



CLICKSOFTWARE CLOUD SERVICE AGREEMENT

This ClickSoftware Cloud Service Agreement ("**Agreement**"), the relevant terms of the Guide, any Addenda, and any executed Order Form(s) and/or SOWs between the parties, are incorporated herein and shall govern the provision of the Services to the customer set forth in the Order Form and/or SOW ("**Client**") by the ClickSoftware entity set forth in the Order Form and/or SOW ("**ClickSoftware**"). Client and its Affiliates may place orders under this Agreement by submitting separate Order Form(s) and SOW(s), pursuant to which an Affiliate will be considered the Client as set forth herein. This Agreement shall commence on the Effective Date of Client's first executed Order Form or SOW ("**Effective Date**") and will continue until otherwise terminated in accordance with Section 11 below.

1. Definitions.

1.1. "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes hereof, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.2. "**Client Data**" means any electronic data and content that is provided by Client to ClickSoftware in the course of Client using the Service.

1.3. "**Deliverables**" shall mean the software deliverable(s) to be delivered by ClickSoftware to Client hereunder as defined in a mutually agreed upon SOW, defined below.

1.4. "**Documentation**" means standard user documentation for the Service that is made generally available by ClickSoftware to its cloud service Users and which is displayed at: <https://wiki.cloud.clicksoftware.com/display/PUBC9D/Technical+Documentation+for+Click+Field+Service+Edge>, as updated from time-to-time.

1.5. "**Guide**" means the Services and Support Guides located at www.clicksoftware.com/service-support-guide, which includes but is not limited to, the Guide to Customer Support, the SLA and any other applicable documentation. The Guide is subject to change at ClickSoftware's discretion to reflect changes in technology, industry practices and patterns of system use; however, ClickSoftware's changes to the Guide will not result in a material reduction in the level of support or availability of the applicable Subscription Services provided to Client for the duration of the Subscription Term.

1.6. "**Guide to Customer Support**" means the ClickSoftware Guide to Customer Support for the Subscription Services that is displayed at www.clicksoftware.com/service-support-guide, as updated from time-to-time.

1.7. "**Information Security Program**" means the ClickSoftware Information Security Program that is displayed at www.clicksoftware.com/cloud-infosec-program. The Information Security Program is subject to change at ClickSoftware's discretion; however, any

changes to the Information Security Program will not result in a material reduction in the level of protection provided for Client Data during the Subscription Term.

1.8. "**Order Form(s)**" means ClickSoftware Order Form #1, and any subsequent ClickSoftware order form that is entered into between ClickSoftware and Client from time to time for Subscription Services to be provided hereunder. Unless the parties agree otherwise in writing, any subsequent Order Form shall be in substantially the same form as ClickSoftware Order Form #1. Client Affiliates may purchase Services subject to this Agreement by executing Order Forms hereunder.

1.9. "**Professional Services**" shall mean the services provided on a consulting basis ordered by Client and performed by ClickSoftware pursuant to this Agreement and in accordance with the scope of work, payment schedule and other criteria specified in a mutually agreed upon SOW, but excluding Support Services.

1.10. "**Service(s)**" means the Subscription Services and Professional Services that Client may purchase under an Order Form or SOW. All references to the Service in this Agreement: (i) include the Documentation and the products, services, features, content and information made available or provided by ClickSoftware in connection with Client's use of the Service, and (ii) do not include Client Data.

1.11. "**SLA**" means the commitment that ClickSoftware makes regarding the availability and performance of the Subscription Services. The SLA is displayed at www.clicksoftware.com/service-support-guide, as updated from time-to-time.

1.12. "**Subscription Services**" means those products that are provided by ClickSoftware on a software-as-a-service (SaaS) basis and that are identified in the Order Form, and includes any associated Support Services, as ordered by Client under an Order Form, as applicable.

1.13. "**Subscription Term**" means: (i) the Initial Subscription Term and each Renewal Subscription Term, and (ii) any subscription periods for other or additional subscriptions, each as defined and/or set forth in an Order Form.

1.14. **“Statement of Work”** or **“SOW”** shall mean a mutually agreed upon statement of work executed between the Parties, setting forth the Professional Services to be provided, including but not limited to the agreed scope of work, description of work and services, project timetable, the SOW term, payment terms, and implementation plans.

