

# StreamGuard Master Services Agreement

**Updated: August 7, 2019**

THIS AGREEMENT GOVERNS YOUR USE OF OUR SERVICES.

BY ACCEPTING THIS AGREEMENT; BY EXECUTING A SERVICES OFFERING FORM THAT REFERENCES THIS AGREEMENT; YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on July 19, 2019. It is effective between You and Us as of the date of Your accepting this Agreement.

## 1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Acceptable Use Policy" means the policy located at (and any successor or related locations designated by Us), as it may be updated by Us from time to time.

"Account Country" is the country associated with Your account. If You have provided a valid tax registration number for Your account, then Your Account Country is the country associated with Your tax registration. If You have not provided a valid tax registration, then Your Account Country is the country where Your billing address is located, except if Your credit card account is issued in a different country and Your contact address is also in that country, then Your Account Country is that different country.

"Account Information" means information about You that You provide to Us in connection with the creation or administration of Your StreamGuard account. For example, Account Information includes names, usernames, phone numbers, email addresses and billing information associated with Your StreamGuard account.

"Agreement" means this Master Services Agreement.

“API” means a set of functions and procedures allowing the creation of applications that access the features or data of an operating system, application, or other service provided by StreamGuard.

“Beta Services” means StreamGuard services or functionality that may be made available to You to try at preview, non-production, evaluation, or by a similar description.

“Content” means software (including machine images), data, text, audio, video or images.

“Documentation” means the user guides and admin guides (in each case exclusive of content referenced via hyperlink) for the Services located at (and any successor or related locations designated by Us), as such user guides and admin guides may be updated by StreamGuard from time to time.

“End User” means any individual or entity that directly or indirectly through another user: (a) accesses or uses Your Content; or (b) otherwise accesses or uses the Service Offerings under Your account. The term “End User” does not include individuals or entities when they are accessing or using the Services or any Content under their own StreamGuard account, rather than under Your account.

“Free Services” means Services that StreamGuard makes available to You at no additional cost.

“Governing Laws” shall mean the laws of the State of Florida. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

“Governing Courts” shall mean courts located in Miami-Dade County, Florida.

“Indirect Taxes” means applicable taxes and duties, including, without limitation, VAT, Service Tax, GST, excise taxes, sales and transactions taxes, and gross receipts tax.

“Losses” means any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys’ fees).

“Marketplace” means an online directory, catalog or marketplace of applications that interoperate with the Services, including, for example, app.StreamGuard.com and any successor websites.

“Non-StreamGuard Application” means a Web-based, mobile, offline or other software process or functionality that is provided by You or a third party and interoperates with a Service, including, for example, an application that is developed by or for You, is listed on a Marketplace, or is identified by a similar designation.

“Policies” means the Acceptable Use Policy, Privacy Policy, the Site Terms, the Service Terms, the Trademark Use Guidelines, all restrictions described in the StreamGuard Content and on the StreamGuard Site, and any other policy or terms referenced in or incorporated into this Agreement, but does not include whitepapers or other marketing materials referenced on the StreamGuard Site.

“Privacy Policy” means the privacy policy located at (and any successor or related locations designated by Us), as it may be updated by Us from time to time.

“Services” means the products and services that are ordered by You under a Services Offering Form or provided to You free of charge (as applicable), and made available online by Us, including associated StreamGuard offline or mobile components, as described in the Documentation. “Services” exclude Content, Third-Party Content, and Non-StreamGuard Applications.

“Service Attributes” means Service usage data related to Your account, such as resource identifiers, metadata tags, security and access roles, rules, usage policies, permissions, usage statistics and analytics.

“Service Level Agreement” means all service level agreements that We offer with respect to the Services and post on the StreamGuard Site, as they may be updated by Us from time to time. The service level agreements We offer with respect to the Services are located at (and any successor or related locations designated by StreamGuard), as may be updated by StreamGuard from time to time.

“Service Offerings” means the Services (including associated APIs), the StreamGuard Content, the StreamGuard Marks, and any other product or service provided by Us under this Agreement. Service Offerings do not include Third-Party Content.

“Services Offering Form” means an ordering document or online order specifying the Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. By entering into a Services Offering Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

“Service Terms” means the rights and restrictions for particular Services located at (and any successor or related locations designated by Us), as may be updated by Us from time to time.

