a) contest the Claim; (b) obtain permission from the claimant for Customer's continued use of the Subscription Service; (c) replace or modify the Subscription Service to avoid infringement, if such replacement or modification has substantially the same capabilities as the Subscription Service; or, if the foregoing (a), (b), and (c) are not available on commercially reasonable terms in ServiceNow's judgment, then (d) terminate Customer's use of the affected Subscription Service upon forty-five (45) days' written notice, whereupon Customer may submit to Reseller a claim for a refund of any prepaid subscription fees covering the remaining portion of the applicable Subscription Term for the affected Subscription Service after the date of termination. Notwithstanding the above, ServiceNow shall have no indemnification obligation or liability for any Claim arising in whole or in part from: (i) any use of the Subscription Service which exceeds the authorized use permitted under this Agreement; (ii) Customer Data; (iii) use of the Subscription Service by Customer in violation of applicable law; (iv) use of the affected Subscription Service after termination in accordance with clause (d) of this Section 6.1; (v) Custom Applications; (vi) modifications to the Subscription Service by any person other than ServiceNow or a person acting at ServiceNow's direction; (vii) modifications made by or at the request of Customer pursuant to a Professional Service; or (viii) use of the Subscription Service in combination with any hardware, software, application or service made or provided other than by ServiceNow.

6.2. **CUSTOMER OBLIGATION.** Customer shall: (i) defend ServiceNow, its officers, directors and employees against any third party Claim alleging that the Customer Data or Custom Application infringes any valid patent, copyright, or trademark of a third party that is issued or registered in the United States, Canada, Australia, the European Union or Switzerland, and (ii) pay any court-ordered award of damages or settlement amount, and reasonable attorney fees, to the extent caused by such Claim.

6.3. **PROCESS.** All of the foregoing indemnity obligations of ServiceNow and Customer are conditioned on the indemnified party notifying the indemnifying party promptly in writing of any actual or threatened Claim, the indemnified party giving the indemnifying party sole control of the defense thereof and any related settlement negotiations, and the indemnified party cooperating and, at the indemnifying party's request and expense, assisting in such defense. SECTION 6 STATES EACH PARTY'S ENTIRE LIABILITY AND THE OTHER PARTY'S EXCLUSIVE REMEDY FOR THIRD PARTY INFRINGEMENT CLAIMS AND ACTIONS.

## 7. LIMITATIONS OF LIABILITY AND DAMAGES

7.1. **LIMITATIONS OF LIABILITY.** SERVICENOW SHALL HAVE NO LIABILITY FOR ANY REFUND THAT, IN ACCORDANCE WITH THE TERMS HEREOF, IS TO BE PAID BY THE RESELLER. TO THE EXTENT PERMITTED BY LAW, THE TOTAL, CUMULATIVE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, WHETHER BASED ON CONTRACT, IN TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER FOR THE SERVICE GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO: (1) BODILY INJURY OR DEATH; (2) INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; AND (3) CUSTOMER'S OBLIGATION TO PAY AMOUNTS OWED TO RESELLER FOR SERVICES PROVIDED HEREUNDER.

7.2. **EXCLUSION OF DAMAGES.** TO THE EXTENT PERMITTED BY LAW, NEITHER SERVICENOW NOR CUSTOMER SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOST PROFITS (WHETHER DIRECT OR INDIRECT) OR LOSS OF USE OR DATA, COSTS OF SUBSTITUTE GOODS, OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGE TO BUSINESS, REPUTATION OR GOODWILL), OR INDIRECT DAMAGES OF ANY TYPE HOWEVER CAUSED, WHETHER BY BREACH OF WARRANTY, BREACH OF CONTRACT, IN TORT OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION EVEN IF SUCH PARTY HAS BEEN ADVISED OF SUCH DAMAGES IN ADVANCE OR IF SUCH DAMAGES WERE FORESEEABLE. THE FOREGOING EXCLUSIONS SHALL NOT APPLY TO: (1) BODILY INJURY OR DEATH; AND (2) INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

## 8. TERM AND TERMINATION

8.1. **TERM AND TERMINATION.** This Agreement continues until terminated under the terms of this Agreement. Each party may terminate this Agreement in its entirety either: (i) upon thirty (30) days' prior written notice to the other party, if at the time such notice is served there are no Use Authorizations in effect; or (ii) upon written notice if the other party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership or liquidation, in any jurisdiction, that is not dismissed within sixty (60) days of its commencement or an assignment for the benefit of creditors. Either party may terminate a Subscription Service or Professional Services effective immediately upon written notice if the other party materially breaches a material obligation under this Agreement or the applicable Use Authorization for the affected service and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching party. Professional Services are separately ordered from the Subscription Service, and are not required for the Subscription Service. A breach by a party of its obligations with respect to Professional Services shall not by itself constitute a breach by that party of its obligations with respect to the Subscription Service even if the services are enumerated in the same Use Authorization.

