

**STACKSWARE  
SAAS AGREEMENT  
COVER PAGE**

The attached document describes the relationship between StacksWare, Inc., ("**StacksWare**") and the customer ("**Customer**") (each of StacksWare and Customer, a "**Party**"). The document attached to this Cover Page entitled "Terms and Conditions" (the "**Access Terms**") describes and sets forth the general legal terms governing the relationship between the Parties (collectively, the "**Agreement**").

## TERMS AND CONDITIONS

### 1. ACCESS AND USE

**1.1 Orders.** The StacksWare Service to be provided by StacksWare under this Agreement will be set forth in one or more Order Forms executed by the Parties from time to time during the Term. The Parties shall negotiate and sign each Order Form separately. Each Order Form shall set out a description of the applicable StacksWare Service to be provided by StacksWare and the costs associated with such StacksWare Service. Each Order Form shall be attached to this Agreement and incorporated in this Agreement by reference.

**1.2 Provision of Access.** Subject to the terms and conditions contained in this Agreement, StacksWare hereby grants to Customer and its Authorized Users a non-exclusive, non-transferable right to access the features and functions of the applicable StacksWare Service set forth in the applicable Order Form during the Term set forth on the Order Form for the number of Authorized Users set forth on the Order Form up to the Service Limits. On or as soon as reasonably practicable after the Effective Date, StacksWare shall provide to Customer the necessary passwords, security protocols and policies and network links or connections and Access Protocols to allow Customer and its Authorized Users to access the StacksWare Service. Customer and any Authorized User may only use the StacksWare Service in accordance with the Access Protocols.

**1.3 Usage Restrictions.** Customer will not (a) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the StacksWare Service is compiled or interpreted, and Customer acknowledges that nothing in this Agreement will be construed to grant Customer any right to obtain or use such code; or (b) allow third parties other than Authorized Users to gain access to the StacksWare Service. Customer will ensure that its use of the StacksWare Service complies with all applicable laws, statutes, regulations or rules.

### 1.4 Retained Rights; Ownership.

**(a) Ownership and Use of Customer Data.** Customer retains all right, title and interest in and to the Customer Data, and StacksWare acknowledges that it neither owns nor acquires any additional rights in and to the Customer Data not expressly granted by this Agreement. StacksWare further acknowledges that Customer retains the right to use the Customer Data for any purpose in Customer's sole discretion. Subject to the foregoing, Customer hereby grants to StacksWare a non-exclusive, non-transferable right and license to use the Customer Data during the Term for the limited

purposes of performing StacksWare's obligations under this Agreement.

**(b) Ownership of StacksWare Service.** Subject to the rights granted in this Agreement, StacksWare retains all right, title and interest in and to the StacksWare Service, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement or any licenses to the software used to provide the StacksWare Service. Customer further acknowledges that StacksWare retains the right to use the foregoing for any purpose in StacksWare's sole discretion.

### 1.5 Support.

**(a) Support.** Subject to the terms and conditions of this Agreement, StacksWare shall exercise commercially reasonable efforts to provide Technical Assistance for the use of the StacksWare Service to Eligible Support Recipients during StacksWare's ordinary and customary business hours in accordance with its standard policies and procedures.

**(b) Eligible Support Recipients.** StacksWare shall have no obligation to provide Technical Assistance, by any means, to any entity or individual other than Eligible Support Recipients. Customer can designate up to two (2) persons, which designees shall be eligible to receive Technical Assistance from StacksWare ("**Eligible Support Recipients**"). Such designees may be changed at any time by written notice.

**(c) Access.** As a condition of StacksWare's obligations under Section 1.5 (a), Customer shall provide such information and/or access to Customer resources as StacksWare may reasonably require in order to provide Technical Assistance under this Agreement. StacksWare shall be excused from any non-performance of its obligations hereunder to the extent any such non-performance is attributable to Customer's failure to perform its obligations under this Section 1.5(b).

**(d) Means of Access to Technical Assistance.** Eligible Support Recipients shall be permitted to request Technical Assistance (i) by telephoning StacksWare at such telephone number as StacksWare may specify for such purposes from time to time; or (ii) by directing electronic mail requests therefore to StacksWare at the electronic mail address as StacksWare may specify for such purposes from time to time.

