

## ONLINE SUBSCRIPTION AGREEMENT

Welcome to nChannel! We start every new subscriber relationship with an online subscription agreement (“Agreement”). The following Agreement spells out what you can expect from us, and what we expect from you. If you agree to what you read below you should check the box adjacent to the words “Agree to EULA” on the subscriber registration page. Checking this box acknowledges that you have read and agree to the terms herein. This online document is the legal equivalent of your signature on a written contract and is legally binding. Only by placing selecting or placing a check mark in the “Agree to EULA” box will you be able to access and use the services available on nChannel.

### Terms and Conditions

#### 1. Definitions.

“Affiliate” means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. “Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity. If you are an agency of a state, provincial, or local government, “Affiliate” means (1) any government agency, department, office, instrumentality, division, unit or other entity, of your state, provincial or local government that you supervise or is part of you, or which supervises you or you are part of, or which is under common supervision with you; (2) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of your state or province and located within your state’s or province’s jurisdiction and geographic boundaries; and (3) any other entity in your state or province expressly authorized by the laws of your state or province to purchase under state or provincial contracts; provided that a state or province and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government or its Affiliates. If you are an agency of the U.S. government, “Affiliate” means any other agency of the U.S. government. If you are an agency of the Canadian government, “Affiliate” means any other agency of the Canadian government, except for a federal Crown corporation.

“Communities” means one or more forums that we or an Affiliate of ours may establish for customers or the general public to obtain information or collaborate regarding the use of the Product(s), as may be accessible via the Portal or at an alternate website we identify.

“Customer Data” means all data, including all text, sound, or image files that you provide, or are provided on your behalf to us for your use of the Online Services.

“License” means the right to copy, install, use, access, display, run and/or otherwise interact with a Product, as applicable, and as may be further described in the Online Services Use Rights.

“Licensed Software” means any software product as available on the Portal. Licensed Software is offered on a standalone basis or as a component of an Online Service.

“Online Service” means any online service as available on the Portal. An Online Service may include Supplemental Software and/or Licensed Software.

“Order” means an order for a Product on the Portal. An Order may include multiple Subscriptions to a Product.

“Portal” means the nChannel Online Services Portal at <https://portal.nchannel.com> or at an alternate website we identify.

“Product” means any Online Service and any Licensed Software as described on the Portal.

“Subscription” means the part of the Order identifying the specific Product being ordered and may include the quantity, ship-to address, or other information.

“Supplemental Software” means software provided to you as part of an Online Service and which is used with the Online Service to enable certain functions of the Online Service.

“Term” means the duration of a Subscription.

## 2. Your use of our Products.

(a) General. This Agreement governs your use of the Products. You may need to activate an Online Service prior to use. We grant you a License to Products you ordered provided you pay for them and comply with this Agreement. Your License is non-exclusive, non-perpetual, and, unless specifically allowed, non-transferable. Minimum system requirements or other factors may affect your ability to use Products. We reserve all rights not expressly granted in this Agreement.

(b) Access and Services. We reserve the right to modify, suspend or terminate access to the service on our Portal at any time for any reason without notice or refund, including the right to require you to change your login identification code or password. We also reserve the right to delete all program and data files associated with your account and or other information we have on our system.

(c) Privacy, Use and Security of Customer Data. We will handle your Customer Data according to the privacy, use and security terms set forth on the Portal.

(d) Supplemental Software. To enable optimal access and use of certain Online Services, you may need to install Supplemental Software, including upgrades and/or updates. This Agreement governs your use of Supplemental Software, and any upgrades/updates, unless we present separate license terms to you upon installation. Any separate license terms are between us and you, not your users. You may use Supplemental Software only to support the applicable Online Service. Copies you make must be complete copies (including copyright and trademark notices) and made from our approved media or a network source. You may use a third party to make and install these copies, but you agree to be responsible for that third party’s actions. You agree to use reasonable efforts to inform anyone you allow to use the Supplemental Software that it is licensed from us and subject to the terms of this Agreement.

We may check the version of the Supplemental Software you are using and recommend or download updates, with or without notice, to your devices. Your right to use the Supplemental Software ends when your right to use the Online Service ends or when we update the Online Service and it no longer supports the Supplemental Software, whichever comes first. You must uninstall the Supplemental Software when your right to use it ends. We may also disable it at that time.

(e) Licensed Software. We grant you Licenses for the number of copies of Licensed Software you ordered. We also grant you the right to use a prior (older) version in place of a Licensed Software version you license if we specify such use in the Online Services Use Rights.

