



GSA Approved 2021-01-28

## GENERAL TERMS AND CONDITIONS – GOVERNMENT

These General Terms and Conditions (“Terms and Conditions”) are by and between OnSolve, LLC (“OnSolve”) and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (the “Customer” or “Ordering Activity”) named on any Order Form (as defined below) that incorporates these Terms and Conditions effective as of the date of the Customer’s signature on such Order Form (the “Effective Date”).

By signing an Order Form or executing this Agreement in writing, Customer agrees that the Services shall be governed exclusively by these Terms and Conditions and any additional terms stated in an Order Form, unless Customer and OnSolve have in place a signed written agreement that supersedes these Terms and Conditions.

OnSolve may change the non-material provisions of these Terms and Conditions from time to time which changes shall be effective upon the commencement of any applicable Renewal Term (as defined below). Any material updates to these Terms and Conditions shall be presented to Ordering Activity for review and will not be effective unless and until both parties sign a written agreement updating these terms.

### 1. CERTAIN DEFINITIONS

- 1.1. “Administrator” means an individual person or application capable of performing administrative functions including initiating Alerts, managing data for Contacts or groups, running or viewing reports, managing User roles, activating/deactivating features, setting default values and/or using any of the features in the administrative area of the user interface.
- 1.2. “Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control with, a party hereto, where “control” means the control, through ownership or contract, of more than 50% of all the voting power of the shares entitled to vote for the election of the entity’s directors or members of the entity’s governing body; provided that such entity shall be considered an Affiliate only for the time during which such control exists. All references to OnSolve in these Terms and Conditions shall be deemed to be references to OnSolve and its Affiliates and all references to Customer in these Terms and Conditions shall be deemed to be references to Customer and its Affiliates.
- 1.3. “Alerts(s)” means notifications / messages issued through the Subscription Service, whether or not responded to by any Contact.
- 1.4. “API Contacts” means an individual person whose information is stored in an external third-party application database (not in the Subscription Services database) capable of only receiving and responding to Alerts and who may not log into the Subscription Services.
- 1.5. “Applicable Law” means any statute, ordinance, judicial decision, executive order, directive or regulation having the force and effect of law in each case to the extent applicable to a party, the Services or, in connection with these Terms and Conditions.
- 1.6. “Contact” means an individual recipient only capable of receiving and responding to Alerts and, if permitted, updating its own profile and includes API Contacts.
- 1.7. “Content” means content, data, text, messages and other material contained in an Alert or sent by Customer through the Subscription Services.
- 1.8. “Documentation” means any explanatory materials, such as user manuals, training manuals, specifications regarding the implementation and use of the Subscription Services (electronic or written) that is provided by OnSolve regarding the Subscription Services, as may be updated from time to time.
- 1.9. “Fees” means any fees due for the Services set forth on the applicable Order Form in accordance with the GSA Schedule Pricelist, including but not limited to all fees for Subscription Services, Non-Recurring Services and Professional Services and any applicable Transaction Fees.
- 1.10. “Initial Term” has the meaning provided in Section 9.1.

- 1.11. "Order Form" means the service order form incorporating these Terms and Conditions which sets out the specific Services to be provided to Customer.
- 1.12. "Non-Recurring Services" means the non-recurring services identified on Customer's OrderForm.
- 1.13. "Professional Services" means the professional services identified on Customer's Order Form or any statement of work to be provided by OnSolve to Customer.
- 1.14. "Renewal Term" has the meaning provided in Section 9.1.
- 1.15. "Services" means those services to be provided by OnSolve to Customer as set forth on the applicable Order Form, including but not limited to the Subscription Services, Non-Recurring Services and Professional Services.
- 1.16. "Sensitive Data" means any personally identifiable information relating to health/genetic or biometric information; religious beliefs or affiliations; political opinions or political party membership; labor or trade union membership; sexual preferences, practices or marital status; national, racial or ethnic origin; philosophical or moral beliefs; criminal record, investigations or proceedings or administrative proceedings; financial, banking or credit data; date of birth; social security number or other national id number, drivers' license information; or any other "sensitive data" category specifically identified under any Applicable Laws.
- 1.17. "Subscription Services" means OnSolve's software-as-a-service, Internet-based and accessed notification service to set up and send Alerts and licensed to the Customer pursuant to these Terms and Conditions.
- 1.18. "Standard Personal Information" means name, business contact details (work telephone number, cell phone number, e-mail address and office address and location), personal contact details (home telephone number, cell phone number, other telephone, e-mail address and physical address), geolocation, and employee ID or other non-personally identifying ID number provided by Customer or obtained through the CNE page.
- 1.19. "Subscription Fee" means the fees for access to and use of the Subscription Services.
- 1.20. "Transaction Fees" means the fees for individual transactions of sending and/or receiving Alerts to and from devices.
- 1.21. "Term" means the Initial Term together with any applicable Renewal Term(s).
- 1.22. "User" means, collectively, any Administrators and Contacts.

