



MASTER SUBSCRIPTION AGREEMENT (MSA)

General

1. THIS AGREEMENT CONTAINS THE TERMS OF ADVENDIO.COM (HEREAFTER REFERRED AS “ADVENDIO”) AND SALESFORCE.COM AND APPLIES TO ALL ADVENDIO ON-DEMAND SUBSCRIPTION SERVICES ON SALESFORCE.COM AND/OR FORCE.COM. IF CUSTOMER REGISTERS FOR A FREE TRIAL FOR ADVENDIO SERVICES, THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

2. BY SIGNING THIS AGREEMENT CUSTOMER AGREES TO THE FOLLOWING TERMS AND CONDITIONS (THE “AGREEMENT”) GOVERNING CUSTOMER’S USE OF ALL ADVENDIO’S ON-DEMAND SERVICES, INCLUDING OFFLINE COMPONENTS (COLLECTIVELY “ADVENDIO ON-DEMAND SERVICES”). IF CUSTOMER IS ENTERING INTO THIS AGREEMENT ON BEHALF OF ANOTHER LEGAL ENTITY, CUSTOMER REPRESENTS THAT CUSTOMER HAS THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “CUSTOMER” SHALL REFER TO SUCH ENTITY.

3. As part of the ADVendio On-Demand Services, ADVendio will provide you with use of its On-Demand Services, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the ADVendio On-Demand Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the ADVendio website incorporated by reference herein, including but not limited to ADVendio privacy and security policies. For reference, a Definitions section is included at the end of this Agreement.

1 Privacy & Security; Disclosure

1.1 In the event, salesforce.com (SFDC) modifies its privacy and security policies for the relevant platform, ADVendio shall have the right to accordingly modify its privacy and security policies. ADVendio shall timely notify customer of upcoming changes. If such changes to the privacy and security policies result in making the use of the ADVendio On-Demand Services by Customer illegal under applicable Data Protection Law, both Parties in good faith will take commercially reasonable measures to restore compliance under Data Protection Law. If such compliance cannot be achieved within 3 months following the change, and Customer is enjoined by a binding order issued by a competent public authority due to violation of Data Protection Law, then Customer shall have the right to terminate this Agreement by giving two (2) months’ notice to the end of a calendar month. The legal consequences of the termination for the already prepaid fees are set out in section 13.

1.2 Individual users, when they initially log in, will be asked whether or not they wish to receive marketing and other non-critical ADVendio On-Demand Service-related communications from ADVendio from time to time. They may opt out of receiving such communications at that time or at any subsequent time by changing their preference under Personal Setup. Note that because the ADVendio On-Demand Service is a hosted, online application, ADVendio occasionally may need to notify all users of the ADVendio On-Demand Service (whether or not they have opted out as described above) of important announcements regarding the operation of the ADVendio On-Demand Service.

1.3 Customer agrees that ADVendio, subject to prior approval by Customer, can disclose the fact that Customer is a paying customer and the edition of the ADVendio On-Demand Service that Customer is using and may name Customer as a reference.



2 License Grant & Restrictions

2.1 ADVendio hereby grants to Customer a non-exclusive, non-transferable, worldwide right to use the ADVendio On-Demand Service, solely for Customer's own internal business purposes, subject to the terms and conditions of this Agreement. Customer may grant sublicenses to affiliated companies, in which Customer owns the majority of shares and/or voting rights (hereinafter "Customer Affiliates") and may grant sublicenses to franchisees of Customer for the time they are bound by a franchise agreement with Customer (hereinafter "Franchisees"). Upon request by ADVendio, Customer will identify to ADVendio all Customer Affiliates and Franchisees to which a sublicense has been granted as well as the number of respective Users of such Customer Affiliates and Franchisees.

Under no circumstances Customer may grant a sublicense or any other use or access rights to entities which are direct or indirect competitors of ADVendio. All rights not expressly granted to Customer are reserved by ADVendio and its licensors.

2.2 Customer, Customer Affiliates, and Franchisees may not access the ADVendio On-Demand Service if the respective entity becomes a direct competitor of ADVendio, except with ADVendio's prior written consent. In addition, Customer, Customer Affiliates and Franchisees may not access the ADVendio On-Demand Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

2.3. Subject to Section 2.1 above, Customer, Customer Affiliates, and Franchisees shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the ADVendio On-Demand Service or the Content in any way; (ii) modify or make derivative works based upon the ADVendio On-Demand Service or the Content; (iii) create Internet "links" to the ADVendio On-Demand Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the ADVendio On-Demand Service in order to (a) build a competitive product or ADVendio On-Demand Service, (b) build a product using similar ideas, features, functions or graphics of the ADVendio On-Demand Service, or (c) copy any ideas, features, functions or graphics of the ADVendio On-Demand Service. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the ADVendio On-Demand Service.

2.4 Customer, Customer Affiliates, and Franchisees may use the ADVendio On-Demand Service only for their internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the ADVendio On-Demand Service or the data contained therein; or (v) attempt to gain unauthorized access to the ADVendio On-Demand Service or its related systems or networks.

