

# MASTER SUBSCRIPTION AGREEMENT

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF THE SERVICES.

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## 1 Definitions

### 1.1 Definitions

In this Agreement:

**“Agreement”** means this Master Subscription Agreement.

**“Beta Services”** means Our services that are not generally available to customers.

**“Business Day”** means a day which is not a Saturday, Sunday, public holiday or bank holiday in Sydney New South Wales.

**“Consequential Loss”** means (a) any loss of profit, loss of opportunity, loss of or corruption of data, loss of business reputation, loss of savings and loss of revenue; and (b) any other Loss suffered or incurred by a person that does not arise according to the usual course of things out of any breach of this Agreement or other event giving rise to the liability, whether or not such Loss was in the contemplation of the parties at the date of this Agreement.

**“Documentation”** means Our online user guides, documentation, and help and training materials, as updated from time to time, accessible via our website or login to the applicable Service.

**“Intellectual Property”** all intellectual property rights, including but not limited to, the following rights:

- (a) rights in relation to patents, copyright (including Moral Rights), circuit layout rights, trade marks (including goodwill in those marks), business names and any right to have confidential information (including trade secrets and know-how) kept confidential and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered.

**“Insolvency Event”** means that a party enters into any arrangement between itself and its creditors, a party ceases to be able to pay its debts as they become due, a party ceases to carry on business, a mortgagee enters into possession or disposes of the whole or any part of the party’s assets or business, an order is made or a resolution passed for the winding-up or dissolution of a party, or a receiver, a receiver and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or other like person for the party’s applicable place of incorporation is appointed over the whole or any part of the party’s assets or business.

**“Loss”** means all claims, demands, proceedings, litigation, losses, costs (including reasonable legal costs on a full indemnity basis), damages and expenses.

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

**Moral Rights** means rights of integrity of authorship or performership, rights of attribution of authorship or performership, rights not to have authorship or performership falsely attributed, and rights of a similar nature conferred by statute anywhere in the world that may now exist or that may come to exist in relation to a work.

**“Order Form”** means an ordering document specifying the Services to be provided under this Agreement, including any appendices, addenda and supplements thereto. The Order Form may include or refer to an SOW.

**"PA"** means the Privacy Addendum attached to this Agreement and includes its Schedules.

**"Personal Information"** has the meaning given to it in the Privacy Act.

**"Privacy Act"** means the *Privacy Act 1988 (Cth)* as amended or replaced from time to time;

**"Privacy Laws"** means all legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information, including the Privacy Act.

**“Portal”** means a Web-based platform accessible at the following url: <http://www.odaseva.com>, used by Us to provide Services to You.

**"Related Body Corporate" or "RBC"** has the meaning given in the *Corporations Act 2001*.

**“Services”** means:

- (a) the products and services that are ordered by You under an Order Form and made available online by Us, including associated offline components, as described in the Documentation, and
- (b) any professional services and deliverables that are ordered by You under a SOW and delivered by Us.

**"SOW"** means a statement of work agreed as part of an Order Form describing professional Services and deliverables to be provided under this Agreement.

**“User”** means an individual who is authorised by You to use a Service, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors and agents.

**“We,” “Us” or “Our”** or "Odaseva" means Odaseva Australia Pty Ltd.

**“You” or “Your”** or "Customer" means the company or other legal entity (other than Odaseva) which executes this Agreement.

**“Your Data”** means electronic data and information submitted by or for You to the Services or collected, used or disclosed by or for You using the Services.

## 1.2 Interpretation

In this Agreement, a reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) a clause or schedule, is a reference to a clause of or schedule to this Agreement;

- (c) a statute, ordinance, code or other law, includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a person or entity, includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
- (e) a day or a month, means a calendar day or calendar month; and
- (f) money (including '\$', 'AUD' or 'dollars'), is to Australian currency;
- (g) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (h) headings are for convenience only and do not form part of this Agreement or affect its interpretation;
- (i) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
- (j) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day.