1.15. **“Support Services”** means the level of support services and data integrity and back-up services for the Subscription Services purchased by Client that are set forth in the Guide to Customer Support.

1.16. **“User(s)”** means any or all of the following categories of users, depending on the Service being subscribed to by Client under the applicable Order Form, that are authorized by Client to use the Service on behalf of Client in accordance with this Agreement: (i) dispatchers, (ii) field supervisors, (iii) field resources, (iv) IT administrators, (v) service managers, (vi) delivery vehicles, and/or (vii) other unique named resources listed in the Service database. A User may be an employee or contractor of Client. The number of Users is set forth in the Order Form.

2. **Subscription Services.**

2.1. **Right to Use.** Subject to the terms and conditions of this Agreement, including without limitation payment of the applicable Subscription fees, ClickSoftware grants to Client, and Client accepts, a limited, nonexclusive, non-transferable and non-sublicensable right to access and use the Subscription Services, solely: (i) in accordance with this Agreement, the Documentation and the Guide, (ii) for Client’s internal business purposes, (iii) during the applicable Subscription Term, (iv) within the Territory set forth in the Order Form, and (v) limited to the number of Users specified in the Order Form and the usage levels specified in the Documentation.

2.2. **Users.** Client may permit its Users to access and use the Subscription Services on Client’s behalf but solely provided such use is in accordance with this Agreement. Client shall remain responsible and liable to ClickSoftware for any act or omission of a User that would constitute a breach of this Agreement if such act or omission were by Client.

2.3. **Acceptable Use.** Except to the extent expressly permitted herein or authorized by ClickSoftware in writing, Client shall not and shall not permit others to: (i) sell, rent, lease, license or distribute the Service to a third party; (ii) use the Service in a timeshare arrangement or a service bureau offering; (iii) copy or modify the Service, and/or create derivative works based upon the Service; (iv) use the Service to develop a competing service or product; (v) violate or abuse password protections governing Service

access; (vi) circumvent, disable or otherwise interfere with security-related features of the Service or features that enforce limitations on access to and use of the Service; (vii) allow any third party to access and use the Service (except for Client’s Users); (viii) interfere with the Service or take any action that imposes or may impose, at ClickSoftware’s sole discretion, a disproportionately large load on the ClickSoftware infrastructure; (ix) remove, deface, obscure or alter ClickSoftware’s, or a third party’s, copyright notices, trademarks or other proprietary rights affixed to or provided as part of the Service, or use or display logos of the Service differing from those of ClickSoftware; (x) upload or transmit any Client Data to or via the Service unless Client has obtained all of the necessary rights and consents, including from data subjects, to do so; (xi) use the communications systems provided by the Service to send unauthorized commercial communications or messages that are unlawful, inappropriate or in violation of a third party’s intellectual property rights; (xii) use the location based services that are provided by the Service in an unlawful or unauthorized manner; and/or (xiii) otherwise use the Service in an unlawful manner or in breach of this Agreement.

2.4. **Client Account.** Client is solely responsible for: (i) the confidentiality and use of names and passwords under Client’s account, and (ii) the activity that occurs under Client’s account. ClickSoftware will deem any use of the Service under Client’s account names and passwords to be for Client’s sole benefit and use. Client must immediately notify ClickSoftware in writing if Client becomes aware that account names or passwords are lost, stolen, or being used in an unauthorized manner.

2.5. **Minimum Requirements.** Client is responsible, at its cost, to meet the minimum system requirements for use of the Service that are provided or made available by ClickSoftware, including to obtain access to the Internet, to obtain an SMS gateway, and using software and hardware that meets ClickSoftware’s security and performance requirements.

2.6. **Changes.** ClickSoftware may make changes to the Subscription Services from time-to-time to reflect changes in technology, industry practices and patterns of system use. ClickSoftware will provide reasonable written notice to Client before removing any material feature or functionality of the Subscription Services, however, ClickSoftware’s changes to the Subscription Services will not result in a material reduction in the level of Subscription Services provided to Client for the duration of the Subscription Term.

3. Security and Data Privacy.

3.1. Security. ClickSoftware maintains appropriate technical, administrative and organizational measures and controls to keep the Client Data secure and protect it against unauthorized access or disclosure. ClickSoftware will comply at all times with the Information Security Program in its collection, use and storage of any Client Data.

