PubNub

TERMS AND CONDITIONS

Effective Date: July 15, 2021

IMPORTANT – PLEASE READ THESE TERMS AND CONDITIONS ("AGREEMENT") CAREFULLY BECAUSE THEY ARE A LEGALLY BINDING AGREEMENT WITH PUBNUB INC. ("PUBNUB"). BY ACCESSING AND/OR USING THE PUBNUB SERVICES, OR BY CLICKING ON THE "SIGN UP NOW" OR SIMILAR BUTTON WHICH REFERENCES THIS AGREEMENT, OR BY SIGNING AN ORDER FORM WHICH INCORPORATES THIS AGREEMENT BY REFERENCE, CUSTOMER AGREES ON BEHALF OF AN INDIVIDUAL AND/OR LEGAL ENTITY ("CUSTOMER") TO BE LEGALLY BOUND BY ALL THE TERMS OF THIS AGREEMENT.

PUBNUB MAY UPDATE THE PUBNUB SERVICES AND PUBNUB SOFTWARE AT ANY TIME IN ITS SOLE DISCRETION.

1. **Definitions.**
    1.1. **"Affiliate"** shall mean with respect to a party, any person or entity which directly or indirectly controls, or is controlled by, or is under the common control with such party, through majority ownership of fifty percent (50%) or more of the voting securities or equity interests.
    1.2. **"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 of its Authorized Users' breach thereof.
    1.3. **"Customer Data"** shall mean data that is published, uploaded, or submitted by Customer or its Authorized Users or end users to the PubNub Services.
    1.4. **"Customer Software"** shall mean the Customer-provided object and source code software used to access the PubNub Services.
    1.5. **"Documentation"** shall mean PubNub's usage guidelines and standard technical documentation for the PubNub Services or PubNub Software, as updated by PubNub from time to time.
    1.6. **"Order Form"** shall mean an order to access the PubNub Services or related services governing the pricing, executed by the parties and that references and is governed by this Agreement.
    1.7. **"PubNub Admin Portal"** shall mean the section of the PubNub website which is password protected, allowing the Customer to configure account settings, purchase other PubNub Services, and view analytics about their usage of the PubNub Services, located at https://admin.pubnub.com.
    1.8. **"PubNub Pricing Page"** shall mean the PubNub web page located at www.pubnub.com/pricing/ which includes the pricing and pricing plans for the PubNub Services.
    1.9. **"PubNub Services"** shall mean the various product and service offerings of PubNub, as described in the Documentation, including any updates thereto made by PubNub from time to time and further described at: www.pubnub.com/docs/transaction-classification.
    1.10. **"PubNub Software"** shall mean the PubNub-provided object and source code software that is designed to be embedded within the Customer Software to facilitate the use of and access to the PubNub Services.
    1.11. **"Service Period"** shall mean one month or any other period specified in an Order Form, and includes any renewals.
    1.12. **"Service Level Agreement"** means the PubNub Service Level Agreement, the current version of which is at www.pubnub.com/SLA.
    1.13. **"Support Service"** means the service provided pursuant to the PubNub Support Service Agreement, the current version of which is at www.pubnub.com/support-agreement.

2. **Licenses Grants.**
    2.1. 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 and PubNub Software as described in the Documentation or this Agreement.
    2.2. PubNub shall have a non-exclusive, non-transferable, worldwide, perpetual, irrevocable license to collect, analyze or use anonymized statistical and aggregated data relating to its delivery of the PubNub Services and PubNub Software, solely for the development, tuning, and scaling of the PubNub Services

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and PubNub Software, including reports for internal use purposes as well as reports available to the Customer, which may be offered at an additional cost.

2.3. PubNub acts solely as a network transport, and does not actively filter or inspect Customer Data sent by Customer or Customer's end users, unless requested by the Customer or if PubNub reasonably suspects or becomes aware of use of the PubNub Services or PubNub Software in contravention of the Documentation or this Agreement.