## **2 Order Forms**

- 2.1 **Order Forms with Us.** If You enter into an Order Form, including an SOW, with Us, that Order Form will operate under and pursuant to the terms and conditions of this Agreement.
- 2.2 **Order Forms with RBCs.** If You enter into an Order Form, including an SOW, with an RBC of Odaseva that expressly incorporates the terms of this Agreement, a new Agreement will be created between You and the RBC of Odaseva, which comprises the terms of this Agreement and the Order Form.
- 2.3 **Supply to and use of Services by Your RBCs.** If you enter into an Order Form, including an SOW, with Us that requires Us to provide Services to one of Your RBCs or You allow one of Your RBCs to use the Services We supply, then:
  - (a) You must ensure Your RBC uses the relevant Services in compliance with and complies fully with the terms of this Agreement and the Order Form as though it was You; and
  - (b) You will be fully responsible under this Agreement and the relevant Order Form for the acts and omissions of Your RBC as though those acts and omissions were committed by you.

## **3 Our Responsibilities**

- 3.1 **Provision of Services.** We will:
  - (a) make the Services available to You pursuant to this Agreement and the applicable Order Forms, including any SOWs;
  - (b) provide the purchased support; and
  - (c) use commercially reasonable efforts to make the Services available except for:
    - (i) downtime for maintenance and

- (ii) any unavailability caused by force majeure events, being events or circumstances beyond Our reasonable control, including but not limited to an act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees),

in this regard, You understand that the access to and performance of the Services depends in part on the services of third parties which are necessary for its operation, including the internet service provider You selected, the Salesforce.com applications that You license and the data storage services provided by the selected data storage provider, e.g., Amazon.com or Microsoft, in relation to them. You specifically assume the risks of any failure or limitations of service by these third parties and release us from all liability for Losses which are caused by those third parties.

- 3.2 **Protection of Your Data.** We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Services to You and prevent or address related service or technical problems, (b) as compelled by law in accordance with clause 7.3 (Compelled Disclosure) below, or (c) as You expressly permit in writing.
- 3.3 **Protection of Personal Information.** The parties must collect, store, use and disclose Personal Information in accordance with the Privacy Addendum attached to this Agreement.
- 3.4 **Our Personnel.** We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified.
- 3.5 **Beta Services.** From time to time, We may invite You to try Beta Services at no charge. You may accept or decline any such trial in Your sole discretion. Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by some other description with a similar meaning. Beta Services are for evaluation purposes and not for production use, are not considered "Services" under this Agreement, are not supported, and may be subject to additional terms. To the maximum extent permitted by law We shall not be liable for any Loss caused by or any failure or error of the Beta Services to operate correctly or continuously. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one (1) year from the trial start date or the date that a version of the Beta Services becomes generally available. We may discontinue Beta Services at any time in Our sole discretion, subject to a reasonable prior notice, and may never make them generally available.

#### **4 Use of Services**

- 4.1 **Subscriptions.** Unless otherwise provided in the applicable Order Form, including for professional Services and deliverables as may be stated in an applicable SOW (a), Services are purchased as subscriptions, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.

#### **4.2 Usage Limits.**

- (a) Services are subject to usage limits, including, for example, the quantities specified in Order Forms. Unless otherwise specified, if a quantity in an Order Form refers to or relates to (a) volumes of records and salesforce organizations, the Service may not be accessed beyond

the number of ordered volumes and salesforce organizations, (b) Users, the Service may not be accessed by more than that number of Users. A User's password may not be shared with any other individual but a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Services.

- (b) If You exceed a contractual usage limit, We will work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding Our efforts, You are unable or unwilling to abide by a contractual usage limit, You will execute an Order Form for additional quantities of the applicable Services promptly upon Our request, and/or pay any invoice for excess usage in accordance with clause 5.2 (Invoicing and Payment).

4.3 **Your Responsibilities.** You will (a) be responsible for each User's compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, (c) use commercially reasonable efforts to prevent unauthorised access to or use of Services except in accordance with the Documentation and applicable laws and government regulations.

4.4 **Usage Restrictions.** You will not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties: (a) make any Service available to, or use any Service for the benefit of, anyone other than You or Users, (b) sell, resell, license, sublicense, distribute, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, defamatory, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorised access to any Service or its related systems or networks, (g) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit, (h) modify, duplicate, create derivative works from, the Service, (i) copy a Service or any part, feature, function or user interface thereof, (j) frame or mirror any part of any Service, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (k) access any Service in order to build a competitive product or service, or (l) reverse engineer any Service, or attempt to do any of the foregoing.