2.5 ADVendio is built on Salesforce.com's platform *force.com*. Force.com is a Platform as a Service (PaaS) product and is owned and operated by Software as a Service (SaaS) vendor Salesforce.com. The headquarters of Salesforce.com is in San Francisco (USA); the company is listed at the New York Stock Exchange (NYSE) under the abbreviation CRM. Each ADVendio license includes a Force.com Platform Embedded Edition License.

ADVendio includes an embedded and limited force.com OEM User License with object access, user permissions and features, and organization limits listed [here](#). Subscribers cannot create their own custom objects and must in case purchase additional licenses directly from salesforce.com. ADVendio is not allowed to sublicense any



further licenses by salesforce.com except above mentioned OEM User License for the solely usage of the application. Even no technical restriction to prevent ADVendio customers from using features and functions not included or excluded does not entitle the customer to use this features and functions and therefore do not derive the right to use in future.

ADVendio aims at allowing media publishers to automate various processes related to advertising management, such as contract management, product packaging and pricing, inventory management, campaign reporting and revenue recognition as well as invoicing. A detailed overview about the features and capabilities of the ADVendio licenses and the underlying Force.com license is available [here](#).

The above does not apply for customers which have purchased force.com or Salesforce.com CRM licenses directly from Salesforce.com. The features and capabilities of these licenses are different from the Force Platform Embedded Edition and are documented on the Salesforce.com website.

3 Customer's Responsibilities

3.1 Customer is responsible for all activity occurring under Customer's, Customer Affiliates' and Franchisees' User accounts and Customer shall be responsible the Customer, Customer Affiliates and Franchisees and their respective Users abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with their use of the ADVendio On-Demand Service, including those related to data privacy, international communications and the transmission of technical or personal data.

3.2 Customer shall be responsible that all conditions and restrictions under this Agreement pertaining to the ADVendio On-Demand Services will also be followed by the Customer Affiliates and Franchisees and Customer will impose such conditions and restriction on such Affiliates and Franchisees in a legally binding way and make ADVendio a third party beneficiary of the respective agreements.

3.3 Customer shall: (i) notify ADVendio immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to ADVendio immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Customer, Customer Affiliates and Franchisees and their Users; and (iii) not impersonate another ADVendio user or provide false identity information to gain access to or use the ADVendio On-Demand Service.

3.4 Customer shall ensure that all of Customer's, Customer Affiliates' and Franchisees' outgoing email campaigns are compliant with the CAN-SPAM Act (<http://www.ftc.gov/spam>) and any additional Anti-Spam laws of their respective countries.

4. Account Information and Data

4.1 ADVendio does not own any data, information or material that Customer, Customer Affiliates and Franchisees submit to the ADVendio On-Demand Service in the course of using the ADVendio On-Demand Service ("Customer Data").

4.2 Customer, Customer Affiliates, and Franchisees, not ADVendio, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data submitted by Customer, Customer Affiliates, and Franchisees. ADVendio shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data *caused by Customer, Customer Affiliates, and Franchisees*.



4.3 In the event this Agreement is terminated, ADVvendio will make available to Customer a file of the Customer Data within thirty (30) days following termination if Customer so requests at the time of termination. In the event Customer, subject to Section 12.5 below, orders Termination Support, the above stated term of thirty (30) days following termination will be extended to the term of the Termination Support, which may be a maximum period of six (6) months following termination.

4.4 Termination Support by ADVvendio shall be subject to Section 12.4.

4.5. The Customer can generate backup files of his data manually. The Force.com platform allows exporting the organization's data on the platform into a set of comma-separated values (CSV) files including documents uploaded to the platform. Details can be found here: [Salesforce HELP Link on Exporting Data](#)

5. Intellectual Property Ownership

5.1 ADVvendio alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the ADVvendio Technology, the Content and the ADVvendio On-Demand Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer, Customer Affiliates, or Franchisees or any other party relating to the ADVvendio On-Demand Service.

5.2 This Agreement is not a sale and does not convey to Customer, Customer Affiliates, or Franchisees any rights of ownership in or related to the ADVvendio On-Demand Service, the ADVvendio Technology or the Intellectual Property Rights owned by ADVvendio. The ADVvendio name, the ADVvendio logo, and the product names associated with the ADVvendio On-Demand Service are trademarks of ADVvendio or third parties, and no right or license is granted to use them.

6. Third Party Interactions

6.1 During use of the ADVvendio On-Demand Service, Customer, Customer Affiliates, and Franchisees may enter into correspondence with, purchase goods and/or ADVvendio On-Demand Services from, or participate in promotions of advertisers or sponsors showing their goods and/or ADVvendio On-Demand Services through the ADVvendio On-Demand Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between Customer, Customer Affiliates, and Franchisees and the applicable third-party. ADVvendio and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between Customer, Customer Affiliates, and Franchisees and any such third-party.

