



Subscription Services Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.

BY USING THE SERVICE, CLICKING AGREE OR OTHER FORM OF ASSENT, YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER OR A THIRD PARTY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON THEIR BEHALF.

This agreement is between Prodly, Inc., a California corporation, (**Prodly**), and the Customer agreeing to these terms (**Customer**).

1. **SOFTWARE SERVICE.** This agreement provides Customer access to and usage of an Internet based software service, to be used on behalf of its clients, and as specified on an order (**Service**).

2. **USE OF SERVICE.**

- a. **Data.** All of Customer’s client’s Salesforce.com account data accessed by the Service remains the property of Customer, as between Customer and Prodly (**Customer Data**). Customer grants Prodly the right to use the Data solely for purposes of performing under this agreement.
- b. **Customer Access and Usage.** Customer may allow its contractors to access the Service in compliance with the terms of this agreement, which access must be for the sole benefit of Customer and its clients (if Customer has purchased a service provider license under an order). Customer is responsible for the compliance with this agreement by its contractors. Customer’s clients may not have direct access or use the Service.
- c. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify Prodly promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service’s user guide and applicable law.
- d. **Prodly Support.** Prodly must provide Customer support for the Service under the terms of Prodly’s Customer Support Policy (**Support**) which is located at <https://success.prodly.co>.

3. **SERVICE LEVEL AGREEMENT & WARRANTY.**

- a. **Warranty.** Prodly warrants to Customer: (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of availability in any given month as provided in the chart below (*excluding* maintenance outages, force majeure, and outages that result from any Customer technology issues); (ii) the functionality or features of the Service may change but will not materially decrease during any paid term; and (iii) that the Support may change but will not materially degrade during any paid term.

Availability Warranty	Credit
98%	3% of monthly fee for each full hour of an outage (beyond the warranty)
Maximum amount of the credit is 100% of the fee for such month.	

- b. **LIMITED REMEDY.** Customer’s exclusive remedy and Prodly’s sole obligation for its failure to meet the warranty in a(i) above will be for Prodly to provide a credit for the applicable month, as provided in the chart above (if this agreement is not renewed, then a refund), for the month; provided that Customer notifies Prodly of such breach within 30 days of the end of that month.
- c. **DISCLAIMER.** PRODLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE PRODLY TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, PRODLY DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.

4. **PAYMENT.** Customer must pay all fees as specified on the order, but if not specified then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use, withholding, VAT and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.

5. MUTUAL CONFIDENTIALITY.

- a. **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Prodlly's Confidential Information includes without limitation the Service, its user interface design and layout, and pricing information, and the Software and Documentation (defined below). Customer's Confidential Information includes without limitation the Customer Data.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care), and it may not disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

6. DATA SECURITY.

- a. **Security Measures.** In order to protect Customer's Confidential Information, Prodlly will (i) implement and maintain all reasonable security measures appropriate to the nature of the Confidential Information including without limitation, technical, physical, administrative and organizational controls, and will maintain the confidentiality, security and integrity of such Confidential Information; (ii) implement and maintain industry standard systems and procedures for detecting, preventing and responding to attacks, intrusions, or other systems failures and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures; (iii) designate an employee or employees to coordinate implementation and maintenance of its security measures; and (iv) identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of Customer's Confidential Information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.
- b. **Notice of Data Breach.** If Prodlly knows that Customer Confidential Information has been accessed, disclosed, or acquired without proper authorization and contrary to the terms of this agreement, Prodlly will promptly alert Customer of any such data breach, and immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the data breach. Prodlly will give highest priority to immediately correcting any data breach and devote such resources as may be required to accomplish that goal. Prodlly will provide Customer with all available information reasonably necessary to enable Customer to fully understand the nature and scope of the data breach. To the extent that Customer, in its sole reasonable discretion, deems warranted, Customer may provide notice to any or all parties affected by any data breach. In such case, Prodlly will consult with Customer in a timely fashion regarding appropriate steps required to notify third parties. Prodlly will provide Customer with information about what Prodlly has done or plans to do to minimize any harmful effect or the unauthorized use or disclosure of, or access to, Confidential Information.

