



TERMS AND CONDITIONS

Effective Date: June 20, 2018

IMPORTANT – READ CAREFULLY: BY CLICKING ON THE "I AGREE", "I ACCEPT" OR SIMILAR BUTTON WHICH REFERENCES THIS AGREEMENT, YOU ARE ACKNOWLEDGING THAT YOU ARE AUTHORIZED TO ENTER INTO THIS SERVICES AGREEMENT ("AGREEMENT"), AND IF YOU ARE ACCEPTING ON BEHALF OF YOUR EMPLOYER OR OTHER ENTITY ("CUSTOMER"), YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL RIGHT TO BIND SUCH ENTITY AND AGREE TO ALL THE TERMS OF THIS AGREEMENT REGARDING CUSTOMER'S USE OF THE PUBNUB SERVICES. IF YOU DO NOT AGREE WITH ALL OF THIS AGREEMENT OR ARE NOT AUTHORIZED TO BIND THE CUSTOMER TO THIS AGREEMENT, DO NOT CLICK ON THE "I AGREE", "I ACCEPT" OR SIMILAR BUTTON OR CLICK THE "I DISAGREE" BUTTON OR CLOSE THE WINDOW TO STOP CREATION OF THE PUBNUB ACCOUNT.

A. Definitions

1. "Authorized User" shall mean the Customer's employees or consultants who are authorized by Customer to access and use the PubNub Services in accordance with this Agreement. Customer shall ensure that all Authorized Users comply with the terms of this Agreement, and Customer shall be liable for any breach thereof.
2. "Customer Data" shall mean data contained in the Messages published by Customer or its users to the PubNub Services.
3. "Messages" shall mean one or more PubNub messages that are sent or received through, or initiated by, the PubNub Services. For example, a Message sent by one PubNub client to another PubNub client is counted as two messages (one sender and one receiver). A Message consists of Envelope Data and Message Body Data. Envelope Data (including the uniform resource identifier) is metadata that includes PubNub-generated data including IP address, user agent information, and may also include Client specific data categories regarding the Message Body Data. Message Body Data is the Customer information contained in the Message.
4. "Functions" shall mean Customer code deployed on the PubNub Services.
5. "Function Execution" shall mean the running of a Function within the PubNub Services.
6. "Transactions" means the various API calls and related computing units that use the PubNub Services. The full list of Transaction types are specified on the PubNub Pricing Page and the Transaction Classification Page.
7. "Client Software" shall mean the object and source code software used to access and use the PubNub Services and made available to Customer on the PubNub website www.pubnub.com.
8. "Documentation" shall mean the documentation available and updated from time to time on PubNub's website that describes the PubNub Services.
9. "Monthly Prepay" shall mean the amount paid at the beginning of each month and, solely for Transaction Plan Customers, applied toward the Metered Usage.
10. "Metered Usage" shall mean, for Transaction Plan Customers, the cost of the total Transactions, Function Executions, and Persisted Data used by the Customer during the calendar month, and for Legacy Device Tier Customers, the cost of Messages, Function Executions, and Persisted Data used by the Customer during the calendar month.
11. "Payment Method" shall mean the method in which the Customer pays for their PubNub Service Selection as indicated in the PubNub Admin Dashboard.
12. "Persisted Data" shall mean data stored via various API calls as defined on the PubNub Pricing Page.
13. "PubNub Pricing Page" shall mean the PubNub webpage located at www.pubnub.com/pricing/ which includes the pricing for the PubNub Services.
14. "Transaction Classification Page" shall mean the PubNub webpage located at list and categorization of Transactions listed here <https://www.pubnub.com/docs/transaction-classification>.
15. "PubNub Admin Dashboard" shall mean the section of the PubNub website which is password protected, allowing the Customer to configure settings about their account, purchase other PubNub Services, and see analytics about their usage of the PubNub Services. admin.pubnub.com

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16. "PubNub Services" shall mean the various product and service offerings of PubNub, which may be updated at any time based on PubNub's sole discretion including the service level commitments set forth on Schedule B.
17. "PubNub Service Selection" shall mean the specific PubNub Services the Customer has selected using the PubNub Admin Dashboard combined with the online submission of the Customer's payment details.
18. "Service Period" shall mean one month.
19. "Service Plan" shall mean either the pricing plan as specified here www.pubnub.com/pricing/ or within the PubNub Admin Dashboard, or a pricing plan as specified in a separately signed agreement between Customer and PubNub.
20. "Transaction Plan Customer" shall mean a customer who is on a PubNub Pricing Plan specified on the PubNub Pricing Page.
21. "Legacy Device Tier Customer" shall mean a Customer who commenced Services on or before 6/20/18 and has not converted to a pricing plan specified on the PubNub Pricing Page.