6.2 ADVvendio does not endorse any sites on the Internet that are linked through the ADVvendio On-Demand Service. ADVvendio provides these links only as a matter of convenience, and in no event shall ADVvendio or its licensors be responsible for any content, products, or other materials on or available from such sites.

6.3 ADVvendio provides the ADVvendio On-Demand Service to Customer pursuant to the terms and conditions of this Agreement. Customer recognizes, however, that certain third-party providers of ancillary software, hardware or ADVvendio On-Demand Services may require Customer's agreement to additional or different license or other terms prior to use of or access to such software, hardware or ADVvendio On-Demand Services.



7. Charges and Payment of Fees

7.1 Charges and Payment of Fees: Customer shall pay all fees or charges to Customer's account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The initial charges and payment are set out in the Order Form and will be equal to the current number of total User licenses (plus basic fee where applicable) requested times the User license fee currently in effect. Payments may be made annually, except if otherwise agreed to in writing by the parties.

7.2 Customer is responsible for paying for all User licenses, including User licenses for Customer Users, Customer Affiliate Users and Franchisees Users, ordered for the entire License Term, whether or not such User licenses are actively used.

7.3 ADVendio may invoice Customer for all Services listed in the present Agreement and/or the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 12 (Term of Purchased Subscriptions/Termination upon Expiration/Reduction in Number of Licenses).

Such invoicing by ADVendio and payment by Customer shall be made in advance, either annually or in accordance with any different billing frequency stated in the present Agreement and/or the Order Form. Unless otherwise stated herein, invoiced charges are due net 30 days from the invoice date. Customer is responsible for maintaining complete and accurate billing and contact information in the Services.

7.4 Added User licenses will be subject to the following:

- (i) added licenses will be coterminous with the preexisting License Term (either Initial Term or renewal term);
- (ii) the license fee for the added licenses will be the then current, generally applicable license fee; and
- (iii) licenses added in the middle of a billing month can be charged in full for that billing month.

7.5 ADVendio reserves the right to modify its fees and charges to the extent that specific third party providers which provide services relevant for the Service to ADVendio On-Demand Service increase fees and charges payable to them by ADVendio. Specific third party providers in the meaning of the preceding sentence shall be (i) Salesforce and (ii) Amazon S3. ADVendio shall timely notify Customer of such increase.

ADVendio shall have the right to modify its fees and charges by giving three (3) months' written notice to the end of the calendar month if such increase is required to compensate for increased costs for personal, infrastructure or other costs. Should an increase of fees and charges amount to more than seven (7) percent per year, then Customer shall have the right to terminate the Agreement by giving written notice within two months following notification by ADVendio. The legal consequences of the termination for the already prepaid fees are set out in section 13.

7.6 All pricing terms are confidential, and Customer agrees not to disclose them to any third party.

8. Excess Data Storage Fees

The maximum data (not file) storage space provided to Customer at no additional charge is the greater of 1 GB or an aggregate of 20 MB per User license. If the amount of disk storage required exceeds these limits, Customer will be charged the then-current storage fees. ADVendio will use reasonable efforts to notify Customer when the average storage used per license reaches approximately 90% of the maximum; however, any failure by



ADvendio to so notify Customer shall not affect Customer's responsibility for such additional storage charges. ADvendio reserves the right to establish or modify its general practices and limits relating to storage of Customer Data.

9. Subscription Term, Billing, Renewal and Termination

9.1 The minimum term for each Service Order and renewal thereof is one (1) year.

9.2 The Renewal Term shall be each one (1) year.

9.3 ADvendio charges and collects in advance for use of the ADvendio On-Demand Service. The renewal charge will be equal to the then-current number of total User licenses times the license fee in effect during the prior term which shall be effective upon renewal and thereafter. Fees for other ADvendio On-Demand Services will be charged on an as-quoted basis. ADvendio's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, in particular applicable Value Added Tax in the then current amount.

9.4 Customer agrees to provide ADvendio with complete and accurate billing and contact information. This information includes Customer's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. Customer agrees to update this information within 30 days of any change to it.

9.5 Existing Service Orders and/or Agreements shall automatically renew unless terminated by either party by providing 45 (forty-five) days prior written notice to the other party.

9.6 Customer will be billed in the currency stated on the order.

9.7 Terminations by the customer shall be handed in by written notice to accounting@advendio.com.

10. Non-Cancelable and non-refundable

Notwithstanding any contrary terms in this Agreement or the Order Form the annual subscription fees paid for the ADvendio On-Demand Service are non-cancelable and non-refundable. The number of User subscriptions specified in an accepted Agreement and/or the Order Form cannot be decreased prior to the end of the term of the Agreement / the Order Form, regardless of any termination, non payment, non use or other conduct or inaction.

11. Non-Payment and Suspension

11.1 In addition to any other rights granted to ADvendio herein and under applicable statutory law, ADvendio reserves the right to suspend or terminate this Agreement and access to the ADvendio On-Demand Service if Customer's account becomes delinquent (falls into arrears) in the amount of more of five (5) percent of the annual fees and charges. Prior to suspension, ADvendio will inform Customer the impending Suspension by sending a warning letter and granting Customer a final deadline for payment of thirty (30) calendar days.