## 5 Fees and Payment for Services

### 5.1 Fees.

- (a) In exchange for the Services, You will pay all fees specified in Order Forms. Except as otherwise specified in this Agreement or in an Order Form, (i) fees are based on Services purchased and not actual usage, provided that if actual usage exceeds the amount purchased, You shall pay for the excess used (ii) except as otherwise expressly provided in this Agreement or an Order Form, payment obligations are non-cancellable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the then current subscription term. Except with respect to excess usage, the fees for the Services are fixed during the initial term of the Order Form.
- (b) Notwithstanding the foregoing, You will pay for the professional Services and deliverables performed by Us pursuant to a SOW at the fixed fee or at the time-and-materials rate specified in the applicable SOW, or if no fixed fee or time-and-materials rate is specified in the SOW, at Our standard rates in effect at the time the SOW is executed. Any amount stated in a time-and-materials SOW is solely a good-faith estimate for budgeting by You and resource-scheduling purposes by Us and is not a guarantee that the professional Services will be completed for that amount; the actual amount may be higher or lower. If the estimated amount is expended, We will continue to provide the professional Services

under the same rates and terms. We will periodically update You on the status of the professional Services and the fees accrued under the SOW.

- 5.2 **Invoicing and Payment.** You will provide Us with a valid acceptance of Order Forms, including purchase order or alternative document reasonably acceptable to Us. We will invoice You in advance either annually or in accordance with any different billing frequency stated in the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.
- 5.3 **Overdue Charges.** If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, those charges will accrue late interest at the CBA Rate plus two percent per annum. **CBA Rate** means the rate known as the "Corporate Overdraft Reference Rate" as quoted by the Commonwealth Bank of Australia which was applicable on the date the relevant fees were due for payment, and should that rate cease to be published such other rate of interest applicable to corporate overdraft facilities as nominated by Us (acting reasonably).
- 5.4 **Suspension of Service and Acceleration.** If any amount owing by You under this Agreement for the Services is thirty (30) or more days overdue, We may, without limiting Our other rights and remedies, suspend the Services or accelerate Your unpaid fee obligations under this Agreement so that all such obligations become immediately due and payable, and suspend the Service to You until such amounts are paid in full. We will give You at least ten (10) days' prior notice that Your account is overdue, in accordance with clause 12.1 (Manner of Giving Notice), before suspending Services to You.
- 5.5 **Payment Disputes.** We will not exercise Our rights under clause 5.3 (Overdue Charges) or 5.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.
- 5.6 **GST.** (a) In this clause 5.6, the expressions **Consideration, GST, Input Tax Credit, Recipient, Supply, Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (**GST Act**), and **Supplier** means any party treated by the GST Act as making a Supply under this Agreement. (b) Unless otherwise expressly stated, all prices or other sums payable under or in accordance with this Agreement are exclusive of GST. (c) If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment. (d) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement.
- 5.7 **Taxes.** Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively "Taxes"). In addition to all charges under this Agreement and the GST, You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this clause 5.7, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorised by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

5.8 **Future Functionality.** You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

## 6 Proprietary Rights and Licenses

6.1 **Ownership.** Nothing in this Agreement shall constitute a transfer of any proprietary right by Us to You. The Service is protected by Intellectual Property laws. We, Our licensors and suppliers, own and retain all right, title and interest in and to the Intellectual Property rights in the Service and any enhancements, modifications or derivative works thereof.

### 6.2 Reservation of Rights.

(a) All rights not specifically granted to You in this Agreement are retained by Us. You acknowledge Our, and Our licensors', proprietary rights in the Service. We retain all right, title and interest in and to the Service. You acknowledge and agree that (i) no configuration or deployment of the Service shall affect or diminish Our rights, title, and interest in and to the Service.

(b) If You request or suggest any new features, functionality or performance for the Service that is subsequently incorporated into the Service (**Modifications**), we will own all Intellectual Property rights in the Modifications, and the Service incorporating such new features, functionality, or performance shall be Our sole and exclusive property. All such suggestions shall be free from any confidentiality restrictions that might otherwise be imposed upon Us.

6.3 **Your Data.** Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any Intellectual Property rights therein.

## 7 Confidentiality

7.1 **Definition of Confidential Information.** "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data, including any Personal Information provided by You; Our Confidential Information includes the Services and all information provided by Us about the Services; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2 **Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorised by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its RBCs' employees and contractors who need that access for purposes consistent

with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its RBCs, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its RBC, legal counsel or accountants will remain responsible for such RBC's, legal counsel's or accountant's compliance with this clause 7.

