# ClickDimensions Marketing Automation Terms of Service

1.  **Access to the Subscription Service**.  ClickDimensions grants Customer the right to receive the Subscription Service, as defined in Section 15.

    a.  The Software is located on Microsoft Windows Azure servers which are located in Microsoft data centers.
    b.  ClickDimensions solely owns the intellectual property in the Software (except for third party components) and the Documentation. This Agreement is not intended to nor does it provide any license rights to the Software.

2.  **Conditions of Use.**  The Subscription Service provided to Customer is non-exclusive, non-transferable (except as provided in Section 14d), and are for Customer's internal business use only.  Customer's right to use the Subscription Service is conditional upon the following. Customer may not:

    a.  Transfer to any other person or entity any of its rights to use the Subscription Service;
    b.  Sell, rent or lease the Subscription Service;
    c.  Make the Subscription Service available to anyone who is not an "Authorized User".  An Authorized User is an employee of Customer, or a person to whom Customer has outsourced service, who is authorized to access the Software
    d.  Create any derivative works based upon the Subscription Service or Documentation
    e.  Copy any feature, design or graphic in, or reverse engineer the Software;
    f.  Access the Subscription Service (i) in order to build a competitive solution or to assist someone else to build a competitive solution; or (ii) if Customer is an employee of a ClickDimensions competitor;
    g.  Use the Subscription Service in a way that violates any applicable criminal or civil law;
    h.  Load test the Subscription Service in order to test scalability.

3.  **Representations and Acknowledgements**.  Subject in each case to the terms listed in this Agreement, You hereby represent, acknowledge and agree that:

    a.  The Service may not be used for the sending of unsolicited commercial email  (as such term is defined in the **CAN-SPAM Act of 2003** and any rules adopted under such act - sometimes called "spam").
    b.  The Service may only be used for lawful purposes.
    c.  The Service may not be used for hosting content, including images and documents, that knowingly infringes on the intellectual property rights of others, including copyright, trademark and patent infringement, or that includes any obscene or libelous material or other material that violates any applicable law or regulation.
    d.  You agree you will not access or otherwise use third party mailing lists or otherwise prepare or distribute mass unsolicited commercial email (as such term is defined in the **CAN-SPAM Act of 2003** and any rules adopted under such act), in connection with the Service.
    e.  You agree to import, access or otherwise use only lists for which all listed parties have consented to receive correspondence from you ("Permission Based Lists") in connection with your use of the Service.  You hereby covenant that you shall not use any other lists in connection with your use of the Service.
    f.  You acknowledge and agree that not all email messages sent through use of the Service will be received by their intended recipients.
    g.  Every email message sent by you in connection with the Service must contain the ClickDimensions "unsubscribe" link that allows the recipient to remove themselves from your mailing list.
    h.  You will comply with the restrictions on content of email messages and activities using the Service as set forth or referenced in this Agreement.
    i.  You acknowledge that you are the sole or designated "sender" (as such term is defined in the **CAN-SPAM Act of 2003** (the "Act") and any rules adopted under the Act) of any email message sent by you using the Service.
    j.  You agree that the "from" line of any email message sent by You using the Service will accurately and in a non-deceptive manner identify your organization, your products or your services.

k.  You agree that the "subject" line of any email message sent by You using the Service will not contain any deceptive or misleading content regarding the overall subject matter of the email message.

l.  You agree to include in any email message sent by You using the Service your valid physical address, which may be a valid post office box meeting the registration requirements established by the United States Postal Service.

m.  You agree that in any email message sent by you using the Service you will not include any incentives (e.g., coupons, discounts, awards) that encourage a recipient to forward the email message to another recipient.

n.  In your use of the Service, you agree to represent you or your organization accurately and will not impersonate any other person, whether actual or fictitious.

