

# Terms of Business

Last Updated: 9<sup>th</sup> November 2017

Algoworks Terms of Business for AppExchange App - Case Management App

IMPORTANT- PLEASE READ CAREFULLY: BY CLICKING ON THE "CONFIRM & INSTALL" OR "DOWNLOAD" BUTTON, YOU, ON BEHALF OF AN ENTITY ("COMPANY") AS ITS AUTHORIZED REPRESENTATIVE, AGREE TO ALL OF THE TERMS OF THIS SERVICES AGREEMENT ("AGREEMENT") REGARDING COMPANY'S USE OF THE TECHNOLOGY (THE "PROVIDER TECHNOLOGY") BEING PROVIDED BY ALGOWORKS SOLUTIONS INC ("PROVIDER"). IF YOU DO NOT AGREE WITH ALL OF THE TERMS OF THIS AGREEMENT, DO NOT CLICK THE "CONFIRM & INSTALL" BUTTON AND DO NOT USE THE PROVIDER TECHNOLOGY, WHICH IN THIS CASE IS THE ALGOWORKS CASE MANAGEMENT APP.

## 1. Provision of Access to Provider Technology

Upon execution of this Agreement by Company (the execution date being the "Effective Date") and subject to the restrictions set forth below and the payment of any applicable fees, Provider will make available during the Term (as defined in Section 10) to end users authorized by the Company (the "Authorized End Users") access to the features and functions of the selected app(s) (the "Provider Technology") for use in conjunction with one (1) Salesforce® production organization and unlimited sandboxes. Company may use the Provider Technology and documentation solely for its internal Customer Relationship Management (CRM) and similar operations. Provider will specify to Company procedures according to which Company and/or its Authorized End Users may establish and obtain such access to the Provider Technology, including, without limitation, provision of access codes, passwords, technical specifications, connectivity standards or protocols, copying of the Provider Technology to an account specific to Company, or any other relevant procedures, to the limited extent any of the foregoing may be necessary to enable Company to permit its Authorized End Users to access and use the Provider Technology as contemplated in this Agreement.

## 2. Installation, Subscription, Trial Period, and Acknowledgement

**a. Installation, Trial Period, Free Access, and Purchases.** Provider shall provide to Company (a) access to the Provider Technology via the Salesforce® AppExchange and (b) related documentation.

I. Where Provider has offered Company access to the Provider Technology pursuant to a free trial, Company shall have the Provider-specified period of time, which will be counted from the date of first access to the Provider Technology unless otherwise specified by the Provider (the "Trial Period"), to evaluate the Provider Technology. Company's access to and permission to use the Provider Technology will each terminate following such Trial Period, unless the Parties have executed a Purchase Agreement and Company's account is in good standing.

II. Where Provider has offered Company access to the Provider Technology without fee and without a Trial Period (e.g., a "free app"), Company need not pay Provider a fee for such access unless the parties enter into a Purchase Agreement requiring payment of a fee.

III. During the Subscription Term, and subject to all terms and conditions of this Agreement, Provider will use commercially reasonable efforts to provide the Services to Company consistent with Company's Service Plan. Provider may provide the Services using third party vendors or service providers. Company may agree to pay the fees, in the amounts and at the time, specified in Company's.

IV. SUBSCRIPTION. Company hereby grants you, subject to the terms and conditions of this Agreement and during the Subscription Term, a non-exclusive, non-transferable, non-sublicensable right and license to (a) use the AppExchange Application, the Services, the Forms and the Documentation solely for your business operations. Company agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Provider regarding future functionality or features.

**b. Acknowledgement.** Company acknowledges and agrees that (i) at all times, access to and use of the Provider Technology is dependent upon the availability and proper functioning of Salesforce® and your particular account and instance within Salesforce®, and (ii) Provider has no control over such availability or functioning of Salesforce® or your Salesforce® account. Company acknowledges Provider specifically disclaims responsibility and liability for any inability to access or use the Provider Technology, or degradation of the performance of the Provider Technology, to the extent caused by issues, problems, or malfunctions of, or inaccessibility to, Salesforce®, your account, or other third party owned or controlled technology, and Company is solely responsible for the configuration of Salesforce® instance and all technology and services necessary to access and use the Internet and Company's Salesforce® instance.

