

## StackHawk Terms of Service - Marketplace

**Last Updated: February 5, 2023**

These StackHawk Terms of Service are entered into by and between StackHawk, Inc., a Delaware corporation having its principal place of business at 1624 Market Street, Suite 226, PMB 36969, Denver, CO 80202 (“**we**,” “**us**,” or the “**Company**”), and the person, company or other legal entity accepting these terms and conditions on behalf of itself and any entity that directly or indirectly controls, is controlled by, or is under common control with it (an “**Affiliate**”) (such company or entity and its Affiliates, collectively, “**you**” or “**Customer**”).

This StackHawk Terms of Service sets forth the terms and conditions that govern your access to and use of the Solution (as defined herein below). You and Company, or a reseller authorized by Company (a “**Reseller**”), may enter into order form(s) (either directly or through an authorized reseller or marketplace) that further specifies the Solution to be provided by Company and that contains pricing, usage quantities, additional terms, conditions and limitations that apply to the Solution ordered by you. If you are placing your order via our Website (as defined herein below), you may select the initial subscription period, the usage quantities and the pricing applicable to such initial subscription period and usage quantities upon checking out on our Website. Any order forms entered into by you and Company or a Reseller and any order you place by checking out on our Website or an authorized Marketplace are each referred to herein as an “**Order**.” These StackHawk Terms of Service, together with any Orders entered into by both parties, are referred to collectively as the “**Agreement**.” By entering into an Order, your Affiliate agrees to be bound by the terms of this Agreement as if it were an original party to this Agreement.

**Please review this Agreement carefully before accessing or using the Company Properties (as defined herein below). By accessing or using any Company Property or by accepting this Agreement (whether by completing the registration process, by clicking a box that indicates acceptance or by executing an Order that references this Agreement), Customer agrees to all of the terms and conditions of this Agreement. If Customer does not agree to all of the terms and conditions of this Agreement, Customer must not access or use the Company Properties.**

### **1. COMPANY PROPERTIES.**

**1.1 Description of Solution and Company Properties.** Company’s software (the “**Software**”) enables end users to scan their software applications and application programming interfaces for certain known vulnerabilities, to aid them in protecting and improving their software. Company makes its Software available to you as a hosted, cloud-based services offering (the “**Services**”). Company also shall make available to you those user guides, documentation and training materials regarding the Software and the Services that it makes generally available to its customers (the “**Documentation**”). The Software, the Services and the Documentation are referred to herein collectively as the “**Solution**.” Company’s website (the “**Website**”), the Solution and the information and content available on the Website and in or through use of the Solution are referred to herein each as a “**Company Property**” and collectively as the “**Company Properties**.” Scan results provided by the Software and Services are based on end user configuration, including information related to the user’s data sets, software framework and identification of the user’s own software applications and application programming interfaces, as well as on generally known security vulnerabilities and accepted coding practices. Since the scan results produced by Software and the Services are based on information provided by the user, as well as on an ever-changing security landscape, the Software and the Services are designed solely for the purpose of

assisting end users in identifying vulnerabilities. Company does not guarantee, represent or warrant that the Solution will identify or properly classify all potential vulnerabilities or threats.

## **1.2 Registration, Free Services and Purchased Services.**

**1.2.1 Registration.** Customer agrees to provide true, accurate, current and complete information as prompted by Company's registration process, and to maintain and promptly update such information to keep it true, accurate, current and complete. Customer represents and warrants that (a) Customer has read, understands, and agrees to be bound by this Agreement; (b) the person entering into this Agreement has the authority to enter into this Agreement on behalf of the company or other entity named as the user, and to bind that company or entity to this Agreement; and (c) Customer is not barred from using the Company Properties under the laws of the United States, its place of residence or any other applicable jurisdiction.