3.2. Cloud Service Privacy Policy. ClickSoftware shall use any personal information that it collects or obtains while providing the Service in accordance with the ClickSoftware Cloud Service Privacy Policy, which is available at <https://www.clicksoftware.com/cloud-service-privacy-policy> ("**Cloud Service Privacy Policy**"). The Cloud Service Privacy Policy is subject to change at ClickSoftware's discretion; however, ClickSoftware policy changes will not result in a material reduction in the level of protection provided for Client Data during the Subscription Term. Where Client's use of the Service includes the processing of personal data by ClickSoftware that are subject to applicable EU privacy regulations such as the GDPR, such data processing by ClickSoftware complies with the requirements of the EU-U.S. Privacy Shield for which it is certified, which can be found at: www.privacyshield.gov/list. ClickSoftware shall process personal data on behalf of and in accordance with Client's instructions consistent with this Agreement, including the ClickSoftware GDPR Addendum located at: www.clicksoftware.com/gdpraddendum and as necessary to provide the Service.

4. Professional Services.

4.1. Efforts. ClickSoftware agrees to use reasonable commercial efforts to perform the Professional Services specified in each Statement of Work executed by the parties. The services specified in a SOW hereunder shall constitute the complete and exclusive definition of the Professional Services to be provided under this Agreement.

4.2. Minimum Requirements. Client shall be responsible for providing ClickSoftware with any equipment, software and software licenses, technical information, designs, or documentation reasonably required by ClickSoftware to perform the Professional Services. In addition, if Professional Services are to be performed at Client's location, Client shall provide ClickSoftware with reasonable access to workspace, local telephone, internet access, basic operational supplies, adequate storage space for work materials, access to Client's computer system, software and related equipment necessary to perform the Professional Services. ClickSoftware shall not be responsible for any delays or omissions in its performance of the Professional Services

which are caused by Client's failure to provide such required items and/or otherwise meet its obligations as set forth herein or in the SOW.

4.3. Personnel. Client shall ensure that competent personnel are available during normal working hours to provide information and other support to ClickSoftware to facilitate the provision of Professional Services by ClickSoftware.

4.4. Change Requests. Client may request changes to the Professional Services identified in a Statement of Work after the work effort has begun. Unless otherwise agreed to, the parties shall utilize ClickSoftware's mechanism called a "Change Request Form" (CRF) to document such changes and any modification in the fees and schedules necessitated thereby. Each such change shall be documented in the CRF and signed by the parties before being effective. In the event of significant changes to the scope, the parties may jointly execute an amended Statement of Work. Such CRFs shall be deemed part of, and subject to, this Agreement.

4.5. Staffing and Primary Contact. ClickSoftware shall have sole discretion in staffing the Services and may use authorized contractors to assist in the delivery of the Professional Services. Each party shall designate a primary contact person listed in the SOW to represent that party during the term of the SOW. Any changes to the contact persons shall be promptly notified to the other party in writing.

5. Intellectual Property Rights.

5.1. Subscription Services Ownership. All right, title and interest in and to the Subscription Services and ClickSoftware's Confidential Information, and any modifications, enhancements and improvements thereto, including all intellectual property and proprietary rights therein, are and at all times shall remain the sole and exclusive property of ClickSoftware and its licensors, and shall be subject to the terms and conditions of this Agreement. This Agreement does not convey any rights of ownership. No rights are granted hereunder other than as expressly set forth herein. "ClickSoftware" and the ClickSoftware logo are trademarks of ClickSoftware or its affiliates.

5.2. Client Feedback. ClickSoftware shall own any and all suggestions, ideas, enhancement requests, feedback and any related intellectual property rights thereof provided by Client to ClickSoftware regarding the Service ("Feedback").

5.3. Deliverables. All right, title and interest in and to the Deliverables, and any modifications, enhancements and improvements thereto, including all intellectual



property and proprietary rights therein, are and at all times shall remain the sole and exclusive property of ClickSoftware. Upon payment of fees set forth in the applicable SOW, ClickSoftware grants Client a non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free license to use the Deliverable(s) delivered thereunder for its internal business purposes solely in connection with Client's use of the Service. Client shall not modify, enhance, translate, reverse engineer, decompile, disassemble, transfer, lease, sublicense, assign, sell, or create derivative works based upon the Deliverable(s), or otherwise attempt to derive source code from the Deliverable(s), and no rights with respect to source code are granted.