B. Licenses Grants

1. Subject to payment of applicable fees and compliance with this Agreement, PubNub grants to Customer a non-exclusive, non-transferable, non-sublicensable, revocable, limited license during the purchased Service Period to use the PubNub Services as described in the Documentation. Usage of the PubNub Services shall be limited to the PubNub Service Selection specified by Customer in the PubNub Admin Dashboard.
2. PubNub shall have a non-exclusive, non-transferable, worldwide, perpetual, irrevocable license to collect, analyze or use statistical data relating to its delivery of the PubNub Services derived from the Customer Data, including Envelope Data, solely for the development, tuning, and scaling of the PubNub Services, including the generation of reports for both internal use purposes as well as reports available to the Customer, which may be offered at an additional cost. PubNub will keep all Envelope Data private, and will not share this data with any third parties (other than its agents and consultants performing services for PubNub who are under contractual obligation to maintain the confidentiality of such information), except in aggregate form across multiple PubNub end users (for example, advertising the total number of messages sent through the PubNub Services per day) and multiple PubNub customers to prevent the identification of such data as pertaining to any individual Customer and Customer's end users. PubNub's use, collection and disclosure of the Customer Data shall comply with applicable law. PubNub acts solely as a network transport, and does not actively filter or inspect the data sent by Customer or Customer's end users under normal circumstances. However, PubNub will respond appropriately if it becomes aware of inappropriate use of the PubNub Services. It is the Customer's responsibility to ensure that their Client Software is protected from the ability to transmit, install or impose upon Customer's users any virus, malware, tracking software or system or other technique for the purpose of tracking users, behavioral targeting or any unlawful purpose.

- C. License Restrictions.** Except as specifically provided in this Agreement, the license grant under this Agreement does not permit Customer or a third party (directly or indirectly, in whole or in part) to: (a) reverse engineer or attempt to derive the source code from or create derivative works of the PubNub Services, or any portion thereof, except as expressly permitted by local law and in such case, solely upon prior written notice to PubNub; (b) use the PubNub Services in a greater capacity than identified in a PubNub Service Selection; (c) sublicense, distribute or pledge the PubNub Services, (d) access, use, or copy any portion of the PubNub Services to directly or indirectly to develop, promote or support any product or service that is competitive with the PubNub Services, (e) lease, rent or commercially share or otherwise use the PubNub Services for purposes of providing a service bureau or providing third party hosting, application service provider type services; (f) remove any identification, patent, trademark, copyright, or other notice from the PubNub Services or Client Software; (g) interfere with or disrupt the integrity or performance of the PubNub Services or third-party data contained therein; (h) attempt to gain unauthorized access to the PubNub Services or the related systems or networks, including access to other PubNub customer's data; (i) disclose or publish, without PubNub's express prior written consent, performance or capacity statistics or the results of any benchmark test performed on the PubNub Services; (j) use any name, mark, or designation of PubNub, or any of its affiliates or licensors or their respective products or services, unless expressly permitted herein or by PubNub in writing; (k) use the PubNub Services in connection with any activity for which may result in tangible or intangible property damage, or death or serious body injury; and (l) use the PubNub Services including the transmission of Customer Data, in any manner that violates in any law, rule, regulation or any other legal or regulatory requirement imposed by any regulatory or government agency or political subdivision, whether federal, state, local, or foreign. Customer is responsible for processing and handling notices it receives from any third party claiming that Customer's content is connection with

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the PubNub Services violates such party's rights including without limitation, notices pursuant to the Digital Millennium Copyright Act. PubNub reserves the right to block, without liability, any Customer Data or Customer account that violates the terms of this Section C. Customer agrees not to send any credit card information including credit card numbers, CSV numbers (three digit codes for Visa and MasterCard, four digit code for American Express) and magnetic stripe information through the PubNub Services. Free accounts may not be used in Product environments and may only be used for testing and development and other non-commercial use. All Customer keys will be aggregated for billing purposes. You are prohibited from load testing the PubNub Services without the prior written approval of and coordination with PubNub. If you exceed the service limits of a Free account, PubNub will send you email notice to the contact information you provide and will begin billing your credit card for your PubNub Services fees (plus any applicable taxes) unless you cancel your subscription by the date set in the notice. PubNub will continue to bill your credit card for your fees until you cancel or the account or applicable Service is otherwise suspended or discontinued pursuant to these Terms. When you provide credit card information to access a Free account, our system will attempt to verify the information you entered. We do this by processing an authorization hold (but PubNub will not charge you in connection with this authorization hold). If your credit card expires or otherwise fails, and you do not edit your credit card information or cancel your account, you authorize PubNub to immediately terminate the account, or continue billing, in PubNub's sole discretion, and you will remain responsible for any uncollected amounts.

D. **Customer Obligations.** Customer shall be responsible for ensuring that all Authorized Users are bound by the terms and conditions of this Agreement and the usage rights ordered under a PubNub Service Selection, and for the accuracy, quality, integrity and legality of Customer Data and of the means by which Customer acquires or has acquired Customer Data. Customer has sole control over the Customer Data uploaded in the PubNub Services, and acknowledges PubNub has no control of the Customer Data. Customer will ensure that each username and password issued to a Customer will be used only by an Authorized User. Customer is responsible for maintaining the confidentiality of all usernames and passwords. Customer is solely responsible for all activities that occur under these usernames. Customer agrees (a) to only allow Authorized Users to use its account, usernames or passwords, (b) to keep a current list of all Authorized Users, (c) to promptly notify PubNub if it becomes aware, or should be aware, of any actual or suspected unauthorized use of its account, usernames or passwords, or any other breach or suspected breach of security related to the PubNub Services. PubNub will not be liable for any loss or damage arising from unauthorized use of any accounts, usernames or passwords; (d) to promptly fix any bugs in Customer's software that causes the PubNub Services to be accessed incorrectly; for example, software that generates incorrect API calls to the PubNub Services, and software that uses incorrect authentication tokens to access the PubNub Services. PubNub reserves the right to block, without liability, any Customer Data and Customer account that violates the terms of this Section 4. Customer shall be responsible for usage charges for PubNub Services the Customer has selected using the PubNub Admin Dashboard.