“Site Terms” means the terms of use located at (and any successor or related locations designated by Us), as may be updated by Us from time to time.

“Standard Support” means any email, forum, and web-based support provided via the StreamGuard website located at StreamGuard [www.StreamGuard.com/support](http://www.StreamGuard.com/support). Standard support shall include a maximum 72-hour response time for any standard support based inquiry.

“Suggestions” means all suggested improvements to the Service Offerings that You provide to Us.

“Term” means the term of this Agreement described in Section 11.1.

“Termination Date” means the effective date of termination provided in accordance with Section 11.2, in a notice from one party to the other.

“Third-Party Content” means Content made available to You by any third party on the StreamGuard Site or in conjunction with the Services.

“StreamGuard Confidential Information” means all nonpublic information disclosed by Us, Our affiliates, business partners or Our or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. StreamGuard Confidential Information includes: (a) nonpublic information relating to Our or Our affiliates or business partners’ technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that We are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between You and Us or Our affiliates. StreamGuard Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to You at the time of Your receipt from Us; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by You without reference to the StreamGuard Confidential Information.

“StreamGuard Content” means Content We or any of Our affiliates make available in connection with the Services or on the StreamGuard Site to allow access to and use of the Services, including APIs; WSDLs; Documentation; sample code; software libraries; command line tools; proofs of concept; templates; and other related technology (including any of the foregoing that are provided by Our personnel). StreamGuard Content does not include the Services or Third-Party Content.

"StreamGuard Contracting Party" means StreamGuard, Inc, a Delaware Corporation as described in Section 18.9(b).

“StreamGuard Marks” means any trademarks, service marks, service or trade names, logos, and other designations of StreamGuard and its affiliates that We may make available to You in connection with this Agreement.

“StreamGuard Site” means (and any successor or related site designated by Us), as may be updated by Us from time to time.

“Trademark Use Guidelines” means the guidelines and trademark license located at (and any successor or related locations designated by Us), as they may be updated by Us from time to time.

“We,” “Us” or “Our” means StreamGuard, Inc, a Delaware Corporation as described in Section 18.9(b).

“You” or “Your” means, in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which You are accepting this Agreement, and Affiliates of that company or entity which have entered into a Service Offering Form . The signature page of the Service Offering Form shall identify whether “You” are an entity or an individual.

“Your Content” means Content that You or any End User transfers to Us for processing, storage or hosting by the Services in connection with Your StreamGuard account and any computational results that You or any End User derive from the foregoing through their use of the Services. For example, Your Content includes Content that You or any End User stores in StreamGuard Simple Storage Service. Your Content does not include Account Information.

“Your Data” means electronic data and information submitted by or for You to the Services, excluding Content and Non-StreamGuard Applications.

## 2. FREE & BETA SERVICES

2.1 Free Services. StreamGuard may make Free Services available to You. Use of Free Services is subject to the terms and conditions of this Agreement. In the event of a conflict between this Section 2.1 (Free Services) and any other portion of this Agreement, this section shall control. Please note that Free Services are provided to You without additional charge up to certain limits as described in the Documentation. Usage over these limits requires Your purchase of additional resources or services. You agree that StreamGuard, in its sole discretion and for any or no reason, may terminate Your access to the Free Services or any part thereof. You agree that any termination of Your access to the Free Services may be without prior notice, and You agree that StreamGuard will not be liable to You or any third party for such termination. You are solely responsible for exporting Your Data from the Free Services prior to termination of Your access to the Free Services for any reason, provided that if We terminate Your account, except as required by law We will provide You a reasonable opportunity to retrieve Your Data.

2.2 Beta Services. From time to time, We may make Beta Services available to You at no charge. You may choose to try such Beta Services or not in Your sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms. Beta Services are not considered “Services” under this Agreement, however, all restrictions, Our reservation of rights and Your obligations concerning the Services, and use of any related Non-StreamGuard Applications and Content, shall apply equally to Your use of Beta Services. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

NOTWITHSTANDING SECTIONS 13.1 (INDEMNIFICATION BY US), 14 (DISCLAIMERS), 15 (LIMITATIONS OF LIABILITY), 17 (CONFIDENTIALITY) AND 18 (MISCELLANEOUS), THE FREE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY AND STREAMGUARD SHALL HAVE NO INDEMNIFICATION OBLIGATIONS WITH RESPECT TO THE FREE SERVICES. WITHOUT LIMITING THE FOREGOING, STREAMGUARD AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO YOU THAT: (A) YOUR USE OF THE FREE SERVICES WILL MEET YOUR REQUIREMENTS, (B) YOUR USE OF THE FREE SERVICES WILL BE

UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED THROUGH THE FREE SERVICES WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 15 (LIMITATION OF LIABILITY), YOU SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO STREAMGUARD AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF YOUR USE OF THE FREE SERVICES, ANY BREACH BY YOU OF THIS AGREEMENT AND ANY OF YOUR INDEMNIFICATION OBLIGATIONS HEREUNDER.

### 3. OUR RESPONSIBILITIES

3.1 Provision of Purchased Services. We will (a) make the Services and Content available to You pursuant to this Agreement and any applicable Service Offering Forms, (b) provide applicable StreamGuard standard support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased, (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, Non-StreamGuard Application failure or delay, or denial of service attack.

3.2 Our Personnel. We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

### 4. USE OF THE SERVICE OFFERINGS.

4.1 Generally. You may access and use the Service Offerings in accordance with this Agreement. Service Level Agreements and Service Terms apply to certain Service Offerings. You will comply with the terms of this Agreement and all laws, rules and regulations applicable to Your use of the Service Offerings.

4.2 Your Account. To access the Services, You must have a StreamGuard account associated with a valid email address and a valid form of payment. Unless explicitly permitted by the Service Terms, You will only create one account per email address.

4.3 Third-Party Content. Third-Party Content may be used by You at Your election. Third-Party Content is governed by this Agreement and, if applicable, separate terms and conditions accompanying such Third-Party Content, which terms and conditions may include separate fees and charges.

### 5. CHANGES.

5.1 To the Service Offerings. We may change or discontinue any or all of the Service Offerings or change or remove functionality of any or all of the Service Offerings from time to time. We will notify You of any material change to or discontinuation of the Service Offerings.

5.2 To the APIs. We may change or discontinue any APIs for the Services from time to time. For any discontinuation of or material change to an API for a Service, We will use commercially reasonable efforts to continue supporting the previous version of such API for 12 months after the change or discontinuation (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) would cause Us to violate the law or requests of governmental entities).

5.3 To the Service Level Agreements. We may change, discontinue or add Service Level Agreements from time to time in accordance with Section 16.

## 6. SECURITY AND DATA PRIVACY.

6.1 StreamGuard Security. Without limiting Section 14 or Your obligations under Section 7.2, We will implement reasonable and appropriate measures designed to help You secure Your Content against accidental or unlawful loss, access or disclosure.

6.2 Protection of Your Data. We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 17.3 (Compelled Disclosure) below, or (c) as You expressly permit in writing.

## 7. YOUR RESPONSIBILITIES.

7.1 Your Accounts. Except to the extent caused by Our breach of this Agreement, (a) You are responsible for all activities that occur under Your account, regardless of whether the activities are authorized by You or undertaken by You, Your employees or a third party (including Your contractors, agents or End Users), and (b) We and Our affiliates are not responsible for unauthorized access to Your account.

7.2 Your Content. You will ensure that Your Content and Your and End Users' use of Your Content or the Service Offerings will not violate any of the Policies or any applicable law. You are solely responsible for the development, content, operation, maintenance, and use of Your Content.

7.3 Your Security and Backup. You are responsible for properly configuring and using the Service Offerings and otherwise taking appropriate action to secure, protect and backup Your accounts and Your Content in a manner that will provide appropriate security and protection, which might include use of encryption to protect Your Content from unauthorized access and routinely archiving Your Content.

7.4 Log-In Credentials and Account Keys. StreamGuard log-in credentials and private keys generated by the Services are for Your internal use only and You will not sell, transfer or sublicense them to any other entity or person, except that You may disclose Your private key to Your agents and subcontractors performing work on Your behalf.

7.5 End Users. You will be deemed to have taken any action that You permit, assist or facilitate any person or entity to take related to this Agreement, Your Content or use of the

Service Offerings. You are responsible for End Users' use of Your Content and the Service Offerings. You will ensure that all End Users comply with Your obligations under this Agreement and that the terms of Your agreement with each End User are consistent with this Agreement. If You become aware of any violation of Your obligations under this Agreement caused by an End User, You will immediately suspend access to Your Content and the Service Offerings by such End User. We do not provide any support or services to End Users unless We have a separate agreement with You or an End User obligating Us to provide such support or services.