**1.2.2 Free Services.** If Customer registers with Company for a free trial or no charge version of the Services ("**Free Services**"), Company shall make the Free Services available to Customer free of charge until the earlier of (a) the end of the free period for which Customer registered to use the applicable Free Service(s), or (b) the start date of any Purchased Services (as defined below in Section 1.2.3). ANY DATA CUSTOMER ENTERS INTO THE FREE SERVICES WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME SERVICES AS THE FREE SERVICES OR TO UPGRADED SERVICES BEFORE THE END OF THE FREE PERIOD. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, ALL FREE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

**1.2.3 Purchased Services.** The Services offerings are available in various packages that offer different usage limits and varying levels of support. The Services that Customer purchases pursuant to an Order on the parameters specified in such Order are the "**Purchased Services.**" Purchased Services exclude any Free Services or any other services made available to Customer free of charge.

## **1.3 Changes.**

**1.3.1 Company Properties.** From time to time, Company may offer new "beta" features or tools to its users. Such features or tools are offered solely for trial or evaluation purposes and without any warranty of any kind, and may be modified or discontinued at Company's sole discretion. Company may choose to modify or discontinue features of the Company Properties as offerings are updated and more features are added. Company may stop, suspend, or modify features available through the Company Properties at any time without prior notice to Customer, provided that Company shall not materially decrease the functionality of the Purchased Services during a Subscription Period.

**1.3.2 Agreement.** Company may from time to time, in its sole discretion, change the terms and conditions of this Agreement. If any such change is material, as determined in Company's sole discretion, Company will notify Customer by email or by posting a notice of the changes on the Website or on the account log-in page for the Services. By continuing to access and use the Company Properties after any changes become effective, Customer agrees to be bound by the revised Agreement.

## 2 USE OF THE COMPANY PROPERTIES.

**2.1 Rights to Use the Solution.** Use of any Software and Documentation that is made available via the Website or the Services is governed by the terms of this Agreement. At no time will Company provide you with any tangible copy of our Software or Documentation. Company shall provide electronic access to the Software and Documentation via the Services and/or the Website and shall not use or deliver any tangible media in connection with the (a) delivery, installation, updating or problem resolution of any Software (including any new releases); or (b) delivery, correction or updating of the Documentation. Subject to your compliance with the Agreement (including payment of all applicable fees to Company or Reseller, as applicable), Company grants you a personal, non-assignable, non-transferable, non-sublicensable, revocable, non-exclusive right to access and use the Software for the sole purpose of enabling you to use the Services during the Subscription Period (defined below in this Agreement) set forth in the applicable Order for the sole purpose of scanning a development or testing instance of your own proprietary software applications and application programming interfaces for vulnerabilities as permitted by the Agreement (the “**Authorized Purpose**”). If Customer retains a third party to provide services related to security threats or vulnerabilities (“**Authorized Service Provider**”), Customer may permit such Authorized Service Provider to use the Software and the Services on Customer’s behalf, provided that the Authorized Service Provider only uses the Software and the Services for the Authorized Purpose and the Authorized Service Provider agrees to comply with this Agreement.

**2.2 Customer’s Responsibilities.** Customer shall (a) use the Company Properties only in accordance with this Agreement and all applicable laws and regulations; (b) be solely responsible and liable for the use of the Company Properties by all Authorized Service Providers and other users in compliance with this Agreement; and (c) prevent unauthorized access to or use of the Company Properties, and notify Company promptly of any such unauthorized access or use. Customer is responsible for any activity originating from Customer’s account, regardless of whether such activity is authorized by Customer.

**2.3 Open Source Software.** The Software may include programs or code that constitute open source software (“**Open Source**”) and are licensed under an open source license agreement. There may be provisions in the open source license agreement that expressly override the terms of this Agreement. If there is any conflict between the Agreement and the open source license agreement, the open source license agreement shall take precedence solely with respect to the Open Source.

**2.4 Updates.** You understand that Company Properties are evolving. As a result, Company may require you to accept updates to Company Properties that you have installed on your computer. You acknowledge and agree that Company may update Company Properties without notifying you. You may need to update third-party software from time to time in order to use Company Properties.