11.2 Delinquent invoices (accounts in arrears) are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. Customer will continue to be charged for User licenses during any period of suspension. If Customer or ADvendio initiates



termination of this Agreement, Customer will be obligated to pay the balance due on Customer's account computed in accordance with the Charges and Payment of Fees section above. Customer agrees that ADVendio may bill Customer for such unpaid fees.

ADVendio reserves the right to impose a reconnection fee in the event Customer is suspended and thereafter requests access to the ADVendio On-Demand Service. Customer agrees and acknowledges that ADVendio has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if Customer's account is 30 days or more delinquent.

12. Term of Purchased Subscriptions/Termination upon Expiration/Reduction in Number of Licenses

12.1 User subscriptions purchased by Customer commence on the start date specified in the Agreement and/or the Order Form and continue for the subscription term specified therein.

12.2 Except as otherwise specified, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 45 days before the end of the relevant subscription term. The billing frequency during any such renewal term shall be the same as that during the prior term. Unless otherwise stated herein, invoiced charges during any such renewal term are due net 30 days from the invoice date.

The per-unit pricing during any such renewal term shall be the same as that during the prior term unless ADVendio has given Customer written notice of a pricing increase at least 90 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed 7% over the pricing for the relevant Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Agreement and/or Order Form as promotional or one-time.

12.3 In the case of free trials, notifications provided through the ADVendio On-Demand Service indicating the remaining number of days in the free trial shall constitute notice of termination.

12.4 In the event this Agreement is terminated, ADVendio will make available to Customer a file of the Customer Data within 30 days of termination if Customer so requests at the time of termination.

In the event Customer, subject to Section 12.5 below, orders Termination Support, the above stated term of thirty (30) days following termination will be extended to the term of the Termination Support, which may be a maximum period of six (6) months following termination.

12.5 In the event this Agreement is terminated (other than by reason of Customer's breach and a termination for cause under Section 13), ADVendio will, upon Customer's request, for a maximum period of six months following termination,

(i) submit an offer for consulting services with regard to migrating the Customer Data to another service on a times and material basis;

(ii) agree to reduce payable User Licenses to a minimum number of administrator licenses required for migration,

(iii) agree to renew the Term for a short term usage in order to support migration and parallel usage with the new system.



13. Termination for Cause

Any breach of Customer's payment obligations or unauthorized use of the ADVENDIO Technology or ADVENDIO On-Demand Service will be deemed a material breach of this Agreement. ADVENDIO, in its sole discretion, may terminate User passwords, account or use of the ADVENDIO On-Demand Service if Customer breaches or otherwise fails to comply with this Agreement. In addition, ADVENDIO may terminate a free account at any time in its sole discretion.

If Customer rightfully terminates this Agreement due to a material breach or on the basis of any other termination right as set out in this Agreement within the Term of this Agreement Customer's obligation to pay the fees shall cease. Any fees prepaid for a specific period of time shall be refundable on a pro rata temporis for the time remaining after termination within fourteen (14) days upon termination.

14. Restrictions on Customer

Customer shall not develop applications for internal use with SFDC Services made available by ADVENDIO. Customer may develop applications for internal use with SFDC Services only when purchased directly from SFDC. Customer cannot extend the SFDC Services using additional custom objects, and their use of the SFDC Services in connection with ADVENDIO On-Demand Service is limited to the objects and functionalities included in the ADVENDIO On-Demand Service, and those functionalities of the Platform strictly necessary for the operation of the ADVENDIO On-Demand Service. Subscriptions to the ADVENDIO On-Demand Service cannot be joined with an existing SFDC Org. Where such a combination is required, Customer must procure the necessary subscriptions directly from SFDC to support, operate and run the ADVENDIO On-Demand Service. Should Customer wish to upgrade its SFDC Service subscriptions contained as a part of the ADVENDIO On-Demand Service to full SFDC Force.com Edition subscriptions, such upgrade subscriptions shall be made available directly by SFDC.

15. Mutual Indemnification

15.1. Indemnification by ADVENDIO. ADVENDIO will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that the use of a Purchased Service in accordance with this Agreement 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 court-approved settlement of, a Claim Against Customer, provided Customer (a) promptly give ADVENDIO written notice of the Claim Against Customer, (b) give ADVENDIO sole control of the defense and settlement of the Claim Against Customer (except that ADVENDIO may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) give ADVENDIO all reasonable assistance, at ADVENDIO's expense. If ADVENDIO receives information about an infringement or misappropriation claim related to a Service, ADVENDIO may in ADVENDIO's discretion and at no cost to Customer (i) modify the Service so that it no longer infringes or misappropriates, without breaching ADVENDIO's warranties under Section 16 (Warranties), (ii) obtain a license for Customer 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 to the



extent a Claim Against Customer arises from Content, a Non-Salesforce.com or ADVendio Application or Customer's breach of this Agreement.