3. **License Restrictions.**

3.1 Except as specifically provided in this Agreement, the license grant under this Agreement does not permit Customer, its Authorized Users, 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 PubNub Software;
(b) sublicense, distribute or pledge the PubNub Services or PubNub Software;
(c) access, use, or copy any portion of the PubNub Services or PubNub Software to develop or support any product or service that is competitive with PubNub;
(d) lease, rent or commercially share or otherwise use the PubNub Services or PubNub Software for purposes of providing a service bureau or providing third party hosting, application, or service provider type services;
(e) remove any identification, patent, trademark, copyright, or other notice from the PubNub Services or PubNub Software, or 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;
(f) create multiple free PubNub accounts for the purposes of avoiding paying fees once the free account usage hits a threshold where payment is required;
(g) 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 or PubNub Software;
(h) load test the PubNub Services without the prior written approval of and coordination with PubNub;
(i) use the PubNub Services or PubNub Software in connection with any activity for which may result in tangible or intangible property damage, or death or serious body injury;
(j) attempt to gain unauthorized access to the PubNub Services or PubNub Software or the related systems or networks, including access to other PubNub customers' data;
(k) use the PubNub Services or PubNub Software, 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;
(l) interfere with or disrupt the integrity or performance of the PubNub Services (or third-party data contained therein) or the PubNub Software; and/or
(m) use the PubNub Software or PubNub Services in a manner that constitutes misuse, abuse, disrupts the PubNub Services, or is otherwise in contravention of this Agreement.

3.2 Customer is responsible for processing and handling notices it receives from any third party claiming that Customer Data connected with the PubNub Services or PubNub Software violates such party's rights, including, without limitation, notices pursuant to the Digital Millennium Copyright Act.

3.3 PubNub may terminate this Agreement if it determines in its sole discretion that the PubNub Services or PubNub Software are used in a manner that constitutes misuse, abuse, or unintended use in contravention of the Documentation or this Agreement by Customer, its Authorized Users, its end users, or third parties acting through or on behalf of Customer. PubNub reserves the right to block, without liability, any Customer Data or deactivate a Customer account that violates the terms of this Agreement.

4. **Customer Obligations.**

4.1. Customer is responsible for and agrees to the following:
(a) ensure that each username and password issued to Customer will be used only by an Authorized User, because Customer is solely responsible for all activities that occur under these usernames;
(b) maintain the confidentiality of all usernames and passwords;
(c) only allow Authorized Users to use its account, usernames or passwords;
(d) ensure that all Authorized Users are bound by the terms and conditions of this Agreement;
(e) promptly notify PubNub if it becomes 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 or PubNub Software. PubNub is not and will not be liable for any loss or damage arising from unauthorized use by Customer or its Authorized Users of any of its (or their) accounts, usernames or passwords;

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(f) ensure the accuracy, quality, integrity and legality of Customer Data and of the means by which Customer acquires or has acquired Customer Data, including, but not limited to, ensuring that it has obtained all necessary consents to use and transmit Customer Data; Customer has sole control over the Customer Data uploaded in the PubNub Services, and acknowledges that PubNub does not review, filter or control the Customer Data;

(g) promptly fix any bugs in Customer Software that causes the PubNub Services to be accessed incorrectly, including, for example, software that generates incorrect API calls to the PubNub Services, and software that uses incorrect authentication tokens to access the PubNub Services; and

(h) ensure that Customer Software is protected from the ability to transmit, install or impose upon Customer's end users or PubNub Services or PubNub Software any virus, malware, tracking software or system or other technique that is or can be used for any unlawful purpose.

4.2. **Customer Data.**

    (a) **Ownership**. As between the parties, Customer retains all ownership in and to Customer Data. Customer will be solely responsible for all Customer Data, including any personal data, that is sent through the PubNub Services. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use Customer Data.

    (b) **License**. Customer grants to PubNub a non-exclusive, worldwide, royalty-free license, and all necessary rights and licenses in its Customer Data that is necessary for PubNub to provide the PubNub Services, including the right to process and transmit Customer Data hereunder or as otherwise specified in this Agreement.

5. **Term & Termination.**

    5.1. **Term**. The term of this Agreement shall begin upon acceptance of this Agreement and shall auto renew for additional Service Periods unless earlier terminated as expressly set forth in this Agreement.