## **2. USE OF THE SUBSCRIPTION SERVICES**

- 2.1. Access to the Subscription Services. During the Term and subject to Customer's compliance with these Terms and Conditions, OnSolve grants Customer a non-exclusive, personal, non-transferable license to access to and use the Subscription Services for Customer's internal business purposes only and only in accordance with the applicable Documentation. Only Customer's and its Affiliates' employees and consultants may act as Administrators.
- 2.2. License Limitations. Customer shall not and shall not permit any third party under its control to, use the Subscription Services for an Unauthorized Purpose. If Customer uses the Subscription Services for an Unauthorized Purpose, OnSolve may take any and all actions as it reasonably deems appropriate, from the issuance of a warning and involvement of government authorities. "Unauthorized Purpose" means to: (i) create derivative works of, modify, decompile, disassemble, or otherwise reverse engineer or attempt to discover any source code or underlying ideas of any component of the Subscription Services; (ii) circumvent or disable any security or features of the Subscription Services, or attempt to probe, scan, gain access to, or test the vulnerability of OnSolve's network and/or Subscription Services; (iii) sublicense, assign, transfer, distribute, rent or sell use or access to the Subscription Services (in whole or in part), whether as a service bureau or otherwise, or otherwise transfer rights in or to the Subscription Services; (iv) remove, alter or obscure any product identification, copyright or proprietary notices (v) upload or provide any Content, information or materials that are defamatory, offensive, abusive, obscene, of menacing character, or that violate privacy or intellectual property rights; (vi) use the Subscription Services to threaten, defame, bully, harass, or harm persons or their property; (vii) send, store or distribute any malware, viruses or any other routines, code or programs with the intent or effect of damaging, destroying, disrupting, monitoring or otherwise impairing OnSolve's, or any other person's or entity's, network, computer system, or other equipment, or any third party data contained therein; (viii) access the Subscription Services or use the Documentation in order to build a similar product or competitive product; (ix) adopt, use, register, or apply for registration of, whether as a corporate name, trademark, service mark or other indication of origin, any OnSolve trademark, service mark or trade name, or any word or mark confusingly similar to them in any jurisdiction; (xi) contest, in any court or other jurisdiction, the validity of any of the OnSolve property; or (xii) use with intent to avoid payment of charges due under these Terms and Conditions.

- 2.3. Acceptable Use Policy. Customer shall and shall ensure its Users and Affiliates use the Subscription Services in accordance with all Applicable Laws and the attached OnSolve Acceptable Use Policy via <https://www.onsolve.com/legal/aup/> dated December 14, 2020.
- 2.4. Username and Passwords. Customer shall be responsible for the confidentiality of all usernames and passwords and all activities that occur under such usernames. Customer shall promptly notify OnSolve of any suspected unauthorized access to the Subscription Services at [security@OnSolve.com](mailto:security@OnSolve.com), copying Customer's OnSolve relationship manager.
- 2.5. Customer Data and Standard Personal Information. Customer represents and warrants it has the right and authority to provide OnSolve with the Content and any Standard Personal Information for use in connection with the Subscription Services. As between the Parties, the Content and Standard Personal Information shall be owned by Customer. Customer grants OnSolve a non-exclusive, worldwide, transferable, royalty-free and fully paid license to use the Content and Standard Personal Information solely as necessary to perform the Subscription Services. To the extent applicable, Customer acknowledges and agrees that OnSolve may notify Contacts who place Standard Personal Information in the Community Notification Enrollment Page ("CNE") that such data will be transmitted to Customer and is subject to Customer's privacy policies. Customer agrees that it will be solely responsible for providing such privacy policies and that OnSolve shall not be responsible for contribution of Standard Personal Information by a Contact through the CNE page.
- 2.6. Feedback. The Parties acknowledge that the Subscription Services may collect and aggregate certain de-identified information and data regarding the use and operation of the Subscription Services by Customer. Customer agrees that OnSolve may utilize such information and data as well as any Customer suggestions, enhancement requests or other recommendations (collectively, "Feedback") for any lawful business purpose, without a duty of accounting to Customer so long as such Feedback does not identify Customer or any Customer provided Content or Contacts. No compensation shall be paid with respect to OnSolve's use of Feedback.