E. **Term & Termination.**

1. Term. The term of this Agreement shall begin upon acceptance of this Agreement as specified in the preamble and shall auto renew for additional Service Periods until the earlier of termination as set forth in Sections E (2), E (3) and E (4) below. A Service Period shall commence upon Customer's completion of a PubNub Service Selection in the PubNub Admin Dashboard.
2. Termination by Customer. The Customer may terminate the Agreement and the then current Service Period by sending an email to support@pubnub.com. Customer must terminate this Agreement and the then current Service Period at least fifteen (15) days prior to the completion of the then current month ("Cancellation Period"). The Agreement and Service Period termination will be effective as of the first day of the following month. If cancellation is later than the Cancellation Period, Customer will be charged for one additional month of the PubNub Service Selection.
3. Termination by PubNub. PubNub may terminate this Agreement and any Service Period, without cause, upon providing the other party with thirty (30) days prior written notice, except the notification period for Customer's use of PubNub Services provided free of charge, shall be fifteen (15) days.
4. Termination for Breach. Either party may terminate this Agreement and the Service Period upon notice to the other party if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days of the original notice thereof or such other period as may be mutually agreed to by the parties, except the cure period for Customer use of a PubNub Services provided free of charge, and for breaches of Section 2 and Section 3, shall be fifteen (15) days; provided further that in the event a breach is not curable, the non-breaching party may terminate on written notice.

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5. Effect of Termination. Upon expiration or termination of this Agreement, (a) the Service Period shall cease, and all license rights to use the PubNub Services, Client Software and the Documentation shall cease, and PubNub shall discontinue the provision of the PubNub Services, and (b) Customer shall immediately pay any outstanding invoices, including fees owed for outstanding Service Periods as specified under Section E(2) above. For the avoidance of doubt, Customer is responsible for usage and payment (at the then price as listed at the PubNub Pricing Page) arising from continued calls to PubNub APIs (even if a Customer key is disabled) after expiration or termination of this Agreement.

F. Support

1. Support Plan. For an additional cost, Customer may elect to choose a support plan as described on the PubNub Pricing Page. Please contact support@pubnub.com to add a Support Plan to your PubNub Service Selection.

- G. **Customer Advertising Commitments & Trademark Usage.** During the Term, PubNub may include Customer's name and logo on a list of customers of the PubNub Services.

H. Fees / Payment.

1. Fees. The fees for PubNub Services are as specified on the PubNub Pricing Page, on the PubNub Admin Dashboard (subject to change at any time at PubNub's sole discretion at <https://www.pubnub.com/pricing/>), or specified on an addendum signed by PubNub and Customer. An invoice is comprised of a monthly pre-pay and Metered Usage accrued during the previous month.
2. Payment. Customers are invoiced monthly for credit card payments, wire transfers or ACH. If payment is not received within fifteen (15) days of the invoice the PubNub Services may be terminated in PubNub's sole discretion. Fees due here under will be billed to Customer's credit card and Customer authorizes the card issuer to pay all such amounts and authorizes PubNub (or its billing agent) to charge the credit card account until Customer or PubNub cancels or terminates the PubNub Services as set forth above; provided that if payment is not received from the credit card issuer, Customer agrees to pay all amounts due upon demand. Customer must provide current, complete and accurate billing and credit card information. Customer agrees to pay all costs of collection, including attorney's fees and costs, on any outstanding balance. In certain instances, the issuer of the credit card may charge a foreign transaction fee or related charges, which Customer shall be responsible to pay.
3. Billing Contact. PubNub will send billing correspondence to the email address included in the online PubNub Services registration page.
4. Payment Disputes. In the event of a good faith dispute as to the calculation of a charge, Customer shall immediately give written notice to PubNub stating the details of any such dispute and shall promptly pay any undisputed amount. The acceptance by PubNub of such partial payment shall not constitute a waiver of payment in full by PubNub of the disputed amount. Any undisputed amounts not paid within fifteen (15) days of receipt shall accrue interest at a rate of one percent (1%) per month or the maximum lawful rate, whichever is less. Notwithstanding anything to the contrary contained in this Agreement, failure to make timely payments of undisputed amounts shall constitute a default hereunder and shall entitle PubNub to suspend its provision of the PubNub Services on ten (10) business days prior notice and require payment in advance until Customer account is paid in full. Customer may not setoff, deduct or otherwise withhold amounts due hereunder.
5. The fees charged by PubNub here under do not include any taxes, duties or charges of any kind. Customer will be responsible for all applicable sales, use, value added, goods and services, consumption, withholding, excise and any other similar taxes or federal, state, local taxes or other government taxes related to the payment under this Agreement (excluding taxes based on PubNub's net income).
6. Refunds. No Refunds will be given.
7. Legacy Device Tier Customers Terms
 - a. Metered-Usage Billing for Device Based Plans. For Customers who commenced payment for Services on or before 06/20/2018 and remain on a previously available "Device Tier Plan," in addition to the service tier, any Metered Usage of the PubNub Services by the Customer is billed in arrears during the next monthly billing cycle based on the Metered Usage of PubNub Services.
 - b. Service Tier Automatic Upgrade for All Legacy Device Tier Plans. Customers who remain on a previously available "Device Tier Plan" may be converted to a currently available plan as specified on the PubNub Pricing Page and on the PubNub Admin Dashboard at any time at PubNub's sole

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discretion. Customers on Legacy Device Tier Plans that have exceeded 40,000,000 monthly transactions or 20,000 daily active devices will be converted to a Transaction Plan Customer.

