

## CHIEFY - SUBSCRIPTION TERMS

Last Revised: March 3, 2021

THESE SUBSCRIPTION TERMS (“**TERMS**”) GOVERNS THE USE OF CHIEFY PRODUCTS AND SERVICES, INCLUDING SAAS AND CLOUD-DELIVERED SERVICES, AND THE SOFTWARE (AS DEFINED BELOW; “**SERVICES**”).

THIS IS A LEGAL AGREEMENT BETWEEN (A) YOU (REFERRED TO HEREIN AS “**CUSTOMER**”, “**YOU**” OR “**YOUR**”) AND (B) CHIEFY, INC, A DELAWARE COMPANY HAVING A PLACE OF BUSINESS AT 370 FIRST AVENUE APT 11F NEW YORK, NY 10010, AND ITS AFFILIATE(S) (“**CHIEFY**”).

PLEASE READ CAREFULLY THESE TERMS BEFORE REGISTERING, ALLOW ACCESS TO, OR OTHERWISE USE THE SERVICES PROVIDED TO YOU BY CHIEFY. THESE TERMS GOVERN YOUR USE OF THE SERVICES HOWEVER THEY WERE ACQUIRED, INCLUDING WITHOUT LIMITATION DIRECTLY VIA CHIEFY, THROUGH AN AUTHORIZED DISTRIBUTOR OR RESELLER, ALL PER AN ORDERING DOCUMENT ACCEPTABLE TO CHIEFY (“**ORDER FORM**”). BY REGISTERING, ALLOW ACCESS TO, OR OTHERWISE USING THE SERVICES PROVIDED TO YOU BY CHIEFY, YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY ALL THESE TERMS AND REPRESENTING THAT YOU HAVE FULL RIGHT, POWER AND AUTHORITY TO ENTER INTO AND PERFORM HEREUNDER. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT REGISTER, ALLOW ACCESS TO, OR OTHERWISE USE THE SERVICES PROVIDED TO YOU BY CHIEFY. FURTHERMORE, YOU HEREBY WAIVE ANY RIGHTS OR REQUIREMENTS UNDER ANY LAWS OR REGULATIONS IN ANY JURISDICTION WHICH REQUIRE AN ORIGINAL (NON-ELECTRONIC) SIGNATURE OR DELIVERY OR RETENTION OF NON-ELECTRONIC RECORDS, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW. BOTH CHIEFY AND CUSTOMER MAY INDIVIDUALLY BE REFERRED AS A “**PARTY**” OR COLLECTIVELY AS “**PARTIES**”

### 1. DEFINITIONS.

1.1 “**Affiliate**” means any entity that Controls, is Controlled by, or under common Control with either of the Parties, where “*Control*” means having the power, directly or indirectly, to direct or cause the direction of the management and policies of the entity, whether through ownership of voting securities, by contract or otherwise.

1.2 “**Documentation**” means the instructions, user guides, manuals, and release notes provided by Chiefy, at any time, in printed and/or electronic form, that describe the installation, operation, use or technical specifications of the Software.

1.3 “**Site**” means a web application provided in our website at <https://www.chiefyteam.com>.

1.4 “**Software**” means Chiefy’s proprietary software and solution for care team collaboration and communication before and after procedures.

1.5 “**Updates**” means any unspecified updates, service patches, or releases made to the Software from time to time which may enhance or improve on existing features, or functions, modules, and technology which are generally made available by Chiefy to its customers at no additional costs.

1.6 “**Upgrades**” any new version of the Software, service patches, or releases thereof which involve the addition of new features and/or new capabilities beyond the existing scope of the features and/or capabilities of the Software.

1.7 “**User**” means Customer’s individual employees, agents, contractors, consultants, suppliers or other individuals who are authorized hereunder to use the Software according to the terms and conditions of these Terms.

1.8 “**User Terms**” Any User will be subject to the Chiefy’s standard end-user Terms of Use and Privacy Policy, available at <https://www.chiefyteam.com/terms-of-use> and <https://www.chiefyteam.com/privacy-policy>, which govern the use of the Software by any User.