**2.5 Restrictions.** The rights granted to you in the Agreement are subject to the restrictions set forth in this Section and elsewhere in this Agreement. Customer shall not, and it shall not permit, assist, authorize or encourage any third party to: (a) license, sell, rent, lease, transfer, assign, reproduce, copy, distribute, republish, host or otherwise commercially exploit Company Properties or any portion of Company Properties, or include the Company Properties in a service bureau or

outsourcing offering, or otherwise make the Company Properties available to, or use any Company Properties for the benefit of, anyone other than Customer; (b) frame or utilize framing techniques to enclose any trademark, logo, or other Company Properties (including images, text, page layout or form) of Company; (c) use any metatags or other "hidden text" using Company's name or trademarks; (d) modify, translate, adapt, merge or make derivative works any part of the Company Properties; (e) disassemble, decompile, reverse compile or reverse engineer any part of the Company Properties except to the extent the foregoing restrictions are expressly prohibited by applicable law; (f) access Company Properties to benchmark performance or in order to build a similar or competitive website, application or service; (g) permit direct or indirect access to or use of any Service in a way that circumvents any usage limit; and (h) remove, alter, obscure or destroy any copyright, trademark, service mark or other proprietary rights notices accompanying or contained on or in Company Properties. Any future release, update or other addition to Company Properties shall be subject to the Agreement. Company, its suppliers and service providers reserve all rights not granted in the Agreement.

### **3 PROPRIETARY RIGHTS.**

**3.1 Company Properties.** You agree that Company and its suppliers own all rights, title and interest in and to the Company Properties.

**3.2 Data.** You own the data you upload or transmit to the Services ("**Your Data**"). You agree that Company and our subcontractors whom we engage to provide the Company Properties may use, reproduce, and modify Your Data for the purposes of operating and providing the Company Properties. Company may collect information about your use of the Solution, analyze Your Data, and aggregate such information and analysis with data and information provided by third parties or produced by Company (the "**Aggregated Data**"). We may share Aggregated Data with third parties but we will not attribute any information or analysis in the Aggregated Data to you or your users.

**3.3 Feedback.** You may submit ideas, suggestions, documents, and/or proposals regarding the Company Properties to Company through its suggestion, feedback, wiki, forum or similar pages ("**Feedback**"). You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to Company a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights, in connection with the operation and maintenance of Company Properties and/or Company's business.

### **4 USER CONDUCT.**

You agree that you will not, under any circumstances:

**4.1** Use cheats, exploits, automation software, bots, hacks, mods or any unauthorized software designed to modify or interfere with any Company Properties;

**4.2** Interfere with or damage any Company Properties, including, without limitation, through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial-of-service attacks, packet

or IP spoofing, forged routing or electronic mail address information, or similar methods or technology;

**4.3** Modify or cause to be modified any files that are a part of Company Properties;

**4.4** Disrupt, overburden, or aid or assist in the disruption or overburdening of: (a) any computer or server used to offer or support the Company Properties; or (b) the enjoyment of Company Properties by any other person;

**4.5** Institute, assist, or become involved in any type of attack, including, but not limited to, distribution of a virus, denial of service attacks upon any Company Properties, or other attempts to disrupt Company Properties or any other person's use or enjoyment of Company Properties;

**4.6** Attempt to gain unauthorized access to any Company Properties, accounts registered to others, or to the computers, servers or networks connected to the Company Properties by any means other than the user interface provided by Company, including, but not limited to, by circumventing or modifying, attempting to circumvent or modify, or encouraging or assisting any other person to circumvent or modify, any security, technology, device or software that is part of Company Properties;

**4.7** Access, tamper with or use non-public areas of the Company Properties, Company's computer systems, or the technical delivery systems of Company's providers;

**4.8** Attempt to probe, scan, or test the vulnerability of any Company system or network, or breach any security or authentication measures;

**4.9** Disrupt or interfere with the security of, or otherwise cause harm to, Company Properties, systems, resources, accounts, passwords, servers or networks connected to or accessible through Company Properties or any affiliated or linked sites; or

**4.10** Avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by Company or any of Company's providers or any other third party (including another user) to protect Company Properties.