15.2. Indemnification by Customer. Customer will defend ADVendio against any claim, demand, suit or proceeding made or brought against ADVendio by a third party alleging that Customer's Data, or Customer use of any Service or Content in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "Claim Against ADVendio"), and will indemnify ADVendio from any damages, attorney fees and costs finally awarded against ADVendio as a result of, or for any amounts paid by ADVendio under a court-approved settlement of, a Claim Against ADVendio, provided ADVendio (a) promptly give Customer written notice of the Claim Against ADVendio, (b) give Customer sole control of the defense and settlement of the Claim Against ADVendio (except that Customer may not settle any Claim Against ADVendio unless it unconditionally releases ADVendio of all liability), and (c) give Customer all reasonable assistance, at Customer's expense.

15.3. Exclusive Remedy. This Section 10 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 10.

16. Warranties

Each party represents and warrants that it has the legal power to enter into this Agreement. ADVendio and its licensors represent and warrant that (i) it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) the Service shall perform materially in accordance with the User Guide; (iii) the functionality of the Service will not be materially decreased during a subscription term; (iv) the Service will not contain or transmit to Customer any Malicious Code (except for any Malicious Code contained in User-uploaded attachments or otherwise originating from Users); (v) it owns or otherwise has sufficient rights in the Service to grant to Customer the rights to use the Service granted herein; and (vi) the Service does not infringe any intellectual property rights of any third party.

17. Disclaimer

EXCEPT AS EXPRESSLY PROVIDED HEREIN, ADVENDIO MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

18. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS ADVendio ON-DEMAND SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE ADVENDIO ON-DEMAND SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE ADVENDIO ON-DEMAND SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH



DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

19. Miscellaneous Provisions

19.1 This Agreement is for the sole benefit of the Parties and their successors and permitted assigns and the Agreement shall not be construed as conferring any rights or remedies on any other third party. There are no third party beneficiaries to this Agreement with the exception that SFDC shall be a third party beneficiary to the Agreement solely as it relates to the SFDC Service Agreement.

19.2 If any provision of this Agreement is held to be unenforceable or invalid for any reason, then that provision will be deemed to be severed from this Agreement and the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. The unenforceable or invalid provision shall be replaced by an enforceable or valid provision which comes as close as possible to the intended purpose of the unenforceable or invalid provision.

20. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

Who you are contracting with under this Agreement, who you should direct notices to under this Agreement, what law will apply in any lawsuit arising out of or in connection with this Agreement, and which courts can adjudicate any such lawsuit, depend on where You are domiciled. The United Nations Convention on the International Sales of Goods shall not apply.

If you are domiciled in:	You are contracting with:	Notices should be addressed to:	The governing law is:	The courts having exclusive jurisdiction are:
The United States of America or Canada	ADvendio America Corporation	19C Trolley Square Wilmington, Delaware 19806 USA	US Law according to State of Delaware	Wilmington, Delaware, USA
Europe, Mexico or a Country in Central or South America or the Caribbean, Australia, Asia, or a country in the Pacific Region	ADvendio.com GmbH, a Swiss corporation	Industriestr. 47 6300 Zug Switzerland	Swiss Law	Zurich, Switzerland

21. Entire Agreement

This Agreement, including all exhibits and addenda hereto, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral,



concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and the Order Form, the terms of such Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

22. Modification to Terms

ADvendio reserves the right to modify the terms and conditions of this Agreement or its policies relating to the ADvendio On-Demand Service at any time provided that SFDC modifies its terms and conditions for the SFDC Platform and/or the SFDC Services either generally in the market or towards ADvendio and such modification requires ADvendio to modify the ADvendio On-Demand Service and/or the respective terms and conditions vis a vis Customer. If such changes result in making the use of the ADvendio On-Demand Services by Customer illegal under applicable Law, including but not limited to Data Protection Law, both Parties in good faith will take commercially reasonable measures to restore compliance under applicable law. If such compliance cannot be achieved within three (3) months following the change, and Customer is enjoined by a binding order issued by a competent public authority or by a competent court of law due to violation of applicable law, then Customer shall have the right to terminate this Agreement by giving two (2) months' notice to the end of a calendar month. The legal consequences of the termination for the already prepaid fees are set out in section 13.

23. Assignment; Change in Control

23.1 This Agreement may not be assigned by Customer without the prior written approval of ADvendio which will not be unreasonably withheld.

23.2 This Agreement may be assigned without Customer's consent by ADvendio to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of Customer that results or would result in a direct competitor of ADvendio directly or indirectly owning or controlling 50% or more of Customer shall entitle ADvendio to terminate this Agreement for cause immediately upon written notice.