7. PRODLY PROPERTY.

- a. **Reservation of Rights.** The software, workflow processes, user interface, designs and Software and Documentation, and other technologies provided by Prodlly as part of the Service are the proprietary property of Prodlly and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Prodlly. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or Software and Documentation. Prodlly reserves all rights unless expressly granted in this agreement.
- b. **Restrictions.** Customer *may not* (i) sell, resell, rent, or lease the Service or use it in a service-provider capacity, unless Customer has purchased a service provider license under an order; (ii) use the Service to store or transmit unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit infringing material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or its related systems or networks; (v) reverse engineer the Service or the Software and Documentation; or (vi) access the Service or use the Software and Documentation to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- c. **Software and Documentation.** All software provided by Prodlly as part of the Service, and the Service documentation, sample data, marketing materials, training material and other material provided through the Service or by Prodlly (**Software and Documentation**) are licensed to Customer as follows: Prodlly grants Customer a non-exclusive, non-transferable license during the term of this agreement, to use and copy such Software in accordance with the Documentation, solely in Customer's Salesforce.com account, and solely in connection with the Service.

- d. **Statistical Information.** Prodlly may compile statistical information related to the performance of the Service and may make such information publicly available, provided that such information does not identify Customer Data, and there is no means to re-identify Customer Data. Prodlly retains all intellectual property rights in such information.

8. **TERM AND TERMINATION.**

- a. **Term.** This agreement continues until all orders have expired or are terminated for material breach under Section 8(b).
- b. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- c. **Return of Customer Data.** All Customer Data resides in Customer's client's Salesforce.com account, so any return of Customer Data must work through Salesforce.com.
- d. **Return Prodlly Property Upon Termination.** Upon termination of this agreement for any reason, Customer must pay Prodlly for any unpaid amounts, and destroy or return all property of Prodlly. Upon Prodlly's request, Customer will confirm in writing its compliance with this destruction or return requirement.
- e. **Suspension for Violations of Law.** Prodlly may temporarily suspend the Service or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law. Prodlly will attempt to contact Customer in advance.
- f. **Suspension for Non-Payment.** Prodlly may temporarily suspend the Service if Customer is more than 30 days late on any payment due pursuant to an order.

9. **LIABILITY LIMIT.**

- a. **EXCLUSION OF INDIRECT DAMAGES.** Except for each party's indemnity obligations and for Customer's violation of Section 7(b), neither party is liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue or anticipated cost savings), even if it knows of the possibility of such damage or loss or if the damage or loss is foreseeable.
- b. **TOTAL LIMIT ON LIABILITY.** Except for each party's indemnity obligations and for Customer's violation of Section 7(b), each party's total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid or payable by Customer within the 12 month period prior to the event that gave rise to the liability.

10. **INDEMNITY.**

- a. **Defense of Third Party Claims.** Prodlly will defend or settle any third party claim against Customer to the extent that such claim alleges that Prodlly technology used to provide the Service violates a copyright, patent, trademark or other intellectual property right, if Customer, promptly notifies Prodlly of the claim in writing, cooperates with Prodlly in the defense, and allows Prodlly to solely control the defense or settlement of the claim. **Costs.** Prodlly will pay infringement claim defense costs it incurs in defending Customer, and Prodlly negotiated settlement amounts, and court awarded damages. **Process.** If such a claim appears likely, then Prodlly may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If Prodlly determines that none of these are reasonably available, then Prodlly may terminate the Service and refund any prepaid and unused fees. **Exclusions.** Prodlly has no obligation for any claim arising from: Prodlly's compliance with Customer's specifications; a combination of the Service with other technology or aspects where the infringement would not occur but for the combination; use of Customer Data; or technology or aspects not provided by Prodlly. **THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND PRODLY'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.**
- b. **By Customer.** If a third-party claims against Prodlly that any part of the Customer Data infringes or violates that party's patent, copyright or other right, Customer will defend Prodlly against that claim at Customer's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Customer, provided that Prodlly: promptly notifies Customer in writing of the claim; and allows Customer to control, and cooperates with Customer in, the defense and any related settlement.

- 11. **GOVERNING LAW AND FORUM.** This agreement is governed by the laws of the State of California (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for San Francisco County, California, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

12. OTHER TERMS.

- a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification or waiver of any term of this agreement is effective unless both parties sign it, however this agreement may be modified through an online process provided by Prodly.
- b. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.
- c. **Audit.** Prodly may remotely query Customer's Salesforce.com account to validate users.
- d. **Independent Contractors.** The parties are independent contractors with respect to each other.
- e. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.
- f. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach of this agreement.
- g. **No Additional Terms.** Prodly rejects additional or conflicting terms of any Customer form-purchasing document.
- h. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- i. **Survival of Terms.** Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply.
- j. **Feedback.** If Customer provides feedback or suggestions about the Service, then Prodly (and those it allows to use its technology) may use such information without obligation to Customer.

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