## **2. CUSTOMER RESPONSIBILITIES.**

**2.1 Authorized Users Access to Services.** Customer may permit any Authorized Users to access and use the features and functions of the StacksWare Service as contemplated by this Agreement. Customer will be responsible for all actions or omissions of its Authorized Users. Authorized User IDs shall not be shared or used by more than one Authorized User at a time. Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the StacksWare Service, and notify StacksWare promptly of any such unauthorized use known to Customer. Customer acknowledges and agrees that it may need certain networking capabilities, bandwidth and hardware to use the StacksWare Service. Customer is solely responsible for all hardware, software and bandwidth required to reach the StacksWare systems to gain access to the StacksWare Service.

**2.2 Customer Responsibility for Data and Security.** Customer and its Authorized Users shall have access to the Customer Data and shall be responsible for all changes to and/or deletions of Customer Data and the security of all passwords and other Access Protocols required in order to access the StacksWare Service. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of the all Customer Data. Customer acknowledges and agrees that, except as otherwise agreed between the Parties to this Agreement or in a separate written agreement, StacksWare will have no obligation to archive to back-up Customer Data, nor will StacksWare have any liability for any loss or corruption of Customer Data, nor will StacksWare have any obligation under this Agreement to retain any Customer Data after the expiration or termination of the Access Term

**2.3 Service Rules and Guidelines.** Customer and all Authorized Users shall use the StacksWare Service solely for its internal purposes as contemplated by this Agreement and shall not use the StacksWare Service to: (a) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs; (b) interfere with or disrupt the integrity or performance of the StacksWare Service or the data contained therein; (c) attempt to gain unauthorized access to the StacksWare Service, computer systems or networks related to the StacksWare Service; or (d) interfere with another user's use and enjoyment of the StacksWare Service.

## **3. FEES AND EXPENSES; PAYMENTS.**

**3.1 Fees.** In consideration for the access rights granted to Customer and the services performed by StacksWare under this Agreement, Customer will pay to StacksWare, without offset or deduction, all fees

required by a particular Order Form. All fees will be billed and paid in U.S. or Canadian dollars. Notwithstanding the foregoing, any set-up fees listed on a particular Order Form, shall be due and payable upon execution of the applicable Order Form.

**3.2 Disputed Fees.** If Customer disputes any fees, taxes, or other charges billed by StacksWare, Customer shall notify StacksWare, in writing, of the disputed amount and any relevant information regarding the circumstances of the dispute. StacksWare shall acknowledge receipt of the dispute information in writing to Customer. All parties agree to work cooperatively to resolve any such disputed amounts. If the Customer fails to provide StacksWare with a notice of such a disputed amount within twenty (20) business days following receipt of StacksWare's invoice for such disputed charge, then such amount is deemed undisputed and due to StacksWare.

**3.3 Price Escalations.** The prices set forth in each Order Form for the StacksWare Service under this Agreement will be adjusted upon each anniversary of the Effective Date to the list price in effect at the time of the renewal; annual quotes can be provided 60 days prior to contract due date.

**3.4 Taxes.** Customer will be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on StacksWare's income), and any related penalties and interest for the grant of access rights hereunder, or the delivery of related services, if any. If Customer is tax exempt, it shall furnish StacksWare with evidence of its tax exempt status prior to placing an order for the StacksWare Service. Customer will make all required payments to StacksWare free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to StacksWare will be Customer's sole responsibility, and Customer will, upon StacksWare's request, provide StacksWare with official receipts issued by appropriate taxing authorities, or such other evidence as StacksWare may reasonably request, to establish that such taxes have been paid.

## **4. TREATMENT OF CONFIDENTIAL INFORMATION.**

**4.1 Ownership of Confidential Information.** The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and will remain the sole property of the disclosing Party or such third party.

**4.2 Mutual Confidentiality Obligations.** Each Party agrees as follows: (a) to use Confidential Information disclosed by the other Party only for the purposes described herein; (b) that such Party will not reproduce Confidential Information disclosed by the other Party, and will hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party; (c) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (d) to restrict access to the Confidential Information disclosed by the other Party to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (e) to the extent practicable, return or destroy, all Confidential Information disclosed by the other Party that is in its possession upon termination or expiration of this Agreement. Notwithstanding the foregoing, Customer agrees that StacksWare may collect aggregated statistical data regarding Customer's use of the StacksWare Service and provide such aggregated statistical data to third parties.