24. Definitions

As used in this Agreement and in the Order Form :

“Agreement” means these online terms of use and the Order Form, and any materials available on the ADvendio website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by ADvendio from time to time in its sole discretion;

“Content” means the audio and visual information, documents, software, products and ADvendio On-Demand Services contained or made available to Customer, Customer Affiliates or Franchisees in the course of using the ADvendio On-Demand Service;

“Customer Affiliate” means companies affiliated with Customer, in which Customer owns the majority of shares and/or voting rights;



“Customer Data” means any data, information or material provided or submitted by Customer, Customer Affiliates, and Franchisees to the ADVendio On-Demand Service in the course of using the ADVendio On-Demand Service;

“Effective Date” means the date of signature of this Agreement by both Parties;

“Franchisee” means franchisees of Customer for the time they are bound by a franchise agreement with Customer.

“Initial Term” means the initial period as set out in the Order Form;

“Intellectual Property Rights” means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, ADVendio On-Demand Service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world;

“License Administrator(s)” means those Users designated by Customer who are authorized to purchase licenses by executing written Order Forms and to create User accounts and otherwise administer Customer’s use of the ADVendio On-Demand Service;

“License Term(s)” means the period(s) during which a specified number of Users are licensed to use the ADVendio On-Demand Service pursuant to the Order Form ;

“Online Order Center” means ADVendio’s online application that allows the License Administrator designated by Customer to, among other things, add additional Users to the ADVendio On-Demand Service;

“ADVendio” means ADVendio.com GmbH, a Swiss based incorporation, having its principal place of business at Industriestrasse 47, 6300 Zug, Switzerland;

“ADVendio Technology” means all of ADVendio’s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Customer by ADVendio in providing the ADVendio On-Demand Service;

“ADVendio On-Demand Service(s)” means the specific edition of ADVendio’s online customer relationship management, billing, data analysis, or other corporate services identified during the ordering process, developed, operated, and maintained by ADVendio, accessible via <http://www.advendio.com> or another designated web site or IP address, or ancillary online or offline products and services provided to Customer by ADVendio, to which Customer is being granted access under this Agreement;

“User(s)” means Customers, Customer Affiliates’ and Franchisees’ employees, representatives, consultants, contractors or agents who are authorized to use the ADVendio On-Demand Service and have been supplied user identifications and passwords by Customer (or by ADVendio at Customer’s request).

“Termination Support” shall have the meaning as set out in Section 12.5.



SFDC Service Agreement

Customer agrees to the following provisions of the SFDC Service Agreement which shall take effect between Advendio and Customer as well as between Customer and SFDC, which shall be a third party beneficiary. Prior to granting access to the Advendio On-Demand Service, Customer shall impose the terms and conditions of the SFDC Service Agreement also on Customer Affiliates and Franchisees in a way that Advendio and SFDC are third party beneficiaries.

For the purpose of clarification: the termination right pursuant to Section 6 hereunder shall be interpreted as a termination right on the part of SFDC but not as a termination right of Advendio.

The SFDC Service Agreement only applies to customers who are direct customers of Advendio and have purchased all licenses including the Force.com Platform Embedded Edition licenses from Advendio. Customers who have purchased Force.com Platform or CRM licenses from Salesforce.com directly come under the Salesforce.com Master Service Agreement which can be found on the Salesforce.com website.

“AppExchange” means the online directory of on-demand applications that work with the SFDC Service, located at <http://www.appexchange.com> or at any successor websites.

“Platform” means the online, Web-based platform service provided by SFDC to Reseller in connection with Reseller’s provision of the Reseller Application to You.

“Reseller” means Advendio.com GmbH and its subsidiaries.

“Reseller Application” means the Advendio On-Demand Service.

“SFDC Service” means the online, Web-based service generally made available to the public via <http://www.salesforce.com> and/or other designated websites, including associated offline components but excluding Third-Party Applications. For purposes of this SFDC Service Agreement, the SFDC Service does not include the Platform.

“SFDC” means salesforce.com EMEA Limited.

“Third-Party Applications” means online, Web-based applications and offline software products that are provided by third parties and are identified as third-party applications, including but not limited to those listed on the AppExchange and the Reseller Application.

“Users” means Your employees, representatives, consultants, contractors, agents and third parties with whom You conduct business who are authorized to use the Platform subject to the terms of this SFDC Service Agreement as a result of a subscription to the Reseller Application having been purchased for such User, and have been supplied user identifications and passwords by You (or by SFDC or Reseller at Your request).

“You” and “Your” means the customer entity which has contracted to purchase subscriptions to use the Reseller Application subject to the conditions of this SFDC Service Agreement, together with any other terms required by Reseller.

“Your Data” means all electronic data or information submitted by You as and to the extent it resides in the Platform or SFDC Service.