- c. "Daily Active Devices" shall mean the total number of universally unique identifiers ("UUIDs") or IP addresses connecting throughout the day. The count is equivalent to the number of unique device connections made during a single day as calculated by the applicable Client Software used by Customer. The Daily Active Device metric will be used as one of the elements to calculate the invoice for Legacy Device Tier Customers.
- d. Production Keys. Legacy Device Tier plans include only a single production key.
- e. "Included Messages" shall mean the total number of Messages included in the Legacy Device Tier. The Included Messages for a Legacy Device Tier are specified as follows: 2M for Starter, 5M for Pilot, 10M for Launch, and 40M for Scale. All Legacy Device Tier customers over 40M in monthly messages are subject to upgrade to a currently available plan as specified on the PubNub Pricing Page.

I. Confidential Information.

1. Definition. The term "Confidential Information" means all information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") pursuant to this Agreement, which the Disclosing Party designates as confidential at the time of disclosure, or a reasonable person should know to be confidential. Notwithstanding the foregoing, the PubNub Services, software (object code and source code), the Documentation, training materials, customer listings, future offerings and products, business plans, investors, pricing, including the fees paid here under, user IDs and passwords shall be deemed Confidential Information without any need to designate such information as confidential. Confidential Information shall not include any information which is: (i) already publicly known, (ii) created by the Receiving Party without reference to any Confidential Information, (iii) otherwise known to the Receiving Party through no wrongful conduct of the Receiving Party, (iv) required to be publicly disclosed by law or court order, provided the Disclosing Party is given reasonable advance notice of the obligation to produce Confidential Information to the extent permitted by such law or court order, or (v) is required by potential investors or necessary pursuant to acquisition or merger activity directly related to the Receiving Party, as part of the associated due diligence process. Confidential Information shall remain the sole property of the Disclosing Party, and each party acknowledges and agrees that it does not acquire any rights therein.
2. Protection of Confidential Information. The Receiving Party shall hold the Disclosing Party's Confidential Information in confidence and may only disclose such to employees and consultants on a need to know basis who are subject to confidentiality obligations substantially similar to those set forth in this Agreement. The Receiving Party will not use or disclose the Confidential Information of the Disclosing Party except as contemplated under this Agreement. Each party agrees to use the same level of care to protect the other party's Confidential Information from unauthorized use or disclosure as it uses to protect its own such information, but in no event with less than reasonable care. Receiving Party shall, as soon as reasonably practical after discovery a breach of this Confidentiality section, report to the Disclosing Party any unauthorized use of, disclosure of or access to the Disclosing Party's Confidential Information, subject to any reasonable restrictions placed on the timing of such notice by a law enforcement or regulatory agency investigating the incident; and take all reasonable measures to prevent any further unauthorized disclosure or access. The parties shall be entitled to seek injunctive or other equitable relief without the necessity of posting a bond even if otherwise normally required. Such injunctive or equitable relief shall not be exclusive remedy for any breach of confidentiality, but shall be in addition to all other rights and remedies available at law or in equity.

J. PubNub Warranties.

1. Limited Warranty. PubNub warrants it has full power and authority to enter into and perform the Agreement.
2. Disclaimer. EXCEPT FOR THE EXPRESS WARRANTY AS SET FORTH IN SECTION J.1 THE PUBNUB SERVICES AND CLIENT SOFTWARE ARE PROVIDED "AS IS" AND ALL OTHER EXPRESS OR IMPLIED INDEMNITIES AND WARRANTIES ARE HEREBY DISCLAIMED WITH RESPECT TO THE PUBNUB SERVICES (INCLUDING THE CLIENT SOFTWARE), INCLUDING BUT NOT LIMITED TO WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

- K. **Customer Warranties.** Customer warrants that (a), if a legal entity, it is a duly formed entity (i.e., corporation or limited liability company) in good standing under the laws of the state of its incorporation or organization; (b) it is qualified to

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transact business in all locations where the nature of its operations requires such qualification; (c) it has full power and authority to enter into and perform this Agreement; (d) the execution and delivery of this Agreement have been duly authorized; (e) Customer has all right necessary to provide, access and modify the Customer Data, including rights to grant the license to PubNub as specified under Section B.2, and to distribute such Customer Data across the Internet using the PubNub Services; (f) the Customer Data does not violate any applicable law, including any law or regulation regarding the transmission of technical data exported from the United States or any other applicable country, any law or regulation regarding privacy rights, or any law or regulation regarding harassment or defamation or other tort; (g) Customer shall employ reasonable professional standards in performance of its rights and obligations under this Agreement, and shall avoid deceptive, misleading or unethical practices that may be detrimental to PubNub or the PubNub Services; (h) Customer will not access any information or data provided or controlled by any other end user of PubNub and will abide by and will not circumvent or otherwise disable any security or data protection measures implement by PubNub; and (i) Customer will not, and will not permit any third party to, upload, post, email transmit or otherwise make available using the PubNub Services any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software, hardware or telecommunications equipment.