### **3. PROVISION OF SERVICES**

- 3.1. Professional Services. If an Order Form or any statement of work includes Professional Services, subject to the payment of applicable fees, OnSolve shall perform such Professional Services (i) in a professional and workmanlike manner and (ii) in accordance with the terms and conditions set forth in the Order Form or such statement of work. Customer must notify OnSolve of a claim under this section within 30 days of the date on which the condition giving rise to the claim first appears. Customer's exclusive remedy arising out of or in a failure to provide the Professional Services in accordance with this section is limited to the re-performance of the Professional Service, or if re-performance is not commercially reasonable, termination as provided by Section 9.2 (Termination for Material Breach). Any changes to the Professional Services are subject to the mutual agreement of the parties. Customer shall provide assistance, cooperation, information, equipment, data, a suitable work environment, and resources reasonably necessary to enable OnSolve to perform the Professional Services. Customer acknowledges that OnSolve's ability to provide Professional Services as described in the Order Form may be affected if Customer does not meet its responsibilities as set forth above and in an Order Form.
- 3.2. Security and Data Integrity. OnSolve shall maintain industry standard physical, administrative, and technical security policies and procedures designed to protect against and prevent the loss, misuse and unauthorized access, alteration or disclosure of Content and Standard Personal Information. If OnSolve learns of any unauthorized access to Content or Standard Personal Information while in OnSolve's care or custody, OnSolve shall, as required by Applicable Law, promptly notify Customer of such unauthorized access, and the parties agree to coordinate and cooperate in good faith on developing the content of any related public statements or any required notices for the affected persons. OnSolve may modify its security procedures from time to time in accordance with changes to industry standards, but only in a manner that retains or increases the stringency of OnSolve's security obligations.
- 3.3. Integrated Services. Customer acknowledges that the Subscription Services integrate or interoperate with certain third-party telephony, GIS, short message service (SMS) and/or facsimile services and that the Subscription Services may be subject to pass-through terms from such third-party vendors. Nothing herein shall bind the Ordering Activity to any Third Party terms unless the terms are provided for review and agreed to in writing by all parties.
- 3.4. Retained Rights. OnSolve retains all right, title and interest in and to the Services except for the rights granted to Customer pursuant to these Terms and Conditions.

### **4. PAYMENT AND TAXES**

- 4.1. Payment Terms. Unless specified otherwise in the Order Form, all Fees shall be stated and paid in U.S. Dollars. Customer shall pay the Fees identified in the Order Form in accordance with the GSA Schedule Pricelist without setoff or deductions as follows:

- (a) *Subscription Services*. Unless otherwise provided on the Order Form, OnSolve, or the GSA Schedule Contractor if the Services are sold through a GSA Schedule Contract reseller, shall invoice Customer annually for the Subscription Services and payment is due within thirty (30) days from the invoice receipt date.
  - (b) *Non-Recurring Services*. Fees for Non-Recurring Services shall be on a fixed fee basis (including all fees for the activation or re-activation) and shall be due and payable upon the execution of the applicable Order Form or statement of work. Non-Recurring Services Fees exclude expenses for travel, food and lodging, that are related to the performance of such services.
  - (c) *Professional Services*. Professional Services will be delivered on time and material basis or fixed fee basis, as set forth on the applicable Order Form or statement of work in accordance with the GSA Schedule Pricelist. Invoices will be issued on a monthly basis unless otherwise stated in the Order Form or any statement of work. Professional Services Fees exclude expenses for travel, food and lodging, that are related to the performance of such services.
  - (d) *Transaction Fees*. If the Subscription Services include Transaction Fees and Customer exceeds the permitted message units for applicable features, OnSolve shall invoice Customer for such Transaction Fees, on a quarterly basis in arrears, at the rate set forth on the Order Form and payment is due within thirty (30) days from the invoice date.
- 4.2. Overdue Charges. To the extent allowed by Applicable Law, if any invoiced amount is not received by OnSolve by the due date then, without limiting OnSolve's rights or remedies, those amounts shall accrue late interest at a rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.
  - 4.3. Taxes. Vendor shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
  - 4.4. Message Surcharges. OnSolve will not be liable to Customer, to any Contact or to any other person for any charges or fees that arise from sending or receipt of an Alert using the Subscription Services, including as a result of increases in pass-through charges by Users' telecommunications providers.
  - 4.5. Contacts. Each Contact is to be assigned to a designated, named individual and cannot be shared by more than one individual. At any time during the Term that Customer exceeds the number of Contacts set out in the Order Form, Customer shall promptly inform OnSolve of such excess and shall be obligated to pay the additional Fees related to such excess Contacts as set forth in the GSA Schedule Pricelist. If a named individual Contact no longer requires access to the Subscription Services, Customer may reassign such Contact to a new individual without increasing the total number of Contacts; provided, however, that the total number of Contacts reassigned may not exceed 15% per year. Unless expressly permitted in the Order form, API Contacts are not included in the total number of Contacts listed in the Order Form and Customer may not send Alerts to API Contacts. At any time during the Term and for a period of ninety (90) days thereafter, OnSolve may inspect the number of Customer's Contacts to ensure compliance with the total number of Contacts permitted in the Order Form. OnSolve shall invoice Customer for excess Contacts pro rata for the remainder of the relevant Term.
  - 4.6. Renewals. OnSolve reserves the right to increase the Subscription Fees and/or the Transaction Fees at the beginning of each Renewal Term in accordance with the then current GSA Schedule Pricelist.