## **5 FEES AND PAYMENT TERMS.**

**5.1 Fees.** You shall pay all fees that apply to the subscription you have ordered for the Solution (each, a "**Subscription Fee**"). The Subscription Fees are either set forth in the applicable Order or, if you and StackHawk did not execute an Order in writing, on the pricing page on our Website or the online marketplace through which purchase was made ("**Price List**"). The Subscription Fees shall commence upon the first day of the Subscription Period as set forth in the applicable Order or, if you and StackHawk did not execute an Order in writing, upon the Commencement Date. If any Subscription Fees that are usage-based apply to the subscription you have ordered for the Solution, you acknowledge and agree that StackHawk may assess your usage of the Solution periodically in its sole discretion. You agree to cooperate in all such assessments and provide any information requested by StackHawk. If StackHawk determines that your use of the Solution exceeds the usage covered by Subscription Fees that you have paid to StackHawk or Reseller, you agree that StackHawk or Reseller may: (a) charge the credit card we have on file for you for, or if we do not have a credit card on file, upon request you shall promptly pay the difference

between the Subscription Fees previously paid by you for the Subscription Period and the Subscription Fees applicable to your current usage; and/or (b) suspend provision of the Solution to you. Except as otherwise expressly set forth in the Agreement, all payment obligations are noncancelable and all amounts paid are non-refundable. The quantities and product offering tier purchased cannot be decreased or downgraded during the relevant Subscription Period. You may purchase at any time: (i) additional rights and subscriptions by paying Company or Reseller the then-current fees for such additional rights and subscriptions, (ii) new features or functions of the Services not previously licensed by you by paying Company or Reseller its price for such features or functions; or (iii) upgrades to your Services offering (e.g., upgrading from the entry level offering to an enhanced offering) by paying Company or Reseller the difference between the price for your current offering and the price for the upgraded offering. Unless otherwise expressly provided in the applicable Order, any discounts provided by Company or Reseller shall only apply to the initial quantities ordered pursuant to the original Order during the Initial Subscription Period. If purchases of additional rights and subscriptions, new features or functions of the Services and/or upgrades to your Services offerings occur during a Subscription Period, the prices for those items shall be prorated for the remainder of the applicable Subscription Period.

**5.2 Price Changes.** Company shall have the right to change the Subscription Fees effective any time after the Service Commencement Date, which right shall include without limitation the right to change the Price List or charge fees for features or functions that have previously been offered at no charge. Prices shall not change during the Initial Subscription Period. Company will give you notice in writing of a price change applicable to the next proximate Subscription Period prior to the end of the then-current Subscription Period. For clarity, your purchases of additional licenses, new features or functions of the Services and/or upgrades to your Services offerings shall not be subject to the notification requirement set forth in the prior sentence.

**5.3 Payment; Late Payment Remedies.** Unless otherwise specified in the Order, Customer will be invoiced in advance of the start of each Subscription Period and otherwise in accordance with the relevant Order. Unless otherwise stated in the Order, invoiced charges are due net thirty (30) days from the invoice date. If any invoiced amount is not received by the due date, then without limiting other rights or remedies, those amounts may accrue late interest at the rate of 1.5% per month or the maximum rate permitted by law. Further, if any amount due and payable by Customer is overdue, Company may, upon at least ten (10) days' prior notice and without limiting any other rights and remedies, suspend provision of the Solution to Customer until such amounts are paid in full. If you wish to use a credit card to pay the Subscription Fees, you must provide Company with a valid credit card (e.g., Visa, MasterCard or any other issuer accepted by us). By providing us with your credit card number and payment information, you agree that Company is authorized to submit charges to your chosen payment method without further authorization from you, until you notify us that you wish to change your payment method.