## 2. **RIGHTS TO USE; RESTRICTIONS ON USE**

2.1 The scope (including any limitation of number of User(s)) of the subscription for the use of the Software (“**Subscription**”) will be determined in the Order Form and shall include the contemplated period(s) of the Subscription (the “**Subscription Period(s)**”). If Customer wishes to extend the Subscription or the Subscription Period(s), such extension shall be subject to additional Order Form.

2.2 Subject to payment of the Subscription’s fees (“**Fees**”) specified under a valid Order Form, the activation, installation and use of the Software shall be enabled, remotely, on Users’ devices (including without limitation, mobile devices, tablets and/or PCs).

2.3 Subject to payment of Fees under a valid Order Form, Chiefy hereby grants Customer a limited, revocable upon breach, non-exclusive, non-transferable and non-assignable right during the Subscription Period(s) to allow its User(s) to access the Software via the Site in accordance with Subscription as set forth in the applicable Order Form and the User Terms in object code form only, and solely for Customer’s internal business purposes, all in accordance with the terms and conditions set forth in these Terms and the Order Form.

2.4 Chiefy may make available Documentation to Customer for Customer’s internal business purposes and solely in connection with the use of the Software during the Subscription Period(s). Customer may print or copy the Documentation as needed for its own internal business purposes provided that all copyright notices are included therein. The Documentation shall be considered as Chiefy’s Confidential Information (as further defined). Unless the Documentation is separately referred to herein, all references in these Terms to the Software shall include the Documentation.

### 2.5 **Additional Rights and Restrictions.**

2.5.1 The Software and/or the Site are licensed, not sold. These Terms only gives Customer limited rights to use the Software and/or the Site as explicitly set forth in these Terms and Chiefy (or its licensors as applicable) reserves all other rights.

2.5.2 The Customer agrees that it will not, and will not permit others to (i) work around any technical protections; (ii) modify, translate, reverse engineer, decompile, disassemble any of the Software and/or the Site, integration or component, and/or any part thereof, or create any derivative work based thereon; (iii) exceed the Subscription as specified in these Terms and applicable Order Form(s); (iv) test the Software and/or the Site or use the Software and/or the Site in connection with any benchmark tests or any other tests or comparisons of which the results are to be published in any form or media; (v) sublicense, transfer, publish or make available to the public or any third party, rent, lease or lend the Software and/or the Site; (vi) use the Software and/or the Site to operate a service bureau or subscription service or for commercial software hosting services; (vii) disclose or attempt to disclose the Software or any part of, or their sources by any means of dissemination; (viii) represent that Customer possess any proprietary interest in the Software and/or the Site; (ix) directly or indirectly, take any action to contest Chiefy’s (or its licensors) intellectual property rights in or in connection to the Software in any way; or (x) use the Software and/or the Site or any of the Software output for the purpose of competing with Chiefy.

2.6 **Marks and Use of Chiefy’s Name.** These Terms does not grant the Customer any rights in and to Chiefy’s trademarks or service marks. The Customer will not remove or modify any Software markings or any notice of Chiefy’s proprietary rights.

**2.7 Software Minimum Requirements.** The Customer acknowledges and agrees that the proper use of the Software may require one or more compatible hardware (e.g., mobile devices, tablets and/or PCs to allow its Users enter the Site and the Software), internet access, as further described in the applicable Order Form and/or Documentation provided by Chiefy.

**2.8 Transfer to a Third Party.** The rights granted to the Customer in these Terms may not be assigned or transferred by Customer to a third party without Chiefy's prior written consent. Chiefy may assign or transfer (i) its rights to receive money under these Terms to any third party without limitation subject only to prompt written notice to Customer, and (ii) any and all other rights and obligations and undertakings hereunder to any Chiefy Affiliate or in connection with a sale or transfer of all or substantially all of Chiefy's assets, stock or business by sale, merger, consolidation, or similar transaction. Any purported assignment or transfer in violation of this Section 2.8 (*Transfer to a Third Party*) shall be void.