- 7.3 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## 8 Representations, Warranties, Exclusive Remedies and Disclaimers

- 8.1 **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

- 8.2 **Our Warranties.** We warrant that during an applicable subscription term (a) this Agreement, the Order Forms and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, (b) We will not materially decrease the overall security of the Services, (c) the Services shall perform substantially in accordance with the Documentation, and (d) We will not introduce Malicious Code into Your systems.

### 8.3 Disclaimers.

- (a) Except as expressly provided in this Agreement, You acknowledge that use of the Service may not be uninterrupted or error-free and the Service web site may, from time to time, be temporarily shut down due to routine maintenance or resolution of errors.
- (b) Except to the extent required by applicable law, if any, We do not make or give any representations, conditions, warranties, or guarantees except for those representations and warranties expressly set out in clause 8.1 and 8.2 of this Agreement.
- (c) Subject to the warranties set out in clauses 8.1 and 8.2 of this Agreement, the Services and any Beta Services are provided 'as is' and on an 'as available' basis and, to the extent permitted by law, We disclaim all warranties, representations, guarantees or conditions of any kind, expressed or implied.
- (d) Each party disclaims all liability and indemnification obligations for any harm or damages caused by any third party hosting providers.

- 8.4 **Non-excludable guarantees.** Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on You by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted or modified. To the extent permitted by law, Our liability for a breach of a non-excludable guarantee is limited, at Our option, to: (a) in the case of goods – the replacement of the goods or the supply of equivalent goods, the repair of the goods, payment of the cost of replacing the goods or of acquiring equivalent goods, or payment of the cost

of having the goods repaired, and (b) in the case of services – the supplying of the services again or payment of the cost of having the services supplied again.

## **9 Mutual Indemnification**

**9.1 IP Indemnification by Us.** We will indemnify and defend You and Your RBCs, officers, directors, and employees (each an “Indemnified Party” and collectively, the “Indemnified Parties”) against any and all third party claims, demands, suits, actions, and proceedings at law or in equity (each a “Claim” and collectively, the “Claims”) and all related liabilities, judgments, awards, settlements damages and costs including without limitation reasonable legal fees and expenses made or brought against You by a third party alleging that the Service or portions of components thereof, or the use thereof in accordance with this Agreement, infringes, causes the infringement or misappropriates any Intellectual Property right of any third party (a “Claim Against You”), whether or not such Claim or allegation is successful, provided that You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You without Your prior written consent, which shall not be unreasonably withheld), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, without breaching Our warranties under clause 8.2 (Our Warranties), (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon 30 days’ written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defence and indemnification obligations do not apply to the extent a Claim Against You arises from Your breach of this Agreement or the combination of the Services by You with any of Your own Intellectual Property or the Intellectual Property of a third party.

### **9.2 IP Indemnification by You.**

You will indemnify and defend Us and Our RBCs, officers, directors, and employees (each an “Odaseva Indemnified Party”) against any and all Claims and all related liabilities, judgments, awards, settlements damages and costs including without limitation reasonable legal fees and expenses made or brought against an Odaseva Indemnified Party by a third party alleging that Your Data, or Your use of any Service in breach of this Agreement, infringes or misappropriates such third party’s Intellectual Property rights or violates applicable law (a “Claim Against Us”) whether or not such Claim Against Us or allegation is successful. We will (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us without Our prior written consent, which shall not be unreasonably withheld.), and (c) give You all reasonable assistance, at Our expense.

**9.3 Exclusive Remedy.** This clause 9 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 clause 9.

## **10 Limitation of Liability**

**10.1 Your Group.** In this clause Your Group means You and your RBCs.

### **10.2 Limitation of Liability.**

- (a) Subject to clause 10.2(b), to the maximum extent permitted by law, , our aggregate liability to Your Group for all Losses suffered or incurred by Your Group arising under or in connection with this Agreement (including under or in connection with all Order Forms and SOWs established under the Agreement and the PA) will not in any case exceed the total amount paid under this Agreement in the twelve (12) months preceding the first incident in respect of which a claim is made under this Agreement. This limitation will apply whether the liability arises under contract, tort (including negligence) or otherwise.
- (b) The limitation of liability under clause 10.2(a) will not apply in respect of Our liability:
  - (i) under the indemnity set out in clause 9.1 of this Agreement ("IP Indemnification by Us");
  - (ii) for a breach by Us of clause 7 of this Agreement ("Confidentiality"); or
  - (iii) for any unauthorised access to or disclosure of your Customer Data held by Odaseva or its sub-contractors which is caused by Our breach of our obligations under the PA.
- (c) Our liability for any claim will be reduced to the extent to which Your Group contributed to the Loss.