8.2. **EFFECT OF TERMINATION OF SERVICE.** Upon expiration or other termination of the Subscription Service for any reason, Customer shall stop using, and ServiceNow shall stop providing, the terminated Subscription Service. (a) If the Subscription Service is terminated by Customer due to ServiceNow's breach, then Customer may submit to Reseller a claim for refund of all prepaid fees for the remaining portion of the Subscription Term for the terminated Subscription Service after the effective date of termination. (b) If Professional Service is terminated by Customer due to ServiceNow's breach, Customer may terminate the affected Professional Services whereupon Customer may submit to Reseller a claim for refund of any prepaid amounts for unperformed Professional Service under the applicable SOW



or a Service Description. (c) If the Subscription Service is terminated by ServiceNow due to Customer's breach, then Customer shall pay to Reseller, within thirty (30) days after the effective date of termination, fees for the terminated Subscription Service that would have been payable for the remainder of the Subscription Term after the effective date of termination. (d) Upon expiration or other termination of the Subscription Service for any reason, Customer shall be eligible to request the return of Customer Data in accordance with Section 8.3 (Return of Customer Data).

8.3. **RETURN OF CUSTOMER DATA.** Following the end of the Subscription Term, where Customer has not renewed, Customer shall have forty-five (45) days to request a copy of the Customer Data from ServiceNow; and, if requested, ServiceNow shall use commercially reasonable efforts to provide a copy of that data within fifteen (15) days in a mutually agreed upon, commercially standard format at no cost to Customer unless ServiceNow determines in its reasonable discretion that the data output is not routine, in which case the parties shall mutually agree on a statement of work for professional services. After such forty-five (45) day period, ServiceNow shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, have the right to delete all Customer Data in its systems or otherwise in its possession or under its control and delete Customer's instances of the Subscription Service.

8.4. **SURVIVAL.** Upon termination of this Agreement for any reason, Customer shall pay to Reseller all amounts owed by it in connection with the services provided hereunder. Sections 3.7 (Ownership), 3.8 (Restrictions), and 5 (Confidentiality and Non-Use Restrictions) through 9 (General Provisions) of this Agreement, together with any other provision required for their construction or enforcement, shall survive termination of this Agreement for any reason.

## 9. GENERAL PROVISIONS

9.1. **ASSIGNMENT.** Neither party may assign its rights or obligations, whether by operation of law or otherwise, without the prior written consent of the other party. Notwithstanding the foregoing, either party may, upon notice and without the other party's consent: (i) in connection with a merger, reorganization or sale of all or substantially all of the assets or equity of such party, assign this Agreement in its entirety to such party's successor; and (ii) assign this Agreement in its entirety to any company, partnership or other legal entity which from time to time directly or indirectly Controls, is Controlled by or is under the common Control with such party, where "**Control**" means the legal power to direct or cause the direction of the general management of the company, partnership or other legal entity. Any attempted or purported assignment in violation of this Section 9.1 will be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

9.2. **NOTICE.** Except as otherwise provided herein, all notices shall be in writing and deemed given upon: (i) personal delivery; (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) the second business day after mailing; or (iv) the first business day after sending by email, except that email shall not be sufficient for notices of termination or regarding a Claim. Notices shall be sent to the parties as set forth on the signature page of this Agreement or as otherwise agreed to by the parties in writing.

9.3. **EXPORT COMPLIANCE.** Each party shall comply with United States and foreign export control laws and regulations. Customer acknowledges that the Subscription Service is subject to the U.S. Export Administration Regulations (the "**EAR**") and that Customer shall comply with the EAR. Without limiting the foregoing, Customer represents and warrants that: (i) Customer is not located in, and shall not use the Subscription Service from, any country that is subject to U.S. export restrictions (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Sudan and Syria); (ii) Customer shall not use the Subscription Service in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, sounding rockets or unmanned air vehicle systems; and (iii) Customer is not prohibited from participating in the U.S. export transactions by any federal agency of the U.S. government. In addition, Customer is responsible for complying with any local laws which may impact Customer's right to import, export or use the Subscription Service.