**2.9 Verification and Reporting.** For the Term of these Terms and for one (1) year after its termination or expiration for any reason whatsoever, at Chiefy's written request, and no more than once in each twelve (12) months' period (unless Chiefy has a reasonable basis to conclude that a breach of the terms of these Terms or any Order Form by Customer, has occurred or is occurring, in which case a request may be made by Chiefy more than once annually), Customer shall provide Chiefy with a signed statement verifying that the Software and Documentation are being used solely pursuant to the provisions of these Terms. At Chiefy's written request and at a mutually agreed time, which shall be no more than once in each twelve (12) month period (unless Chiefy has a reasonable basis to conclude that a breach of the terms of these Terms or any Order Form by Customer has occurred or is occurring in which case an audit may be conducted more than once annually), Customer shall grant Chiefy access to Customer's relevant records in order to audit the use of the Software and Documentation. Such audit shall be conducted during Customer's regular business hours and without impairing Customer's business operations. If such audit establishes that Customer has used the Software or Documentation beyond the Subscription set forth in these Terms and in applicable Order Form(s), Chiefy shall be entitled to charge Customer for the costs of performing the audit in addition to Chiefy's standard price list for such additional use of the Software and Documentation.

### **3. FEES**

3.1 Customer shall pay the Fees due to Chiefy as set forth in the Order Form added with any applicable VAT or other similar sales taxes. Payment shall be due in accordance with the payment schedule set forth in the Order Form. Unless otherwise set forth in the applicable Order Form payments shall be made in United States Dollars by wire transfer to Chiefy (or to any of its Affiliates in Chiefy's sole discretion) designated bank account. All Fees shall be non-cancellable and the sums paid non-refundable except in the case of termination of the Agreement by Customer for material breach by Chiefy (pursuant to the terms of these Terms) in which case Customer shall be entitled to a refund of prepaid Fees on a pro-rated basis from the termination date.

3.2 Unless otherwise specifically stated in the Order Form, any discounts provided will apply only to the specific term they were granted. Support and maintenance services and/or professional services are optionally available to Customer subject to payment of applicable Fees. Customer is responsible for payment of any taxes resulting from the acceptance of the Subscription or from the possession and use of the Software. If any taxes are required to be withheld at source and remitted to the authorized tax authority, Customer shall pay an amount to Chiefy such that the net amount payable to Chiefy after withholding of taxes shall equal the amount that would have been payable under these Terms if such withholding was not applied.

### **4. SUPPORT AND MAINTENANCE; PROFESSIONAL SERVICES.**

4.1 During the Subscription, Customer will be entitled to receive Chiefy’s standard customer support services (“**Support Services**”) during each coast normal business hours (9:00 a.m. to 5:00 p.m., Monday-Friday). Subject to additional Fees, Customer may be entitled to receive enhanced Support Services in the event such are included under the applicable Order Form.

4.2 Unless otherwise indicated in the Order Form, the Support Services do not include, however, any configuration, integration, customization, training, or other services (“**Professional Services**”) with respect to the Software. If Customer desires to receive any Professional Services with respect to the Software, such Professional Services shall be governed by a separate professional service agreement to be agreed upon in writing between the Parties.

## 5. **Third-Party Components**

**Third-Party Components and Services.** Chiefy may include with or embedded in the Software (as necessary or advisable for the operation of the Software) certain third-party software components (“**Third-Party Components**”). Such Third Party Components may be subject to separate terms and conditions.

## 6. **MUTUAL REPRESENTATIONS AND WARRANTIES.**

**Mutual Warranties.** Each party represents and warrants to the other that: (i) it has the power and authority to enter into and perform its obligations under these Terms, and (ii) it will comply with any applicable law, including without limitation, Health Insurance Portability and Accountability Act and its implementing administrative simplification regulations (45 CFR 160-164) (“**HIPAA**”), the Protected Health Information (as defined under HIPAA), and the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”), and any applicable export control laws, and (iii) the Parties hereby incorporate the terms of the Business Associate Agreement available at <https://www.chiefyteam.com/selfservice> to these Terms, as applicable. The Parties hereby agree that in case of regulatory changes and/or changes in the industry practice, that will affect Customer’s business and/or these Terms, the Parties will discuss in good faith and use their best efforts to agree on the changes and any amendments required to be made to these Terms following such changes.

