

## CITIZENCONTACT SERVICE SUBSCRIPTION AGREEMENT

### **IMPORTANT: PLEASE READ THIS AGREEMENT CAREFULLY.**

THE CITIZENCONTACT SERVICE (AS DEFINED BELOW) IS PROVIDED TO SUBSCRIBER BY SMARTFORCE TECHNOLOGIES, INC. (“SMARTFORCE”) SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS SERVICE SUBSCRIPTION AGREEMENT (“AGREEMENT”). BY USING THE CITIZENCONTACT SERVICE, CLICKING ON THE “I ACCEPT” BUTTON, OR BY COMPLETING THE REGISTRATION PROCESS FOR THE CITIZENCONTACT SERVICE, YOU: (1) AGREE TO THE TERMS OF THIS AGREEMENT, AND (2) REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE ENTITY YOU HAVE NAMED AS THE SUBSCRIBER, AND TO BIND THAT ENTITY TO THIS AGREEMENT. IF YOU DO NOT FULLY AGREE TO THE TERMS OF THIS AGREEMENT, YOU ARE NOT AUTHORIZED TO ACCESS OR OTHERWISE USE THE CITIZENCONTACT SERVICE. THE TERM “SUBSCRIBER” MEANS THE ORGANIZATION TO WHICH THE CITIZENCONTACT SERVICE IS PROVIDED. EACH AND EVERY PERSON USING THE CITIZENCONTACT SERVICE ON BEHALF OF THE SUBSCRIBER REPRESENTS AND WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO DO SO ON SUBSCRIBER’S BEHALF. IF SUBSCRIBER HAS ENTERED INTO A SIGNED HARDCOPY AGREEMENT REGARDING THE SUBJECT MATTER HEREOF WITH SMARTFORCE, THEN THAT SIGNED HARDCOPY AGREEMENT GOVERNS SUBSCRIBER’S USE OF THE CITIZENCONTACT SERVICE.

### **1. DEFINITIONS.** As used in this Agreement:

**1.1 “Access Protocols”** means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Subscriber or any Authorized Users to access the CitizenContact Service.

**1.2 “Authorized User”** means Subscriber’s employees, representatives, consultants, contractors or agents who are authorized to use the CitizenContact Service on behalf of Subscriber and have been supplied user identifications and passwords for this purpose.

**1.3 “CitizenContact Service”** means the field stop data management application delivered by SmartForce to Subscriber using the CitizenContact System.

**1.4 “CitizenContact System”** means the technology, including software, used by SmartForce to deliver the CitizenContact Service to Subscriber.

**1.5 “Documentation”** means the technical materials provided or made available by SmartForce to Subscriber that describe the features, functionality or operation of the CitizenContact System.

**1.6 “Intellectual Property Rights”** means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

**1.7 “Subscriber Data”** means any data provided, imported or uploaded by Subscriber with the CitizenContact Service.

### **2. PROVISION OF SERVICES**

**2.1 License Grant.** Subject to the terms and conditions of this Agreement, SmartForce grants to Subscriber a non-exclusive, non-transferable, non-sublicensable license to, during the Term (as defined below), solely for Subscriber’s internal business purposes and in accordance with the Documentation and the limitations set forth in Section 4.2, (a) access and use the CitizenContact Service; (b) internally use and reproduce the Documentation; and (c) grant Authorized Users the right to access and use the CitizenContact Service.

**2.2 Access.** SmartForce will provide to Subscriber the necessary passwords, security protocols and policies and network links or connections and Access Protocols to allow Subscriber and its Authorized Users to access the CitizenContact Service in accordance with the Access Protocols. Subscriber will use commercially reasonable efforts to prevent unauthorized access to, or use of, the CitizenContact Service, and notify SmartForce promptly of any such unauthorized use known to Subscriber.

**2.3 Authorized Users.** Subscriber may permit any Authorized Users to access and use the features and functions of the CitizenContact Service as contemplated by this Agreement. Each Authorized User will be assigned a unique user identification name and

password (“User ID”) for access to and use of the CitizenContact Service. User IDs cannot be shared or used by more than one Authorized User at a time.