1. Use of Platform.

(a) Each User subscription to the Reseller Application shall entitle one User to use the Platform via the Reseller Application, subject to the terms of this SFDC Service Agreement, together with any other terms required by Reseller. User subscriptions cannot be shared or used by more than one User (but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment with You or otherwise changed job status or function and no longer require use of the Platform). For clarity, Your subscription to use the Platform hereunder does not include a subscription to use the SFDC Service generally or to use it in connection with applications other than the Reseller Application. If You wish to use the SFDC Service or any of its functionalities or services other than those included in the Reseller Application, or to create or use additional custom objects beyond those which appear in the Reseller Application in the form that it has been provided to You by Your Reseller, visit www.salesforce.com to contract directly with SFDC for such services. In the event Your access to the Reseller Application provides You with access to the SFDC Service generally or access to any Platform or SFDC Service functionality within it that is in excess of the functionality described in the Reseller Application's user guide, and You have not separately subscribed under a written contract with SFDC for such access, then You agree to not access or use such functionality, and You agree that Your use of such functionality, or Your creation or use of additional custom objects in the Reseller Application beyond that which appears in the Reseller Application in the form that it has been provided to You by your Reseller, would be a material breach of this Agreement.

(b) If Your subscription to use the Platform hereunder includes Salesforce Mobile, You understand that prior to purchasing Salesforce Mobile, You should refer to the Mobile Device list located at <http://www.salesforce.com/mobile/devices/> for information on mobile devices that are supported by SFDC. You agree that SFDC will not provide any refunds, credits or other compensation or remedies in connection with Your purchase of Salesforce Mobile for any mobile devices that are not supported by SFDC. Third party mobile device, operating system and network connectivity providers may, at any time, cease distribution of, interrupt, deinstall and/or prevent use of Salesforce Mobile clients on supported mobile devices without entitling You to any refund, credit or other compensation or remedies.

(c) Notwithstanding any access You may have to the Platform or the SFDC Service via the Reseller Application, Reseller is the sole provider of the Reseller Application and You are entering into a contractual relationship solely with Reseller. In the event that Reseller ceases operations or otherwise ceases or fails to provide the Reseller Application, SFDC has no obligation to provide the Reseller Application or to refund You any fees paid by You to Reseller.

(d) You (i) are responsible for all activities occurring under Your User accounts; (ii) are responsible for the content of all Your Data; (iii) shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Platform and the SFDC Service, and shall notify Reseller or SFDC promptly of any such unauthorized use You become aware of; and (iv) shall comply with all applicable local, state, federal and foreign laws and regulations in using the Platform.

(e) You shall use the Platform and the SFDC Service solely for Your internal business purposes and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform or the SFDC Service available to any third party, other than to Users or as otherwise contemplated by this SFDC Service Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Platform or the SFDC Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Platform or the SFDC Service or its related systems or networks.



(f) You shall not (i) modify, copy or create derivative works based on the Platform or the SFDC Service; (ii) frame or mirror any content forming part of the Platform or the SFDC Service, other than on Your own intranets or otherwise for Your own internal business purposes; (iii) reverse engineer the Platform or the SFDC Service; or (iv) access the Platform or the SFDC Service in order to (a) build a competitive product or service, or (b) copy any ideas, features, functions or graphics of the Platform or the SFDC Service.

2. Third-Party Providers

Reseller and other third-party providers, some of which may be listed on pages within SFDC's website and including providers of Third-Party Applications, offer products and services related to the Platform, the SFDC Service, and/or the Reseller Application, including implementation, customization and other consulting services related to customers' use of the Platform and/or the SFDC Service, and applications (both offline and online) that interoperate with the Platform and/or the SFDC Service such as by exchanging data with the Platform and/or the SFDC Service or by offering additional functionality within the user interface of the Platform and/or the SFDC Service through use of the Platform and/or SFDC Service's application programming interface. SFDC does not warrant any such third-party providers or any of their products or services, including but not limited to the Reseller Application or any other product or service of Reseller, whether or not such products or services are designated by SFDC as "certified," "validated" or otherwise. Any exchange of data or other interaction between You and a third-party provider, including but not limited to the Reseller Application, and any purchase by You of any product or service offered by such third-party provider, including but not limited to the Reseller Application, is solely between You and such third-party provider. In addition, from time to time, certain additional functionality (not defined as part of the Platform or SFDC Service) may be offered by SFDC or Reseller to You, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by You in connection with a separate purchase by You of such additional functionality. Your use of any such additional functionality shall be governed by such terms, which shall prevail in the event of any inconsistency with the terms of this SFDC Service Agreement.

3. Integration with Third-Party Applications

If You install or enable Third-Party Applications for use with the Platform or SFDC Service, You acknowledge that SFDC may allow providers of those Third-Party Applications to access Your Data as required for the interoperation of such Third Party Applications with the Platform or SFDC Service. SFDC shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-Party Application providers. In addition, the Platform and SFDC Service may contain features designed to interoperate with Third-Party Applications (e.g., Google, Facebook or Twitter applications). To use such features, You may be required to obtain access to such Third-Party Applications from their providers. If the provider of any such Third-Party Application ceases to make the Third-Party Application available for interoperation with the corresponding Platform or SFDC Service features on reasonable terms, SFDC may cease providing such Platform or SFDC Service features without entitling You to any refund, credit, or other compensation.

4. Access by Reseller

To the extent Reseller serves as the administrator of the Reseller Application for You, You acknowledge that your use of the Reseller Application may be monitored by Reseller and Reseller may access Your Data submitted to the SFDC Service or Reseller Application. By agreeing to this SFDC Service Agreement, you are consenting to such monitoring and access by Reseller.

