Non-Disclosure Agreement

This Non-disclosure Agreement (“**Agreement**”) is made and entered into as of Some date (“**Effective Date**”) between ServiceNow, Inc. (“**ServiceNow**”) and ServiceNow (“**Company**”).

# **Confidential Information.** The term “**Confidential Information**” shall mean any and all information whether in written, oral, electronic or any other tangible form, and whether or not labeled as confidential, that has been or will be provided by either party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) including without limitation license pricing, business and marketing plans, financial data, compiled databases, computer software, customer lists, ideas, concepts, prototypes and any other matters relating to the products, technical information or business of the Disclosing Party. Confidential Information shall not, however, include any information which the Receiving Party can show:

### is already in possession prior to receipt of the same from the Disclosing Party;

### has become publicly known or otherwise generally available to the public through no action or fault of the Receiving Party;

### was received without restriction from a third party which was lawfully in possession of such information and is not in breach of any confidentiality obligation; or

### was independently developed without use of any Confidential Information of the Disclosing Party.

# **Non-use and Non-disclosure.** The Receiving Party agrees not to use the Confidential Information for any purpose except to evaluate and engage in discussions concerning a potential business relationship between ServiceNow and Company. The Receiving Party agrees to limit access to the Disclosing Party’s Confidential Information to employees who have a need to know such Confidential Information to evaluate or engage in discussions concerning the contemplated business relationship. The Receiving Party shall not disclose the Disclosing Party’s Confidential Information to third parties, including independent contractors, analysts and consultants without the prior express written consent of the Disclosing Party. The Receiving Party shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the Disclosing Party’s Confidential Information and which are provided to the Receiving Party hereunder. The Receiving Party agrees that it shall take all reasonable measures to protect the secrecy of and prevent disclosure of the Confidential Information. Without limiting the foregoing, the Receiving Party shall take at least those measures that the Receiving Party takes to protect its own most highly confidential information and shall advise its employees, agents or advisors who have access to such Confidential Information of their non-use and non-disclosure obligations. The Receiving Party shall immediately notify the Disclosing Party in the event of any unauthorized use or disclosure of the Confidential Information. The Receiving Party shall not export or re-export any such Confidential Information in violation of an U.S. or other export control laws or regulations. In the event of a lawful court order compelling disclosure of any Confidential Information subject to this Agreement, the Receiving Party subject to such order shall provide the other party with prompt written notice thereof, and shall reasonably cooperate with the other party to seek confidential or other protective treatment of such information.

# **No Further Agreement.** Nothing herein shall obligate ServiceNow or Company to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity. The Receiving Party acknowledges that the Disclosing Party is not responsible, nor liable for any business decision made by the Receiving Party based on any Confidential Information provided. No representations or warranties are being made as to the completeness or accuracy of any of either party’s Confidential Information.

# **Title.** The Disclosing Party retains all title to its Confidential Information and all copies thereof. Nothing in this Agreement shall be deemed by implication or otherwise to convey to the Receiving Party any title, right, license, patent, copyright, trademark, know-how or trade secret relating to the Confidential Information of the Disclosing Party.

# **Return of Materials.** Upon the expiration of this Agreement, all documents and other tangible objects containing or representing Confidential Information and all copies thereof which are in the possession of the Receiving Party shall be promptly destroyed or returned to the Disclosing Party upon request.