    5.2. **Termination by Customer**. The Customer may terminate this Agreement by sending an email to support@pubnub.com, and such termination shall be effective at the end of the then current Service Period provided it is received at least thirty (30) days prior to the end of the then current Service Period ("Cancellation Period"). If cancellation is later than the Cancellation Period, Customer will be charged for one additional Service Period, and the termination of the Agreement and Service Period will be effective as of the end of that additional Service Period.

    5.3. **Termination by PubNub**. PubNub may terminate this Agreement and any Service Period by providing Customer with thirty (30) days prior written notice, except PubNub may immediately terminate any PubNub Services that are provided free of charge.

    5.4. **Termination for Breach**. Either party may terminate this Agreement and the Service Period upon notice to the other party if the other party materially breaches any 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; provided further that in the event a breach is not curable, the non-breaching party may immediately terminate on written notice to the other party.

    5.5. **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, PubNub 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 5.2 above. Customer shall discontinue use of the PubNub Services and PubNub Software and Customer shall be responsible for usage and payment arising from continued calls to PubNub Services and PubNub Software (even if a Customer key is disabled) after expiration or termination of this Agreement.

6. **Ownership of PubNub Services and Trademarks.** Customer acknowledges and agrees that the PubNub Services, PubNub Software and PubNub's trademarks, and all intellectual property and other proprietary rights related thereto, as well as any modifications, enhancements or derivative works (including all feedback relating to the use of the PubNub Services) of any of the foregoing, are and will remain the exclusive property of PubNub, its Affiliates or its licensors. PubNub reserves all rights not expressly granted to Customer in this Agreement.

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7. **Customer Trademark and Brand Usage.** During the term of this Agreement, PubNub may include Customer's name and logo on a list of customers of the PubNub Services, and Customer agrees to the use of its name and logo in marketing materials.

8. **Fees / Payment**
   8.1. **Fees.** The fees for the PubNub Services are specified on the PubNub Pricing Page, the PubNub Admin Portal, or specified on an Order Form (if executed) and are further described in Schedule C, PubNub Services Descriptions, which is incorporated herein by reference.
   8.2. **Payment**. The Customer will be invoiced monthly unless otherwise agreed to, including in an Order Form, and payment is due upon receipt of invoice. If payment is not received within fifteen (15) days of receipt of invoice, the PubNub Services may be terminated in PubNub's sole discretion. Customer agrees to pay all costs of collection, including attorney's fees and costs, on any outstanding balance(s).
   8.3. **Billing Contact**. PubNub will send billing correspondence to the email address specified by Customer in the PubNub Admin Portal or Order Form.
   8.4. **Payment Disputes; Interest**. In the event of a good faith dispute as to the calculation of a fee (or fees), Customer shall immediately give written notice to PubNub stating the details of any such dispute and shall promptly pay any undisputed amount. PubNub's acceptance 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 of invoice shall accrue interest at a rate of one percent (1%) per month or the maximum lawful rate, whichever is less. Failure to make timely payments of undisputed amounts shall constitute a material breach hereunder and shall entitle PubNub to suspend its provision of the PubNub Services on ten (10) business days prior notice to Customer and require payment in advance until Customer's account is paid in full. Customer may not set off, deduct or otherwise withhold amounts due hereunder.
   8.5. **Taxes**. All fees charged by PubNub do not include such taxes or any other taxes. Customer shall be solely 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 payments under this Agreement.
   8.6. **Refunds**. No refunds will be given by PubNub unless expressly specified in this Agreement.

9. **Confidential Information.**
   9.1. **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 that a reasonable person should know to be confidential. Notwithstanding the foregoing, the PubNub Services, PubNub Software, the Documentation, Support Services, training materials, customer listings, future offerings and products, business plans, investors, pricing, including the fees paid hereunder, user IDs and passwords shall be deemed Confidential Information of PubNub. Confidential Information shall not include any information which is: (i) already is or becomes publicly known through no fault of the Receiving Party, (ii) created by the Receiving Party without use of or reference to any of the disclosing Party's Confidential Information, or (iii) otherwise known to the Receiving Party, without restriction and through no wrongful conduct of the Receiving Party. 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.
   9.2. **Compelled Disclosure**. The Receiving Party may disclose Confidential Information (i) that it is required to disclose 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 (ii) to potential investors pursuant to acquisition or merger activity directly related to the Receiving Party, as part of the associated due diligence process.
   9.3. **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 similar information, but in no event with less than reasonable care. Receiving Party shall, as soon as reasonably practical after discovering a breach of this Confidential Information 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 use, 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 an exclusive remedy for any breach of confidentiality, but shall be in addition to all other rights and remedies available at law or in equity.

