



## Pre-Release Product Agreement

This Pre-Release Product Agreement (this “**Agreement**”) is between SugarCRM Inc. (“**Sugar**”) and the undersigned Customer (“**Customer**”). By installing or otherwise using a Pre-Release Product, Customer agrees to be bound by the terms of this Agreement. Customer may not use a Pre-Release Product if it does not agree to comply with this Agreement.

### 1. Certain Definitions

- 1.1. “**Customer Agreement**” means a master subscription agreement or similar subscription or licensing agreement between Sugar and Customer under which Customer obtains rights to access and use of Sugar Products.
- 1.2. “**Pre-Release Product**” means a pre-release, beta and/or non-generally available Sugar Products version made available for Customer evaluation, testing and feedback.
- 1.3. “**Pre-Release Product Term**” means from time period beginning on the day Customer installs or uses a Pre-Release Product Program until the earlier of the day (a) that Sugar makes a production version of the Pre-Release Product generally commercially available to its customers, and (b) announces discontinuation of Pre-Release Product availability.
- 1.4. “**Sugar Products**” means the Sugar products and services Customer may access and use pursuant to a valid Customer Agreement.

**2. Authorization.** Sugar hereby grants Customer a limited, temporary, revocable, non-exclusive and non-transferable right to access and use the Pre-Release Product during the Pre-Release Product Term.

**3. General Restrictions.** Customer may not and may not cause or permit others to: (a) use the Pre-Release Product to harass any person; cause damage or injury to any person or property; publish any material that is false, defamatory, libelous, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe property rights; or otherwise violate applicable laws, ordinances or regulations; (b) perform or disclose any benchmarking, availability or performance testing of the Pre-Release Product; (c) perform or disclose any performance or vulnerability testing of Pre-Release Product; (d) introduce or subject the Pre-Release Product to any viruses, worms, defects, Trojan horses, time bombs, or other harmful or malicious code, files, scripts, agents, or programs, or any items of a destructive nature; (e) cause the Pre-Release Product to become subject in whole in or in part to a copyleft license; (f) modify, make derivative works of, reproduce, republish, download, or copy any part of Pre-Release Product; (g) except to the extent permitted by applicable law, disassemble, decompile or reverse engineer the Pre-Release Product; (h) access or use the Pre-Release Product to build or support, directly or indirectly, products or services competitive to Sugar; (i) license, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, or make available the Pre-Release Product to any third party except as permitted by this Agreement; or (j) use the Pre-Release Product in a production (*i.e.*, non-test) environment.

### 4. Feedback

4.1. In consideration for providing the Pre-Release Product to Customer under this Agreement, Customer understands and agrees that Sugar (either directly or through third-party providers) may be reviewing, monitoring and collecting data about the performance of the Pre-Release Product as well as Customer’s use of the Pre-Release Product during the course of the Pre-Release Product Term.

4.2. Sugar may collect, use, process, store, and analyze diagnostic and usage related content from computers, mobile phones or other devices Customer uses to access the Pre-Release Product to create and/or compile anonymized and aggregated statistics about the Pre-Release Product and how customers use it. Diagnostic and usage related content may include, but is not limited to, log-in information, IP addresses, internet service, location, type of browser, modules and features that are used and/or accessed, and licensing, system, and service performance data.

4.3. Customer agrees to promptly report to Sugar all Feedback regarding the Pre-Release Product by submitting it via the URL or email address designated by Sugar for this Pre-Release Product. For purposes of this Agreement, “**Feedback**” means all ideas, feedback, suggestions, requests, questions, comments, results of Customer’s access, use, testing and evaluation of the Pre-Release Product including without limitation any defects, errors or other issues Customer discovers and reports about the Pre-Release Product.

**5. Confidentiality.** Customer acknowledges and agrees the Pre-Release Product is not publicly released and therefore the Feedback, the Pre-Release Product itself, information concerning current or future features and functionality, user interfaces, design details, specifications, and structure of the Pre-Release Product, future product and services direction, research, development, business forecasts, sales information and marketing plans are all Sugar’s Confidential Information (the “**Confidential Information**”). Customer must, both during the Pre-Release Product Term and at all times thereafter, keep in confidence and trust all of the Confidential Information provided to it. Customer may not use the Confidential Information other than as necessary to exercise its rights under this Agreement. Customer must take all reasonable steps to prevent unauthorized disclosure or use of the Confidential Information and to prevent it from falling into the public domain or into the possession of unauthorized persons. Customer may not disclose Confidential Information to any person or entity other than its officers, employees and consultants who need access to such Confidential Information in order to effect the intent of this Agreement and who have entered into written confidentiality agreements with Customer which protect the Confidential Information containing terms and conditions at least as protective of Sugar, the Pre-Release Product or any other Confidential Information as the terms and conditions contained herein. These obligations do not apply information to the extent that such information: (a) is, or, through no act or failure to act by Customer becomes publicly known; or (b) is approved for release by Sugar’s written authorization. Customer will promptly notify Sugar in writing of any disclosure of Confidential Information in violation of this Agreement, and of any subpoena, demand, court order, or other legal demand requiring disclosure of Confidential Information in sufficient time for Sugar to seek to prevent such disclosure.