## 7. **SOFTWARE WARRANTY; DISCLAIMERS**

7.1. **Limited Software Warranty.** Chiefy warrants, for Customer’s benefit alone, that the Software as provided by Chiefy, if operated as directed and in accordance with the Documentation and herewith, shall operate substantially in accordance with the express functional specifications in the Documentation. Chiefy warrants that it has the requisite authority to execute, deliver, and perform its obligations under these Terms and that doing so will not violate any preexisting contracts or agreements.

7.2. **DISCLAIMERS.** THE SOFTWARE IS COMPLEX COMPUTER SOFTWARE. ITS PERFORMANCE WILL VARY DEPENDING ON THE USERS DEVICES, SOFTWARE INTERACTIONS, THE CONFIGURATION OF THE SOFTWARE AND OTHER FACTORS. EXCEPT FOR THE EXPRESS WARRANTIES STATED ABOVE, THE SOFTWARE IS NEITHER FAULT TOLERANT NOR FREE FROM ERRORS, CONFLICTS, OR INTERRUPTIONS AND CHIEFY DOES NOT WARRANT OR GUARANTEE THAT THE SOFTWARE WILL MEET CUSTOMER’S REQUIREMENTS, THAT THE SOFTWARE WILL OPERATE ERROR-FREE, THAT CUSTOMER’S USE OF THE SOFTWARE WILL BE UNINTERRUPTED, THAT IT WILL BE COMPATIBLE WITH ALL OF CUSTOMER’S EQUIPMENT OR SOFTWARE CONFIGURATIONS OR THAT CHIEFY WILL CORRECT ALL ERRORS IN THE SOFTWARE. IN ADDITION, NOTWITHSTANDING ANYTHING TO THE CONTRARY, CHIEFY SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR PROBLEMS CAUSED BY MODIFICATIONS OR CUSTOMIZATIONS TO THE SOFTWARE MADE WITHOUT CHIEFY’S WRITTEN APPROVAL. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 7.1 (*LIMITED SOFTWARE WARRANTY*) ABOVE THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED “AS-IS”, AND CHIEFY EXPRESSLY DISCLAIMS ANY AND

ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

**7.3. Exclusive Remedies.** For any breach of the warranties contained in Section 7.1 (*Limited Software Warranty*), Customer's exclusive remedy, and Chiefy's entire and sole liability under these Terms, shall be to use reasonable commercial efforts to repair or replace the Software so that it operates as warranted; provided that (i) Customer has fully paid all due Fees, (ii) Customer is not otherwise in breach of these Terms, and (iii) Customer has reported in writing to Chiefy the claimed failure promptly upon discovery. If Chiefy is unable to repair or replace the Software within thirty (30) days of receiving such notice from Customer, Chiefy will be entitled to terminate these Terms and refund any prepaid unused amount of the Fees covering the remainder of the current Subscription Period(s) after the effective date of termination. Chiefy may disclaim any obligation or liability under this Section 6 (*Warranty; Disclaimers*) if the Software has been: (i) altered, modified, or serviced other than by Chiefy; (ii) used in a manner other than as specified in the Documentation; or (iii) if Customer violated the Subscription's scope and/or the restrictions set forth under Section 2 (*Right to Use; Restrictions to use*) hereto. The warranty shall not apply if the Software is used in any manner other than the unmodified version of the Site with which the Software was designed to be used as described in the Documentation or in the applicable Order Form.