5.4. Developments. Any ideas, know-how, or techniques which may be developed by ClickSoftware including, without limitation, any enhancements or modifications made to or in connection with the Service (collectively, "Developments"), shall be the sole property of ClickSoftware. ClickSoftware may at its sole discretion develop, use, market, and license any software or data processing material that is similar or related to that which was developed by ClickSoftware for Client. ClickSoftware shall not be required to disclose information concerning any Developments that ClickSoftware deems to be proprietary and confidential.

5.5. Client Data Ownership. Client (and its customers) retains exclusive ownership of the Client Data, including any modifications, enhancements and improvements thereto, including any intellectual property and proprietary rights therein.

5.6. Client Data License. Client grants ClickSoftware a non-exclusive license during the term of this Agreement to use, process, store, display and reproduce Client Data solely in order to provide the Service to Client. Client is solely responsible for the content of Client Data and represents and warrants that it owns or has obtained the rights to all of the intellectual property rights subsisting in the Client Data, and Client has the right to provide ClickSoftware the license granted herein to use such Client Data in accordance with this Agreement. Client agrees that it will not include in Client Data any data, including personal information, which is subject to the rights of any third parties without first obtaining all required authorizations and rights in writing from such third parties.

6. Fees and Payment.

6.1. Fees. Client shall pay all fees specified in each Order Form and SOW and any applicable additional fees if Client exceeds the allotted capacity or other applicable limits specified in the Order Form. Except as otherwise specified herein or in an Order Form or SOW, (i) the fees

for the Subscription Service are based on the quantities set forth in the Order Form and the Subscription Service ordered, regardless of actual usage, (ii) no Subscription Term may be less than a twelve (12) month period, (iii) all Subscription Terms are non-cancelable once commenced or renewed, and fees paid are non-refundable, (iv) all Services shall be deemed accepted upon delivery, (v) any fees, including but not limited to Subscription fees and Professional Services fees, may be increased by up to 5% each year, (vi) the Subscription Services purchased cannot be decreased during the relevant Subscription Term, and (vii) the hourly rates/daily rates/fixed price for Professional Services shall be stated in the SOW. Client shall reimburse ClickSoftware for the reasonable travel, accommodation, and subsistence expenses in connection with its performance of the Services in accordance with ClickSoftware's travel guidelines.

6.2. Invoicing and Payment. Unless otherwise agreed to in an Order Form, fees for Subscription Services specified in an Order Form are due and payable in advance of each Subscription Term (or any 12-month annual period therein) and in accordance with the payment schedule set forth in the Order Form. If Client continues to use the Service past any Subscription Term renewal date, Client shall be deemed to have renewed its subscription for the corresponding Subscription Term. ClickSoftware shall submit invoices for Professional Services rendered and expenses incurred in accordance with the billing schedule detailed in the applicable Statement of Work.

6.3. Late Payments. Any amount not paid by the due date shall bear interest at the rate of 1.5% per month, or the highest rate allowed by law, whichever is less, from the date due until paid. Subject to ClickSoftware providing Client with a written reminder about an overdue payment and at least thirty (30) days to pay the overdue amount, ClickSoftware may suspend access to and use of the Service until any overdue amount is paid in full.

6.4. Taxes. The fees set forth in the Order Form and/or SOW are the net amounts due to ClickSoftware for the Service, and are exclusive of applicable taxes (including, without limitation, any stamp and customs taxes and any value-added, goods and services, sales, or like taxes), withholdings or duties ("**Taxes**"). Client shall be responsible for the payment of all Taxes with respect to its subscription to and use of the Service, other than taxes based on ClickSoftware's net income. If a taxing authority determines that ClickSoftware did not collect all applicable taxes, Client shall remain liable to ClickSoftware for such additional taxes, but not any interest or penalty assessed as the result of ClickSoftware's failure to timely collect such additional taxes.

7. Warranties and Disclaimers.

7.1. Authority. Each party warrants that it has full corporate power and has obtained the required authority and consents to enter into and perform its obligations under this Agreement.