**4.3 Confidentiality Exceptions.** Notwithstanding the foregoing, the provisions of Sections 4.1 and 4.2 will not apply to Confidential Information that (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) is independently developed by the recipient without access to or use of the disclosing Party's Confidential Information; or (f) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (y) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

**4.4 Limitation Period.** The obligations set forth in this Section 4 shall survive the termination or expiration of this Agreement.

## **5. REPRESENTATIONS AND WARRANTIES.**

**5.1 Mutual Representations and Warranties.** Each Party hereby represents and warrants (i) that it is duly

organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; and (ii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

**5.2 Customer Warranties.** Customer represents and warrants that any Customer data or content hosted by StacksWare as part of the StacksWare Service shall not (a) infringe, misappropriate or violate any Intellectual Property Rights, publicity/privacy rights, law or regulation; (b) contain any viruses, worms or other malicious computer programming codes intended to damage, surreptitiously intercept or expropriate any system, data or personal or personally identifiable information; or (c) otherwise violate the rights of a third party. Customer agrees that any use of the StacksWare Service contrary to or in violation of the representations and warranties of Customer in this section constitutes unauthorized and improper use of the StacksWare Service.

**5.3. StacksWare Warranties.** StacksWare represents and warrants that it will provide the StacksWare Service in substantial conformance with the service levels set forth in Exhibit A and perform its other obligations under this Agreement in a professional and workmanlike manner substantially consistent with general industry standards. StacksWare's sole liability and Customer's sole and exclusive remedy for any breach of the foregoing warranty shall be: (i) for failure to meet a Service Level, to promptly correct such failure; and (ii) for failure to perform an obligation, to re-perform such obligation at no additional charge to Customer.

## **6. DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY.**

**6.1 Internet Delays.** STACKSWARE'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. STACKSWARE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**6.2 Disclaimer.** EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN SECTION 5, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE STACKSWARE SERVICES, THE DOCUMENTATION, AND ALL OTHER SERVICES PERFORMED BY STACKSWARE ARE PROVIDED "AS IS," AND STACKSWARE DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS

FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SYSTEM INTEGRATION AND/OR DATA ACCURACY. STACKSWARE DOES NOT WARRANT THAT THE STACKSWARE SERVICES OR ANY OTHER SERVICES PROVIDED BY STACKSWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE STACKSWARE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

**6.3 Exclusions of Remedies; Limitation of Liability.** EXCEPT FOR LIABILITY OF A PARTY FOR BREACH OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, OR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE CUMULATIVE LIABILITY OF STACKSWARE TO CUSTOMER FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED TOTAL AMOUNT OF ALL FEES PAID BY CUSTOMER TO STACKSWARE DURING THE TWELVE (12)-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY (OR, IF NO FEES HAVE BEEN PAID DURING SUCH PERIOD, THEN SUCH AMOUNT SHALL BE ONE HUNDRED U.S. DOLLARS (\$100)). THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

**6.4 Essential Basis of the Agreement.** Customer acknowledges and understands that the disclaimers, exclusions and limitations of liability set forth in this Section 6 form an essential basis of the agreement between the Parties, that the Parties have relied upon such disclaimers, exclusions and limitations of liability in negotiating the terms and conditions in this Agreement, and that absent such disclaimers, exclusions and

limitations of liability, the terms and conditions of this Agreement would be substantially different.