## 8. NON-STREAMGUARD PROVIDERS

8.1 Third-Party Providers. We or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-StreamGuard Applications and implementation and other consulting services (such non-Streamguard products and services are referred to as "Third Party Services").. Any acquisition by You of Third Party Services, and any exchange of data between You and any Non-StreamGuard provider, product or service is solely between You and the applicable Non-StreamGuard provider. We do not warrant or support Non-StreamGuard Applications or Third Party Services, whether or not they are designated by Us as a Partner, as "certified", as coming from a Non-StreamGuard Provider who is a member of the "StreamGuard Security Partner Program", or otherwise, unless expressly provided otherwise in a Service Offering Form.

8.2 Non-StreamGuard Applications and Your Data. If You choose to use a Non-StreamGuard Application with a Service, You grant Us permission to allow the Non-StreamGuard Application and its provider to access Your Data as required for the interoperation of that Non-StreamGuard Application with the Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by such Non-StreamGuard Application or its provider. You understand and acknowledge that such Data transfer will not be covered by the StreamGuard Privacy Policy.

8.3 Interoperation with Non-StreamGuard Applications. If You choose to use Third Party Services, the certain features of the Services may have to interoperate with Non-StreamGuard Applications. To use such features, You may be required to obtain access to such Non-StreamGuard Applications from their providers, and may be required to grant Us access to Your account(s) on such Non-StreamGuard Applications. We cannot guarantee the continued availability of Third Party Services which may terminate without entitling You to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-StreamGuard Application ceases to make the Third Party Service available for interoperation with the corresponding Service features in a manner acceptable to Us.

## 9. FEES AND PAYMENT.

9.1 Service Fees. We calculate and bill fees and charges monthly. We may bill You more frequently for fees accrued if we suspect that Your account is fraudulent or at risk of non-payment. You will pay Us the applicable fees and charges for use of the Service Offerings as described on the StreamGuard Site using one of the payment methods We support. All



amounts payable by You under this Agreement will be paid to Us without setoff or counterclaim, and without any deduction or withholding. Fees and charges for any new Service or new feature of a Service will be effective when We post updated fees and charges on the StreamGuard Site, unless We expressly state otherwise in a notice. We may increase or add new fees and charges for any existing Services You are using by giving You at least 30 days' prior notice. We may elect to charge You interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments.

9.2 Taxes. Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this Agreement. All fees payable by You are exclusive of Indirect Taxes. We may charge and You will pay applicable Indirect Taxes that We are legally obligated or authorized to collect from You and remit such payments to the appropriate taxing authority. You will provide such information to Us as reasonably required to determine whether We are obligated to collect Indirect Taxes from You. We will not collect, and You will not pay, any Indirect Tax for which You furnish Us a properly completed exemption certificate or a direct payment permit certificate for which We may claim an available exemption from such Indirect Tax. All payments made by You to Us under this Agreement will be made free and clear of any deduction or withholding, as may be required by law. If any such deduction or withholding (including but not limited to cross-border withholding taxes) is required on any payment, You will pay such additional amounts as are necessary so that the net amount received by Us is equal to the amount then due and payable under this Agreement. We will provide You with such tax forms as are reasonably requested in order to reduce or eliminate the amount of any withholding or deduction for taxes in respect of payments made under this Agreement.

## 10. TEMPORARY SUSPENSION.

10.1 Generally. We may suspend Your or any End User's right to access or use any portion or all of the Service Offerings immediately upon notice to You if We determine:

- (a) Your or an End User's use of the Service Offerings (i) poses a security risk to the Service Offerings or any third party, (ii) could adversely impact Our systems, the Service Offerings or the systems or Content of any other StreamGuard customer, (iii) could subject Us, Our affiliates, or any third party to liability, or (iv) could be fraudulent;
- (b) You are, or any End User is, in breach of this Agreement;
- (c) You are in breach of Your payment obligations under Section 9; or
- (d) You have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

10.2 Effect of Suspension. If We suspend Your right to access or use any portion or all of the Service Offerings:

(a) You remain responsible for all fees and charges You incur during the period of suspension; and

(b) You will not be entitled to any service credits under the Service Level Agreements for any period of suspension.