7.2. Subscription Services Warranty. ClickSoftware warrants that (i) the Subscription Services will meet the terms of the SLA during the Subscription Term, (ii) it will provide the Subscription Services in accordance with the Documentation as described in this Agreement during the Subscription Term, and (iii) it will comply with all applicable laws, rules and/or regulations in ClickSoftware's performance of the Services under this Agreement.

7.3. Professional Services Warranty. ClickSoftware warrants that the Professional Services shall be provided in a competent and professional manner by persons who are trained and qualified in connection with the Service and in a workmanlike manner consistent with current industry standards. Client's sole remedy for a breach of this warranty and ClickSoftware's entire liability shall be re-performance by ClickSoftware of that portion of the Professional Services performed giving rise to the liability

7.4. Emergency Communications. Any text messaging, or other communication tools, included within the Service must not be relied upon as a communication channel in a life-threatening or emergency event.

7.5. High Risk Activities. The Service 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 to death, personal injury, or environmental or property damage. ClickSoftware specifically disclaims any express or implied warranty of the Service's suitability for these types of activities.

7.6. No Other Warranties. ClickSoftware disclaims any warranty that the Service will operate uninterrupted, error-free or completely secure. Client acknowledges that there are certain risks inherent in internet connectivity that could result in the loss of privacy, Confidential Information and data. ClickSoftware will not be responsible for: (i) any technical problems of the Internet (such as slow Internet or outages), (ii) any issue attributable to Client's hardware or software or Client's Internet or data service provider and/or (iii) any services relating to the Service or Deliverables that are made by Client or by any third party on behalf of Client. **Except as expressly stated in this Agreement: (a) the Service is provided "as-is" and without warranty of any kind whether express, implied, statutory or otherwise, and (b) ClickSoftware disclaims all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose, and non-**

infringement, to the maximum extent permitted by applicable law.

8. Indemnification.

8.1. By ClickSoftware. ClickSoftware hereby agrees to defend, indemnify and hold harmless Client from any costs and damages awarded against Client by a court of competent jurisdiction, or paid in settlement, in connection with a third party claim, suit or proceeding that Client's use of the Service or Deliverable in accordance with this Agreement infringes a third party's intellectual property rights. ClickSoftware's obligations under this section do not apply: (i) to any third party open source software that may be included in the Service or Deliverable; (ii) if the alleged infringement is based on the Client Data or any use of the Service or Deliverable except as authorized by ClickSoftware in writing or as provided herein; (iii) a combination of non-ClickSoftware products with the Service or Deliverable; (iv) use for a purpose or in a manner not proscribed by ClickSoftware, (v) use of an older version of software when use of a newer software version made available to Client would have avoided infringement, (vi) any modification not made with ClickSoftware's written approval or any modification made by ClickSoftware due to Client's (or its end user's) specific instructions, or (vii) any intellectual property right owned or licensed by Client, its end user or any of its/their affiliates. Without derogating from the foregoing defense and indemnification obligation, if ClickSoftware believes that the Service or Deliverable, or any part thereof, may infringe a third party's intellectual property rights, then ClickSoftware may in its sole discretion: (a) obtain (at no additional cost to Client) the right for the Client to continue to use the Service or Deliverable, or (b) replace or modify the allegedly infringing part of the Service or Deliverable so that it becomes non-infringing while giving substantially equivalent performance. If ClickSoftware determines that the foregoing remedies are not reasonably available, ClickSoftware may require that use of the Service or Deliverable (or part thereof) cease and, in such an event, Client shall receive (1) a prorated refund of the applicable Subscription fees paid for the unused portion of the remainder of the Subscription Term for the Service (or part thereof) that is terminated or (2) a prorated refund of the applicable fees for the unused portion of the Deliverable (or part thereof) that is terminated. **This section states ClickSoftware's entire liability and Client's sole remedy for any infringement of any intellectual property rights with respect to the Service or Deliverable.**

8.2. By Client. Client hereby agrees to defend, indemnify and hold harmless ClickSoftware from any damages awarded against ClickSoftware by a court of competent jurisdiction, or paid in settlement, in

connection with a third party claim, suit or proceeding that (i) Client's use of the Service is in violation of this Agreement; or (ii) ClickSoftware's use of Client Data, as permitted under this Agreement, infringes or violates a third party's intellectual property or other proprietary rights.