## 5. CONFIDENTIALITY AND DATA PRIVACY

- 5.1. Confidential Information. The term "Confidential Information" means Standard Personal Information, internal policies and procedures of a party and all other non-public information that a reasonable person should understand to be confidential due to its nature and the circumstances in which it was disclosed and that is disclosed by or on behalf of either party ("Disclosing Party") to the other party ("Receiving Party"), whether such information is disclosed before or after the Effective Date. "Confidential Information" excludes information that (i) was in the public domain prior to the time of disclosure; (ii) enters the public domain after disclosure through no action or inaction of the Receiving Party; (iii) is already known by the Receiving Party at the time of disclosure; (iv) is obtained by the Receiving Party from a third party without restriction; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. Except as otherwise expressly set forth in these Terms and Conditions, the Receiving

Party shall not disclose (including, without limitation, distribute, transmit or transfer) or use the Confidential Information of the Disclosing Party or any portion thereof without the prior written consent of Disclosing Party except for the purpose of exercising its rights or performing its obligations under these Terms and Conditions. The Receiving Party may disclose the Disclosing Party's Confidential Information to its employees, consultants, and agents who are bound by obligations of confidentiality no less protective than those set forth in these Terms and Conditions, and Receiving Party shall be responsible for any unauthorized disclosure of any Confidential Information by such persons as if Receiving Party had made such unauthorized disclosure itself. In addition, the Receiving Party may disclose the Disclosing Party's Confidential Information to the extent required by law so long as the Receiving Party gives the Disclosing Party prompt written notice prior to the disclosure and reasonable assistance in limiting disclosure or obtaining a protective order. OnSolve may also disclose these Terms and Conditions to actual and potential investors and funding sources who agree to hold it in confidence. The Receiving Party agrees to take steps designed to protect the Disclosing Party's Confidential Information that are substantially similar to those it takes to protect its own proprietary information (but not less than reasonable care) from unauthorized disclosure. Receiving Party shall promptly notify the Disclosing Party if the Receiving Party becomes aware of any misuse or unauthorized disclosure of Confidential Information. Upon any termination or expiration of these Terms and Conditions, and after a minimum ninety (90) day holding period, the Receiving Party will destroy or permanently obfuscate all of the Disclosing Party's Confidential Information in its possession. This Section 5.1 and the obligations set forth hereunder shall survive termination of all Subscription Services subject to these Terms and Conditions. OnSolve recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

- 5.2. Data Privacy. Each party shall comply with Applicable Law with respect to data privacy and data protection. Customer (i) may only upload transmit or store Standard Personal Information through the Subscription Service; (ii) shall not upload, transmit or store any Sensitive Data through the Subscription Services; (iii) shall not, without OnSolve's prior written consent, upload, transmit or store any information that may be deemed personal data or personal information of any individual person by Applicable Law (including but not limited to the Gramm- Leach-Bliley Act, Health Insurance Portability and Accountability Act of 1996, and Family Educational Rights and Privacy Act) through the Subscription Services other than Standard Personal information that is expressly requested in a data field specified by the Subscription Services. Either party shall notify the other party within 72 hours in relation to the receipt of any complaint, notice, or communication received from any regulatory authority or individual which relates directly or indirectly to the processing of the Standard Personal Information or to either party's compliance with Applicable Law.

## 6. REPRESENTATIONS AND DISCLAIMER

- 6.1. Mutual Representations. Each party represents and warrants that: (i) it has the full corporate right, power and authority to enter into the applicable Order Form or statement of work, and (ii) when executed and delivered by such party, the applicable Order Form or statement of work will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.
- 6.2. Subscription Services Warranty. OnSolve represents and warrants that the Subscription Services shall materially perform in accordance with the Documentation. For any material breach of a warranty, Customer's exclusive remedy shall be as provided by Section 9.2 (Termination for Material Breach).
- 6.3. Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 6, ONSOLVE MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER INCLUDING THAT THE SERVICES OR THE DOCUMENTATION ARE ERROR-FREE OR THAT OPERATION OR USE OF THE SERVICES WILL BE SECURE OR UNINTERRUPTED. ONSOLVE EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, QUIET ENJOYMENT, TITLE, AND NON-INFRINGEMENT. THE SUBSCRIPTION SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ONSOLVE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS AND SHALL NOT HAVE ANY LIABILITY FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE ARISING FROM FAILURE OF THE SUBSCRIPTION SERVICES TO DELIVER AN ELECTRONIC COMMUNICATION, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ONSOLVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## 7. INDEMNIFICATION