4.  **Customer Data.**

a.  Customer must provide all data for use in the Subscription Service (the "Customer Data"), and ClickDimensions is not obliged to modify or add to the Customer Data. Customer is solely responsible for the content and accuracy of the Customer Data.

b.  The Customer Data belongs to Customer, and ClickDimensions makes no claim to any right of ownership in it.

c.  ClickDimensions must keep the Customer Data confidential in accordance with Section 11 of this Agreement.

d.  ClickDimensions must use the Customer Data strictly as necessary to carry out its obligations under this Agreement, and for no other purpose.  However, ClickDimensions:

    i.  May observe and report back to Customer on Customer's usage of the Subscription Service, and make recommendations for improved usage of the Subscription Service;

    ii.  May identify trends and publish reports on its findings provided the reports include data aggregated from more than one customer site and do not identify Customer;

e.  ClickDimensions will use industry-standard technical and organizational measures in compliance with all relevant laws to keep Customer Data secure and to protect it against accidental loss or unlawful destruction, alteration, disclosure or access; and, will use and process the Customer Data only in accordance with Customer's commercially reasonable and lawful instructions.

f.  The ClickDimensions solution runs on the Microsoft Windows Azure cloud platform. Windows Azure runs in data centers managed and operated by [Microsoft Global Foundation Services (GFS)](). These data centers comply with key industry standards, such as ISO/IEC 27001:2005, for security and reliability. They are managed, monitored, and administered by Microsoft operations staff that have years of experience in delivering the world's largest online services with 24 x 7 continuity.  For detailed information about Windows Azure security please visit Microsoft's Azure security page at [http://www.windowsazure.com/en-us/support/trust-center/security/](http://www.windowsazure.com/en-us/support/trust-center/security/)

g.  Notification of Security Breach: In the event of a security breach that may affect Customer, we will notify Customer of the breach and provide a description. In the event we reasonably determine, and notify Customer, that it is necessary for all or part of such information to be forwarded on to individuals on one or more of Customer's email lists, Customer will promptly forward such information to the individuals on such list or lists.

5.  **Subscription Service Warranties.**  ClickDimensions warrants that (i) the Subscription Service will function substantially as described in the Documentation; and (ii) ClickDimensions owns or otherwise has the right to provide the Subscription Service to Customer under this Agreement. The remedies set out in this Section are Customer's exclusive remedies for breach of either warranty.

a.  If the Subscription Service does not function substantially in accordance with the Documentation, ClickDimensions shall, at its option, either (i) modify the Subscription Service to conform to the Documentation; or (ii) provide a workaround solution that will reasonably meet Customer's requirements.  If neither of these options is commercially feasible, either party may terminate the relevant Order Form under this Agreement, in which case ClickDimensions shall refund to Customer all prepaid subscription fees to ClickDimensions for unused Subscription Service under the relevant Order Form.

b. If the normal operation, possession or use of the Subscription Service by Customer is found to infringe any third party U.S. intellectual property right or ClickDimensions believes that this is likely, ClickDimensions shall, at its option, either (i) obtain a license from such third party for the benefit of Customer; (ii) modify the Subscription Service so that they no longer infringe; or (iii) if neither of these options is commercially feasible, terminate the relevant Order Form under this Agreement, in which case ClickDimensions shall refund to Customer all prepaid subscription fees to ClickDimensions under the relevant Order Form for unused Subscription Service.

c. However, ClickDimensions has no warranty obligations for:

    i. The extent that Software has been modified by Customer or any third party, unless the modification has been pre-approved in writing by ClickDimensions;

    ii. Problems in the Subscription Service caused by any third party software or hardware, by accidental damage or by other matters beyond ClickDimensions' reasonable control.

6. **Term of Agreement.** This Agreement will start on the date that Customer signs an Order Form and ends when ClickDimensions is no longer obliged to provide Customer with the Subscription Service under any Order Forms or until terminated pursuant to Section 8. The ClickDimensions Subscription Service Term will begin on a mutually agreed upon date between ClickDimensions and the Customer.

7. **Payments.** Customer must pay the fees listed in the relevant Order Form to receive uninterrupted Service.

a. ClickDimensions reserves the right to suspend service if payment is not received by renewal date specified in the order form.  Service will be reinstated upon receipt of payment

b. All Subscription Service fee payments are due per the terms of the Order Form and payments are required to be processed through credit card if paid quarterly or by check, wire or PayPal if pre-paid annually

8. **Termination and Suspension.**

a. Either party may terminate rights granted under a particular Order Form if the other party breaches any material term of the Order Form (including a material term of this Agreement insofar as it applies to the Order Form) and the breach is not cured within 30 days of written notice.

b. If ClickDimensions terminates this Agreement because of non-payment by Customer, all unpaid fees for the remainder of the Subscription Term immediately fall due for payment.

c. ClickDimensions reserves the right to suspend service, at its sole discretion, should it be discovered that Customer is misusing (i.e. SPAM) the email sending service in a way that is adversely affecting the reputation and deliverability of the overall ClickDimensions solution.

d. Customer may terminate the Subscription Service at any time upon thirty (30) days' notice to ClickDimensions.