8.3. **General.** The defense and indemnification obligations of a party under this section are subject to: (i) the indemnifying party being given prompt written notice of the claim; (ii) the indemnifying party being given immediate and complete control over the defense (and settlement) of the claim; and (iii) the indemnified party providing cooperation and assistance, at the indemnifying party's expense, in the defense or settlement of the claim and not taking any action that prejudices the indemnifying party's defense of, or response to, the claim.

9. Limitation of Liability.

9.1. **Limitation.** **The aggregate liability of each party (and its affiliates and 3rd party licensors) arising under or in connection with this Agreement (whether an action is under statute, in contract or in tort and regardless of the theory of liability), is limited to direct losses and damages, and shall not under any circumstances exceed the total amounts received by ClickSoftware from Client for the specific Service giving rise to such liability during the twelve (12) month period preceding the date on which the claim arose.**

9.2. **Exclusion.** **In no event will either party (and its affiliates and 3rd party licensors) be liable for any indirect, consequential, special, incidental, punitive or exemplary damages, or for any damages for lost revenues and profits, business interruption, or loss of goodwill or use of the Service, whether arising under or in connection with this Agreement (whether an action is under statute, in contract or in tort and regardless of the theory of liability) even if the party knew that such damages were possible.**

9.3. **Exceptions to limitations.** The limits and exclusions of liability in this Section 9 (*Limitation of Liability*) apply to the fullest extent permitted by applicable law, but do not apply to: (i) Client's payment obligations under this Agreement, (ii) any liability for death or personal injury caused by a party's negligence, (iii) fraud or fraudulent misrepresentation, (iv) a breach of Section 2.3 (*Acceptable Use*) and/or Section 5.1 (*Subscription Services Ownership*), or (v) a party's indemnification obligations pursuant to Section 8 (*Indemnification*).

10. **Confidentiality.** Each party acknowledges that during the term of this Agreement it ("**Receiving Party**") may be entrusted with certain confidential information of the other party ("**Disclosing Party**") that should reasonably have been understood by Receiving Party due to legends

or other markings, the circumstances of disclosure or the nature of the information itself, to be proprietary and confidential to Disclosing Party ("**Confidential Information**"). Receiving Party shall: (i) not use any Confidential Information for any purpose except to exercise its rights and obligations under this Agreement; (ii) protect all Confidential Information using the same degree of care which it uses with respect to its own confidential information, but in no event less than reasonable care; and (iii) not, without Disclosing Party's prior written consent, disclose the Confidential Information to any third party except to its employees, contractors and agents ("**Permitted Recipients**") who have a need to know in order to enable Receiving Party to perform its rights and obligations under this Agreement, provided that each Permitted Recipient is bound by a written obligation of confidentiality that is at least as demanding as the confidentiality and non-disclosure obligations imposed on Receiving Party under this Agreement, and further provided that Receiving Party shall be liable to Disclosing Party for any breach of confidentiality or non-disclosure by a Permitted Recipient. Receiving Party shall promptly notify Disclosing Party of any actual or threatened unauthorized disclosure or use of Confidential Information. If any Confidential Information must be disclosed to any third party by reason of legal, accounting or regulatory requirements beyond the reasonable control of Receiving Party, Receiving Party shall (to the extent permitted by applicable law) promptly notify Disclosing Party of the order or request and permit Disclosing Party (at its own expense) to seek an appropriate protective order. Confidential Information does not include information that: (a) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (b) is or becomes generally known to the public without breach of any obligation owed to Disclosing Party; (c) has come into the possession of Receiving Party rightfully from a third party without any breach of obligation of confidentiality owed to Disclosing Party; and/or (d) was developed by Receiving Party independently of and without reference to Confidential Information.

11. Term and Termination.

11.1. **Term.** This Agreement, and the right to access and use the Service, commences and shall become effective upon the Effective Date and shall remain in full force and effect until each Subscription Term set forth in an Order Form and/or each term of a SOW has expired or been terminated. If Client continues to use the Service past any renewal date, then Client shall be deemed to have renewed this Agreement at the rates applicable for the new Subscription Term.

11.2. Termination. Notwithstanding any other provision herein to the contrary, either party may terminate this Agreement (i) if the other party materially breaches this Agreement and such breach remains uncured (to the extent that the breach can be cured) thirty (30) days after having received written notice thereof or (ii) if a party is unable to perform its obligations pursuant to this Agreement as a result of bankruptcy or other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors and such breach remains uncured (to the extent that the breach can be cured) thirty (30) days after having received written notice thereof.