## **7. INDEMNIFICATION.**

**7.1 By StacksWare.** StacksWare will defend at its expense any suit brought against Customer, and will pay any settlement StacksWare makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the StacksWare Service infringes, misappropriates or violates any third party Intellectual Property Rights. If any portion of the StacksWare Service becomes, or in StacksWare's opinion is likely to become, the subject of a claim of infringement, StacksWare may, at StacksWare's option: (a) procure for Customer the right to continue using the StacksWare Service; (b) replace the StacksWare Service with non-infringing software or services which do not materially impair the functionality of the StacksWare Service; (c) modify the StacksWare Service so that it becomes non-infringing; or (d) terminate this Agreement and refund any fees actually paid by Customer to StacksWare for the remainder of the term then in effect, and upon such termination, Customer will immediately cease all use of the StacksWare Service and Documentation. Notwithstanding the foregoing, StacksWare shall have no obligation under this section or otherwise with respect to any infringement claim based upon (x) any use of the StacksWare Service not in accordance with this Agreement or as specified in the Documentation; (y) any use of the StacksWare Service in combination with other products, equipment, software or data not supplied or specified by StacksWare; or (z) any modification of the StacksWare Service by any person other than StacksWare or its authorized agents (collectively, "Exclusions"). This Section states StacksWare's entire liability and Customer's sole and exclusive remedy for the claims and actions described herein.

**7.2 By Customer.** Customer will defend at its expense any suit brought against StacksWare, and will pay any settlement Customer makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim arising out of or relating to (a) an Exclusion; (b) Customer's (or its Authorized User's) use of the StacksWare Service or Documentation, except to the extent the claim is subject to indemnification under Section 7.1 above or caused by StacksWare's gross negligence or willful misconduct; and (c) Customer's breach or alleged breach of Section 5.2. This Section sets forth Customer's entire liability and StacksWare's sole and exclusive remedy for the claims and actions described herein.

**7.3 Procedure.** Any party that is seeking to be indemnified under the provisions of this Section 7 (an

“**Indemnified Party**”) must (a) promptly notify the other party (the “**Indemnifying Party**”) in writing of any third-party claim, suit, or action for which it is seeking an indemnity hereunder, (b) give the Indemnifying Party sole control over the defense of such claim, suit or action and any related settlement negotiations, and (iii) cooperating and, at Indemnifying Party’s reasonable request and expense, assisting in such defense.

## 8. TERM AND TERMINATION.

**8.1 Term.** The term of this Agreement will commence on the Effective Date and will continue for a period of one (1) year thereafter, unless earlier terminated in accordance with this Section 8, and will automatically renew for successive one year terms, unless either Party provides written notice of its desire not to renew at least thirty (30) days prior to the expiration of the then-current term (the initial term, together with any renewal terms, collectively, the “**Term**”). As of the Effective Date, it is StacksWare’s intention to renew this Agreement for at least one renewal term following the expiration of the initial term, but StacksWare reserves the right not to renew this Agreement if StacksWare’s business objectives change in the interim. In such event, StacksWare shall have no liability whatsoever to Customer for exercising its right of non-renewal as set forth above.

**8.2 Termination for Breach.** Either Party may, at its option, terminate this Agreement in the event of a material breach by the other Party. Such termination may be effected only through a written notice to the breaching Party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching Party will have a right to cure such breach or breaches within thirty (30) days of receipt of such notice, and this Agreement will terminate in the event that such cure is not made within such thirty (30)-day period.

**8.3 Effect of Termination.** Upon any termination of this Agreement, Customer will (a) immediately discontinue all use of the StacksWare Service and any StacksWare Confidential Information; and (b) promptly pay to StacksWare all amounts due and payable under this Agreement. Within thirty (30) business days after the effective date of any termination of this Agreement,

**8.4 Survival.** Any payment obligations of Customer, and the provisions of Sections 1.4, 3, 4, 6, 7, 8.3 and 9 will survive the termination of this Agreement.

**8.5 Suspension of Service.** If Customer fails to pay undisputed amounts in accordance with the terms and conditions hereof and the Order Form, StacksWare shall have the right, in addition to any of its other rights or remedies, to suspend Customer’s access to the

StacksWare Service, without liability to Customer until such amounts are paid in full.

## 9. MISCELLANEOUS.

**9.1 Entire Agreement.** This Agreement, together with its Exhibits and Addenda, sets forth the complete and entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and, supersedes and merges all prior and contemporaneous oral and written agreements, discussions and understandings between the Parties with respect to the subject matter of this Agreement, and neither of the Parties will be bound by any conditions, inducements or representations other than as expressly provided for in this Agreement.