## **8. Intellectual Property; Confidential Information**

**8.1. Intellectual Property.** No rights other than those expressly set forth herein shall pass to the Customer or anyone on its behalf. Customer acknowledges and agrees that as between Customer and Chiefy, the Software, Site, and the Documentation, including any related services (and without limitation any Third-Party Components) and any revisions, corrections, modifications, enhancements and/or Upgrades thereto, are Chiefy's property protected under copyright laws, patent law, and/or other laws protecting intellectual property rights and international treaties. Customer further acknowledges and agrees that all right, title, and interest in and to the Software and/or the Site including associated intellectual property rights (including, without limitation, copyrights, trade secrets, trademarks, etc.), evidenced by or embodied in and/or attached/connected/related to the Software (including, without limitation, the code), Documentation and any related services, are and shall remain with Chiefy. Nothing in these Terms constitutes a waiver of Chiefy's intellectual property rights under any law. Customer understands and acknowledges that the Software contains or includes proprietary confidential information and trade secrets of Chiefy. Customer will not knowingly do anything to impair Chiefy's proprietary rights in the Software or seek to acquire or register any rights in Chiefy's proprietary marks, copyrights or information. In the event Customer (including via its User(s)) provides Chiefy with any suggestions, comments or other feedback relating to the Software, or if Chiefy, independently or via its third party service provider generates any knowledge in connection with its provision of the Software and any related services or the use thereof (collectively "**Feedback**"), whether such Feedback is provided or generated (as applicable) prior to, on or after the Effective Date, such Feedback is and shall become the sole and exclusive property of Chiefy and/or its Affiliates, and Customer hereby irrevocably assigns to Chiefy and/or its Affiliates all of its right, title and interest in and to such Feedback.

**8.2.** Other than as set forth in Section 8.1 (*Intellectual Property*) above, Customer Data (as such term User Terms) uploaded to the Software via its Users is and will remain at all times the property of Customer, all subject to the terms and conditions set forth in the User Terms.

**8.3.** Chiefy acts and is authorized on behalf of Customer during the Term to connect (or to have connected) the Site and the Software (via the Site) on or to Users' devices, and use Customer Data (according to the User Terms). Customer represents that during the Subscription, it shall (i) hold any necessary rights, licenses, consents and/or permissions to allow Chiefy and its service providers to perform their obligations under these Terms, including without limitation, the use of Customer Data as contemplated hereunder, and (ii) any content, information and data (including Customer Data) provided to Chiefy under these Terms be only in accordance with any applicable laws, and as described in the User Terms.

8.4. Customer grants Chiefy an irrevocable, perpetual, non-transferable, non-sub-licensable, non-exclusive, royalty-free right to use, have used, any depersonalized anonymous or statistical data, which does not identify Customer, and any derivative, or data which is derived or deducted by Chiefy from Customer's use of the Software pursuant hereto, for Chiefy's analytics, research, development, internal uses.