## 11. TERM, TERMINATION.

11.1 Term. The term of this Agreement will commence on the Effective Date and will remain in effect until terminated under this Section 11. Any notice of termination of this Agreement by either party to the other must include a Termination Date that complies with the notice periods in Section 11.2.

### 11.2 Termination.

(a) Termination for Convenience. You may terminate this Agreement for any reason by providing Us notice and closing Your account for all Services for which We provide an account closing mechanism. We may terminate this Agreement for any reason by providing You at least 30 days' advance notice.

(b) Termination for Cause.

(i) By Either Party. Either party may terminate this Agreement for cause if the other party is in material breach of this Agreement and the material breach remains uncured for a period of 30 days from receipt of notice by the other party. No later than the Termination Date, You will close Your account.

(ii) By Us. We may also terminate this Agreement immediately upon notice to You (A) for cause if We have the right to suspend under Section 10, (B) if Our relationship with a third-party partner who provides software or other technology We use to provide the Service Offerings expires, terminates or requires Us to change the way We provide the software or other technology as part of the Services, or (C) in order to comply with the law or requests of governmental entities.

### 11.3 Effect of Termination.

(a) Generally. Upon the Termination Date:

(i) except as provided in Section 11.3(b), all Your rights under this Agreement immediately terminate;

(ii) You remain responsible for all fees and charges You have incurred through the Termination Date and are responsible for any fees and charges You incur during the post-termination period described in Section 11.3(b);

(iii) You will immediately return or, if instructed by Us, destroy all StreamGuard Content in Your possession; and

(iv) Sections 1, 7.1, 9, 11.3, 12 (except the license granted to You in Section 12.3), 13, 14, 15, and 18 will continue to apply in accordance with their terms.

(b) Post-Termination. Unless We terminate Your use of the Service Offerings pursuant to Section 11.2(b), during the 30 days following the Termination Date:

(i) We will not take action to remove from the StreamGuard systems any of Your Content as a result of the termination; and

(ii) We will allow You to retrieve Your Content from the Services only if You have paid all amounts due under this Agreement.

For any use of the Services after the Termination Date, the terms of this Agreement will apply, and You will pay the applicable fees at the rates under Section 9.

## 12. PROPRIETARY RIGHTS.

12.1 Your Content. Except as provided in this Section 12, We obtain no rights under this Agreement from You (or Your licensors) to Your Content. You consent to Our use of Your Content to provide the Service Offerings to You and any End Users.

12.2 Adequate Rights. You represent and warrant to Us that: (a) You or Your licensors own all right, title, and interest in and to Your Content and Suggestions; (b) You have all rights in Your Content and Suggestions necessary to grant the rights contemplated by this Agreement; and (c) none of Your Content or End Users' use of Your Content or the Service Offerings will violate the Acceptable Use Policy.

12.3 Service Offerings License. We or Our licensors own all right, title, and interest in and to the Service Offerings, and all related technology and intellectual property rights. Subject to the terms of this Agreement, We grant You a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to do the following: (a) access and use the Services solely in accordance with this Agreement; and (b) copy and use the StreamGuard Content solely in connection with Your permitted use of the Services. Except as provided in this Section 12.3, You obtain no rights under this Agreement from Us, Our affiliates or Our licensors to the Service Offerings, including any related intellectual property rights. Some StreamGuard Content and Third-Party Content may be provided to You under a separate license. In the event of a conflict between this Agreement and any separate license, the separate license will prevail with respect to the StreamGuard Content or Third-Party Content that is the subject of such separate license.

12.4 License Restrictions. Neither You nor any End User will use the Service Offerings in any manner or for any purpose other than as expressly permitted by this Agreement. Neither You nor any End User will, or will attempt to (a) modify, distribute, alter, tamper with, repair, or otherwise create derivative works of any Content included in the Service Offerings (except to the extent Content included in the Service Offerings is provided to You under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the Service Offerings or apply any other process or procedure to derive the source code of any software included in the Service Offerings (except to the extent applicable law doesn't allow this restriction), (c) access or use the

Service Offerings in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the Service Offerings. You may only use the StreamGuard Marks in accordance with the Trademark Use Guidelines. You will not misrepresent or embellish the relationship between Us and You (including by expressing or implying that We support, sponsor, endorse, or contribute to You or Your business endeavors). You will not imply any relationship or affiliation between Us and You except as expressly permitted by this Agreement.