**c. Data Security** The Provider acknowledges and confirms that the Provider Technology is not interacting with any third party application or server. The Provider Technology functions completely and absolutely within the boundary of the Salesforce® Org within which it is installed. In the case of being installed in more than one Salesforce® Org belonging to the same owner, the Provider Technology installed in each org will act independently and will be alien to any information, dependency, query or interaction with any other data from the other orgs or the data in the Provider Technology installed in a different org. The Provider acknowledges and confirms that the Provider Technology Security has been designed, developed and completed such that no data can be transmitted, transferred, transported, or sent out of the Salesforce® Org within which the Provider Technology is installed by the Company. The Provider acknowledges and confirms that the Provider Technology Security of data has been designed, developed and completed to perfection as such that no data can be transmitted, transferred, transported, imported, or received into the Salesforce® Org within which the Provider Technology is installed by the Company.

### 3. Price and Payment

Company shall pay Provider the total amount specified in the executed Purchase Agreement according to the terms specified in the Purchase Agreement. Fees are based on Provider Technology purchased and not actual usage. Payment obligations are non-cancellable and fees paid are non-refundable except as otherwise outlined herein. Quantities purchased cannot be decreased during the relevant subscription term. Provider agrees to provide Company with access to all updated versions of the Provider Technology released publicly by Provider and associated documentation, provided Company has paid all applicable fees.

Company shall be responsible for any applicable taxes or any value added taxes payable with respect to the licensing of the Provider Technology, or arising out of or in connection with this Agreement, other than taxes levied or imposed based upon Provider's income. Any such taxes required to be paid by Company arising out of the licensing of the Provider Technology or in connection with this Agreement (except for taxes levied or imposed based upon Provider's income) shall be billed to and paid by Company.

#### **4. Proprietary Rights**

Company acknowledges and agrees that the copyright, patent, trade secret, and all other intellectual property rights of whatever nature in the Provider Technology, any related Provider software, and the Provider documentation are and shall remain the property of Provider, and except for the rights expressly granted under this Agreement, nothing in this Agreement should be construed as transferring any aspects of such rights to Company or any third party.

#### **5. Confidentiality**

Confidential information shall mean the Provider Technology, the Documentation, the terms and conditions of this Agreement and any other sensitive or proprietary information provided by one party to the other and marked as Confidential or with similar language, or if not marked confidential should be understood by a reasonable person to be confidential due to the nature of the information disclosed or the manner of disclosure. Each Party acknowledges the confidential and proprietary nature of the confidential information and agrees that it shall not reveal or disclose any confidential information for any purpose to any other person, firm, corporation or other entity, other than such Party's employees with a need to know such confidential information to perform employment responsibilities, and such Party's service providers who are bound to confidentiality obligations no less stringent than those imposed by this Agreement and who assist such Party in its performance of obligations or exercise of rights under this Agreement, consistent with such Party's rights under this Agreement. Each Party (as Recipient of the other party's Confidential Information) shall safeguard and protect the confidential information from theft, piracy or unauthorized access in a manner at least consistent with the protections that the Recipient uses in order to protect its own most confidential information. Each Party shall inform its employees of their obligations under this Agreement, and shall take such steps as may be reasonable in the circumstances, or as may be reasonably requested by the disclosing party, to prevent any unauthorized disclosure, copying or use of the confidential information. Confidential Information does not include information which (i) is already known to the Recipient at the time of disclosure; (ii) is or becomes publicly available through no wrongful act of the Recipient; (iii) is independently developed by Recipient without access to the disclosed Confidential Information; or (iv) is received by Recipient from a third party without restriction and without a breach of an obligation of confidentiality; provided, however, that the occurrence of (i), (ii), (iii) or (iv) above will not be construed to grant any rights, express or implied, under any patents or copyrights relating to any such information. The foregoing confidentiality obligations shall not apply to any disclosure that is required by law. Provider may disclose Company's Confidential Information to salesforce.com with written approval from Company to the extent reasonably necessary to troubleshoot technical problems and provide customer support to Company.