9. **Warranty Disclaimer**. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SUBSCRIPTION SERVICE IS PROVIDED WITH NO OTHER WARRANTIES OF ANY KIND, AND CLICKDIMENSIONS DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLICKDIMENSIONS DOES NOT WARRANT THAT THE USE OF THE SUBSCRIPTION SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

10. **Limitation of Liability.** EXCEPT FOR CLICKDIMENSIONS' LIABILITY UNDER SECTION 12, NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST OR CORRUPTED DATA, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY), OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF THE OTHER PARTY HAS BEEN INFORMED OF THIS POSSIBILITY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE

SUBSCRIPTION SERVICE, SOFTWARE AND DOCUMENTATION NECESSARY TO ACHIEVE CUSTOMER'S INTENDED RESULTS, AND FOR THE USE AND RESULTS OF THE SUBSCRIPTION SERVICE. EACH PARTY'S TOTAL LIABILITY FOR ANY DIRECT LOSS, COST, CLAIM OR DAMAGES OF ANY KIND RELATED TO THE RELEVANT ORDER FORM SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID OR PAYABLE BY CUSTOMER TO CLICKDIMENSIONS UNDER SUCH RELEVANT ORDER FORM DURING THE 24 MONTHS BEFORE THE EVENT GIVING RISE TO SUCH LOSS, COST, CLAIM OR DAMAGES. THIS LIMITATION ON LIABILITY WAS AND IS AN EXPRESS PART OF THE BARGAIN BETWEEN CLICKDIMENSIONS AND CUSTOMER AND WAS A CONTROLLING FACTOR IN THE SETTING OF THE FEES PAYABLE TO CLICKDIMENSIONS. HOWEVER, THERE IS NO LIMITATION ON DIRECT LOSS, CLAIM OR DAMAGES ARISING AS A RESULT OF (A) AN INFRINGEMENT OF CLICKDIMENSION'S INTELLECTUAL PROPERTY RIGHTS, (B) A BREACH BY EITHER PARTY OF SECTION 11 OF THIS AGREEMENT, OR (C) IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS.

11. **Confidentiality.**

   a. The Subscription Service, Software contains valuable trade secrets that are the sole property of ClickDimensions, and Customer agrees to use its reasonable commercial efforts to prevent other parties from learning of these trade secrets. Customer shall use reasonable commercial efforts to prevent unauthorized access to or duplication of the Subscription Service.
   b. The Customer Data contain valuable trade secrets and confidential information that are the sole property of Customer. ClickDimensions will use best efforts to prevent unauthorized access to Customer Data.
   c. Sections 11a and 11b do not apply to any information that (i) is now, or subsequently becomes, through no act or failure to act on the part of receiving party (the "Receiver"), generally known or available; (ii) is known by the Receiver at the time of receiving such information, as evidenced by the Receiver's records; (iii) is subsequently provided to the Receiver by a third party, as a matter of right and without restriction on disclosure; or (iv) is required to be disclosed by law, provided that the party to whom the information belongs is given prior written notice of any such proposed disclosure.

12. **Indemnification by ClickDimensions.** ClickDimensions hereby indemnifies, defends and holds harmless Customer, its affiliates, directors and employees from any damages finally awarded against Customer (including, without limitation, reasonable costs and legal fees incurred by Customer) arising out of any third party suit, claim or other legal action alleging that the use of the Subscription Service by Customer infringes any copyright, trade secret or United States patent, ("Legal Action"). ClickDimensions assumes the defense of the Legal Action.

