

CLICKSOFTWARE END USER TERMS

These ClickSoftware End User Terms are hereby entered into by and between Customer and ClickSoftware, Inc., a company duly organized and existing under the laws of the State of California, having offices at 35 Corporate Drive, Suite 400, Burlington, MA 01803 USA (“Click”).

By entering into the corresponding Salesforce Order Form for products containing the ClickSoftware App(s) (defined below), Customer expressly acknowledges and agrees that it is entering into a legal agreement with Click, and agrees to be bound by and to become a party to these End User Terms. Customer hereby waives any applicable rights to require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent not prohibited under applicable law.

1. DEFINITIONS.

1.1. “**Customer**” for purposes of these End User Terms means the party to the corresponding Salesforce Order Form for products containing the ClickSoftware App(s).

1.2. “**ClickSoftware App(s)**” means the Field Service Lightning optimization functionality that is provided and managed by Click which processes and determines potential efficiencies based upon Customer’s input data related to Customer’s unique business environment and requirements pertaining to the scheduling of resources and that is included within the applicable Salesforce product ordered in a Salesforce Order Form during the ordering process.

1.3. “**End User Data**” means the anonymized, latitude/longitude data that is submitted to the ClickSoftware App.

2. RIGHT TO USE.

2.1. Grant of Right to Use: Subject to payment of the applicable subscription fee, and pursuant to the terms and conditions of these End User Terms, Click grants Customer a limited, nonexclusive, nontransferable, non-sublicensable right to access and use the ClickSoftware App(s) via the internet, solely for Customer's internal business purposes, during the time period and limited to the number of subscriptions specified in the applicable Salesforce Order Form. All rights not expressly granted to Customer are reserved by Click and its licensors.

2.2. Restrictions: Customer shall not and shall not permit others to (i) modify or create derivative works based upon the ClickSoftware App; (ii) use the ClickSoftware App for the benefit of a third party; (iii) license, sublicense, assign or otherwise transfer or exploit the ClickSoftware App or make the ClickSoftware App available to third parties; (iv) access the ClickSoftware App for any reason other than for Customer's internal business purposes; or (v) interfere with the performance of the ClickSoftware App.

2.3. Customer Account Access and Use: Customer is responsible for the confidentiality and use of names and passwords under Customer's account. Customer agrees to notify Click if account names or passwords are lost, stolen, or being used in an unauthorized manner. Customer shall abide by all applicable laws and regulations in connection with its use of the ClickSoftware App.

3. **INTELLECTUAL PROPERTY RIGHTS.** Customer acknowledges that, all right, title and interest in the ClickSoftware Apps, as well as to any trademarks, trade names, logos or other proprietary marks and other intellectual and proprietary rights therein, are and at all times shall remain the sole and exclusive property of Click and its licensors, the use of which shall be subject to these End User Terms. These End User Terms do not convey any rights of ownership in or related to the ClickSoftware Apps or any intellectual property rights owned by Click.

4. WARRANTY; DISCLAIMERS.

4.1. Click warrants that (i) it has the legal authority to enter into these End User Terms and (ii) that the ClickSoftware App will materially conform with the functional definition as set forth in Section 1.2 during the applicable Salesforce Order Form term.

4.2. THE CLICKSOFTWARE APP IS NOT DESIGNED OR INTENDED FOR USE IN HIGH RISK ACTIVITIES OR

HAZARDOUS ENVIRONMENTS THAT REQUIRE FAIL-SAFE PERFORMANCE WHERE FAILURE OF THE SERVICE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY OR ENVIRONMENTAL DAMAGE (SUCH AS IN DIRECT LIFE-SUPPORT MACHINES AND COMMUNICATION SYSTEMS). CLICK EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF FITNESS OF THE CLICKSOFTWARE APP FOR ANY OF THE FOREGOING ACTIVITIES.

4.3. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE CLICKSOFTWARE APPS ARE PROVIDED WITHOUT ANY WARRANTIES OF ANY KIND. CLICK DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. CLICK SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE CLICKSOFTWARE APP SHALL OPERATE UNINTERRUPTED OR ERROR FREE OR BE COMPLETELY SECURE.

5. INDEMNIFICATION

5.1 BY CLICK. Click shall indemnify and defend Customer, at its sole expense, against all liability and expenses, including reasonable attorney fees and costs, in any action or proceeding brought by a third party arising from a claim that Customer's use of the ClickSoftware App in accordance with these End User Terms infringes a third party's intellectual property rights. Click's obligations under this section do not apply: (i) to any third party open source software that may be included in the ClickSoftware App; (ii) if the alleged infringement is based on the End User Data or any use of the ClickSoftware App except as authorized by Click in writing or as provided herein; (iii) a combination of non-Click products with the ClickSoftware App; (iv) use for a purpose or in a manner not proscribed by Click, (v) use of an older version of software when use of a newer software version made available to Customer would have avoided infringement, (vi) any modification not made with Click's written approval or any modification made by Click due to Customer's (or its end user's) specific instructions, or (vii) any intellectual property right owned or licensed by Customer, its end user or any of its/their affiliates. Without derogating from the foregoing defense and indemnification obligation, if Click believes that the ClickSoftware App, or any part thereof, may infringe a third party's intellectual property rights, then Click may in its sole discretion: (a) obtain (at no additional cost to Customer) the right for Customer to continue to use the ClickSoftware App, or (b) replace or modify the allegedly infringing part of the ClickSoftware App so that it becomes non-infringing while giving substantially equivalent performance. If Click determines that the foregoing remedies are not reasonably available, Click may require that use of the ClickSoftware App (or part thereof) cease. **This section states Click's entire liability and Customer's sole remedy for any infringement of any intellectual property rights with respect to the ClickSoftware App.**