10. PubNub Warranties.
  10.1.   **Limited Warranty**. PubNub warrants that it has full power and authority to enter into and perform this Agreement.
  10.2.   **Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTY AS SET FORTH IN THIS SECTION 10, THE PUBNUB SERVICES, PUBNUB SOFTWARE, AND SUPPORT SERVICES ARE PROVIDED "AS IS" AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES ARE HEREBY DISCLAIMED WITH RESPECT TO THE PUBNUB SERVICES AND THE PUBNUB SOFTWARE AND OTHERWISE IN CONNECTION WITH THIS AGREEMENT, 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. **PUBNUB DOES NOT WARRANT THAT CUSTOMER'S USE OR OPERATION OF THE PUBNUB SERVICES OR PUBNUB SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR THAT THE PUBNUB SERVICES OR PUBNUB SOFTWARE ARE DESIGNED TO MEET CUSTOMER'S BUSINESS REQUIREMENTS.**

11. Customer Warranties. Customer warrants the following:
(a) if a legal entity, it is a duly formed entity (i.e., corporation or limited liability company);
(b) it is qualified to 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 has been duly authorized;
(e) it has all right necessary to provide, access and modify the Customer Data, including rights to grant the licenses to PubNub as specified in this Agreement, and to distribute such Customer Data across the Internet using the PubNub Services and PubNub Software;
(f) its 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 or any law or regulation regarding privacy rights;
(g) Customer shall employ reasonable professional standards in performance of its rights and obligations under this Agreement, and shall avoid deceptive, misleading, unethical, or other practices that may be detrimental to PubNub, the PubNub Services or the PubNub Software;
(h) it will not attempt to access, or access any information or data provided or controlled by any other Customer or end user of PubNub and will abide by and will not circumvent or otherwise disable any security or data protection measures implemented by PubNub; and
(i) it will not, and will not permit any Authorized User or end user 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.

12. Limitation of Liability. PUBNUB'S AGGREGATE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT, WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, OR ANY OTHER CAUSE OF ACTION, SHALL BE LIMITED TO THE LESSER OF THE FEES PAID OR DUE FOR THE PUBNUB SERVICES AND/OR SOFTWARE IN THE 12 MONTHS PRIOR TO WHICH THE INCIDENT RELATES, OR USD $2,500. PUBNUB SHALL NOT BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST INCOME, LOST REVENUE, LOST PROFITS, BUSINESS INTERRUPTION, OR DAMAGES FOR GOODWILL, OR PROCUREMENT OF SUBSTITUTE SERVICES, ARISING OUT OR IN ANY WAY RELATED TO THIS AGREEMENT, INCLUDING THE USE OR THE INABILITY TO USE THE PUBNUB SERVICES AND/OR PUBNUB SOFTWARE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. Indemnification.

13.1. **Customer Exclusive Remedies**. If the PubNub Services, PubNub Software 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 PubNub Software with non-infringing technology that is materially, functionally equivalent or superior; (ii) modify the either or both of PubNub Services and the PubNub 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 PubNub 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 PubNub Services and/or PubNub Software (as applicable) and PubNub will refund the pro-rata portion of the pre-paid fees attributable to the infringing PubNub Services and/or PubNub Software (as applicable) for the portion of the Service Period Customer is not able to use the PubNub Services and/or PubNub Software. 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 or the PubNub Software under this Agreement.

13.2. **Customer's Indemnification**.

    (a)   Customer agrees that the Customer Data as well as Customer's use of the Customer Data within the PubNub Services and PubNub Software shall not: (a) infringe any third party's copyright, patent, trademark, trade secret or other intellectual property or proprietary rights or rights of publicity or privacy; (b) include or constitute 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.