L. Limitation of Liability. PUBNUB'S AGGREGATE LIABILITY TO CUSTOMER, WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, OR ANY OTHER CAUSE OF ACTION, SHALL BE LIMITED TO THE LESSER OF THE PRICE PAID OR DUE FOR THE PUBNUB SERVICES TO WHICH THE INCIDENT RELATES, OR \$2,500. PUBNUB SHALL NOT BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST INCOME, LOST REVENUE, LOST PROFITS, BUSINESS INTERRUPTION, DAMAGES FOR GOODWILL, PROCUREMENT OF SUBSTITUTE SERVICES, ARISING OUT OR IN ANY WAY RELATED TO THIS AGREEMENT, THE USE OR THE INABILITY TO USE THE PUBNUB SERVICES. IN NO EVENT SHALL PUBNUB BE LIABLE FOR ANY DAMAGES HOWEVER ARISING AS RELATED TO THE CLIENT SOFTWARE AS PROVIDED UNDER THIS AGREEMENT, EXCEPT AS SPECIFICALLY PERMITTED UNDER SECTION M.1. EVEN IF ADVISED OF THE POSSIBILITY OF SUCH CLAIM. THESE LIMITATIONS WILL APPLY DESPITE THE FAILURE OF ESSENTIAL PURPOSE.

M. Indemnification.

1. **Customer Exclusive Remedies.** If the PubNub Services or any part thereof becomes the subject of a claim for infringement, or in PubNub's reasonable discretion is likely to become subject to such a claim, PubNub will have the right, at its option, to: (i) replace either or both of the PubNub Services and the Client Software with non-infringing technology that is materially, functionally equivalent or superior; (ii) modify the either or both of PubNub Services and the Client Software so to become non-infringing without materially affecting functionality; or (iii) obtain a license for Customer to continue using either or both of the PubNub Services and the Client Software. If (a) an injunction is issued by a court of competent jurisdiction barring Customer's exercise of the license rights granted under this Agreement, or (b) the alternatives specified in (i), (ii) or (iii) above are not available to PubNub on a commercially reasonable basis, then Customer will cease using the infringing technology and PubNub will refund the pro-rata portion of the pre-paid fees attributable to such technology for the amount of the Service Period Customer is not able to use the PubNub Services. This section states the entire liability and obligation of PubNub, and the sole and exclusive remedy of Customer with respect to any alleged or actual infringement of the PubNub Services (including the Client Software) provided under this Agreement.
2. **Customer's Indemnification.** Customer agrees that Customer's use of the PubNub Services, and the use of the Customer Data and information that Customer places on the PubNub Services site shall not: (a) infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) include any illegal conduct or any violation any law, statute, ordinance or regulation (including without limitation those governing export control, dealer agreements, unfair competition, anti-discrimination or false advertising); or (c) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing or obscene. Customer shall indemnify, defend and hold PubNub harmless from any third party claims including without limitation those claims arising from: (1) Customer's breach of the subsections (a), (b) and (c) of this subsection; (2) breach of the warranties as set forth in Section K; (3) modifications or alterations to the PubNub Services; (4) any representations or warranties made by Customer regarding the PubNub Services. PubNub will promptly notify Customer in writing of such claim, and Customer shall have the sole control of

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such defense and all negotiations for any settlement or compromise, although PubNub will provide reasonable assistance in the same at Customer's request and expense.

N. Ownership. Customer acknowledges and agrees that the PubNub Services, the Client Software, and PubNub's trademarks, and all proprietary rights contained therein, as well as any modifications, enhancements or derivative works (including all feedback relating to the use of the PubNub Services and the Client Software) relating thereto, are and will remain the exclusive property of PubNub or its licensors. PubNub reserves all rights not expressly granted to Customer in this Agreement. As between the parties, Customer retains all ownership in and to the Customer Data subject to the license granted under Section B.2.

O. Miscellaneous.

1. **Entire Agreement.** This Agreement, and any other references, exhibits or attachments, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all written or oral prior and contemporaneous agreements and understandings between the parties concerning such subject matter. If any one or more of the provisions of the Agreement shall for any reason be held to be invalid, illegal or unenforceable, the same shall not affect any of the other portions of this Agreement. Failure or delay by either party in exercising any right here under shall not operate as a waiver of such right. The descriptive headings of the sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. PubNub, at its sole discretion, reserves the right to modify the terms and conditions as set forth under this Agreement at any time. In such case, PubNub shall notify (via email or other written communication) Customer of an updated Agreement available for online acceptance. PubNub shall provide Customer with at least seven (7) days to accept the terms of the updated agreement. After such period, the updated agreement shall govern the provision of PubNub Services upon the commencement of a new month of PubNub Services. Customer shall be required to accept the updated Agreement if it desires to continue to use the PubNub Services.
2. **Assignment.** This Agreement, and any rights or obligations hereunder, shall not be assigned or sub-licensed by Customer, including by operation of law, without prior written consent from PubNub. PubNub may assign this Agreement without the consent of the Customer. Any attempted assignment or transfer in violation of the foregoing shall be void and shall result in the immediate and automatic termination of this Agreement. Subject to this restriction, this Agreement will be binding upon and inure to the benefit of the parties hereto, their successors and assigns.
3. **Force Majeure.** Except for payment for fees due hereunder, neither party shall be liable for any losses arising out of the delay or interruption of its performance of obligations under this Agreement due to any act of God, act of governmental authority, act of public enemy, terrorism, war, riot, flood, civil commotion, severe weather conditions, unplanned system downtime, or any other cause beyond the reasonable control of the party delayed.
4. **Export.** PubNub Services, Client Software and the Documentation are subject to U.S. export control laws, including without limitation the U.S. Export Administration Act and its associated regulations and may be subject to export or import regulations of other countries. Customer hereby agrees that it will not export or re-export the PubNub Services, Client Software or Documentation in any form in violation of any applicable export or import laws of any jurisdiction.
5. **Survival of Terms.** Any provision of this Agreement that contemplates performance or observance subsequent to any termination or expiration of this Agreement, including, without limitation, all provisions with respect to confidentiality, limitation on liabilities, and indemnification, shall survive any termination or expiration of this Agreement and continue in full force and effect.
6. **Compliance with Laws.** CUSTOMER REPRESENTS AND WARRANTS THAT IT SHALL COMPLY WITH THE U.S. FOREIGN CORRUPT PRACTICES ACT, UK BRIBERY ACT 2010, AND ALL APPLICABLE LOCAL ANTI-BRIBERY LAWS.
7. **Choice of law.** This Agreement and any disputes related thereto shall be governed by and construed in accordance with the laws of California as if performed wholly within that state and without giving effect to its conflict of laws principles. The United Nations Convention on Contracts for the International Sales of Goods does not apply to this Agreement. The parties agree that the exclusive venue for any dispute arising hereunder shall be the federal or state located in the City and County of San Francisco and the parties waive any objection to personal jurisdiction or venue in any forum located in that county.
8. **Relationship.** This Agreement shall not be interpreted to create an agency or consignment relationship, and neither party is a partner, employee, agent or joint venture partner of, or with, the other. Neither party may