**9.2 Independent Contractors.** In making and performing this Agreement, Customer and StacksWare act and will act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement will be construed or implied to create an agency, partnership franchise or employer and employee relationship between them.

**9.3 Notices.** All notices required by or relating to this Agreement will be in writing and will be sent by means of certified mail, postage prepaid, to the Parties at their respective addresses set forth in the preamble to this Agreement, or addressed to such other address as the receiving Party may have given by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by facsimile, provided that the sender receives and retains confirmation of successful transmittal to the recipient. Such notices will be effective on the date indicated in such confirmation. In the event that either Party delivers any notice by means of facsimile transmission in accordance with the preceding sentence, such Party will promptly thereafter send a duplicate of such notice in writing by means of certified mail, postage prepaid, to the receiving Party, addressed as set forth above or to such other address as the receiving Party may have previously substituted by written notice to the sender.

**9.4 Amendments; Modifications.** This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both Parties.

**9.5 Assignment.** Neither Party shall assign, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other Party (such consent not to be unreasonably withheld), and any attempted assignment or transfer in violation of the foregoing will be null and void; provided, however, that either Party may assign this Agreement in connection with a merger,

acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without the consent of the other Party. StacksWare may delegate its duties hereunder, in whole or in part, to a third party, provided that StacksWare shall remain responsible to Customer for the performance of such duties as set forth in this Agreement. The terms of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

**9.6 No Third Party Beneficiaries.** The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

**9.7 Severability.** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

**9.8 Waiver.** No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

**9.9 Force Majeure.** Except with respect to payment obligations hereunder, if a Party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such Party's reasonable control, including, by way of example but not limitation, war, riot, fires, floods, epidemics, or failure of public utilities or public transportation systems, failure of telecommunications services or the Internet, such failure or delay will not be deemed to constitute a material breach of this Agreement, but such obligation will remain in full force and effect, and will be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such Party is prevented or delayed from performing for more than ninety (90)

days, the other Party may terminate this Agreement upon thirty (30) days' written notice.

**9.10 Governing Law.** THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF OR ANY OTHER PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT BODY OF LAW. CUSTOMER HEREBY EXPRESSLY CONSENTS TO PERSONAL JURISDICTION AND VENUE IN THE STATE AND FEDERAL COURTS LOCATED IN THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA FOR ANY DISPUTES ARISING FROM OR RELATED TO THIS AGREEMENT. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXPRESSLY EXCLUDED FROM THIS AGREEMENT.

**9.11 Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement.

**9.12 U.S. Government End-Users.** Each of the Application Documentation and the software components that constitute the StacksWare Service is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the StacksWare Service and the Documentation with only those rights set forth therein.

**9.13. Equitable Relief.** Notwithstanding the venue provisions set forth herein, either Party may, at any time, seek injunctive or other equitable relief from any court of competent jurisdiction to protect or enforce such Party's rights hereunder.

**10. DEFINITIONS.** Certain capitalized terms, not defined above, have the meanings set forth below.

**10.1 "Access Protocols"** will mean the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer or any Authorized Users to access the StacksWare Service.

**10.2 "Authorized User"** will mean any individual who is an employee of Customer or such other person or entity as may be authorized by an Order Form, authorized, by virtue of such individual's relationship to, or permissions from, Customer, to access the

StacksWare Service pursuant to Customer's rights under this Agreement.

**10.3 "Confidential Information"** shall mean all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential.

**10.4 "Customer Data"** will mean the data, media and content provided by Customer through the StacksWare Service.

**10.5 "Intellectual Property Rights"** means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

**10.6 "Order Form"** shall mean a document signed by both Parties identifying a given type of StacksWare Service to be made available by StacksWare pursuant

to this Agreement. Each Order Form shall be agreed upon by the Parties as set forth in Section 2.1.

**10.7 "Service Limit"** shall mean StacksWare's standard service limitations related to the StacksWare Service as set forth in StacksWare's standard policies provided to Customer from-time-to-time or as otherwise identified in an Order Form. For example, there are Service Limits on records, storage of Customer Data, etc.

**10.8 "StacksWare Service"** shall mean the proprietary StacksWare technology ordered by Customer through an Order Form and provided by StacksWare by means of access to certain content and use of the features and functionality of software applications available and accessible from StacksWare, solely to the extent set forth and further described in, and as limited by, the Order Forms executed by the Parties.