#### **6. Warranty and Disclaimer**

Provider represents to Company that: (i) it shall meet the Service Level Agreement applicable to the Provider Technology, if such an agreement is established by an executed Purchase Agreement; and (ii) upon notification to Provider, during the Term, of any defect in the Provider Technology that are

reproducible and verifiable by Provider (each a “Defect”), as described below, Provider will, at no costs to Company, attempt to correct such Defect. Problems caused by uses of the Provider Technology which were not in accordance with the documentation, and problems caused by the underlying Salesforce® platform, shall not be considered Defects.

In the event that Company notifies Provider of a Defect during the Term, Provider’s sole responsibility and liability, and Company’s sole remedy, will be Provider’s use of reasonable efforts to correct such Defect or receive a refund as described below. If the Defect cannot be corrected within 60 days, or if Provider provides earlier notification to Company that Provider will not be able to correct the Defect within 60 days, Provider shall, at Company’s request, refund any prepaid price for the specific Provider Technology that has the Defect, prorated from the date Company reported the Defect to Provider. To be valid, the refund request must (i) be made within 30 days of the earlier of the expiration of the above-mentioned 60-day period or the above-mentioned earlier notification by Provider that the Defect will not be corrected, and (ii) be accompanied by the Company’s accurate certification that it has complied with Section 13 with respect to the Provider Technology that has the defect. Provider will deliver the refund within 30 days of such certification. Provider’s limited warranty is in lieu of all liabilities or obligations of Provider for damages arising out of or in connection with the installation, use or performance of the Provider Technology.

EXCEPT AS REPRESENTED AND WARRANTED IN THIS SECTION 6, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER DISCLAIMS ALL PROMISES, REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE PROVIDER TECHNOLOGY, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, SECURITY, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE AND/OR QUIET ENJOYMENT. PROVIDER DOES NOT WARRANT THAT ANY USE OF THE PROVIDER TECHNOLOGY WILL BE ERROR-FREE OR UNINTERRUPTED.

Salesforce, Sales Cloud, and others are trademarks of salesforce.com, inc., and are used here with permission.

## **7. Mutual Indemnification**

(a) Provider Indemnification. Provider agrees to hold harmless, indemnify, and, at Company’s option, defend Company and Company’s affiliates, officers, directors, employees, agents and their representatives (the “Company Indemnitees”) from all losses, liabilities, damages or expenses (including reasonable attorney’s fees) actually incurred by Company resulting from a claim brought against Company by any third party arising out of any claim that the Provider Technology, furnished and used within the scope of this Agreement, infringes any registered copyright or U.S. patent issued as of the Effective Date, provided that (i) Provider is given timely notice of the claim; (ii) Company reasonably solicits advice and input from Provider in Company’s defense and/or settlement of such claim; and (iii) the alleged infringement is not based upon the use of the Provider Technology in a manner prohibited under this Agreement, in a manner for which the Provider Technology was not designed, in a manner not in accordance with the documentation, or in combination with any other software or technology not provided or specified by Provider. In the event that any of the Provider Technology is alleged or determined to be infringing, Provider shall, at its own expense: (x) procure for Company the right to continue using the infringing element; (y) replace or modify such infringing element so that it becomes non-infringing, but only if the modifications or replacement does not adversely affect the functionality or Company’s use thereof; or (z) if neither (x) or (y) above is practical, remove infringing element; refund to Company a

prorated amount of any remaining payments or charges paid hereunder to Provider. The foregoing states Provider's entire obligations and liability with respect to the infringement of any property right.