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make any contracts, warranties or representations or assume or create any other obligations, express or implied, in the other party's name or on its behalf. Each party acknowledges that this Agreement is non-exclusive and either party may contract with third parties for the procurement or sale of comparable products or services.

9. Notices. All notices related to this Agreement shall be in writing. Notices will be effective if dispatched by hand (which shall be deemed given upon delivery), e-mail (legal@pubnub.com), or reliable overnight delivery service (which shall be deemed given on business day after mailing), unless otherwise stated in this Agreement, sent to PubNub Legal, to PubNub's address as specified on www.pubnub.com, and the Customer, to the respective address as set forth in the Customer's online registration, unless otherwise indicated by a party subject to the requirements of this subsection.
10. Waiver. Failure or delay by either party in exercising any right here under shall not operate as a waiver of such right. The descriptive headings of the sections of the Agreement and any attachments are inserted for convenience only and do not constitute a part of this Agreement.

Schedule A - PubNub Functions

- A. The following terms apply only to Customers using PubNub Functions:
 1. PubNub grants the worldwide, limited, non-exclusive, non-transferable, non-sublicenseable, revocable, limited right to Customer to insert Customer created Event Handler(s) (source code in a programming language (such as Javascript) adhering to guidelines and limitations as provided in PubNub documentation, to be executed by the PubNub Data Stream Network) as part of a block ("Customer block") into the PubNub Data Stream via the PubNub Administration Portal, a link to PubNub's REST application programming interface or a command line interface. The Customer block may also call Customer and third party application programming interfaces ("Third Party Partner APIs").
 2. Customer grants to PubNub a worldwide, limited, non-exclusive, non-transferable, non-sublicenseable (except as necessary to process the Customer block), revocable, license to use, display, perform, copy, modify and distribute (solely within the PubNub network) a Customer block (including any source code therein), solely on behalf of Customer. Customer blocks will only be accessed by authorized PubNub personnel.
 3. PubNub may remove any Customer from PubNub Functions and may prohibit any block and prohibit a Customer from submitting additional blocks. Customer is liable for any damage caused by a Customer block. Customer may use blocks created by PubNub and hosted on the PubNub BLOCKS Catalog. PubNub is not liable for any availability and performance of Third Party Partner APIs.
 4. Customer blocks are transmitted to PubNub via TLS but Customer blocks will not be encrypted in transit or at rest in the PubNub Data Stream.
 5. Pricing for PubNub Functions. PubNub Functions are charged for each execution of an Event Handler in the PubNub Data Stream Network and is set forth at www.pubnub.com/pricing. Use of Blocks also incur may Transaction charges on the PubNub Data Stream Network depending of the Customer implementation.
 6. PubNub's EU Only Storage service shall not be available with Functions.
 7. Definitions:
 - a. PubNub Data Stream means the sequence of digitally encoded coherent signals (packets of data or data packets) used to transmit or receive information that is in the process of being transmitted.
 - b. Blocks Templates are open source code libraries that are licensed under the MIT license ("blocks Templates"). For purposes of this Agreement, blocks developed by PubNub and blocks hosted in the BLOCKS Catalog are deemed Client Software.
 - c. A block consists of one or more functions written in JavaScript ("Event Handlers").

Schedule B - Service Level Terms

Subject to payment of the Service Fees, PubNub will provide the Service Levels and Support as described here in:

- A. **Service Level.** PubNub endeavors to make the PubNub Services available with 99.999% availability. PubNub measures Service Unavailability by consecutive seconds over the period of a calendar month.
- B. **Definitions**