    (b)   Customer shall indemnify, defend and hold PubNub harmless from any third party claims arising from: (a) Customer's breach of subsections (a), (b) and/or (c) of subsection 13.2.1; (b) breach of the warranties set forth in Section 11; or (c) modifications or alterations to the PubNub Services. PubNub will promptly notify Customer in writing of such claim, and Customer shall have the sole control of such defense and all settlement negotiations, although PubNub will provide reasonable assistance to Customer in connection with the foregoing at Customer's request and expense.

14. Miscellaneous.

14.1. **Entire Agreement**. This Agreement, and any of its schedules, 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 this 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 hereunder shall not operate as a waiver of such right or any other right.

14.2. **Right to Amend.** PubNub, at its sole discretion, reserves the right to modify the terms and conditions of this Agreement at any time to reflect new features without notice, if the modifications will not materially decrease PubNub's overall material obligations during the Service Period. For material changes, PubNub shall notify the Customer of an updated agreement available for online acceptance or other designated manner. PubNub shall provide the Customer with at least seven (7) days to accept the terms of the updated agreement. After such period, the updated agreement shall be deemed to govern the following month the notice was given. Customer shall be required to accept the updated Agreement if it desires to continue to use the PubNub Services and PubNub Software.

14.3. **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 permitted assigns.

14.4. **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, pandemic, 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.

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14.5. **Export**. The PubNub Services, PubNub 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, PubNub Software or Documentation in any form in violation of any applicable export or import laws of any jurisdiction.

14.6. **Survival of Terms**. Any provision of this Agreement that contemplates performance or observance after termination or expiration of this Agreement, including, without limitation, all provisions with respect to Confidential Information, Limitation of Liability, Indemnification, and Fees/Payment, shall survive any termination or expiration of this Agreement and continue in full force and effect. At all times, the Customer shall be responsible for any use of PubNub Services and/or PubNub Software and subsequent fees owed.

14.7. **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. The United Nations Convention on Contracts for the International Sales of Goods does not apply to this Agreement.

14.8. **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 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.

14.9. **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 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.

14.10. **Notices**. All notices related to this Agreement shall be in writing, effective if dispatched by reliable overnight delivery service (which shall be deemed given on business day after mailing), and sent to PubNub's address (Att: Legal) as specified on www.pubnub.com with a copy via e-mail (legal@pubnub.com), and to the Customer, at the respective address and email address as set forth in the Customer's online registration.

14.11. **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 - Service Level Agreement

Subject to Customer's payment of fees in accordance with the Agreement, PubNub will provide the Service Level Agreement as described herein:

1. **Service Level.** PubNub endeavors to make the PubNub Services available in accordance with the below Service Availability. PubNub measures Service Unavailability by consecutive minutes over the period of a calendar month.

2. **Definitions**

    2.1 **"Service Availability."** This means that the PubNub Services is available for Customer use and is measured by the number of minutes 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.

    2.2 **"Service Unavailability."** This means the number of minutes that the PubNub Services is unavailable for use over a period of a calendar month (other than Scheduled Maintenance).

    2.3 **"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 this Service Level Agreement.

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3. **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, its website, or via the Admin Portal of any Scheduled Maintenance for the PubNub Services, and (b) make commercially reasonable efforts to minimize the period of Scheduled Maintenance.

4. **Service Credits for Service Unavailability**

   4.1 **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 minutes 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, according to the following Service Credit criteria:

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 Service monthly fee	5% of PubNub Service monthly fee	10% of PubNub Service monthly fee	15% of PubNub Service monthly fee

   4.2 **Payment Procedures and Eligibility.** PubNub will apply any Service Credits only against future PubNub payments due from the 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 Agreement, the Customer's sole and exclusive remedy, and PubNub's sole liability, for any Service Unavailability is the receipt of a Service Credit (if eligible) in accordance with the terms of this Service Level Agreement.

   4.3 **Service Unavailability Service Credit Exclusions.** 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 or Customer usage that exceeds the PubNub General API Limits (https://www.pubnub.com/docs/platform/resources/limits), unless Customer provides PubNub at least 10 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 Agreement or Documentation, (e) any force majeure event, as described in the Agreement, (f) Scheduled Maintenance, (g) problems within the Customer Software that create the perception of Service Unavailability but are not due to errors with the PubNub Services or PubNub Software, (h) use of PubNub Software that is more than four (4) months older than the most recent version of the PubNub Software, and (i) Customer Software that uses modified versions of the PubNub Software.