(b) Company Indemnification. Company agrees to hold harmless, indemnify, and, at Provider's option, defend Provider losses, liabilities, damages or expenses (including reasonable attorney's fees) actually incurred by Provider resulting from a claim brought against Provider by any third party arising out of (i) a material breach by Company, any Authorized End Users, its employees or agents of its or their duties pursuant to this Agreement; (ii) gross negligence or wilful misconduct by Company, its employees or agents, or any Authorized End Users, or (iii) any claim by any third party that the Provider infringes such third party's intellectual property rights, if such alleged infringement arises due to modification of any technology by Company, or if such alleged infringement arises due to combination or integration of the Provider Technology with hardware, software and/or technology not supplied or specified by Provider hereunder, if such infringement would have been avoided by use of the Provider Technology absent such modification, combination or integration, provided that Company will not settle any claim unless such settlement completely and forever releases Provider from all liability with respect to such claim or unless Provider provides its prior written consent to such settlement, and further provided that Provider will have the right to participate in the defense thereof by counsel of its own choice at its own expense.

## **8. Audit**

(Intentionally omitted)

## **9. Limitation of Liability**

EXCEPT WITH RESPECT TO RIGHTS AND OBLIGATIONS ARISING OR RECOGNIZED UNDER SECTIONS 5 OR 7(b) OR WITH RESPECT TO VIOLATIONS BY COMPANY OF SECTION 1, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF THE PARTY FROM WHICH SUCH DAMAGES ARE SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT WITH RESPECT TO RIGHTS AND OBLIGATIONS ARISING OR RECOGNIZED UNDER SECTIONS 5 OR 7(b) OR WITH RESPECT TO VIOLATIONS BY COMPANY OF SECTION 1, THE CUMULATIVE LIABILITY OF EITHER PARTY TO THE OTHER PARTY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE TO PROVIDER BY COMPANY UNDER THIS AGREEMENT. THESE LIMITATIONS OF LIABILITY ARE INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

## **10. Term**

Unless this Agreement is terminated, the rights and license granted herein to Company shall remain in effect until the end of the "Term", which is defined as the longest of the following, as applicable:

a. The Trial Period;

b. The Term Start Date through the Term End Date, granted by a fully executed Purchase Agreement pursuant to which Company makes timely payment; and

c. The period of time during which Provider makes the Provider Technology available to Company without a payment obligation.

## **11. Termination**

In the event that either party hereto materially or repeatedly defaults in the performance of any of its duties or obligations hereunder and does not substantially cure such default within thirty (30) days after being given written notice specifying the default, or, with respect to those defaults which cannot reasonably be cured within sixty (60) days, if the defaulting party fails to proceed promptly after being given such notice to commence curing the default and thereafter to proceed to cure the same, then the party not in default may, by giving written notice thereof to the defaulting party, terminate this Agreement as of a date specified in such notice of termination. Provider reserves the right to terminate offering of a particular component of Provider Technology at the end of the Term upon giving ninety (90) days written notice to Company. Company reserves the right to terminate for convenience upon thirty (30) days written notice to Provider but such termination does not relieve Company of their obligations under section 3. Absent a Purchase Agreement, at any time in its sole discretion, Provider also may terminate the Agreement with or without notice with respect to Provider Technology that is in a Trial Period or for which Provider has offered Company access without a payment obligation.

## **12. Survival**

All provisions of this Agreement relating to proprietary rights, confidentiality, limitation of liability, notices, the Miscellaneous provisions, and Company's accrued payment obligations shall survive the expiration or termination thereof.

## **13. Cessation of use**

Upon termination of this Agreement, or at an earlier time if the Company is requesting a refund pursuant to Section 6 (Warranty and Disclaimer), Company shall cease using the Provider Technology and documentation and promptly uninstall and securely dispose of all copies of the Provider Technology, documentation and all other confidential information in its possession or control.