**5.4 Taxes.** The payments required under this Agreement do not include any Sales Tax (as defined below) that may be due in connection with the Solution provided under this Agreement. If Company or Reseller determines it has a legal obligation to collect a Sales Tax from you in connection with this Agreement, Company or Reseller shall collect such Sales Tax in addition to the payments required under Section 5 of this Agreement. If any Solution or payments for any Solution under the Agreement are subject to any Sales Tax in any jurisdiction and you have not remitted the applicable Sales Tax to Company or Reseller, you will be responsible for the payment of such Sales Tax and any related penalties or interest to the relevant tax authority, and you will

indemnify Company for any liability or expense Company may incur in connection with such Sales Taxes. Upon Company's request, you will provide it with official receipts issued by the appropriate taxing authority, or other such evidence that you have paid all applicable taxes. For purposes of this section, "**Sales Tax**" shall mean any sales or use tax and any other tax measured by sales proceeds that is the functional equivalent of a sales tax where the applicable taxing jurisdiction does not otherwise impose a sales or use tax.

**5.5 Disputes.** Unless otherwise provided by the applicable payment processor or payment platform used in connection with your payment for Services, you must notify us in writing within seven (7) days after an invoice from us or after receiving your credit card statement if you dispute any of our charges on that statement or such dispute will be deemed waived. Billing disputes should be notified to the following address: 1624 Market St, Ste 226 PMB 36969, Denver, CO 80202, with electronic copies of such notice delivered to [finance@stackhawk.com](mailto:finance@stackhawk.com).

## **6 CONFIDENTIALITY.**

**6.1 Definition.** "**Confidential Information**" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of its disclosure. Customer's Confidential Information includes Your Data. Company's Confidential Information includes the Solution and pricing. Confidential Information of each party includes the terms and conditions of this Agreement, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

**6.2 Protection of Confidential Information.** The Receiving Party shall (a) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, (b) not disclose any Confidential Information of the Disclosing Party to any third party without the Disclosing Party's prior written consent, except as otherwise permitted by this Section, (c) use the same degree of care to protect the Confidential Information of the Disclosing Party that the Receiving Party uses to protect the confidentiality of its own like confidential information (but not less than reasonable care), and (d) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. The Receiving Party may disclose the terms of this Agreement to its legal counsel and accountants, and to its Affiliates and current and prospective investors and financing sources, and their respective legal counsel and accountants, and the Receiving Party shall be responsible for the compliance of such entities with this Section 6.

**6.3 Compelled Disclosure.** The Receiving Party may preserve and disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so or in a good faith belief that such

preservation or disclosure is reasonably necessary to comply with legal process or protect the rights, property or personal safety of the public. The Receiving Party shall give the Disclosing Party prompt notice of the compelled disclosure (to the extent legally permitted). If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil or criminal claim, action or proceeding to which the Disclosing Party is a party, the Disclosing Party shall reimburse the Receiving Party for its reasonable costs of compiling and providing secure access to that Confidential Information.

## **7 INDEMNIFICATION.**

**7.1 By You.** You agree to indemnify and hold Company, its parents, subsidiaries, affiliates, officers, employees and agents harmless from any losses, costs, liabilities and expenses (including reasonable attorneys' fees) arising out of or relating to a third party's claim relating to: (a) Your Data or your provision thereof to Company, or (b) the use of the Company Properties for any purpose other than the Authorized Purpose.

**7.2 Procedures.** Company agrees to give you (a) prompt written notice of the claim, (b) sole control of the defense and settlement of the claim (except that you may not settle any claim unless it releases all of the Company indemnified parties of all liability), and (c) reasonable assistance, at your request and expense, in the defense and settlement of the claim.