(f) Limitations on use. The Online Services Use Rights identify limitations on your use of Products in addition to those specified in this Agreement. You may not reverse engineer, decompile or disassemble any Product, except where applicable law permits it despite this limitation. You may not rent, lease, lend, resell, or host to or for third parties any Product, except as expressly permitted for a given Product in the Online Services Use Rights. You may not separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately.

(g) Responsibility for your IDs and accounts. You are responsible for protecting the confidentiality of any Online Services associated with this Agreement. In addition, you are responsible for your passwords, if any, and all activity with your Online Service accounts including that of users you provision and dealings with third parties that take place through your account or associated accounts. You must keep your accounts and passwords confidential. You must tell us right away about any possible misuse of your accounts or any security incident related to the Online Service.

### 3. Ordering, pricing, payments, renewals, and taxes.

(a) Ordering. You can place an Order on the Portal.

(b) Prices. Pricing and payment terms for Products are available on or through the Portal. Payments are due and must be made according to the payment option you selected for each Product on the Portal.

(c) Subscription renewal. The subscriptions will be collected via credit card on a month to month basis and may be cancelled without further notice in the event that you fail to pay your monthly fees.

(d) Taxes. Any amounts owed to us are exclusive of any taxes. You shall pay any applicable value added, goods and services, sales, or like taxes that are owed with respect to any Order placed under the Agreement and which we are permitted to collect from you under applicable law. You shall be responsible for any applicable stamp taxes and for all other taxes that you are legally obligated to pay including any taxes that arise on the distribution or provision of Products to your Affiliates. We shall be responsible for all taxes based upon our net income or on our property ownership. If any taxes are required to be

withheld on payments you make to us, you may deduct such taxes from the amount owed to us and pay them to the appropriate taxing authority, provided however that you promptly secure and deliver an official receipt for those withholdings and other documents we reasonably request to claim a foreign tax credit or refund. You will make certain that any taxes withheld are minimized to the extent possible under applicable law.

4. Term, suspension, and termination.

(a) Agreement term and termination. This Agreement is on a month to month basis. Termination will not affect any Subscription not otherwise terminated and this Agreement shall remain in effect for such Subscription for the remainder of the Term.

(b) Termination of a Subscription. You may terminate a Subscription at any time during its Term. A termination will be effective at the end of the monthly Subscription cycle during which you terminate the Subscription. You must pay for the period prior to the termination effective date.

(c) How to terminate the Agreement or a Subscription. You must follow the process, if available, on the Portal or otherwise contact nChannel customer service (see contact information on the Portal) to terminate the Agreement or a Subscription.

(d) Effect of termination or expiration on Licensed Software. If the Agreement or a Subscription is terminated or expires, and you do not exercise an available buy-out option, then you must delete all copies of Supplemental Software and Licensed Software licensed under this Agreement and destroy any associated media. We may ask you to provide written certification of the deletion and destruction.

(e) Expiration or termination: Customer Data. Upon expiration or termination of each Subscription, you must tell us whether to:

(i) retain Customer Data in your paid account upon conversion from a trial account; or

(ii) disable your account and then delete your Customer Data; or

(iii) retain your Customer Data in a limited function account for at least 90 days after expiration or termination of your Subscription (the “retention period”) so that you may extract your Customer Data.

1) If you indicate (ii), you will not be able to extract your Customer Data from your account.

2) If you indicate (iii), you will be able to extract your Customer Data via our standard processes and tools, and you will reimburse us if there are any applicable costs.

3) If you do not indicate (ii) or (iii), we will retain your Customer Data in accordance with (iii).

4) Following the expiration of the retention period, we will disable your account and then delete your Customer Data.

(f) You agree that, other than as described above, we have no obligation to continue to hold, export or return your Customer Data. You agree that we have no liability whatsoever for deletion of your Customer Data pursuant to these terms.

(g) Regulatory environment: modification or termination. We may modify or terminate an Online Service in any country where there is any current or future government requirement or obligation that subjects us to any regulation or requirement not generally applicable to businesses operating there, presents a hardship for us to continue operating the Online Service without modification, and/or causes us to believe these terms or the Online Service may be in conflict with any such requirement or obligation. For example, we may modify or terminate the Online Service in connection with a government requirement that would cause us to be regulated as a telecommunications provider.

## 5. Confidentiality.

You agree that you shall treat the design and performance of the Online Services that are accessible to you only via password protected access and any documentation or materials we make available to you under this Agreement as confidential and shall not disclose them to any third party except in the furtherance of the parties' business relationship with each other. If you are a government customer, this Section is subject to the requirements of applicable trade secret, public records, and similar laws. Neither party shall make any public statement concerning the terms or our business relationship as provided in this Agreement without the other party's prior written consent.