10.3 **Exclusion of Consequential Loss.** To the maximum extent permitted by law, in no event will We or You have any liability for any Consequential Loss suffered or incurred by the other party (and in your case by Your Group) under or in connection with this Agreement (including under or in connection with all Order Forms and SOWs established under the Agreement and the PA), whether the liability arises under contract, tort (including negligence) or otherwise and regardless of whether the party has been advised of the possibility of such damages.

10.4 **Claims by Your RBCs.** The liability, exclusions and limitations specified in this Agreement apply to all Losses (in the aggregate) suffered or incurred by Your Group. You must ensure Your RBCs do not bring any claim directly against Us in connection with this Agreement. All Claims made in respect of any Losses suffered by an RBC may only be brought by You and will be subject to these exclusions and limitations. You will indemnify Us against any claim made against Us by any of your RBCs in contravention of this clause.

## 11 Term and Termination

11.1 **Term of Agreement.** This Agreement commences on the date executed by the parties and continues until all Order Forms have expired or have been terminated.

11.2 **Term of Purchased Subscriptions.** The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one (1) year (whichever is shorter), unless either party gives the other notice of non-renewal at least sixty (60) days before the end of the relevant subscription term. The per-unit pricing during any renewal term will increase by up to seven per cent (7%) above the applicable pricing in the prior term, (i) unless otherwise provided in the applicable Order Form, or (ii) unless We provide You notice of different pricing at least sixty (60) days prior to the applicable renewal term; it being understood that You will be authorised to stop the renewal of Your subscription should You disagree with such different pricing. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at Our applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume for

any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.

- 11.3 **Termination.** A party may terminate this Agreement for cause (i) if it gives the other party sixty (60) days written notice to remedy a material breach and that breach is not remedied before the expiration of that period, or (ii) to the extent authorised by applicable law, if the other party suffers an Insolvency Event.
- 11.4 **Refund or Payment upon Termination.** If this Agreement is terminated by You in accordance with clause 11.3 (Termination), We will refund You any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Us in accordance with clause 11.3 (Termination), You will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.
- 11.5 **Your Data Portability and Deletion.** Upon request by You made within fifteen (15) days before the scheduled date of termination or expiration of this Agreement, We will make Your Data available to You for download directly on our Portal before contract termination at no cost to You. Additionally, if you make the same request to Us within fifteen (15) days after the effective date of termination or expiration of this Agreement, We will reactivate the Portal for a period of ten (10) days to allow you to download Your Data all at no cost to You. Notwithstanding the above, after ten (10) days following the termination of this Agreement, We will have no obligation to maintain or provide Your Data, and will thereafter delete or destroy all copies of Your Data in Our systems or otherwise in Our possession, unless legally prohibited.
- 11.6 **Surviving Provisions.** The clauses titled "Fees and Payment for Purchase Services," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Your Data Portability and Deletion," "Notices, Governing Law and Jurisdiction," and "General Provisions" and any other clauses that are required to or intended to operate after termination or expiry of the Agreement, will survive any termination or expiration of this Agreement.

## 12 Notices, Governing Law and Jurisdiction

- 12.1 **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, and (ii) the second Business Day after sending by confirmed email. Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You.
- 12.2 **Agreement to Governing Law and Jurisdiction.** This Agreement will be governed by the Laws of the State of New South Wales, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales, Australia and courts of appeal from them in respect of any proceedings arising in connection with this Agreement.