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1. **Service Availability.** means the PubNub APIs are available for Customer use and is measured by consecutive seconds over the period of a calendar month (other than Scheduled Maintenance). Availability is calculated on PubNub data gathered through internal PubNub and third party monitoring tools.
 2. **Scheduled Maintenance.** The period during which PubNub is performing maintenance on the PubNub Services, for which the Customer has been previously alerted per the terms specified in the Scheduled Maintenance Notification paragraph below. Scheduled Maintenance is not considered Service Unavailability for purposes of PubNub's Service Unavailability SLA.
 3. **Customer Product Offerings.** The software developed by the Customer that makes use of the PubNub Service, including any PubNub Client libraries ("Libraries") that have not been modified by the Customer.
 4. **PubNub Client Libraries.** The PubNub Client Libraries made available by PubNub. The PubNub Client Libraries are designed to be embedded within the Customer Product Offerings to facilitate the use of the PubNub Services.
 5. PubNub Services. Services provided to the customer product offering by PubNub.
- C. **Scheduled Maintenance Notification.** In the event that PubNub needs to conduct Scheduled Maintenance, PubNub will (a) give Customer at least 72 hours of notice via email of any scheduled downtime for the Services, and (b) make commercially reasonable efforts to minimize the downtime.
- D. **Service Credits for Service Unavailability**
1. **Service Credit Request.** To receive a Service Credit, Customer must submit a request by sending an e-mail message to support@pubnub.com within thirty (30) days of the last reported Service Unavailability. If the Service Unavailability is confirmed by PubNub and the number of Service Unavailability seconds qualifies the Customer for a Service Credit (as specified in the "Service Credit" table below), then PubNub will issue the Service Credit to the Customer within one Billing Cycle following the month in which the request occurred.

Service Credit			
26 consecutive seconds – 99 consecutive seconds in a calendar month	100 consecutive seconds – 199 consecutive seconds in a calendar month	200 consecutive seconds – 599 consecutive seconds in a calendar month	More than 600 consecutive seconds in a calendar month
2% of PubNub Services monthly fee	5% of PubNub Services monthly fee	10% of PubNub Services monthly fee	15% of PubNub Services monthly fee

2. **Payment Procedures and Eligibility.** PubNub will apply any Service Credits only against future PubNub payments otherwise due from Customer. Service Credits shall not entitle the Customer to any refund or other payment from PubNub. Service Credits may not be transferred or applied to any other PubNub account. Any Service Unavailability occurring prior to a successful Service Credit claim cannot be used for future claims. Customers are only eligible for a Service Credit if their PubNub account is in good standing (i.e. there are no past-due unpaid PubNub invoices) during a Service Unavailability event. Unless otherwise provided in the PubNub Agreement, the Customer's sole and exclusive remedy, and PubNub's sole liability, for any unavailability or non-performance of the PubNub Services or other failure by PubNub to provide the PubNub Services is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA.
3. Service Unavailability explicitly excludes problems due to (a) Customer usage that exceeds 300% of the Customer's peak usage as measured by PubNub over the immediately preceding 30-day period, unless Customer provides PubNub at least 5 business days advance notice of such usage, (b) Explicit denial of service events, though PubNub will use commercially reasonable efforts to counter any denial of service event if one occurs, (c) Failure of three (3) or more geographically disparate PubNub data centers simultaneously, (d) Customer's attempts to overload, crash, load test, subvert, or otherwise misuse the PubNub Services in any way not explicitly allowed in the PubNub Services Customer Agreement, (e) Force Majeure as defined in the PubNub Services Customer Agreement, (f) Scheduled Maintenance, (g) problems within the Customer Product Offerings that create the perception of Service Unavailability but are not due to errors with the PubNub Services, (h) use of Client Software libraries that are more than four (4) months older



than the most recent version of the Client Software libraries, and (i) Customer Product Offerings that use modified versions of the Client Software libraries.

Schedule C - Support Agreement

If Customer selects to pay for Support, the following terms shall apply:

A. **Scope of Service.** The Support Services as defined in Section B below shall apply only to the PubNub Services set forth on the Purchase Confirmation (as defined in the Terms and Conditions between PubNub and Customer ("Terms and Conditions")), or identified on the applicable order form or invoice (in either case, the "PubNub Services").

B. **Description Of Support Services**

1. Support Services. Provided that all amounts due and payable under this Agreement have been made to PubNub, PubNub shall use commercially reasonable efforts to provide to Customer support and maintenance services that shall consist of, and be limited to, advice and assistance regarding: (a) the operational use by Customer of the PubNub Services; (b) suspected issues with the PubNub Services or documentation; (c) the identification and verification of the causes of suspected issues with the PubNub Services or documentation; (d) detours and work-arounds for identified issues, where reasonably possible; and (e) the features and capabilities of the PubNub Services and documentation (collectively, "Support Services"). PubNub is under no obligation to provide Support Services to Customer for Services or Client Software not in current release. PubNub reserves the right, in its sole discretion, to perform Support Services by means of making available to Customer a later release of the Client Software or other aspects of the PubNub Services. PubNub is not responsible to provide Support Services to Customer's end users or anyone other than the designated Customer Contacts.

a. Gold Support Services will be available 5 days a week (except PubNub holidays) from 9 AM to 5 PM (Pacific Time). Gold Support customers will have access to the PubNub Support team via Web Forms and Email and, at PubNub's discretion, On-line Screen Sharing. Gold Support also includes a one (1) hour Best Practices Session.

b. Platinum Support Services will be available 5 days a week (except PubNub holidays) 24 hours per day, with priority handling; provided PubNub support personnel are available 7 days a week, 24 hours per day, via a phone line for Critical and Urgent issues. Platinum Support will have access to the PubNub Support team via Web Forms and Email and, at PubNub's discretion, On-line Screen Sharing and Phone. Platinum Support also includes a 1-hour Best Practice Session, a half-day (4 hours) Architecture Review as well as PubNub will provide an executive sponsor to help assist with any issues.

c. Event Support Services will be available 24 hours per day, 7 days a week, with priority handling, via a dedicated PubNub support manager via email, phone and On-Line Screen Sharing, and an architecture readiness review. Customer is entitled to at least 3 hours of dedicated phone support per event. Customer must provide access to PubNub to the Event Software and suitable instructions for usage at least two (2) business days prior to the Event. Support includes live monitoring of the event.