8.5. **Confidential Information.** Prior to or during the Term of these Terms, the Parties may, directly or indirectly, disclose to each other, or have access to, certain Confidential Information (as defined below) of the other Party, whether in writing, oral form or in any other manner. For the purposes of these Terms, "*Confidential Information*" means any and all information, data and know-how of a private, non-public or confidential nature, in whatever form, that relates to the business, financial condition, technology and/or products of the disclosing party, its Affiliates, customers, suppliers, or potential customers or suppliers, provided or disclosed to the receiving party or which becomes known to the receiving party, or is viewed by the receiving party during a visit to the disclosing party's facilities, whether or not marked or otherwise designated as "confidential", "proprietary" or with any other legend indicating its proprietary nature. By way of illustration and not limitation, Confidential Information of Chiefy includes all forms and types of financial, business, scientific, technical, or engineering information and know-how, including but not limited to in relation to the Software. "*Confidential Information*" shall not include information or any matter that the receiving party can demonstrate by written and dated evidence (a) was already known to the receiving party from a source other than the disclosing party prior to disclosure; (b) was independently developed by the receiving party without use of, or reference to, the Confidential Information; (c) has become a part of the public knowledge, through no fault of, or breach of these Terms by the receiving party; (d) was lawfully received by the receiving party from another person or entity having no confidentiality obligation to the disclosing party or its Affiliates; or (e) is explicitly approved in writing by the disclosing party for release by the receiving party. The receiving party shall treat all Confidential Information of the disclosing party as strictly confidential, and except as expressly contemplated hereunder it shall: (a) not, directly or indirectly use or otherwise exploit Confidential Information for any other purpose other than for performing hereunder; (b) refrain, either by itself or through any third party, from analyzing or attempting to analyze the Confidential Information or any part of it, including by way of disassembly, decompiling or reverse engineering any samples, prototypes, software or other tangible objects, in order to determine the composition, design or specifications thereof; (c) not modify, create derivative works based, or emulate the functionality of any samples, prototypes, software or other tangible objects constituting Confidential Information; (d) protect and safeguard the Confidential Information against any unauthorized use, disclosure, transfer or publication with at least the same degree of care as it uses for its own confidential or proprietary information, but in no event using less than a reasonable degree of care; (e) restrict disclosure of the Confidential Information to those directors, officers, employees, agents, consultants, contractors, or representatives of itself or of its Affiliates ("**Representatives**") who clearly have a need-to-know such Confidential Information, and for no purpose other than for performing hereunder; (f) advise such Representatives of their obligations to comply with the terms and conditions of these Terms, and receiving party shall be liable for any failure of its Representatives to comply with any terms of these Terms; and (g) notify the disclosing party immediately upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of these Terms. In the event that the receiving party becomes legally compelled to disclose any of the Confidential Information, it will provide the disclosing party with prompt notice thereof so that the disclosing party may seek a protective order or other appropriate remedy against the disclosure, and in any event, will limit the disclosure to the greatest extent reasonably possible under the circumstances. The receiving party acknowledges that a breach of this Section 8.5 (*Confidential Information*) will cause irreparable damage to disclosing party that cannot be calculated or that cannot be adequately compensated for by money damages and, accordingly, the disclosing party shall be entitled to seek injunctive relief under these Terms, as well as such further relief as may be granted by a court of competent jurisdiction.

## 9. INTELLECTUAL PROPERTY INFRINGEMENT; INDEMNIFICATION

9.1. **Infringement Indemnification.** Chiefy shall defend, indemnify and hold Customer harmless at Chiefy's sole cost and expense, for any claim, suit, expenses, damages, or proceeding brought against Customer which alleges that the Software, as delivered and used in accordance with the terms of these Terms, infringes any third party patent, copyright or other intellectual property right (a "**Claim**"). Chiefy will pay the amount of any final judgment or settlement of such Claim awarded against Customer, provided that Customer gives Chiefy written notice promptly upon becoming aware of such Claim or threat of Claim, including full information and reasonable assistance in its defense or settlement and allows Chiefy to assume full control of the defense and settlement of such Claim, provided that any settlement intended to bind Customer shall not be final without Customer's written consent, which consent shall not be unreasonably withheld.

9.2. **Limitations on Indemnity Obligations.** Chiefy shall have no liability for any claim of infringement based upon: (i) modification of the Software not approved by Chiefy; (ii) use by Customer of a superseded or altered release of the Software or Documentation if such infringement would have been avoided by the use of a current unaltered release of the Software or Documentation that Chiefy made available to Customer; (iii) the combination, operation or use of the Software furnished under these Terms with software or hardware not furnished or approved for such combination, operation or use by Chiefy if the infringement would not have arisen but for such actions.

9.3. **Remedies.** Without in any way limiting Chiefy's obligations to indemnify and defend Customer under Section 9.1 (*Infringement Indemnification*), if an injunction is obtained in such action against Customer's use of the Software, Chiefy may, at its option and expense, either: (i) obtain for Customer the right to continue to use the Software; (ii) replace the Software with a product with substantially equivalent functionality; or (iii) modify the Software so that it becomes non-infringing, while maintaining substantially equivalent functionality. If (i), (ii) or (iii) above are not commercially practical, then Chiefy may elect to give Customer a refund of prepaid Fees on a prorated basis from the date the Software became unavailable for Customer's use and shall be entitled to terminate these Terms and any Order Form.