## 13 General Provisions

- 13.1 **Disputes.** Before a party commences any legal proceedings in relation to any dispute, the party will notify the other of the dispute (the date such notice is given being the **Dispute Date**) and request the dispute be referred to Our Chief Executive Officer or Managing Director and Your Chief

Executive Officer or Managing Director (or equivalent in each case). If the dispute remains unresolved within twenty (20) Business Days of the Dispute Date, either party shall be entitled to require the dispute be submitted to mediation. If a party requests the dispute be submitted to mediation, the mediation shall be conducted in accordance with the Guidelines for Commercial Mediation as issued by the Australian Disputes Centre (ADC). If neither party requests mediation of the dispute within twenty (20) Business Days of becoming entitled to request mediation of the dispute or the mediation does not resolve the dispute, either party may commence legal proceedings in relation to the dispute. Nothing in this clause precludes a party commencing proceedings to seek urgent interlocutory or equitable relief.

- 13.2 **Export Compliance.** The Services, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.
- 13.3 **Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between You and Us regarding Your use of Services 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 will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the conflict or inconsistency will be resolved in the following order of precedence: (1) the applicable Order Form, including any SOW and exhibits, (2) this Agreement and its exhibits, and (3) the Documentation.
- 13.4 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to an RBC or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favour of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, We will refund to You any prepaid fees covering the remainder of the term of all subscriptions. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 13.5 **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 13.6 **Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 13.7 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

## PRIVACY ADDENDUM

This Privacy Addendum (“PA”) forms part of the Agreement concluded between Odaseva and Customer for the Services, and sets out the parties’ agreement with regard to the collection, storage, use and disclosure of Personal Information.

Where the Customer enters into an Order Form for the provision of Services to an RBC under the terms of this Agreement, this PA will apply to all Personal Information provided by or on behalf of any of its RBCs in the course of using or receiving the Services.

### 1 Definitions

All capitalized terms not defined in this PA shall have the meaning set out in the Agreement.

“**Customer**” means the company or other legal entity which executes the Agreement, and except where indicated otherwise, shall include its RBCs.

“**Customer Data**” means electronic data and information submitted by or for You or an RBC in connection with using the Services and includes all electronic data and information submitted, collected, used or disclosed by or for You or an RBC in connection with the Services, and may include Personal Information.

“**Odaseva**” means Odaseva Australia Pty Ltd.

“**Schedule 1**” refers to the security, privacy and architecture documentation applicable to the specific Services purchased by Customer, as updated from time to time.

### 2 Collection, use and disclosure of personal information

2.1 **Roles of the Parties.** The parties acknowledge and agree that the Customer may collect, use, and disclose Personal Information in the course of using the Services, and that Odaseva and its subcontractors may receive Personal Information from the Customer and use or disclose that Personal Information in the course of providing the Services. For purposes of the PA, Odaseva shall not be deemed to hold or have access to any Personal Information of Customer to the extent it is held in encrypted form and Odaseva does not hold the encryption key as part of performing the Services.

2.2 **Customer’s responsibilities.** Customer will:

- (a) in the performance of its obligations and the exercise of its rights under the Agreement, including the use of the Services, comply with all Privacy Laws in relation to any Personal Information that is collected, stored, used, disclosed or otherwise dealt with under or in connection with this Agreement, If the Customer is not an APP Entity (within the meaning of the Privacy Act), the Customer will comply with the requirements of the Privacy Act as if it was an APP Entity.
- (b) not do or omit to do anything in relation to Personal Information that would cause Odaseva or its personnel or subcontractors to contravene any Privacy Laws. Customer must not instruct Odaseva to or use the Services to collect, use, disclose or otherwise do anything with respect to Personal Information in any way which would cause Odaseva to contravene any Privacy Laws.

- (c) prior to providing any Personal Information to Odaseva or uploading any Personal Information as part of using the Services, obtain all necessary consents and make all necessary disclosures that are necessary under Privacy Laws so that Odaseva can perform its obligations under this PA and the Agreement without breaching any Privacy Laws; and
- (d) be responsible for the accuracy, quality, and legality of the Personal Information collected or provided by it in connection with the use of the Services and for ensuring that the means by which Customer acquired that Personal Information complies with Privacy Laws.

### 2.3 **Odaseva's responsibilities.**

- (a) Odaseva shall treat the Personal Information received from the Customer as Confidential Information and shall only use and disclose the Personal Information for the purposes of complying with and performing its obligations under this Agreement and in accordance with Customer's instructions where such instructions are consistent with the terms of the Agreement and with the Privacy Laws. Odaseva may refuse to accept, use or disclose Personal Information if it believes that to do so would contravene any Privacy Laws.
- (b) Odaseva will, in the performance of its obligations and the exercise of its rights under the Agreement, including the provision of the Services, comply with all Privacy Laws in relation to any Personal Information that is collected, stored, used, disclosed or otherwise dealt with under or in connection with this Agreement.