2. Provision of Support Services. In the provision of the Support Services, PubNub will use commercially reasonable efforts to provide remote telephonic, email, and website support during the periods set forth above for the applicable level of support, which will consist of: (a) receiving the Company communication, recording it and sending a confirmation of receipt to Company; and (b) qualifying the problem; and (c) providing a written action plan to Customer to resolve the problem or provide a temporary solution.

3. Classification of Issues. Any issues reported in the PubNub Services will be categorized, in PubNub's sole discretion, as follows:

a. Critical -- Issue is affecting the majority of users of an in-production app, or preventing an impending launch of a new production app.

b. Urgent -- Issue is affecting a minority of users of an in-production app.

c. Development -- Issue is affecting the customer ability to develop software with PubNub.

d. "Issue" shall mean any mistake, problem, defect, malfunction or deficiency, which causes behavior of the PubNub Services which is non-compliant with its specifications. In the provision of the Support Services, Customer's sole and exclusive remedy for resolving Issues and PubNub's sole obligation is that PubNub

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shall use commercially reasonable efforts to provide corrections, detours or work-arounds any reproducible Issues. PubNub, however, does not warrant that any Issues is capable of complete remedy.

4. Commitments on Response Time. PubNub shall use commercially reasonable efforts to respond to Issues solely in accordance with the following schedule:

a. Gold Support.

Severity	Response time
Critical	
Urgent	
Development	

b. Platinum Support.

Severity	Response time	Update Frequency
Critical	Every 4 hours	
Urgent	Every 8 hours	
Development	Every 48 hours during business day	

c. Event Support.

Severity	Response time	Update Frequency
Critical	10 minutes	Every hour
Urgent	10 minutes	Every hour

5. Updates and upgrades to the PubNub Services. Provided that all Fees due and payable under the applicable Terms and Conditions have been paid to PubNub, PubNub will provide updates and upgrades at no additional charge to Customer during the Term, pursuant to the Terms and Conditions. All Issues corrections, modifications, bug fixes, patches, and other updates and upgrades provided to Customer under the Terms and Conditions or this Agreement shall be deemed "Client Software" and subject to all of the provisions of the applicable Terms and Conditions.

C. Obligations Of Customer. During the term of this Agreement, Customer shall: (1) use commercially reasonable efforts to use only the then current release of the applicable Client Software; (2) ensure that the then current release is used in accordance with the applicable documentation and only by competent, trained employees or by persons under their supervision; (3) always perform Customer Support Obligations (as defined below) and use all reasonable efforts in the initial problem identification and isolation obligations; (4) keep full security copies of the current release, Customer databases and Customer computer records in accordance with best computing practices; (5) not request, permit or authorize anyone other than PubNub or PubNub's designees to provide any support services with respect to the PubNub Services or any updates thereto; (6) cooperate fully with PubNub personnel in the diagnosis of any Issues or defect in the current release or documentation; (7) make available to PubNub, free of charge, all information, facilities, and services reasonably required by PubNub to enable PubNub to perform the Support Services, including without limitation computer runs, memory dumps, printouts, data preparation, office accommodation, typing and photocopying; and (8) provide such telecommunication and remote access facilities as are reasonably required by PubNub for testing and diagnostic purposes at Customer's expense. "Customer Support Obligations" shall mean: (a) generating a response to inquiries by Customer's end users, either electronically or via telephone; (b) the identification of system level Issues, and isolating such Issues; and (c) communicating information from (a) and (b) to PubNub. Customer's failure to comply with the terms of this Section will relieve PubNub of its obligations in connection with any such failure.

D. Additional Services. PubNub may also offer Customer additional services at such charges and upon such terms and conditions as provided by PubNub to Customer upon request. Examples of additional services include: (1) system integration and associated services for the PubNub Services; (2) consultation for resolution of problems experienced by Customer in operating the PubNub Services for problems not covered by this Agreement; (3) consultation on, development of, and installation of, updates; (4) preventive maintenance; (5) additional training; and (6) on-site support. PubNub will not provide any additional service until the parties have executed a separate written agreement setting forth the charges and terms and conditions therefor.

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E. **Support Services Exclusion**

- a. General Exclusions. Support Services do not include installation, hardware, operating system or any environment support.
- b. Specific Exclusions. The following services are expressly excluded from the scope of this Agreement: (a) Client Software that has been altered, damaged or modified or if any portion of the Client Software has been incorporated with or into other software without PubNub's prior written consent; (b) significant modifications to Customer's operating system or environment from those applicable at the time the PubNub Services was implemented; (c) Client Software that has been used under abnormal conditions or not in accordance with the instructions provided in the applicable documentation or any additional instruction provided by PubNub; and (d) malfunctions due to reasons external to the PubNub Services including, but not limited to, failure or fluctuation of electrical supplies, hardware features, accidents or natural disasters. For any of the preceding cases PubNub may, in its sole discretion, determine whether to intervene to resolve the problem.

F. **Warranty Disclaimer**. THE SUPPORT SERVICES ARE PROVIDED "AS IS" AND PUBNUB DISCLAIMS ALL INDEMNITIES AND WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

G. **Confidentiality Of Support Services**. The advice, assistance and all other information provided by PubNub in connection with the Support Services shall be deemed "Confidential Information" of PubNub under the Terms and Conditions.