## **8 WARRANTY AND DISCLAIMERS.**

**8.1 Warranty.** Company warrants to you that during the Subscription Period the Purchased Services will perform materially in accordance with the Documentation. If you report to Company any non-conformance with the warranty set forth in this Section 8.1, and provide to Company such detailed information as Company may reasonably require to permit Company to reproduce such non-conformity, then Company shall, at its expense, correct such non-conformity. The foregoing states Company's sole obligation, and your exclusive remedy, in the event of the breach of any warranty.

**8.2 Disclaimers.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF COMPANY PROPERTIES IS AT YOUR SOLE RISK, AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION 8, COMPANY PROPERTIES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION 8 COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE COMPANY PROPERTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES ARISING OUT OF OR RELATING TO ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

COMPANY DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS THAT: (A) THE COMPANY PROPERTIES WILL MEET YOUR REQUIREMENTS; (B) YOUR USE OF COMPANY PROPERTIES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (C) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE COMPANY PROPERTIES WILL BE ACCURATE OR RELIABLE; OR (D) THE SERVICES WILL DETECT, FLAG OR OTHERWISE IDENTIFY ALL POTENTIAL THREATS, VULNERABILITIES AND SECURITY ISSUES RELATED TO YOUR SOFTWARE APPLICATIONS AND



APPLICATION PROGRAMMING INTERFACES. NO ADVICE OR INFORMATION, INCLUDING RECOMMENDED VULNERABILITY FIXES, WHETHER ORAL OR WRITTEN, OBTAINED FROM COMPANY OR THROUGH THE COMPANY PROPERTIES WILL CREATE ANY REPRESENTATION OR WARRANTY ON BEHALF OF COMPANY. YOU ACKNOWLEDGE THAT YOU MUST ONLY USE THE SERVICES WITH A DEVELOPMENT OR TESTING INSTANCE OF YOUR SOFTWARE APPLICATIONS AND APPLICATION PROGRAMMING INTERFACES. COMPANY IS NOT RESPONSIBLE OR LIABLE FOR ANY DAMAGE TO YOUR SOFTWARE APPLICATIONS AND APPLICATION PROGRAMMING INTERFACES, OR ANY LOSS OF DATA, RESULTING FROM YOUR USE OF THE SERVICES. THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. COMPANY MAKES NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF SERVICES.

## **9 LIMITATION OF LIABILITY.**

**9.1 Disclaimer of Certain Damages.** IN NO EVENT SHALL COMPANY, ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, IN EACH CASE WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE COMPANY PROPERTIES OR THIS AGREEMENT, ON ANY THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION ANY DAMAGES ARISING OUT OF OR RESULTING FROM: (A) THE USE OR INABILITY TO USE COMPANY PROPERTIES; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR DATA; OR (D) ANY OTHER MATTER RELATED TO COMPANY PROPERTIES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING DISCLAIMER OF LIABILITY SHALL NOT APPLY TO LIABILITY OF COMPANY FOR ANY INJURY CAUSED BY COMPANY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

**9.2 Cap on Liability.** COMPANY'S AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE COMPANY PROPERTIES OR THIS AGREEMENT SHALL AT ALL TIMES BE LIMITED TO THE GREATER OF (A) THE TOTAL AMOUNT PAID TO COMPANY OR RESELLER BY YOU DURING THE SIX (6) MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY AND (B) \$100. THE FOREGOING CAP ON LIABILITY SHALL NOT APPLY TO LIABILITY OF COMPANY FOR ANY INJURY CAUSED BY COMPANY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

**9.3 Basis of the Bargain.** THE DISCLAIMERS AND LIMITATIONS OF DAMAGES SET FORTH IN THIS SECTION 9 ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN COMPANY AND YOU.