## 3 **Rights of Individuals**

- (a) Each party shall, to the extent legally permitted, promptly notify the other party if it receives a request from an individual who wishes to access or correct their Personal Information held by Odaseva or has a complaint regarding the Personal Information,
- (b) If an individual requests access to or correction of, or has a complaint regarding, their Personal Information which is held by Odaseva, then to the extent required by the Privacy Laws, each party shall use reasonable measures (including in the case of Odaseva, appropriate technical measures), to assist the other to respond to and resolve such a request or complaint in accordance with the Privacy Laws.

## 4 **Odaseva Personnel**

- 4.1 **Confidentiality.** Odaseva will ensure that its personnel who may access Personal Information are informed of the confidential nature of the Personal Information, and are given appropriate training on their responsibilities and execute written confidentiality agreements. Odaseva will ensure that such confidentiality obligations survive the termination of the personnel's engagement.
- 4.2 **Limitation of Access.** Odaseva shall ensure that Odaseva's access to Personal Information is limited to those personnel who need access to enable Odaseva to perform the Services in accordance with the Agreement.
- 4.3 **Privacy Officer.** Odaseva has appointed a Privacy Officer. The appointed person may be contacted at this email address: [dpo@odaseva.com](mailto:dpo@odaseva.com).

## 5 **Subcontractors**

- 5.1 **Appointment of Subcontractors.** Customer acknowledges and agrees that (a) Odaseva may engage third-party subcontractors and its RBCs to assist it with the provision of the Services. Such

subcontractors and the Odaseva RBCs and their personnel may access the Personal Information provided by the Customer to perform their functions including (but not limited to) administration, support and maintenance activities. The subcontractors and the Odaseva RBCs and their personnel may be located outside Australia.

5.2 **Agreements with subcontractors.** Odaseva will enter into a written agreement with each subcontractor containing data protection obligations which are not less protective than those provided in this Agreement in relation to the protection of Customer Data to the extent applicable to the nature of the Services provided by such subcontractor.

5.3 **Information Regarding Subcontractors.** Odaseva will make available to Customer information about the identity and country of location of each current and anticipated Subcontractor

5.4 **Liability.** Odaseva shall be liable for the acts and omissions of its subcontractors to the same extent that Odaseva would be liable if performing the services of each subcontractor directly under the terms of the Agreement and this PA.

## 6 Security

6.1 **Controls for the Protection of Customer Data.** Odaseva will maintain appropriate technical and organizational measures for protection of the security (including protection against unauthorised or unlawful access or use, and against accidental or unlawful destruction, loss or alteration or damage, unauthorised disclosure of, or access to, Customer Data), confidentiality and integrity of Customer Data, as set out in Schedule 1. Odaseva will regularly monitor compliance with these measures. Odaseva will not materially decrease the overall security of the Services during a subscription term.

6.2 **Third-Party Certifications and Audits.** Odaseva has obtained the third-party certifications and audits set out in the Schedule 1. Upon Customer's written request at reasonable intervals, and subject to the confidentiality obligations set out in the Agreement, Odaseva will make available to Customer, that is not a competitor of Odaseva, a copy of Odaseva's then most recent third-party audits or certifications, as applicable.

## 7 Data Breaches

(a) Odaseva will maintain the security incident management policies and procedures specified in the Schedule 1 and will, notify the Customer without undue delay after becoming aware of any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Data, including Personal Information, held by Odaseva or its subcontractors of which Odaseva becomes aware (a "Customer Data Incident").

(b) Odaseva shall make reasonable efforts to identify the cause of such Customer Data Incident and take those steps as Odaseva considers necessary and reasonable in order to remediate the cause of such a Customer Data Incident to the extent the remediation is within Odaseva's reasonable control. These obligations will not apply to incidents that are caused by Customer or Customer's Users.

## 8 Return and Deletion of Customer Data

Odaseva will return Customer Data to the Customer and, to the extent allowed by applicable law, delete the Customer Data in accordance with the procedures and timeframes specified in clause 11.5 ("Your Data Portability and Deletion") of the Agreement.