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Schedule B - Support Agreement

For an additional cost, the Customer may elect (or upgrade to) a premium support plan by contacting support@pubnub.com. The following terms shall apply to the PubNub Support Services:

1. **Scope of Support Services.** PubNub will only provide support ("Support Services") for the PubNub Services and PubNub Software as further specified at: https://www.pubnub.com/pricing.

2. **Definitions.**
   a. **Classification of Issues**. Any Issues reported in the PubNub Services or PubNub Software will be categorized, in PubNub's sole discretion, as follows:
      i. **Critical** -- Issue is affecting the majority of users of an in-production app, or preventing an impending launch of a new production app.
      ii. **Urgent** -- Issue is affecting a minority of users of an in-production app.
      iii. **Development** -- Issue is affecting the customer's ability to develop Customer Software.
   b. "**Issue**" shall mean any mistake, problem, defect, malfunction or deficiency, which causes behavior of the PubNub Services or PubNub Software which is in contravention of the Agreement or Documentation.

3. **Description of Support Services.**
   a. In the provision of the Support Services, PubNub will use commercially reasonable efforts to provide support during the periods set forth above for the applicable level of support, which will consist of:
      i. receiving the Customer communication, recording it and sending a confirmation of receipt to Customer;
      ii. qualifying the Issue; and
      iii. providing a written action plan to the Customer to resolve the Issue or provide a temporary solution.
      iv. advice and assistance regarding:
         1. the operational use by Customer of the PubNub Services and/or PubNub Software;
         2. suspected Issues with the PubNub Services or PubNub Software or Documentation;
         3. the identification and verification of the causes of suspected Issues with the PubNub Services, PubNub Software, or Documentation;
         4. detours and work-arounds for identified Issues, where reasonably possible; and
         5. the features and capabilities of the PubNub Services and PubNub Software and Documentation.
   b. In the provision of the Support Services, Customer's sole and exclusive remedy for resolving Issues and PubNub's sole obligation is that PubNub shall use commercially reasonable efforts to provide corrections, detours or work-arounds any reproducible Issues. PubNub, however, does not warrant that any Issue is capable of complete remedy.
   c. PubNub will provide updates, upgrades, issues corrections, modifications, bug fixes, patches, and other updates at no additional charge to the Customer during the Service Period, pursuant to the Agreement.

   d. **Event Support Services.**
      i. Subject to an additional fee by contacting support@pubnub.com, PubNub will provide Event Support Services (minimum 2 hours per event).
      ii. The Customer must provide written notice to PubNub a minimum of at least ten (10) business days prior to the event. If a Customer does not provide the minimum notice for events, PubNub may in its sole discretion not guarantee the Service Level Agreement and response time. Support includes live monitoring of the event.
      iii. If applicable, Customer must provide PubNub with access to the Customer Software (if applicable) and suitable instructions for usage to PubNub at least ten (10) business days prior to the event.

   4. **Obligations of Customer**.
      a. During the term of the Agreement, Customer shall:
         i. use only the then current release of the applicable PubNub Software;
         ii. 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;

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  iii. use all reasonable efforts in the initial Issue identification and isolation obligations;

  iv. co-operate fully with PubNub personnel in the diagnosis of any Issues or defect in the current release or Documentation;

  v. make available to PubNub, free of charge, all information, facilities, and services reasonably required by PubNub to enable PubNub to perform the Support Services; and provide such telecommunication and remote access facilities as are reasonably required by PubNub for testing and diagnostic purposes at Customer's expense.

 b. Customer's failure to comply with the terms of this section will relieve PubNub of its obligations in connection with the provision of any Support Services related to such failure.