## 6. Warranties.

You must bear the risk of any liability relating to your use of Online Services. We would not be able to afford to operate Online Services if we were held accountable for every wrongful action by every Online Subscriber.

ACCORDINGLY, YOUR USE OF THE NCHANNEL ONLINE SYSTEM IS ENTIRELY AT YOUR SOLE RISK. WE WILL NOT BE RESPONSIBLE TO YOU OR ANY THIRD PARTIES FOR ANY DIRECT OR INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR LOSSES YOU MAY INCUR IN CONNECTION WITH OUR SYSTEM, YOUR USE THEREOF OR ANY OF THE DATA OR OTHER MATERIALS TRANSMITTED THROUGH OR RESIDING ON OUR SYSTEM, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION EVEN IF WE HAVE ADVISED YOU OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

DISCLAIMER OF OTHER WARRANTIES. OUR ONLINE SERVICES ARE PROVIDED "AS IS." WE PROVIDE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. WE DISCLAIM ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.

7. Defense of infringement, misappropriation, and third party claims.

(a) Our agreement to protect. We will defend you against any claims made by an unaffiliated third party that any Product infringes that party's patent, copyright or trademark or makes intentional unlawful use of its trade secret. We will also pay the amount of any resulting adverse final judgment (or settlement to which we consent). This Section provides your exclusive remedy for these claims.

(b) Limitations on defense obligation. Our obligations will not apply to the extent that the claim or award is based on:

(i) Customer Data, code, or materials you provided as part of the use of an Online Service;

(ii) Your use of the Product after we notify you to discontinue that use due to a third party claim;

(iii) Your combination of the Product with a non-nChannel product, data or business process;

(iv) Damages attributable to the value of the use of a non-nChannel product, data or business process;

(v) Modifications you make to the Product;

(vi) Your redistribution of the Product to, or use for the benefit of, any unaffiliated third party;

(vii) Your use of nChannel's trademark(s) without express written consent to do so; or

(viii) Any trade secret claim, where you acquire the trade secret or undisclosed information (1) through improper means; (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from a person (other than us or one of our Affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret.

You will reimburse us for any costs or damages that result from any of the above actions.

(c) Specific rights and remedies in case of infringement.

(i) Our rights in addressing possible infringement. If we receive information concerning an infringement claim related to a Product, we may, at our expense and without obligation to do so: (1) procure for you the right to continue to use the allegedly infringing Product; (2) modify the Product; (3) replace the Product with a functional equivalent, to make it non-infringing, in which case you will immediately stop using the allegedly infringing Product after receiving notice from us; or (4) terminate any applicable Subscriptions if the Product was provided free of charge.

(ii) Your specific remedy in case of injunction. If, as a result of an infringement claim, your use of a Product is enjoined by a court of competent jurisdiction, we will, at our option, either: (1) procure the right to continue its use; (2) replace it with a functional equivalent; (3) modify it to make it non-infringing; (4) terminate the License for the infringing Product and refund any amounts you paid in advance for unused Product; or (5) terminate any applicable Subscriptions if the Product was provided free of charge.

(d) Your agreement to protect. You will defend us and our Affiliates against any claims made by an unaffiliated third party (1) that any Customer Data or non-nChannel software we host on your behalf infringes the third party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret, or (2) related to your use of the Product in violation of this Agreement. You must pay the amount of any resulting adverse final judgment (or settlement to which you consent). This section provides our exclusive remedy for these claims.

(e) Obligations of protected party. You must notify us promptly in writing of a claim subject to the subsection titled "Our agreement to protect" and we must notify you promptly in writing of a claim subject to the subsection titled "Your agreement to protect." The party invoking its right to protection must (1) give the other party sole control over the defense or settlement; and (2) provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance.

## 8. Limitation of liability.

(a) Limitation on liability. Except as otherwise provided in this Section, to the extent permitted by applicable law, our and our Affiliates' and contractors' liability to you arising under this Agreement is limited to direct damages up to the amount you paid us for the Product giving rise to that liability during the twelve months prior to the filing of the claim. In the case of Products provided free of charge, or any code that you are authorized to redistribute to third parties without separate payment to nChannel, our and our Affiliates' and contractors' liability to you arising under this Agreement is limited to five United States dollars (\$5.00 USD). These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:

(i) Our obligations under the Section titled "Defense of infringement, misappropriation, and third party claims";

(ii) Liability for damages awarded by a court of final adjudication for our or our employees' or agents' gross negligence or willful misconduct;

(iii) Liabilities arising out of any breach of our obligations under the Section entitled "Confidentiality", except that our and our Affiliates' and contractors' liability arising out of or in relation to Customer Data shall in all cases be limited to the amount you paid for the Online Service giving rise to that liability during the twelve months prior to the filing of the claim; and

(iv) Liability for personal injury or death caused by our negligence or that of our employees or agents or for fraudulent misrepresentation.