5. Processing of Your Data

SFDC's processing of Your Data is limited to the extent, and in such a manner as is necessary, for the performance of SFDC's obligations under its agreement with Reseller with regard to provisioning the Platform



in connection with the Reseller Application and shall not include processing Your Data for any other purpose without Your or Reseller's written instruction as appropriate.

For clarity, the following processing is deemed an instruction by Reseller and/or You: (a) processing necessary for the performance of SFDC's obligations under its agreement with Reseller with regard to provisioning the Platform in connection with the Reseller Application; and (b) processing initiated by Your Users in their use of the Reseller Application.

6. Return of Your Data

You have thirty (30) days from the date of termination your Reseller Application subscription term in which to request a copy of Your Data, which will be made available to You in a .csv format. You may also request such a copy on a one-time basis during your Reseller Application subscription term, including during any suspension of Your access to the Platform due to non-payment by You or Reseller. Any modifications to such Your Data made by the Reseller Application outside of the Platform (if any) will not be captured in Your Data as returned and the return of any such modified data shall be the responsibility of Reseller.

7. Proprietary Rights

Subject to the limited rights expressly granted hereunder, SFDC reserves all rights, title and interest in and to the Platform and the SFDC Service, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth in this SFDC Service Agreement. The Platform and the SFDC Service is deemed SFDC confidential information, and You will not use it or disclose it to any third party except as permitted in this SFDC Service Agreement.

8. Compelled Disclosure

If either You or SFDC is compelled by law to disclose confidential information of the other party, it shall provide the other party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.

9. Suggestions

You agree that SFDC shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into any SFDC products or services any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the Platform and/or the SFDC Service.

10. Suspension and Termination

Your use of the Platform and the SFDC Service may be immediately terminated and/or suspended upon notice due to (a) a breach of the terms of this SFDC Service Agreement by You or any User, (b) the termination or expiration of Reseller's agreement with SFDC pursuant to which Reseller is providing the Platform as part of the Reseller Application to You, and/or (c) a breach by Reseller of its obligations to SFDC with respect to the subscriptions it is providing to You in connection with this SFDC Service Agreement. If You use the Reseller Application in combination with a SFDC Service Org other than the Org provisioned solely for use with the Reseller Application (a "Shared org") You acknowledge and understand that (i) access to such Org, including the Reseller Application used in connection with such Org, may be suspended due to Your non-payment to SFDC or other breach of Your Agreement with SFDC, and (ii) in the event Your relationship with SFDC is terminated as a result of non-payment or other material breach of Your agreement with SFDC, Your Platform subscriptions would also be terminated. In no case will any such termination or suspension give rise to any liability of SFDC to You for a refund or other compensation.



11. OEM Services Continuity

In the event that SFDC terminates the Agreement because Reseller has become the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors or Reseller ceases business in the ordinary course (any of which would be a Reseller "End of Operations Event"), SFDC will continue to make the OEM Services available to You and SFDC will take no self-initiated steps to (a) remove the Reseller Application from SFDC's systems or (b) block Your access to the Reseller Application via the OEM Services for the remainder of Your current order term with Reseller (the "Transition Period"), provided that: (i) You pay to SFDC in advance any applicable fees that Reseller owes to SFDC for the OEM Services pursuant to a separate order between You and SFDC; (ii) You remain in compliance with this SFDC Service Agreement; (iii) You are legally entitled to continue Your access to and use of the Reseller Application after an End of Operations Event through a written agreement with Reseller or its successor in interest in anticipation – or as a consequence – of the End of Operations Event; and (iv) there are no legal or operational impediments (as reasonably determined by SFDC) to (a) SFDC continuing to host the Reseller Application and/or (b) Your use of the Reseller Application with the OEM Services. Notwithstanding SFDC's continued provision of the OEM Services through the Transition Period, You understand and acknowledge that SFDC will not itself be responsible for providing (other than hosting "as is" subject to the above conditions) the Reseller Application, and that You will be responsible for updating, maintaining or supporting the Reseller Application during the Transition Period. Your failure to update, maintain and support the Reseller Application may result in reduced Reseller Application functionality and/or an inability to use the Reseller Application.

12. Subscriptions Non-Cancelable

Subscriptions for the Platform are non-cancelable during a subscription term, unless otherwise specified in Your agreement with Reseller.

13. No Warranty

SFDC MAKES NO WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SFDC DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

14. No Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SFDC HAVE ANY LIABILITY TO YOU OR ANY USER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, COST OF PROCUREMENT OF REPLACEMENT GOODS OR SERVICES, LOST BUSINESS, LOSS OF USE, LOSS OF OR CORRUPTION OF DATA, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. Further Contact

SFDC may contact You regarding new Platform and SFDC Service features and offerings.



16. Third Party Beneficiary

SFDC shall be a third party beneficiary to the agreement between You and Reseller solely as it relates to this SFDC Service Agreement.