   a. However, ClickDimensions shall have no indemnification obligations for any Legal Action arising out of: (i) a combination of the Subscription Service with software or service not supplied, or approved in writing by ClickDimensions; (ii) any repair, adjustment, modification or alteration to the Subscription Service by Customer or any third party, unless approved in writing by ClickDimensions; or (iii) any refusal by Customer to install and use a non-infringing version of the Subscription Service offered by ClickDimensions under Section 5. Section 5 and this Section 12 state the entire liability of ClickDimensions with respect to any intellectual property infringement by the Subscription Service.
   b. Customer shall give prompt written notice to ClickDimensions of any Legal Action no later than 30 days after first receiving notice of a Legal Action, and shall give copies to ClickDimensions of all communications, notices and/or other actions relating to the Legal Action. Customer gives ClickDimensions the sole control of the defense of any Legal Action, shall act in accordance with the reasonable instructions of ClickDimensions and shall give ClickDimensions such assistance as ClickDimensions reasonably requests to defend or settle such claim. ClickDimensions will conduct its defense at all times in a manner that is not adverse to Customer's interests. Customer may employ its own counsel to assist it with respect to any such claim. Customer will bear all costs of engaging its own counsel, unless engagement of counsel is necessary because of a conflict of interest with ClickDimensions or its counsel, or because ClickDimensions fails to assume control of the defense. Customer will not settle or compromise any Legal Action without ClickDimension's express written consent. ClickDimensions shall be relieved of its indemnification obligation under Section 12 if Customer materially fails to

comply with Section 12 and such material failure prejudices ClickDimensions' defense of the Legal Action.

13. **Indemnification by Customer.** Customer hereby indemnifies, defends and holds harmless ClickDimensions, its affiliates, directors and employees from any damages finally awarded against ClickDimensions (including, without limitation, reasonable costs and legal fees incurred by ClickDimensions) arising out of any third party suit, claim or other legal action for infringement of any copyright, trade secret or United States patent ("Legal Action") to the extent that such damages resulted from Customer's use of the Subscription Service (and not the Subscription Service itself).   Customer assumes the defense of the Legal Action.

   a. ClickDimensions shall give prompt written notice to Customer of any Legal Action, and shall give copies to Customer of all communications, notices and/or other actions relating to the Legal Action.  ClickDimensions shall give Customer the sole control of the defense of any Legal Action, shall act in accordance with the reasonable instructions of Customer and shall give Customer such assistance as Customer reasonably requests to defend or settle such claim. Customer will conduct its defense at all times in a manner which is not adverse to ClickDimension's interests. ClickDimensions may employ its own counsel to assist it with respect to any such action.  ClickDimensions will bear all costs of engaging its own counsel, unless engagement of counsel is necessary because of a conflict of interest with Customer or its counsel, or because Customer fails to assume control of the defense.  ClickDimensions will not settle or compromise any Legal Action without Customer's express written consent.

14. **Miscellaneous.**

   **a.** This Agreement together with the Order Form represents the entire agreement of the parties, and supersedes any prior or current understandings, whether written or oral.  If there is a conflict between the Agreement and an Order Form, the Customer Agreement will prevail.
   **b.** This Agreement may not be changed or any part waived except in writing by the parties.
   **c.** This Agreement will be governed by the laws of Georgia (excluding its choice of law rules).  The parties consent to the exercise of exclusive jurisdiction by the state or federal courts in the State of Georgia for any claim relating to this Agreement.
   **d.** Customer may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of ClickDimensions.  ClickDimensions may not withhold such consent in the case of an assignment by Customer of its rights and obligations to an entity that has acquired all, or substantially all of Customer's assets, or to an assignment that is part of a genuine corporate restructure. Any assignment in breach of this Section is void.
   **e.** Customer may not export or re-export, directly or indirectly, any Subscription Service, Documentation or confidential information to any countries outside the United States except as permitted under the U.S. Commerce Department's Export Administration Regulations.

15. **Glossary.**

   a. "Customer Data" means any electronic information stored in the Software database.
   b. "Documentation" means user documentation provided electronically by ClickDimensions for use with the Subscription Service, as periodically updated.
   c. "Order Form" means a document provided by ClickDimensions and signed by Customer that describes ClickDimension's subscription service offering.
   d. "Subscription Service" or "Service" means the hosted customer experience solutions identified in an Order Form, and any modifications periodically made by ClickDimensions.
   e. "Subscription Term" means the period of time during which ClickDimensions is required to provide Customer with the Subscription Service.
   f. "Third Party Applications" are applications with restricted access to ClickDimensions on the source code and/or are managed and operated independently of ClickDimensions.

16. **Renewal.** ClickDimensions reserves the right to adjust prices, availability levels, or other terms and conditions in order to meet its fiduciary and operational obligations when any contract is

being renewed.  This contract does not automatically renew after the term of the Order Form. For renewal ClickDimensions and Customer must execute