## **9 Customer RBCs**

9.1 **Communication.** The Customer is responsible for coordinating all communication with Odaseva under this PA in connection with the Services provided to and used by the Customer and its RBCs and confirms it is entitled to make and receive any communication in relation to this PA on behalf of its RBCs.

9.2 **RBCs.** Except where applicable Privacy Laws require a Customer RBC to exercise a right or seek any remedy under this PA against Odaseva directly by itself, the parties agree that (i) the Customer will exercise any such right or seek any such remedy on behalf of its RBCs, and (ii) the Customer will exercise any such rights under this PA not separately for each RBC individually but in a combined manner for all of its RBCs together.

## **10 Limitation of Liability**

The liability of Odaseva arising out of or in connection with this PA and its handling of the Personal Information of the Customer and its RBCs is subject to clause 10 ("Limitation of Liability") of the Agreement.

## **SCHEDULE 1 – SECURITY, PRIVACY AND ARCHITECTURE DOCUMENTATION**

In order to guarantee the highest degree of security and availability for the Odaseva platform and services, Odaseva manages a variety of policies, procedures and controls covering different aspects such as infrastructure monitoring and security operations, risk management, communication process and rigorous management of access rights to information of its Information System. These procedures are audited on an annual basis by an auditor with a solid international reputation who is required to deliver a SOC2 report to Odaseva.

Odaseva has established and maintains the following policies and procedures in connection with the security and availability of its services:

- Code of Conduct: ethical and moral integrity rules, that every Odaseva employee agrees to comply with.
- Antivirus and New Software Policy: rules applying to every laptops and servers used at Odaseva, both in terms of setup and maintenance of software and antivirus.
- AWS Data Disposal Policy: policy detailing data removal from AWS or Microsoft Odaseva servers, as applicable, when they are no longer used.
- Business Continuity Plan: procedure used in case of data loss on any component of Odaseva architecture.
- Confidential data transfer and Encryption Policy: policy for transferring confidential data, that every Odaseva employee agrees to comply with.
- Emergency Key Lost Process: procedure to recover an encryption key, only executed upon explicit request from a Customer authorised individual.
- Employee Hiring Policy: policy governing Odaseva recruitment (Background checks, etc.).
- Employee OnBoarding Procedure: procedure executed when an employee joins Odaseva (NDA, technical equipment setup, presentation of policies and procedures).
- Employee OffBoarding Procedure: procedure executed when an employee leaves Odaseva (data deletion from any device, deactivating access rights to Odaseva architecture components, knowledge transfer).
- Confidentiality Security Agreement: confidentiality and information security principles, presented to every new Odaseva hire, in addition to the NDA included in his/her work contract.
- Front-End Internal Audit Process: recurring internal audit procedure executed on the Odaseva platform to provide system resilience.
- Internal File Management Process: policy covering how to use Odaseva documents and how to secure them, including a monthly control of access review granted to each employee.

- Incident Management Procedure: procedure detailing incident management of incidents having an impact on the service provided by Odaseva.
- Laptop configuration Monitoring Process: procedure executed by IT Management team on a recurring basis to audit Odaseva laptops.
- Platform Credentials Management Process: management procedure (activation, deactivation, audit) of Odaseva platform access related to its customers and employees.
- Release Lifecycle Procedure: description of Odaseva release lifecycle, from requirement gathering to Go Live, including design, development and UAT.
- Sanction Policy: policy governing how to sanction an employee in case of serious misconduct.

To secure Customer data, Odaseva continuously reviews its security policies and applies an End-To-End encryption principle:

- Customer Data is encrypted In Transit (HTTPS TLS 1.2) as soon as it leaves Salesforce Customer environment.
- Customer Data is then immediately encrypted at a granular level (field by field, row by row), with an encryption key only known by the Customer, before storing Customer Data on Odaseva Databases and Filesystems.
- Servers, Filesystems and Databases are also encrypted, at the Operating System level and/or hard-drive level, and protected accordingly to Security State-of-the-art (IP Restriction, isolated VLAN, firewall).

This granular encryption security pattern is designed to allow Odaseva to process Customer data while having Customer Data encrypted with no Odaseva employees having access to the decryption key. This standard feature is broadly equivalent to the paid option "Platform Encryption" provided by the Salesforce Shield product line.