- 7.1. Indemnification by OnSolve. OnSolve shall, at its expense, have the right to intervene to defend Customer from or settle any claim, proceeding, or suit brought by a third party ("Claim") against Customer to the extent (i) (a) that the Services

infringe or misappropriate any intellectual property right of such third party or (b) arising out of OnSolve's gross negligence or willful misconduct, and (ii) will indemnify Customer from all damages, costs, and attorneys' fees finally awarded and unappealable against Customer as a result of such Claim.

OnSolve shall have no obligation under this Section 7.1 for any Claim to the extent arising out of or is based upon: (i) Customer's use of the Services not in compliance with these Terms and Conditions or the Documentation; (ii) Customer's combination of the Subscription Services with software, hardware, system, data, or other materials not supplied or authorized by OnSolve (unless expressly permitted by the Documentation) without OnSolve's prior written authorization; or (iii) the Content or Standard Personal Information.

In the event of an infringement or misappropriation Claim involving the Services is brought or threatened, or is likely to be brought or threatened in OnSolve's reasonable opinion, OnSolve may, at its sole option and expense: (x) procure for Customer the right to continue to use the Services, (y) modify the Services in a manner that does not materially degrade the Service's functionality, or (z) terminate the affected Services and, with respect to termination of the Subscription Services, refund the unearned portion of the Subscription Fees based on the days left in the Term, less any Fees for usage accrued prior to the date of termination. Notwithstanding anything else herein, the foregoing indemnification obligations are OnSolve's only obligations and liability, and Customer's exclusive remedy, in respect of any infringement or misappropriation Claim.

7.2. Reserved.

7.3. Indemnification Procedures. Customer shall provide the other party with: (i) prompt written notice of any Claim for which indemnification is sought; (ii) control of the defense and settlement of such claim; and (iii) reasonable assistance and cooperation in such defense at the OnSolve's expense. Notwithstanding the foregoing, the OnSolve may not enter into a settlement of a claim that involves a remedy other than the payment of money by the Customer (which amounts must be subject to indemnification by the OnSolve) without the Customer's written consent. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

## 8. LIMITATION OF LIABILITY

8.1. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY OTHER PERSON FOR (I) ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE, (HOWEVER ARISING, UNDER ANY THEORY OF LIABILITY) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE SERVICES OR THESE TERMS AND CONDITIONS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) DIRECT DAMAGES IN EXCESS OF THE FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER UNDER THESE TERMS AND CONDITIONS. THE FOREGOING LIMITATIONS AND EXCLUSIONS DO NOT APPLY TO ONSOLVE'S INFRINGEMENT INDEMNIFICATION OBLIGATIONS, CUSTOMER'S INDEMNIFICATION OBLIGATIONS, CUSTOMER'S FAILURE TO REMIT ALL FEES PROPERLY DUE AND OWING UNDER THESE TERMS AND CONDITIONS, OR ANY LIABILITY WHICH MAY NOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

## 9. TERM AND TERMINATION

- 9.1. Term. All Subscription Services shall be provided beginning on the Effective Date for the initial term identified on the Order Form (the "Initial Term"), unless earlier terminated in accordance with these Terms and Conditions. Upon completion of the Initial Term, the term for all Subscription Services may be renewed for successive one (1) year renewal terms (each a "Renewal Term") by exercising an option, or by both parties executing a new purchase order in writing.
- 9.2. Termination for Material Breach. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, OnSolve shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.
- 9.3. Suspension. OnSolve may temporarily suspend Customer's access to and use of the Subscription Services if OnSolve reasonably determines that any Users' use of the Subscription Services is causing immediate and ongoing harm to OnSolve or others. OnSolve shall promptly notify Customer of any suspension and the parties shall diligently attempt to resolve the issue. Any such suspension shall not modify or lengthen the Term hereof or of any then current Order Form, nor shall any

rights or obligations hereunder be waived during the suspension period.