1. **ORDERING**
   1. ORDERS AND PAYMENT. Upon execution by Customer and ServiceNow, each Order Form is non-cancellable and non-refundable, except as provided in this Agreement. Prices stated in each Order Form are final. Subscription Service fees are invoiced annually in advance. Each Subscription Term is a non-divisible, continuous commitment, regardless of the invoice schedule, and pricing is based on a purchase of the entire Subscription Term. Professional Services fees are invoiced on a time and materials basis, monthly in arrears. Customer will pay each invoice within 30 days after the invoice date. If Customer issues a purchase order, then it shall be for the full amount of the Order Form. Any such purchase order submitted by Customer is for its internal purposes only, and ServiceNow rejects, and in the future is deemed to have rejected, any purchase order’s terms to the extent they add to or conflict in any way with this Agreement or the applicable Order Form, SOW, or Service Description, and such additional or conflicting terms will have no effect. On request, ServiceNow will reference the purchase order number on its invoices (solely for administrative convenience), so long as Customer provides the purchase order at least 15 business days before the invoice date. Late payments will accrue interest at a rate of 4% per annum above the credit rate of the Customer’s bank as evidenced by the Customer, or the statutory late payment interest rate, whichever is lower commencing on the due date for payment and continuing until the outstanding amount has been paid in full, whether before or after judgment. Customer will cure a delinquency in payment of any amounts owed under this Agreement within 30 days from the date of ServiceNow’s delinquency notice. If Customer fails to cure or regain compliance under Section 3.2 (Use Verification), ServiceNow may suspend Customer’s use of the Subscription Service or terminate this Agreement for breach, in addition to any other available rights and remedies. All terms of this Section 3.1 apply except as may be expressly stated otherwise in the applicable Order Form, SOW, Service Description, or elsewhere in this Agreement.
   2. USE VERIFICATION. ServiceNow may remotely review Customer’s use of the Subscription Service, and on ServiceNow’s written request, Customer will provide reasonable assistance to verify Customer’s compliance with the Agreement, and access to and use of the Subscription Service. If ServiceNow determines that Customer has exceeded its permitted access and use rights to the Subscription Service, ServiceNow will notify Customer and within 30 days thereafter Customer shall either: **(a)** disable any unpermitted use, or **(b)** purchase additional subscriptions commensurate with Customer’s actual use.
   3. TAXES. All payments required by this Agreement are stated exclusive of all taxes, duties, levies, imposts, fines, or similar governmental assessments, including sales and use taxes, value-added taxes (“**VAT**”), goods and services taxes (“**GST**”), excise, business, service, and similar transactional taxes imposed by any jurisdiction, and the interest and penalties on any and all of these (collectively, “**Taxes**”). Customer is solely liable for and will pay all Taxes associated with its purchase of, payment for, access to, or use of, any ServiceNow Products. For the avoidance of doubt, Taxes will not be deducted from payments to ServiceNow, except as required by Law, in which case Customer will increase the amount payable as necessary so that, after making all required deductions and withholdings, ServiceNow receives and retains (free from any liability for Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made. Each party is solely liable for and will pay taxes imposed on its net income. If Customer is a tax-exempt entity or claims exemption from any Taxes under this Agreement, it will include its tax exemption number on, and provide a tax exemption certificate on execution of the Order Form and, after receipt of valid evidence of exemption, ServiceNow will not charge Customer any Taxes from which it is exempt. If ServiceNow is required to invoice or collect Taxes associated with Customer’s purchase of, payment for, access to, or use of, any ServiceNow Products, ServiceNow will invoice Customer for those Taxes, itemized where required by Law. Customer will provide to ServiceNow its VAT or GST identification number(s) on the Order Form for: **(a)** the country where Customer has established its business; and **(b)** any other country where Customer has a fixed establishment. Customer will use the ordered ServiceNow Products for Customer’s business use in the foregoing location(s) in accordance with the provided VAT or GST identification number(s).

# **Term.** The term of this Agreement shall be three (3) years from the Effective Date. The parties’ obligations respecting non-disclosure and non-use, and return and/or destruction of Confidential Information shall survive the expiration or termination of this Agreement.

# **Remedies**. The Receiving Party agrees that any violation or threatened violation of this Agreement will cause irreparable injury to the Disclosing Party, entitling the Disclosing Party to obtain injunctive relief in addition to all legal remedies.

# **Miscellaneous.** This Agreement shall be governed by the laws of the State of California, without reference to conflict of laws principles. This document contains the entire agreement between the parties with respect to the subject matter hereof. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision hereof. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto. If any provision is found to be unenforceable, such provision will be limited or deleted to the minimum extent necessary so that the remaining terms remain in full force and effect. The prevailing party in any dispute or legal action regarding the subject matter of this Agreement shall be entitled to recover attorneys’ fees and costs.

1. **Return of Materials.** Upon the expiration of this Agreement, all documents and other tangible objects containing or representing Confidential Information and all copies thereof which are in the possession of the Receiving Party shall be promptly destroyed or returned to the Disclosing Party upon request.

# **Confidential Information.** The term “**Confidential Information**” shall mean any and all information whether in written, oral, electronic or any other tangible form, and whether or not labeled as confidential, that has been or will be provided by either party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) including without limitation license pricing, business and marketing plans, financial data, compiled databases, computer software, customer lists, ideas, concepts, prototypes and any other matters relating to the products, technical information or business of the Disclosing Party. Confidential Information shall not, however, include any information which the Receiving Party can show:

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### was received without restriction from a third party which was lawfully in possession of such information and is not in breach of any confidentiality obligation; or

1. was independently developed without use of any Confidential Information of the Disclosing Party.

**ACKNOWLEDGED AND ACCEPTED:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Company** | | **ServiceNow, Inc.** | |
| **Signature** | Signer1 | **Signature** | Signer2 |
| **Name** | Signer1name | **Name** | Signer2name |
| **Title** | Signer1Title | **Title** | Signer2Title |
| **Date** |  | **Date** |  |
| **Company** | company | **Company** | ServiceNow |