#### 9. Verifying compliance.

During the Term of any Subscription and for three years thereafter, you must keep all usual and proper records relating to the Subscription(s) and your use of Products under this Agreement. We may request that you conduct an internal audit of all Products in use throughout your organization, comparing the number of Licenses in use to the number of Licenses issued to and/or paid for by you. By requesting an audit, we do not waive our rights to enforce this Agreement or to protect nChannel intellectual property by any other means permitted by law.

If verification or self-audit reveals any unlicensed use, you must promptly order sufficient Licenses to cover your past and present use. If material unlicensed use is found, you must reimburse us for the costs we incurred in verification and acquire the necessary additional Licenses at retail license cost within 30 days.

#### 10. Miscellaneous.

(a) Notices to us. You must send notices, authorizations, and requests in connection with this Agreement by regular or overnight mail, express courier, or fax to the addresses listed below. We will treat notices as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery.

Notices should be sent to:

nChannel Inc.  
1275 Kinnear Rd, Suite 239  
Columbus, OH 43212

Copies should be sent to:

nChannel Inc.  
1275 Kinnear Rd, Suite 239  
Columbus, OH 43212



(b) Electronic notices to you. We may provide you with information about the Online Service in electronic form. It may be via email to the address you provide when you sign up for the Online Service (as you may update via the Portal) or through a web site that we identify. Notice via email is given as of the transmission date. As long as you use the Online Service, you have the software and hardware needed to receive these notices. You may not use the Online Service if you do not agree to receive these electronic notices. In addition, various service communications may be sent via email to account administrators you identify and may update via the Portal.

(c) Assignment. You may not assign this Agreement. We may assign this Agreement to our Affiliates.

(d) Severability. If a court holds any provision(s) of this Agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this Agreement will be amended to give effect to the eliminated provision to the maximum extent possible.

(e) Waiver. A waiver of any breach of this Agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.

(f) Applicable law. This Agreement is governed by the laws of the State of Ohio without regard to its conflict of laws principles, except that (1) if you are a U.S. Government entity, this Agreement is governed by the laws of the United States, and (2) if you are a state or local government entity in the United States, this Agreement is governed by the laws of that state. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement. The Products are protected by copyright and other intellectual property rights laws and international treaties.

(g) Dispute resolution. Any action to enforce this Agreement must be brought in the State of Ohio, USA. This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction. If you are a U.S. Government or state or local government entity, this Section does not apply and jurisdiction and venue will be determined by applicable law.

(h) Entire agreement. This Agreement constitutes the entire agreement concerning the subject matter and supersedes any prior or contemporaneous communications.

(i) Survival. Provisions regarding fees, Online Services Use Rights, restrictions on use, transfer of Licenses, export restrictions, defense of infringement, misappropriation, and third party claims, limitations of liability, confidentiality, compliance verification, obligations on termination and the provisions in this Section entitled "Miscellaneous" will survive termination or expiration of this Agreement.

(j) No transfer of ownership. We do not transfer any ownership rights in any Products. We reserve all rights not specifically granted in this Agreement. Products are protected by copyright and other intellectual property rights laws and international treaties.

(k) Force majeure. Neither party will be liable for any failure in performance due to causes beyond either party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services)). This Section will not, however, apply to your payment obligations under this Agreement.

(l) U.S. export jurisdiction. The Products are subject to U.S. export jurisdiction. You must comply with all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

(m) Natural disaster. In the event of a natural disaster, we may post information or provide additional assistance or rights on <http://www.nchannel.com>

(n) Acknowledgment. This Agreement represents the entire understanding between you and us regarding the relationship with respect to the Online Services and supersedes any prior statements or representations.

IF YOU AGREE TO BE BOUND BY THE TERMS OF THIS ONLINE SUBSCRIPTION AGREEMENT, PLEASE SELECT THE CHECK BOX ADJACENT TO THE TEXT "AGREE TO EULA" LOCATED ON THE REGISTRATION PAGE.