11.3. Consequences of Termination. Upon the actual termination of this Agreement: (i) all Subscription Terms set forth in an Order Form and SOW terms shall be deemed to automatically terminate, and Client shall immediately stop access and use of the Service; (ii) each party shall promptly return to the other party all Confidential Information provided by the other party and which is in its possession or control; and (iii) ClickSoftware will (a) upon a written request that is received within thirty (30) days of the actual termination of this Agreement make available to Client a full export of Client Data in a standard format (e.g., SQL), and (b) following that thirty (30) day period, delete all Client Data that is in ClickSoftware's possession or control (a portion of the Client Data may be retained but solely to the extent required for billing and audit purposes). ClickSoftware does not accept any liability for any Client Data that is deleted in accordance with this section.

11.4. Survival. This section and sections 2.3 (*Acceptable Use*), 3.2 (*Cloud Service Privacy Policy*), 5.1 (*Subscription Services Ownership*), 5.2 (*Client Feedback*), 5.3 (*Deliverables*), 5.4 (*Developments*), 5.5 (*Client Data Ownership*), 6 (*Fees and Payment*, to the extent due amounts remain unpaid), 8 (*Indemnification*), 9 (*Limitation of Liability*), 10 (*Confidentiality*), 12 (*General Provisions*) hereof and any other rights and obligations of the parties hereunder that by their nature are reasonably intended to survive termination or expiration, shall survive any termination or expiration of this Agreement.

12. General Provisions.

12.1 Promotional Activities. ClickSoftware may use Client's name and logo on its website and in its promotional materials to state that Client is a customer of ClickSoftware and Service user, but will not imply that the parties are affiliated. Client agrees to serve as a reference customer of ClickSoftware and shall cooperate with ClickSoftware's reasonable marketing and referencing requests. Upon the execution of this Agreement, ClickSoftware may issue a press release announcing the existence of this Agreement and any other relevant

information, *provided* that the content of the press release is first approved in writing by Client (such approval not to be unreasonably withheld).

12.2. Anonymous Information. ClickSoftware is permitted to use Anonymous Information (defined below) or disclose it to third party service providers, to provide, improve and develop its cloud service and other offerings, including to analyze trends, gather demographic information and identify products and services that may be desirable to customers. "**Anonymous Information**" means information which does not enable identification of an individual user, such as aggregated information, about use of the Service.

12.3. Notices. **Any notice that is required to be given hereunder shall be: (i) in writing and delivered by courier service or mailed by pre-paid registered mail addressed to the parties' respective addresses, and (ii) deemed to have been received by the addressee at the time and date when actually delivered or in any event within five (5) days after sending in the manner provided herein. The addresses provided herein may be changed at any time on prior written notice.**

12.4. Assignment. Neither party may assign this Agreement, 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 this Agreement 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. This Agreement 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.

12.5. Additional Third Party Terms. Certain parts of the Service are subject to the Additional Third Party Terms identified at www.clicksoftware.com/cloud-additional-terms, as updated from time-to-time. The Additional Third Party Terms are incorporated into this Agreement by this reference.

12.6. Open Source Software. Client acknowledges that the Service may include certain open source software ("**Open Source Materials**") which are governed by the applicable license terms thereof ("**Open Source Terms**"). A list of the Open Source Materials and related Open Source Terms is displayed at www.clicksoftware.com/open-source-software-list, as updated from time-to-time. Client's use of the Open Source Materials is subject to and governed by this Agreement and the Open Source

Terms. To the extent of any conflict between any Open Source Terms and the terms of this Agreement, the Open Source Terms shall prevail in connection with the related Open Source Materials. Notwithstanding anything to the contrary in this Agreement, ClickSoftware's indemnification obligations under this Agreement do not apply to the Open Source Materials.