5. **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 Support Services:

  i. PubNub Software that has been altered, damaged or modified or if any portion of the PubNub Software has been incorporated with or into other software without PubNub's prior written consent;

  ii. significant modifications to Customer's operating system or environment from those applicable at the time the PubNub Services were implemented;

  iii. PubNub Software that has been used under abnormal conditions or not in accordance with the applicable Documentation or any additional instructions provided by PubNub; and

  iv. malfunctions due to reasons external to the PubNub Services or PubNub Software 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.

 c. **Limitations.**

  i. PubNub is under no obligation to provide Support Services to Customer for PubNub Services or PubNub Software not in the most current release or as otherwise specified in the Documentation.

  ii. PubNub reserves the right, in its sole discretion, to perform Support Services by means of making available to Customer a later release of the PubNub Software or other aspects of the PubNub Services.

  iii. PubNub is not responsible for providing Support Services to Customer's end users or anyone other than the designated Customer Authorized User contacts.

Schedule C - PubNub Services Descriptions

These Service Descriptions provide details for specific PubNub Services and PubNub Software, and supplement and form part of the PubNub Terms of Service. Additional terms are described in the PubNub Pricing Page: https://www.pubnub.com/pricing/transaction-classification and Documentation: www.pubnub.com/docs/.

SERVICE DESCRIPTIONS

1. "**Edge Transactions**" shall mean API calls to the PubNub Services that do not result in replication to other PubNub data centers. Examples of these are Subscribe requests, reads from Storage or Mobile Push service API calls.

2. "**Event Handlers**" means a Function which consists of one or more functions written in JavaScript and which adheres to guidelines and limitations as provided in the PubNub Documentation, and which will be executed by the PubNub Services.

3. "**Files**" shall mean Customer-provided text or binary types of data (e.g. document, picture, image, audio or video file, data library, application, or other collection of data) that are initiated, submitted, uploaded or downloaded by Customer or its Authorized Users or end users, to the PubNub Services, whether in Message or by itself.

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4. "**Functions**" shall mean either Customer Software deployed on the PubNub Services and runs within PubNub's operational environment, or PubNub Software that is hosted on the PubNub Integration Catalog located https://www.pubnub.com/integrations/.

5. "**Functions Executions**" are accrued whenever a Function is executed based on the configuration settings by the Customer within the PubNub Admin Portal.

6. "**Messages**" shall mean a message that is sent or received through 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). Messages are also generated by the use of PubNub Presence, Storage & Playback, and PubNub Real-Time Analytics services.

7. "**Message Actions**" are API calls to the PubNub Services that intend to associate data to past messages to support features like Delivery/Read Receipts, Reactions, etc.

8. "**Monthly Active Users (MAU)**" shall mean one universally unique identifier (UUID) that connects at least once to the PubNub Services in a calendar month period. A single user who connects to the PubNub Services multiple times in one calendar month will be counted as one MAU.

9. "**Persisted Data**" means data that is saved in the PubNub Data Stream Network and is measured as the peak of stored data for each calendar month.

10. "**PubNub Integrations**" means open source code libraries. For purposes of the Agreement, integrations developed by PubNub and integrations hosted in the PubNub Integration Catalog are deemed PubNub Software.

11. "**Replicated Transactions**" are any of the following API calls to the PubNub Services to generate Access Tokens or which are otherwise replicated across data centers. Examples of these are Publish or Storage write requests that are set forth in the "Replicated Transactions" section at https://www.pubnub.com/docs/transaction-classification.
"**Signals Transactions**" is part of a high-volume stream of payloads (each up to 30 bytes) intended to inform or instruct an application, without including information that would be directly reflected in an application UI (such as rideshare driver lat/long measurements, a command to switch on a chat app typing indicator, an update from an IoT device, etc.).

12. "**Transaction Plan Customer**" shall mean a Customer who is on a PubNub Pricing Plan specified on the PubNub Pricing Page.

13. "**Transactions**" means the different transactions that are set forth at https://www.pubnub.com/docs/transaction-classification.

14. "**Transaction Type**" means the various API calls and related computing units that use the PubNub Services.

15. "**Transaction Unit**" is a Transaction whose total size in network traffic does not exceed 2048 bytes. Transactions that exceed 2048 bytes are counted as multiple Transaction Units, calculated based on each 2048 byte unit. For example, a Transaction size of 2,900 bytes is counted as 2 (two) Transaction Units. A Transaction size of 4,300 bytes is counted as 3 (three) Transaction Units.