**2.4 Restrictions.** Subscriber will not, and will not permit any Authorized User or other party to: (a) use the CitizenContact Service to harvest, collect, gather or assemble information or data regarding any other person in violation of applicable law; (b) knowingly interfere with or disrupt the integrity or performance of the CitizenContact Service or the data contained therein; (c) reverse engineer, disassemble or decompile any component of the CitizenContact System; (d) interfere in any manner with the operation of the CitizenContact Service, or the CitizenContact System or the hardware and network used to operate the CitizenContact Service; (e) sublicense any of Subscriber’s rights under this Agreement, or otherwise use the CitizenContact Service for the benefit of a third party or to operate a service bureau; (f) modify, copy or make derivative works based on any part of the CitizenContact Service; (g) access or use the CitizenContact Service to build a similar or competitive product or service or attempt to access the CitizenContact Service through any unapproved interface; or (h) otherwise use the CitizenContact Service in a manner inconsistent with applicable law, the Documentation, or this Agreement. Subscriber acknowledges and agrees that the CitizenContact Service will not be used, and are not licensed for use, in connection with any of Subscriber’s time-critical or mission-critical functions.

### **3. OWNERSHIP OF SMARTFORCE TECHNOLOGY**

**3.1 SmartForce Technology.** Subscriber acknowledges that SmartForce retains all right, title and interest in and to the CitizenContact System, CitizenContact Service and Documentation and all software and all SmartForce proprietary information and technology used by SmartForce or provided to Subscriber in connection with the CitizenContact Service (the “SmartForce Technology”), and that the SmartForce Technology is protected by Intellectual Property Rights owned by or licensed to SmartForce. Other than as expressly set forth in this Agreement, no license or other rights in the SmartForce Technology are granted to Subscriber.

**3.2 Feedback.** Subscriber hereby grants to SmartForce a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the CitizenContact Service any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber, including Authorized Users, relating to the CitizenContact Service. SmartForce will not identify Subscriber as the source of any such feedback.

**3.3 Third Party Software.** The CitizenContact Service may utilize, contain or otherwise use certain third-party software (collectively, the “Third Party Software”). Third Party Software may be subject to additional licensing terms, which SmartForce may deliver or make available from time to time to Subscriber, which are incorporated herein by reference, and which supersede any contradictory terms in this Agreement.

**4. FREE SERVICES.** The CitizenContact Services is currently made available free of charge. SmartForce, however, reserves the right to

charge for the CitizenContact Services in the future and change its billing and payment policies upon prior notice.

## **5. SUBSCRIBER DATA AND RESPONSIBILITIES.**

**5.1 Responsibilities.** Subscriber and its Authorized Users shall have access to the Subscriber Data and shall be responsible for all changes to and/or deletions of Subscriber Data and the security of all User IDs and other Access Protocols required in order to access the CitizenContact Service. Subscriber shall have the ability to export Subscriber Data out of the CitizenContact Service and is encouraged to make its own back-ups of the Subscriber Data. Subscriber shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Subscriber Data.

**5.2 Use of Subscriber Data.** As between Subscriber and SmartForce, Subscriber will at all times remain the exclusive owner of such Subscriber Data. Subscriber hereby grants to SmartForce a non-exclusive, worldwide, royalty-free and fully paid license (a) to use the Subscriber Data as necessary to provide the CitizenContact Service to Subscriber; (b) to use aggregated and anonymized Subscriber Data (i) to improve the CitizenContact Service and SmartForce's related product and service offerings; (ii) to create new products and services relating to the CitizenContact Service (including analytics services such as providing benchmarking); and (iii) to generate and disclose statistics regarding use of the CitizenContact Service, provided, however, that no Subscriber-only statistics will be disclosed to third parties without Subscriber's consent; and (c) as necessary to comply with applicable laws, rules and regulations. Except as expressly specified in this Agreement, Subscriber's provision of or SmartForce's collection of the Subscriber Data hereunder does not transfer to SmartForce or any third party any rights in or ownership thereof.

**5.3 Data Security.** SmartForce will use commercially reasonable administrative, physical and technical measures designed to protect the confidentiality of Subscriber Data. SmartForce will promptly notify Subscriber of any known or suspected loss or unauthorized access, use or disclosure of any Subscriber Data.