**6. Ownership.** All rights, title, and interest in and to the Pre-Release Product, including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works thereto, are owned exclusively by Sugar or its licensors. Customer grants Sugar a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Pre-Release Product (without attribution of any kind) any suggestions, enhancement requests, recommendations, proposals, corrections or other Feedback or information provided by Customer or any of its subscription users related to the operation or functionality of the Pre-Release Product. Any rights in the Pre-Release Product or Sugar’s intellectual property not expressly granted herein by Sugar are reserved by Sugar.

**7. No Warranty; Disclaimer.** The Pre-Release Product is a prerelease code and is not bug or error free or at the level of performance or compatibility of a final, generally available product offering. The Pre-Release Product may not operate correctly and may be substantially modified by Sugar prior to first commercial shipment or withdrawn by Sugar completely. The entire risk arising out of the use or performance of the Pre-Release Product remains with Customer and Customer has sole responsibility for adequate protection and backup of its data or equipment used in connection with the Pre-Release Product. Customer acknowledges and agrees Sugar makes no representation or warranties regarding use of the Pre-Release Product and Sugar will have no liability for lost data, incomplete data, re-run time, inaccurate input, work delay, lost profits or adverse effect on the performance of the Sugar Products resulting from the use of the Pre-Release Product. Sugar's standard product service levels shall not apply to the Pre-Release Product and the Pre-Release Product will not be supported by Sugar's customer support team. The Pre-Release Product is provided to Customer solely for use in accordance with Section 2 and is provided on an "AS IS" basis and without warranty. TO THE EXTENT NOT PROHIBITED BY LAW, SUGAR HEREBY DISCLAIMS ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, RELATED TO THE PRE-RELEASE PRODUCT, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

**8. Limitation of Liability.** IN NO EVENT WILL SUGAR'S LIABILITY FOR ACTUAL DIRECT DAMAGES ARISING OUT OF THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE PRE-RELEASE PRODUCT EXCEED USD\$100. TO THE MAXIMUM EXTENT ALLOWABLE BY LAW, IN NO EVENT WILL SUGAR BE LIABLE FOR ANY LOST PROFITS OR LOST REVENUE OR FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING UNDER THIS AGREEMENT, EVEN IF THE SUGAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING. This limitation applies notwithstanding any failure of essential purpose of any limited remedy.

**9. Term and Termination.** This Agreement is effective during the Pre-Release Product Term only. Sugar reserves the right to discontinue the Pre-Release Product Program or withdraw the Pre-Release Product from testing, disable the Pre-Release Product at any time and/or never release the Pre-Release Product Program as a commercial product. Sugar may, at Sugar's option, also extend the Pre-Release Product Term by providing Customer with prior written notice (email shall suffice) authorizing such extension of the Pre-Release Product Term. Either party may terminate this Agreement at any time and for any reason on 10 days written notice to the other party. Upon any termination of this Agreement, Customer will (a) immediately cease the use of all of the Pre-Release Product; and (b) return to Sugar or destroy all copies of the Pre-Release Product and/or any Confidential Information provided in connection with this Agreement that's in Customer's possession or control within 15 days after the effective date of such termination and certify in writing that it has complied with these obligations upon Sugar's request. The provisions of Sections 4 through 10 survive any termination or expiration of this Agreement.

## **10. General**

10.1. **Assignment.** Company shall not assign any of its rights or delegate any of its obligations under this Agreement without Sugar's prior consent, which may be withheld in Sugar's sole discretion. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

10.2. **Governing Law.** This Agreement and any dispute arising from or relating to the performance or breach hereof shall be governed by and construed and enforced in accordance with the laws of the State of California USA, without reference to conflicts of laws principles, and excluding the United Nations Convention on Contracts for the International Sale of Goods.

10.3. **Jurisdiction.** Any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in Santa Clara County, California USA. Sugar and Customer agree to submit to the jurisdiction of, and agree that venue is proper in, these courts for any legal action or proceeding.

10.4. **Notices.** Notices regarding this Agreement will be in writing and addressed to Customer at the email address or mailing address it provides, or, in the case of Sugar, to [legal@sugarcrm.com](mailto:legal@sugarcrm.com).

10.5. **Severability; Construing.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions will remain in effect.

10.6. **Waiver.** The waiver by either party of a breach of any provision of this Agreement or the failure by either party to exercise any right hereunder shall not operate or be construed as a waiver of any subsequent breach of that right or as a waiver of any other right.

10.7. **Export Compliance.** The Pre-Release Product is subject to certain export control laws and regulations, including those of the United States Government. As may be reasonably necessary for Sugar to comply with such laws, Customer agrees to make Customer records available to Sugar upon reasonable request to permit Sugar to confirm Customer's compliance with its obligations as set forth in this Section. Company will not permit anyone to use the Trial Services who is in any Restricted Country or who is on a U.S. government sanctioned or denied party list. Company represents and warrants it is not named on any U.S. government sanctioned or denied party list.

10.8. **Entire Agreement.** This Agreement represents the entire agreement of the parties concerning the subject matter thereof and is intended to be the final expression of the parties' agreement and intent. This Agreement supersedes all prior and contemporaneous agreements, proposals, requests for proposals (RFP's) or responses thereto, and representations, whether written or oral. The parties hereto agree any terms or conditions stated or referenced in or on a document or documents other than this Agreement that contradict this Agreement are null and void. No amendment or waiver of any provision of the Agreement will be effective unless in writing and signed by both parties.