- 9.4. Effects of Termination. Upon termination or expiration of the applicable Order Form (i) Customer's access to and use of the Subscription Services shall cease; (ii) OnSolve shall, upon written request of Customer, erase Customer data from the production servers controlled by OnSolve, except that: (a) any data stored on OnSolve's backup servers shall be deleted as soon as technically feasible, and in any event within ninety (90) days from deletion from production, and OnSolve agrees that it (1) shall discontinue processing such data; and (2) shall maintain the confidentiality of such data in accordance with these Terms and Conditions; and (b) OnSolve may retain report data (e.g., date/time of Alert and number of Alerts sent) necessary to support its billing and accounting records; (iii) Customer will immediately pay to OnSolve all Fees due and payable for Services delivered prior to the date of termination; and (iv) Customer shall immediately cease all use of the Services and return or destroy all copies, extracts, derivatives and reflections of the Services, and, upon OnSolve's request, provide written notice that Customer has fully complied with this clause. Upon termination of any applicable Order Form and/or these Terms and Conditions OnSolve will refund an amount equal to the unearned portion of Fees paid for the remainder of the then current term, less any expenses for transactions completed prior to the date of termination, which shall be calculated based upon the Transaction Fees.

## 10. GENERAL

- 10.1. Changes to the Service. OnSolve may modify the Subscription Services from time to time by removing unused features or substituting outdated features with new features that have similar or improved functionality or otherwise, as may be necessary to meet any applicable legal, regulatory, or industry-standard requirements or demands.
- 10.2. Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).
- 10.3. Non-Solicitation. Each party acknowledges that the employees of the other party are a valuable asset of that party and have acquired confidential and proprietary information belonging to that party. Each party further acknowledges that hiring a current or former employee of that party to work as an employee of the other party will cause damage to the other party. Each party agrees that, for a period of one (1) year after the termination of the applicable Order Form, it will not solicit any current or former employee of the other party in any capacity, provided that solicitations and subsequent hirings initiated through general newspaper or website advertisements and other general circulation materials not directly targeted at such individuals shall not be deemed solicitations in violation of this sentence.
- 10.4. Governing Law/Venue. These Terms and Conditions will be interpreted, construed and enforced in all respects in accordance with the laws of the federal laws of the United States without reference to its choice of law rules.
- 10.5. Publicity. OnSolve may reference Customer's name as an OnSolve customer online and in OnSolve marketing materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.
- 10.6. Survival of Terms. If these Terms and Conditions is terminated for any reason, remedies for breach, rights to accrued payments and Sections 1 (Definitions), 2.2 (Contacts; Users; Administrators), 2.6 (Feedback), 3 (Payment Terms), 4.4 (Effects of Termination), 5 (Confidentiality and Data Privacy), 7 (Indemnification), 8 (Limitation of Liability), and 10 (General) shall survive termination.
- 10.7. Independent Contractor. In making and performing under these Terms and Conditions, the parties are acting and shall act as independent contractors and nothing in these Terms and Conditions shall be construed to create a partnership, joint venture, principal-agent, or employer-employee relationship. Neither party will have or represent that it has the right, power or authority to bind, contract or commit the other party or to create any obligation on behalf of the other party.
- 10.8. Severability. If any provision of these Terms and Conditions or the application thereof is to any extent held invalid or unenforceable, the remainder of these Terms and Conditions shall not be affected thereby, and each term and provision hereof shall be valid and enforced to the fullest extent of the law.
- 10.9. Waiver. The failure of either party to enforce any provision of these Terms and Conditions, unless waived in writing by such party, will not constitute a waiver of that party's right to enforce that provision or any other provision of these Terms and Conditions.
- 10.10. Notice. Any notice required or permitted to be given in accordance with these Terms and Conditions will be effective if it is in writing and sent by certified or registered mail, or overnight courier, return receipt requested, to the appropriate party at the address set forth on Order Form and with the appropriate postage affixed. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section 10.10. Notices are deemed given two (2) business days following the date of mailing or one business day following delivery to a courier.
- 10.11. Export Compliance. The Subscription Services and other OnSolve technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Customer represents that it is not named on any U.S. government denied-party list. Customer will not permit any User to access or use the Subscription Services in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation,

and will not permit any U.S.-sanctioned persons or entities to act as Users, and Customer shall indemnify OnSolve in respect of any breach of this section.

- 10.12. U.S. Government End Users. As defined in Federal Acquisition Regulation ("FAR") section 2.101, Defense Federal Acquisition Regulations Supplement ("DFARS") section 252.227-7014(a)(1) and DFARS section 252.227-7014(a)(5) or otherwise, *all software* and accompanying documentation provided in connection with these Terms and Conditions are "commercial items," "commercial computer software," and or "commercial computer software documentation." Consistent with FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by the terms of these Terms and Conditions as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the FAR and its successors

Customer shall ensure that each copy used or possessed by or for the government is labeled to reflect the foregoing.