9.4. **FORCE MAJEURE.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including without limitation: strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), trespassing, sabotage, theft or other criminal acts, failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters or extreme adverse weather conditions (each a "**Force Majeure Event**"). The party suffering a Force Majeure Event shall use reasonable efforts to mitigate against the effects of such Force Majeure Event.

9.5. **US GOVERNMENT RIGHTS.** All ServiceNow software is commercial computer software and all services are commercial items. "**Commercial computer software**" has the meaning set forth in Federal Acquisition Regulation ("**FAR**") 2.101 for civilian agency purchases and the Department of Defense ("**DOD**") FAR Supplement ("**DFARS**") 252.227-7014(a)(1) for defense agency purchases. If the software is licensed or the services are acquired by or on behalf of a civilian agency, ServiceNow provides the commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as required in FAR 12.212 (Computer Software) and FAR 12.211 (Technical Data) and their successors. If the software is licensed or the services are acquired by or on behalf of any agency within the DOD, ServiceNow provides the commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as specified in DFARS 227.7202-3 and its successors. Only if this is a DOD prime contract or DOD subcontract, the Government acquires additional rights in technical data as set forth in DFARS 252.227-7015. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS or other clause or provision that addresses Government rights in computer software or technical data.

9.6. **ENTIRETY.** This Agreement, together with the referenced and/or attached documents, is the final and entire agreement of the parties regarding the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written agreements, representations, understandings, undertakings and negotiations. In the event of any conflict between this Agreement and any referenced

and/or attached documents or Use Authorization(s), Product Overview or Subscription Service Guide, this Agreement shall govern unless such referenced and/or attached document is signed by both parties and manifests a clear intent to override the terms of this Agreement. The terms of this Agreement apply to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of ServiceNow which is not set out in this Agreement, the applicable Use Authorization, Product Overview, Subscription Service Guide, SOW or Service Description. Customer's orders are not contingent on, and Customer has not relied on, the delivery of any future functionality regardless of any verbal or written communication about ServiceNow's future plans. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

9.7. WAIVER AND AMENDMENT. A waiver of any right is only effective if it is in writing and only against the party who signed such writing and for the circumstances given. Any modification of this Agreement, a Use Authorization, the Product Overview, the Subscription Service Guide, a SOW or a Service Description must be in writing and signed by authorized representatives of both parties.

9.8. RELATIONSHIP OF THE PARTIES. The parties are independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship. Neither party shall have any right or authority to assume or create any obligation of any kind expressed or implied in the name of or on behalf of the other party. ServiceNow may at any time subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.

9.9. GOVERNING LAW; VENUE; TIME FOR BRINGING ACTION. This Agreement shall be governed by, subject to, and interpreted in accordance with the laws of the state of California, United States of America, if Customer is located in Canada, United States or Mexico, and the laws of England if Customer is located elsewhere. If Customer is located in Canada, United State or Mexico, the parties hereby irrevocably consent to the nonexclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in San Diego, California, or New York, New York, for the purposes of adjudicating any action or proceeding to enforce the terms of this Agreement. If Customer is located elsewhere, then any dispute arising under this Agreement shall be finally settled by binding arbitration in London, England. Such arbitration shall be conducted in English in accordance with the rules of the International Chamber of Commerce by one (1) arbitrator appointed in accordance with such rules. The arbitrator shall allow such discovery as is appropriate in accomplishing a fair, speedy, and cost-effective resolution of the dispute, and shall be expressly empowered to issue appropriate injunctive relief. The award of arbitration shall be final and binding upon both parties, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any monetary award shall be payable in United States dollars. To the extent permitted by law, choice of law rules and the United Nations Convention on Contracts for the International Sale of Goods shall not apply. No cause of action arising hereunder or relating hereto may be brought more than one (1) year after it first accrues. The prevailing party in an action to enforce this Agreement shall be entitled to costs of bringing the claim and reasonable attorneys' and experts' fees and expenses. Notwithstanding the foregoing, either party may at any time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding such party's intellectual property rights.

9.10. CONSTRUCTION. The Subscription Service and Professional Services shall be provided in the English language unless agreed otherwise. The parties confirm that they have requested that this Agreement and all related documents be drafted in English at the express wishes of the parties. Les parties ont exigé que le présent contrat et ServiceNow les documents connexes soient rédigés en anglais selon la volonté expresse des parties. Capitalized terms not defined herein shall have the meaning set forth or referenced in the Subscription Service Guide. Section headings are for convenience only and are not to be used in interpreting this Agreement.