## **10 TERM AND TERMINATION.**

**10.1 Term.** This Agreement commences on the date that Customer accepts this Agreement, the date that Customer enters into an Order, or the date that Customer first accesses any Company Property (whichever date occurs first) (the "**Commencement Date**"), and continues until all Orders issued

hereunder have expired or have been terminated. The initial subscription period for the Solution shall commence on the Commencement Date and shall continue for that initial time period as specified in the applicable Order or that period of time covered by the Subscription Fees paid by Customer (the **"Initial Subscription Period"**). Except as otherwise specified in an Order, subscriptions will automatically renew for additional, successive periods equal to the duration of the Initial Subscription Period, unless either party gives the other notice of non-renewal at least ten (10) days before the end of the relevant subscription period (each, a **"Renewal Subscription Period"**). The Initial Subscription Period plus any applicable Renewal Subscription Period for that Order are referred to herein as the **"Subscription Period."**

**10.2 Termination.** A party may terminate an Order and/or this Agreement for cause (a) upon thirty (30) days prior written notice to the other party of a material breach if such breach is curable and remains uncured at the expiration of such period, (b) immediately upon written notice to the other party of a material breach by such other party that is not curable, or (c) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**10.3 Effects of Termination.** Upon termination or expiration of this Agreement for any reason: (a) any amounts owed to Company under any Order or this Agreement before such termination or expiration will be immediately due and payable by Customer, (b) all rights granted to the Company Properties in this Agreement will immediately cease to exist, and (c) Customer must promptly discontinue all access to and use of the Company Properties. The following provisions shall survive any expiration or termination of this Agreement: Sections 1.3 (Changes), 2.2 (Customer Responsibilities), 2.5 (Restrictions), 3 (Proprietary Rights), 4 (User Conduct), 5 (Fees and Payment Terms), 6 (Confidentiality), 7 (Indemnification), 8.2 (Disclaimers), 9 (Limitation of Liability), 10.3 (Effects of Termination), 11 (Governing Law and Dispute Resolution) and 12 (General Terms). You understand that any termination of Services may involve deletion of Your Data associated therewith from our live databases. Company will not have any liability whatsoever to you for any suspension or termination, including for deletion of Your Data.

## **11 GOVERNING LAW AND DISPUTE RESOLUTION.**

**11.1 Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of Colorado without regard to any conflict of laws principles that would require the application of the laws of another jurisdiction. The parties acknowledge and confirm that they have selected the laws of the State of Colorado as the governing law for this Agreement in part because jury trial waivers are enforceable under Colorado law. The parties further acknowledge and confirm that the selection of the governing law is a material term of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**11.2 Arbitration.** Except as otherwise provided in this Agreement, the following binding dispute resolution procedures shall be the exclusive means used by the parties to resolve all disputes, differences, controversies and claims arising out of or relating to the Agreement or any other aspect of the relationship between Company and Customer or their respective Affiliates and subsidiaries (collectively, **"Disputes"**). Any and all Disputes shall be referred to arbitration under the rules and procedures of Judicial Arbitrator Group, Inc. (**"JAG"**), who shall act as the arbitration administrator. The parties shall agree on a single arbitrator (the **"Arbitrator"**). The Arbitrator shall be a retired judge selected by the parties from a roster of arbitrators provided by JAG. Unless otherwise mutually agreed

to by the parties, the place of arbitration shall be Denver, Colorado, although the arbitrators may be selected from rosters outside Denver. The Federal Arbitration Act shall govern the arbitrability of all Disputes. The Federal Rules of Civil Procedure and the Federal Rules of Evidence (the “**Federal Rules**”), to the extent not inconsistent with this Agreement, govern the conduct of the arbitration. The parties may engage in discovery, the extent of which shall be agreed upon by the parties or determined by JAG if the parties cannot agree. The Arbitrator shall render an award setting forth the findings of fact and conclusions of law. The Arbitrator shall have authority to award compensatory damages only, and shall not award any punitive, exemplary, or multiple damages. The award (subject to clarification or correction by the arbitrator as allowed by statute and/or the Federal Rules) shall be final and binding upon the parties, subject solely to the review procedures provided in this Section.