- 10.13. Assignment. Neither party may assign these Terms and Conditions without the prior written consent of the other party, except to an Affiliate or an entity that acquires all or substantially all of its business or assets, whether through merger, reorganization or otherwise. The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for securing such approval are set forth in FAR 42.1204. Any assignment in violation of the foregoing shall be void and of no effect.
- 10.14. Entire Agreement. These Terms and Conditions, together with Schedule 1 attached hereto and any related Order Form or statement of work constitute the entire agreement and understanding between Customer and OnSolve with respect to the subject matter hereof and supersedes all prior and contemporaneous verbal and written negotiations, agreements and understandings, if any, between the parties. These Terms and Conditions cannot be modified except by a writing signed by an authorized representative of each party. The terms of these Terms and Conditions shall take precedence over any conflicting terms in Customer-provided purchase or procurement documentation, such as a purchase order, acknowledgement form, or other similar documentation and any pre-printed terms and conditions on or attached to Customer's purchase orders or invoices will be of no force or effect.

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### **Schedule 1**

#### **Product Specific Terms**

The following are additional terms that are specific to each of the OnSolve Services identified below, as applicable pursuant to the relevant Customer Order Form, and are incorporated by reference into the Terms and Conditions. In the event that a provision in this Schedule 1 conflicts with an analogous provision in the Terms and Conditions, then the provision in these Product Specific Terms control.

#### **A. Situational Awareness**

Customer's right to access and use the 'Situational Awareness' services listed on the Order Form (the "Situational Awareness Services") is subject to the following additional terms:

1. Customer may appoint up to five (5) Administrators for the Situational Awareness Services. Customer may add additional Administrators for the Situational Awareness Services from time to time, subject to payment of additional Fees.
2. Customer may appoint up to five (5) Web Operators for the Situational Awareness Services. Customer may add additional Web Operators from time to time, subject to the payment of additional fees. A "Web Operator" means a user who has access to view and interact with Situational Awareness Services through the dashboard but may not administer or configure such services.
3. The platform fee for the Situational Awareness Services identified in the Order Form is based upon the number of Employees for whom such services are to be used by Customer. "Employees" for this purpose means the approximate number of personnel of the business unit(s) or entity(ies) for which the Situational Awareness Services are utilized.
4. Customer may access those Service Module(s) set forth on the Order Form up to the volume purchased therein or ordered at a later date, and for which the applicable Fees have been paid. "Service Module(s)" includes, without limitation passenger name record, a location asset (e.g., a building or facility), mass notification enrollee, and/or a mobile application license (by device) or any of them, all as specified on the Order Form.

Alerts may be triggered for each Service Module, subject to the limitations set forth on the Order Form.

#### **B. Incident Management**



Customer's right to access and use the 'Incident Management' Services listed on the applicable Order Form (the "Incident Management Services") is subject to the following additional terms:

1. Customer shall purchase 'Full Access Licenses' and 'On-Demand Licenses' to use the Incident Management Services.
2. Each 'Full Access License' for Incident Management Services (i) entitles the Full Access License User to log into Incident Management Services system anytime, manage the account, add/update plans/other content, and activate/manage all teams and all account features; and (ii) cannot be shared by more than one User (but may be reassigned to new Users to replace former Full Access users who no longer need access).
3. Each On-Demand License for Incident Management Services (i) must be activated by a Full Access License User; (ii) enables the On Demand License User to participate and perform any assigned responsibilities during a single incident; and (iii) is fully consumed for each such User when the incident ends.

### **C. Installed Components**

Customer's right to access and use the Installed Components (defined below) listed on the Order Form is subject to the following additional terms:

"Installed Components" means any software, in machine-readable form, that is delivered by OnSolve for installation on computers or devices controlled by Customer or its Users solely for use as part of and with an OnSolve including, without limitation, Data Sync, Desktop Alerting and all OnSolve downloaded mobile applications.

If Installed Components are included on Customer's Order Form, Customer shall have a limited, nonexclusive, nontransferable right to use such Installed Components solely in connection with the use of the services. Except for one copy of the Installed Components solely for back-up purposes, copying of the Installed Components, if any, is expressly forbidden. Customer shall not, and shall not allow or assist any other entity to, decompile, disassemble, or otherwise reverse engineer or attempt to discover any source code or underlying ideas of any Installed Component, or modify any Installed Component, except to the extent (but only to such extent) that Applicable Law prohibits such restrictions. All relevant terms and conditions applicable to the Subscription Services shall apply to the Installed Components.

# OnSolve Acceptable Use Policy

(December 14, 2020)

## 1. Definitions.

1. “Alerts(s)” means messages or notifications (“Notifications”) issued through the Service, whether or not responded to by Contact.
2. “Applicable Law” means any domestic and/or foreign statute, ordinance, judicial decision, executive order, or regulation having the force and effect of law.
3. “Contact(s)” means an individual person/recipient (“Recipient”) capable of only receiving and responding to Alerts/Notifications and, if permitted, updating its own profile. Contact includes API Contacts.
4. “Content” means content, data, text, messages and other material contained in an Alert.
5. “User” means, collectively, Administrator(s), Initiator(s) and Contact(s) or Recipient(s). User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require continued use of the Services.