12.7. Additional Terms Regarding SMS Gateway. If the Services incorporate software and/or services provided by Twilio, CM Telecom, or another SMS gateway supplier of Client's choice (each an "SMS Supplier"), then Client's use of the functionality provided by such SMS Supplier in conjunction with the Services are further subject to the applicable SMS Supplier's Acceptable Use Policy and any other agreement entered into between Client and the SMS Supplier. In addition, ClickSoftware's obligations with respect to the security, confidentiality or liability for Client Data described elsewhere in this Agreement shall not extend to any Client Data stored within or used by the SMS Supplier. Client acknowledges and agrees that (i) the SMS Supplier may be allowed to access the Client Data stored within the SMS Supplier's services to respond to any technical problems, ClickSoftware or Client queries, and/or to ensure the proper working of the SMS Supplier services, (ii) the SMS Supplier may periodically delete Client Data stored within its services, and (iii) storage of Client Data on the SMS Supplier's services is not guaranteed and that ClickSoftware shall not have any liability whatsoever for any damage, liabilities, losses or any other consequences that Client may incur with respect to the loss or deletion of Client Data. Client shall, at its sole expense, indemnify, defend, and hold ClickSoftware harmless from and against all damages, losses, liabilities or expenses, including reasonable attorney fees and costs, that ClickSoftware may incur with respect to any claim, action, suit or proceeding made or brought against ClickSoftware by an SMS Supplier or a third party arising from Client's use of the functionality provided by the SMS Supplier within the Services. CLIENT'S INDEMNITY OBLIGATION CONTAINED IN THIS SECTION SHALL NOT BE (A) RESTRICTED OR LIMITED BY ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, SECTION 9 ("LIMITATION OF LIABILITY"), AND (B) CONSTRUED TO LIMIT OR EXCLUDE ANY OTHER CLAIMS OR REMEDIES WHICH CLICKSOFTWARE MAY ASSERT UNDER THIS AGREEMENT OR BY LAW.

12.8. Independent Contractors. The parties are acting solely as independent contractors, and neither party is an agent or partner of the other.

12.9. Non-Solicitation of Employees. Unless otherwise agreed to in writing by the parties, during the term of each Order Form and/or SOW and for six months thereafter,

neither party shall solicit, hire, seek or influence the employees or consultants of the other party with whom such party has had contact during the performance of the Services under the applicable Order Form and/or SOW. The foregoing provision shall not preclude a party from (i) making good faith generalized solicitations for employees through advertisements or search firms and hiring any persons through such solicitations, or (ii) responding to or hiring any employee of the other party who contacts the responding/hiring party at his or her own initiative, provided such response is not prompted by the responding/hiring party intentionally circumventing the restrictions of this Section.

12.10. Waiver. No failure or delay in exercising any right hereunder by either party shall operate as a waiver thereof, nor will any partial exercise of any right hereunder preclude further exercise of that right. A waiver shall only be deemed to have been made if expressed in writing by the party granting such waiver.

12.11. Interpretation and Severability. The headings used herein are for convenience only and shall in no case be considered in construing this Agreement. If any provision of this Agreement shall be held by a court of law of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be reformed, construed and enforced to the maximum extent permissible, and the remaining provisions shall remain in full force and effect.

12.12. Force Majeure. Except for any payment obligations hereunder, neither party shall be liable for any failure to perform due to causes beyond its reasonable control provided that such party takes all reasonable steps to minimize the extent and duration of any such failure in performance.

12.13. Governing Law and Jurisdiction. This Agreement will be governed by, interpreted, and construed in accordance with the substantive laws of the jurisdiction set forth in the Order Form and/or SOW, without regard to its conflict of laws principles. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the jurisdiction set forth in the Order Form and/or SOW. Each party consents to the jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court. Notwithstanding the foregoing, the parties agree that any action regarding the unauthorized disclosure of Confidential Information or any actual or alleged infringement of such party's or third party's intellectual property rights may be brought in any state, federal, or national court of competent jurisdiction, without bond and without the necessity of showing actual monetary damages.



12.14. Priority. To the extent of any conflict between the provisions of this Agreement, the Guide, the Documentation, any Addenda, or any Order Form or SOW, the terms of this Agreement shall prevail, unless specifically amended in such other document and agreed to otherwise. To the extent of any conflict between the provisions of an Order Form, SOW or Client purchase order, the Order Form or SOW shall prevail. The preprinted provisions of any Client purchase order shall not apply and shall be deemed to be for administrative purposes only.

12.15. Entire Agreement and Modifications. The preamble is an integral part of this Agreement. 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.