**11.3 Venue.** This Agreement’s arbitration provisions are to be performed in Denver, Colorado. Any judicial proceeding arising out of or relating to this Agreement or the relationship of the parties, including without limitation any proceeding to enforce this section, to review or confirm the award in arbitration, or for preliminary injunctive relief shall be brought exclusively in a court of competent jurisdiction in the county of Denver, Colorado (the “**Enforcing Court**”). By execution and delivery of this Agreement, each party expressly and irrevocably consents to the exclusive jurisdiction of the Enforcing Court and waives any objection to the personal jurisdiction, venue and convenience of the Enforcing Court. Each party shall pay their own expenses in connection with the resolution of Disputes pursuant to this section, including attorneys’ fees.

**11.4 Waiver.** IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES, WHETHER IT RESULTS IN PROCEEDINGS IN ANY COURT IN ANY JURISDICTION OR IN ARBITRATION, THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY, AND HAVING HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, WAIVE ALL RIGHTS TO TRIAL BY JURY, AND AGREE THAT ANY AND ALL MATTERS SHALL BE DECIDED BY A JUDGE OR ARBITRATOR WITHOUT A JURY TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW. In the event of any lawsuit between the parties arising out of or related to this Agreement, the parties agree to prepare and to timely file in the applicable court a mutual consent to waive any statutory or other requirements for a trial by jury.

## **12 GENERAL TERMS.**

**12.1 Electronic Communications.** The communications between you and Company may take place via electronic means, whether you visit Company Properties or send Company e-mails, or whether Company posts notices on Company Properties or communicates with you via e-mail. For contractual purposes, you (a) consent to receive communications from Company in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Company provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights, including but not limited to the Electronic Signatures in Global and National Commerce Act at 15 U.S.C. §7001 et seq.

**12.2 Assignment.** The Agreement, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without Company’s prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. Company may assign or transfer its rights and obligations hereunder to any of its affiliates or subsidiaries, or to any successor in interest of any business associated with the Company Properties.

- 12.3 Force Majeure.** Company shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.
- 12.4 Publicity.** You agree that Company may use your name and logo (a) on its website and marketing materials to identify you as a customer of Company; and (b) for any other purpose set forth in an Order.
- 12.5 Notice.** Where Company requires that you provide an e-mail address, you are responsible for providing Company with your most current e-mail address. In the event that the last e-mail address you provided to Company is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by the Agreement, Company's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to Company at the following address: 1624 Market St, Ste 226, PMB 36969, Denver, CO 80202. Such notice shall be deemed given when received by Company by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.
- 12.6 Waiver.** Any waiver or failure to enforce any provision of the Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 12.7 Severability.** If any portion of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions shall remain in full force and effect.
- 12.8 Export Control.** You may not use, export, import, or transfer Company Properties except as authorized by U.S. law, the laws of the jurisdiction in which you obtained Company Properties, and any other applicable laws. In particular, but without limitation, Company Properties may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using Company Properties, you represent and warrant that (y) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (z) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use Company Properties for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You acknowledge and agree that products, services or technology provided by Company are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer Company products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.
- 12.9 Entire Agreement.** The Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter. In the event of any conflict between the terms and conditions of these StackHawk Terms of Service and the terms and conditions of an Order, precedence will be given in the following order: (a) the terms and conditions of an Order but solely to the extent that the Order expressly states that the parties' intent is to modify the terms and conditions of these

StackHawk Terms of Service, (b) the terms and conditions of these StackHawk Terms of Service, and (c) any terms and conditions of an Order other than the terms and conditions covered by subsection (a).

**12.10 Acknowledgment.** YOU ACKNOWLEDGE, IN ENTERING INTO THIS AGREEMENT, THAT YOU HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND THAT YOU HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT WILL NOT BE CONSTRUED AGAINST EITHER PARTY BY REASON OF THE DRAFTING OR PREPARATION OF THIS AGREEMENT.