## 2. General Terms.

1. All Content is Customer’s sole responsibility. Customer is solely responsible for the integrity and quality of the Content. Customer shall be responsible for, and under no circumstances will Provider or its Affiliates or any of their licensors or suppliers be responsible, for any loss, damage or liability arising out of any Content, including any mistakes contained in the Content or the use or subject matter of the Content. Further, Customer is responsible for: (i) any Alerts that are sent through its accounts (other than if caused by the Service itself or breaches by Provider); (ii) all Fees accruing from the use of the Service through its account, whether by its Affiliates and its and their employees and consultants; and (iii) all actions of its Affiliates, and its and their employees consultants, as if such actions had been conducted by Customer.
2. Customer shall be responsible for procuring any necessary consents or having other legal basis to contact Contacts with respect to the provision of any data transmitted through the Service.
3. Customer shall use any data it uploads into the Service in accordance with any and all restrictions applicable to such data and all Applicable Laws.
4. Customer will use and permit its Users to use the Service in accordance with this Agreement and all Applicable Laws, including the Telephone Consumer Protection Act, Fair Debt Collections Practices Act, Federal Communications Commission (“FCC”) or Federal Trade Commission (“FTC”) rules or regulations and any and all other Applicable Laws related to pre-recorded telephone and/or text messages and the use of automated dialing equipment.
5. Customer will not send any Short Message Service (“SMS”) Alerts to a User unless Customer has obtained such User’s “opt-in” consent.
6. Customer must provide Contacts with a simple mechanism for opting out or unsubscribing from receiving Alerts, including information on how to “opt-out” or unsubscribe.
7. Customer will not send Alerts to phone numbers that are emergency numbers and/or other numbers that may not be called using automated dialing equipment under Applicable Law.
8. Customer’s total Alerts to an individual Contact will not exceed an average of one (1) Alert per day (via any contact method), absent an emergency or a specific use case for the Contact. Should Customer exceed this fair use, the parties will meet to discuss the reasons, review best practices and determine if an adjustment to Customer’s Service plan is necessary. Due to vendor requirements for ensuring Alerts sent by the Service are not blacklisted, Customer shall adhere to this fair use policy.
9. Customer will not send any Content that it knows, or has reason to know: (i) infringes another’s rights in intellectual property; (ii) invades any privacy laws including without limitation another’s right to privacy and/or any privacy policies of Customer or any third-party; and/or (iii) justifies a complaint to the FCC and/or FTC.
10. Customer will not, and will not permit its Users or any third parties to: (i) engage or facilitate any unethical, deceptive or misleading practices in connection with the use of the Service; (ii) use the Service in connection with any telemarketing, solicitations, donations, sales, spamming or any unsolicited messages (commercial or otherwise); and/or (iii) provide Content to be transmitted in the Service which: (a) is defamatory, libelous, obscene, pornographic, or is otherwise harmful; (b) promotes violence, discrimination, illegal activities, gambling, alcoholic beverages, guns or tobacco; and/or (c) contains or otherwise links to viruses, worms, cancelbots or any other harmful code or computer programs designed to disrupt the functionality of any computer software or hardware or telecommunications equipment.
11. Customer may send SMS Texts in text format only.
12. Customer acknowledges and agrees that Alerts may not be delivered to the phone if not in range of a transmission site, or if sufficient network capacity is not available at a particular time. Even within a coverage area, factors beyond the control of the carrier may interfere with message delivery, including the Customer’s equipment, terrain, proximity to buildings, foliage, and weather. Customer acknowledges that urgent Alerts may not be timely received and that the carrier does not guarantee that messages will be delivered.
13. Customer acknowledges that Provider may block Alerts (e.g., based on instructions from Contacts, carriers, aggregators, government agencies, etc.).

14. Customer agrees to maintain all security regarding its account ID, password, and connectivity with the Service. If Customer's account ID or password are stolen, or otherwise compromised Customer is obligated to immediately change the password and inform Provider of the compromise.
3. **Terms Applicable to MIR3 GIS Service.** In the event that the Services include Provider's geographic information system functionality ("**GIS Service**"), Customer agrees to the terms set forth in documents found at the following links:
  1. (i) Google's Legal Notices ([http://maps.google.com/help/legalnotices\\_maps.html](http://maps.google.com/help/legalnotices_maps.html));
  2. (ii) Google's Acceptable Use Policy (AUP) (<https://cloud.google.com/maps-platform/terms/aup/>);
  3. (iii) Google's Maps Terms ([http://maps.google.com/help/terms\\_maps.html](http://maps.google.com/help/terms_maps.html))