**10. LIMITATION OF LIABILITY.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL OR EQUITABLE BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES OR SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, LOSS OF GOODWILL, COMPUTER FAILURE OR MALFUNCTION, LOSS OF DATA OR BUSINESS INFORMATION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES) ARISING IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SOFTWARE SUPPORT SERVICES OR PROFESSIONAL SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. CHIEFY'S MAXIMUM AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE ANNUAL FEES PAID TO CHIEFY HEREUNDER AS SET FORTH IN THE APPLICABLE ORDER FORMS. THE FOREGOING LIMITATIONS OF THIS SECTION 10 (*LIMITATION OF LIABILITY*) WILL NOT APPLY TO LIABILITY CAUSED BY EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 8.5 (*CONFIDENTIAL INFORMATION*) OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR CUSTOMER'S BREACH OF ANY RESTRICTIONS, OBLIGATIONS AND REPRESENTATIONS UNDER SECTION 2 (*RIGHT TO USE; RESTRICTIONS ON USE*) HEREUNDER.

**11. TERM AND TERMINATION.** These Terms shall enter into effect upon the Effective Date, and unless terminated earlier in accordance with the terms hereof, it shall continue until the expiration of all Subscription Periods set forth in agreed upon Order Forms executed between the Parties, referencing these Terms (the "**Term**"). Either Party may terminate these Terms if the other Party breaches its terms and such breach is not cured within thirty (30) days of the terminating Party's written notice of such breach. Sections 2.5.2 (*Restrictions*) 2.9 (*Verification and Reporting*), 6 (*Warranty; Disclaimers*), 8 (*Intellectual Property; Confidential Information*), 9 (*Intellectual Property Infringement; Indemnification*), 10 (*Limitation of*

*Liability*), 11 (*Term and Termination*) and 14 (*General*) will survive any termination or expiration of these Terms.

**12. RETURN OR DESTRUCTION OF SOFTWARE AND DOCUMENTATION UPON TERMINATION OF SUBSCRIPTION.** Upon termination or expiration of these Terms Customer must, and make its Users, cease using the Software, the Site and the Documentation and promptly return the Documentation and any copies thereof (in all forms, partial and complete, in and on all types of media and computer memory, and whether or not modified or merged into other materials) to Chiefy or certify in writing that it has been destroyed. This requirement applies to copies of the Documentation; and either Party shall return to the other Party and purge its systems from any Confidential Information it holds or has access to, and certify of the same in writing.

**13. PUBLICITY.** With Customer's prior written consent, Chiefy may use Customer's name and logo in publicly available sources to identify Customer as a customer of Chiefy, such as use on Chiefy's Site and marketing materials. Any such consent terminates upon termination of these Terms.

#### **14. GENERAL**

14.1. **Severability.** In the event any provision or part of these Terms is held to be invalid or unenforceable by any court of competent jurisdiction, it shall be amended to the extent required to render it valid, legal and enforceable, or deleted if no such amendment is feasible, and such amendment or deletion shall not affect the enforceability of the other provisions hereof.

14.2. **Waiver.** No waiver of any breach of these Terms will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving Party. The failure of either Party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

14.3. **Entire Agreement.** These Terms, including any referenced written addenda, Order Forms and exhibits constitutes the entire agreement between the Parties and supersedes all previous agreements or representations, written or oral, with respect to its subject matter. These Terms may not be modified or amended except in writing signed by a duly authorized representative of each Party.

14.4. **Governing Law.** The validity, interpretation, and performance of these Terms shall be controlled by and construed under the laws of the State of New York as if performed wholly within New York and without giving effect to the principles of conflicts of laws. The Parties hereby consent to the exclusive jurisdiction of the courts located in New-York to settle any dispute or claim that arises out of or in connection with these Terms or its subject matter. The Parties specifically exclude application of the United Nations Convention on Contracts for the International Sale of Goods to these Terms.

14.5. **Headings.** The paragraph headings in these Terms have been inserted merely for convenience and shall not affect the rights and obligations of the Parties or the meaning of the language in these Terms.

**[End of Terms]**