**6. DISCLAIMER.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CITIZENCONTACT SERVICE, CITIZENCONTACT SYSTEM AND DOCUMENTATION ARE PROVIDED AS IS," "AS AVAILABLE," AND WITH ALL FAULTS, AND SMARTFORCE AND ITS AFFILIATES, SUPPLIERS, AND LICENSORS HEREBY DISCLAIM ALL OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, RELATING TO THE CITIZENCONTACT SERVICE, CITIZENCONTACT SYSTEM AND DOCUMENTATION WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. SMARTFORCE DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE CITIZENCONTACT SERVICE AND THE CITIZENCONTACT SYSTEM SHALL BE UNINTERRUPTED, SECURE, OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO SUBSCRIBER.

## **7. LIMITATION OF LIABILITY**

**7.1 Types of Damages.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER SMARTFORCE NOR ITS AFFILIATES, SUPPLIERS OR LICENSORS WILL BE LIABLE TO SUBSCRIBER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE

ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE CITIZENCONTACT SERVICE, THE CITIZENCONTACT SYSTEM OR THE DOCUMENTATION, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF SMARTFORCE HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES.

**7.2 Amount of Damages.** THE MAXIMUM LIABILITY OF SMARTFORCE ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL EXCEED NOT ONE THOUSAND DOLLARS (\$1,000). IN NO EVENT SHALL SMARTFORCE'S SUPPLIERS OR LICENSORS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE SMARTFORCE'S LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SMARTFORCE OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO SUBSCRIBER.

**7.3 Basis of the Bargain.** The parties agree that the limitations of liability set forth in this Section 7 shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

## **8. TERM AND TERMINATION**

**8.1 Term.** This Agreement commences on the date Subscriber accepts this Agreement and will continue until terminated in accordance with the terms herein (the "Term").

**8.2 Termination.** Either party may terminate this Agreement upon thirty (30) days prior written notice. In addition, SmartForce may terminate this Agreement immediately upon notice Subscriber, if Subscriber materially breaches this Agreement, and such breach remains uncured more than five (5) days after receipt of written notice of such breach.

**8.3 Effect of Termination.** Upon termination or expiration of this Agreement for any reason: (a) all rights and obligations of both parties, including all licenses granted hereunder, shall immediately terminate; and (b) for thirty (30) days following after the effective date of termination, SmartForce will make available the Subscriber Data for export by Subscriber, after which time SmartForce shall discontinue all use of Subscriber Data and destroy all copies of Subscriber Data in its possession. The Sections titled *Definitions, Restrictions, Ownership, Disclaimers, Limitation of Liability, Effect of Termination, and Miscellaneous* will survive expiration or termination of this Agreement for any reason.

## **9. MISCELLANEOUS**

**9.1 Governing Law and Venue.** This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Delaware, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**9.2 Compliance with Laws.** Subscriber shall at all times comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the CitizenContact Services hereunder, including, but not limited to those relating to open records requests.

**9.3 Export.** Subscriber agrees not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from SmartForce, or any products utilizing such data, in violation of the United States export laws or regulations.

**9.4 Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

**9.5 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**9.6 Remedies.** Except as provided in Section 10, the parties' rights and remedies under this Agreement are cumulative. Subscriber acknowledges that the CitizenContact Services and Documentation contain valuable trade secrets and proprietary information of SmartForce, that any actual or threatened breach by Subscriber of its obligations with respect to Intellectual Property Rights of SmartForce will constitute immediate, irreparable harm to SmartForce for which monetary damages would be an inadequate remedy. In such case, SmartForce will be entitled to immediate injunctive relief without the requirement of posting bond, including an order that any CitizenContact Services, Documentation, or any portions thereof, that Subscriber attempts to import into any country or territory be seized, impounded and destroyed by customs officials. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**9.7 No Assignment.** Neither party shall assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of the other party. The terms of this Agreement shall be binding upon the parties and their respective successors and permitted assigns.

**9.8 Force Majeure.** Any delay in the performance of any duties or obligations of either party will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

**9.9 Independent Contractors.** Subscriber's relationship to SmartForce is that of an independent contractor, and neither party is an agent or partner of the other. Subscriber will not have and will not represent to any third party that it has, any authority to act on behalf of SmartForce.

**9.10 Notices.** Each party must deliver all notices or other communications required or permitted under this Agreement in writing to the other party by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, any such notice shall be considered to have been given on the delivery date reflected by the courier or express mail service receipt. Each party may change its address for receipt of notice by giving notice of such change to the other party.

**9.11 Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters. Any preprinted terms included in any purchase order that are different from or are in addition to the terms of this Agreement shall be void and of no force or effect. No modification or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of Subscriber and SmartForce.