**10.9 "Technical Assistance"** shall mean the provision of responses by StacksWare personnel to questions from Eligible Support Recipients related to use of the StacksWare Service, including basic instruction or tutorial assistance regarding the features and functions of the StacksWare Service.

## **End of Terms**



**EXHIBIT A**  
**Service Levels**

**1. DEFINITIONS**

Certain capitalized terms, not otherwise defined in this Exhibit A, will have the meanings set forth in the Agreement. The following capitalized terms will have the definitions set forth below:

**1.1 “Scheduled Downtime”** will mean the total amount of time during any calendar month, measured in minutes, during which Customer is not able to access the StacksWare Service, according to the Access Protocols, due to planned system maintenance performed by StacksWare, as set forth in the table below. StacksWare will exercise reasonable efforts to perform scheduled system maintenance between the hours of 7:00pm and 6:00am US Eastern Standard Time. StacksWare reserves the right to change the aggregated times set forth in the table below, provided that StacksWare provides reasonable prior notice prior to modifying such Scheduled Downtime.

<b>When Scheduled Downtime will occur on a regular basis:</b>	<b>Purpose of Scheduled Downtime:</b>	<b>Maximum Duration of Scheduled Downtime:</b>
Each Weekend	STACKSWARE software maintenance	8 hours
Once per calendar month	Server hardware/OS maintenance	8 hours per server
Once per calendar quarter	Server hardware/OS maintenance/upgrades	8 hours per server

**1.2 “Unscheduled Downtime”** will mean the total amount of time during any calendar month, measured in minutes, during which Customer is not able to access the features and functions of the StacksWare Service according to the Access Protocols, other than Scheduled Downtime, as defined above.

**1.3 “System Availability”** will mean, with respect to any particular calendar month, the ratio obtained by subtracting Unscheduled Downtime during such month from the total time during such month, and thereafter dividing the difference so obtained by the total time during such month. Represented algebraically, System Availability for any particular calendar month is determined as follows:

$$\text{System Availability} = \frac{(\text{Total Monthly Time} - \text{Unscheduled Downtime})}{\text{Total Monthly Time}}$$

NOTE: “**Total Monthly Time**” is deemed to include all minutes in the relevant calendar month, to the extent such minutes are included within the Term of this Agreement.

**2. SYSTEM PERFORMANCE**

**2.1 System Availability:** StacksWare will undertake commercially reasonable measures to ensure that System Availability equals or exceeds 98% during each calendar month (the “**Service Standard**”), provided that any Unscheduled Downtime occurring as a result of (i) Customer’s breach of any provision of this Addendum; (ii) non-compliance by Customer with any provision of this Exhibit A; (iii) incompatibility of Customer’s equipment or software with the StacksWare Service; (iv) poor or inadequate performance of Customer’s systems; or (v) force majeure (as contemplated in the Master Terms), shall not be considered toward any reduction in System Availability measurements.

**2.2 Access to Support:** Eligible Hosting Support Recipients of the Customer may report Unscheduled Downtime at any time (“24x7x365”) using support email: [contact@stacksware.com](mailto:contact@stacksware.com) or support phone lines: 855-655-3832

### **3. CUSTOMER REQUIREMENTS**

**3.1 Additional Customer Obligations:** Customer is responsible for (i) maintenance and management of its computer network(s), servers, software (including STACKSWARE software installed on local computers of Customer), web site(s), and any equipment or services related to maintenance and management of the foregoing; and (ii) correctly configuring Customer's systems in accordance with the Access Protocols.

**3.2 Reporting of Unscheduled Downtime:** Customer must promptly notify StacksWare in the event Unscheduled Downtime occurs. Unscheduled Downtime will be deemed to begin when StacksWare receives accurate notification thereof from Customer, or when StacksWare first becomes aware of such Unscheduled Downtime, whichever first occurs.

**3.3 Non-Performance by Customer:** The obligations of StacksWare set forth in this Exhibit A will be excused to the extent any failures to meet such obligations result in whole or in part from Customer's or its Authorized Users' failure(s) to meet the foregoing requirements.