5.2 BY CUSTOMER. Customer shall indemnify and defend Click, at its sole expense, against all liability and expenses, including reasonable attorney fees and costs, in any action or proceeding brought by a third party arising from a claim that (i) the End User Data, and/or (ii) use of the ClickSoftware App in violation of these End User Terms and/or the ClickSoftware Documentation infringes or misappropriates a duly issued patent, copyright or trade secret of a third party, provided that Click promptly notifies Customer in writing of such action, gives Customer the right to control the defense and/or settlement of such action and provides reasonable assistance to Customer in its defense thereof.

6. LIMITATION OF LIABILITY.

6.1 Limitation of Liability: IN NO EVENT SHALL THE AGGREGATE LIABILITY OF CUSTOMER OR CLICK, TOGETHER WITH EACH OF THEIR RESPECTIVE AFFILIATES, ARISING OUT OF OR RELATED TO THESE END USER TERMS, AND THE USE OF OR INABILITY TO USE THE CLICKSOFTWARE APPS, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES UNDER THE CORRESPONDING SALESFORCE ORDER FORM FOR THE PRODUCTS, CONTAINING THE CLICKSOFTWARE APP(S), GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS.

6.2 Exclusion of Consequential and Related Damages: IN NO EVENT WILL CUSTOMER, CLICK OR EITHER OF THEIR RESPECTIVE AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THESE END USER TERMS, AND THE USE OF OR INABILITY TO USE THE CLICKSOFTWARE APPS, FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR

PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

6.3 Exceptions to limitations: The limits and exclusions of liability in this Section 6 (*Limitation of Liability*) apply to the fullest extent permitted by applicable law, but do not apply to: (i) a breach of Sections 2.2 (*Restrictions*) and 3 (*Intellectual Property Rights*), and (ii) Section 5 (*Indemnification by Customer*).

7 GENERAL

7.1 Survival: 3 (*Intellectual Property Rights*), 4 (*Warranty Disclaimers*), 5 (*Indemnification by Customer*), 6 (*Limitation of Liability*), and 7 (*General*) hereof shall survive any termination of this Order Form Supplement or the associated Order Form.

7.2 Assignment: Neither party may assign these End User Terms, or its rights and obligations hereunder, without the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign or otherwise transfer these End User Terms and its rights and obligations hereunder to (i) its subsidiary or parent, or (ii) or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. The assigning party shall give prompt written notice of the assignment to the other party. These End User Terms will bind and inure to the benefit of the parties, their respective successors and permitted assigns. Any attempted assignment in violation of this section shall be void.

7.3 Waiver: No failure or delay by either party in exercising any right under these End User Terms will constitute a waiver of that right.

7.4 Entire Agreement: These End User Terms constitute the entire understanding between the parties, and supersede all prior discussions, representations, understandings or agreements, whether oral or in writing, between the parties, with respect to the ClickSoftware Apps.

7.5 Modifications and Amendments: This Agreement: (i) constitutes the entire understanding between the parties, and supersedes all prior discussions, representations, understandings or agreements, whether oral or in writing, between the parties with respect to the subject-matter of this Agreement; and (ii) may only be modified by a writing that is mutually signed by both parties.

7.6 Severability: If any provision of these End User Terms 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 these End User Terms will remain in effect.

7.7 Governing Law: These End User Terms will be governed by, interpreted, and construed in accordance with the substantive laws of the Commonwealth of Massachusetts.

7.8 Jurisdiction: Without limiting the right of either party to seek injunctive relief in any court of competent jurisdiction to protect its intellectual property rights, any dispute or claim arising out of or relating to these End User Terms will be exclusively resolved in the courts of competent jurisdiction in Boston, Massachusetts, and each party expressly consents to the exclusive jurisdiction therein.

8. RESELLERS. To the extent Customer is a reseller that has been appointed by Salesforce and approved by Click, Customer shall be permitted to resell the products containing the ClickSoftware App(s) to end clients, and shall in connection with such resale shall be permitted to assign, and shall assign, to such end clients these End User Terms and all rights and obligations granted to Customer hereunder except for Customer's rights under this Section 8, notwithstanding any terms set forth herein prohibiting Customer's transfer, sublicensing, or assignment of the End User Terms or the rights granted hereunder or requiring that Customer use the ClickSoftware App(s) solely for its own internal business purposes.