## **14. Publicity**

Provider may mention or describe its work for Company, and/or identify Company as a client, in Provider's marketing materials and proposals, whether in printed or electronic media. When doing so, Provider may use Company's logo to identify Company, so long as no modification is made to the logo (other than, where applicable and appropriate, displaying a color logo in grayscale). This Publicity Section does not apply when Company only is using Provider Technology during a Trial Period. To opt out of this Publicity Section, Company must enter into a separate signed agreement with Provider that provides for the opt-out; Provider will consider entering into such written agreements on a case-by-case basis.

## **15. Notices**



Wherever under this Agreement one party is required or permitted to give notice to the other, such notice shall be deemed given when delivered in hand, or when delivered by registered or certified mail, return receipt requested of the party receiving the notice.

## **16. Miscellaneous**

(a) Interpretation and Construction. The captions contained herein are for the convenience of the parties hereto and shall not be construed to amend or modify any of the provisions hereof. The language in all parts of this Agreement shall in all cases be construed in accordance to its fair meaning as if prepared by all parties to the Agreement and not strictly for or against any of the parties.

(b) Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter herein. No waiver, amendment or modification of any provision of this Agreement shall be valid unless in writing and signed by the parties hereto.

(c) Waiver. The failure of a party to object to, or to take affirmative action with respect to, any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach or of any future violation, breach, or wrongful conduct. Any waiver, in whole or in part, of any provision hereof shall not be construed as a waiver of any other provision hereof.

(d) Assignment. Subject to Provider's right and discretion to engage subcontractors, this Agreement shall not be assignable by either party without the prior written consent of the other; provided, however, that this Agreement is assignable by either party without prior written consent of the other if such assignment is to any entity which acquires all or substantially all of such party's assets and business or any entity with or into which such party may be consolidated or merged, provided in any such case that the assignee fully assumes in writing the assignor's obligations under this Agreement.

(e) Governing Law. This Provider Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof.

(f) Attorney's Fees. In the event that a dispute arises with respect to this Agreement, the party prevailing in such dispute shall be entitled to recover all expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred in ascertaining such party's rights under this Agreement, whether or not it was necessary for such party to institute suit.

(g) Unenforceable Terms. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, its invalidity shall not affect the other provision of this Agreement that can be given effect without the invalid provision. If any provision of this Agreement does not comply with any law, ordinance or regulation, such provision to the extent possible shall be interpreted in such a manner to comply with such law, ordinance or regulation, such provision to the extent possible shall be interpreted in such a manner to comply with such law, ordinance or regulation, or if such interpretation is not possible, it shall be deemed to satisfy the minimum requirements thereof.

(h) Binding Effect. This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

## **17 DISPUTES**

Before either party brings or initiates any action or proceeding regarding any dispute arising out of, relating to or in connection with this Agreement (including a claim that the other party breached any of its obligations herein), authorized representatives of each party shall meet within fifteen (15) days after receipt of written notice by either party at a mutually agreeable time and place to discuss possible resolution of the dispute. The parties agree that, any dispute, controversy or claim arising out of, related to or in connection with this Agreement shall be resolved through binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules (the "Rules"), except as modified herein. The parties shall endeavor to select a single mutually agreed arbitrator experienced in commercial and software matters. If the parties cannot agree, the necessary appointment shall be made in accordance with the Rules. The arbitration shall occur in San Francisco, California and shall be in English. The arbitrators shall be instructed and required to render a written, binding, non-appealable resolution and award on each issue that clearly states the basis upon which such resolution and award is made. The written resolution and award shall be delivered to the parties within sixty (60) days after conclusion of the hearing, unless otherwise agreed by the parties. Judgment upon such award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such an award and order for enforcement. The arbitrators will not have authority to make any award that could not be made by a court of competent jurisdiction. At the request of either party, the arbitrators shall enter an appropriate protective order to maintain the confidentiality of information produced or exchanged in the course of the arbitration proceedings. Notwithstanding the foregoing, either party shall be entitled to seek injunctive relief in a court of competent jurisdiction.