12.5 Suggestions. If You provide any Suggestions to Us or Our affiliates, We and Our affiliates will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to Us all right, title, and interest in and to the Suggestions and agree to provide Us any assistance We require to document, perfect, and maintain Our rights in the Suggestions.

### 13. INDEMNIFICATION.

13.1 General. You will defend, indemnify, and hold harmless Us, Our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any Losses arising out of or relating to any third-party claim concerning: (a) Your or any End Users' use of the Service Offerings (including any activities under Your StreamGuard account and use by Your employees and personnel); (b) breach of this Agreement or violation of applicable law by You, End Users or Your Content; or (c) a dispute between You and any End User. You will reimburse Us for reasonable attorneys' fees, as well as Our employees' and contractors' time and materials spent responding to any third party subpoena or other compulsory legal order or process associated with third party claims described in (a) through (c) above at Our then-current hourly rates.

#### 13.2 Intellectual Property.

(a) Subject to the limitations in this Section 13, StreamGuard will defend You and Your employees, officers, and directors against any third-party claim alleging that the Services infringe or misappropriate that third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement.

(b) Subject to the limitations in this Section 13, You will defend StreamGuard, its affiliates, and their respective employees, officers, and directors against any third-party claim alleging that any of Your Content infringes or misappropriates that third party's intellectual property rights and will pay the amount of any adverse final judgment or settlement.

(c) Neither party will have obligations or liability under this Section 13.2 arising from infringement by combinations of the Services or Your Content, as applicable, with any other product, service, software, data, content or method. In addition, StreamGuard will have no obligations or liability arising from Your or any End User's use of the Services after StreamGuard has notified You to discontinue such use. The remedies provided in this Section 13.2 are the sole and exclusive remedies for any third-party claims of infringement or misappropriation of intellectual property rights by the Services or by Your Content.

(d) For any claim covered by Section 13.2(a), StreamGuard will, at its election, either: (i) procure the rights to use that portion of the Services alleged to be infringing; (ii) replace the

alleged infringing portion of the Services with a non-infringing alternative; (iii) modify the alleged infringing portion of the Services to make it non-infringing; or (iv) terminate the allegedly infringing portion of the Services or this Agreement.

13.3 Process. The obligations under this Section 13 will apply only if the party seeking defense or indemnity: (a) gives the other party prompt written notice of the claim; (b) permits the other party to control the defense and settlement of the claim; and (c) reasonably cooperates with the other party (at the other party's expense) in the defense and settlement of the claim. In no event will a party agree to any settlement of any claim that involves any commitment, other than the payment of money, without the written consent of the other party.

#### 14. DISCLAIMERS.

THE SERVICE OFFERINGS ARE PROVIDED "AS IS." EXCEPT TO THE EXTENT PROHIBITED BY LAW, OR TO THE EXTENT ANY STATUTORY RIGHTS APPLY THAT CANNOT BE EXCLUDED, LIMITED OR WAIVED, WE AND OUR AFFILIATES AND LICENSORS (A) MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OFFERINGS OR THE THIRD-PARTY CONTENT, AND (B) DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES (I) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, (II) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, (III) THAT THE SERVICE OFFERINGS OR THIRD-PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND (IV) THAT ANY CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.

#### 15. LIMITATIONS OF LIABILITY.

WE AND OUR AFFILIATES AND LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICE OFFERINGS, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENTS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, EXCEPT FOR PAYMENT

OBLIGATIONS UNDER SECTION 9.2, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE. THE LIMITATIONS IN THIS SECTION 15 APPLY ONLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 16. MODIFICATIONS TO THE AGREEMENT.

We may modify this Agreement (including any Policies) at any time by posting a revised version on the StreamGuard Site or by otherwise notifying You in accordance with Section 18.9; provided, however, that We will provide at least 90 days' advance notice in accordance with Section 18.9 for adverse changes to any Service Level Agreement. Subject to the 90-day advance notice requirement with respect to adverse changes to Service Level Agreements, the modified terms will become effective upon posting or, if We notify You by email, as stated in the email message. By continuing to use the Service Offerings after the effective date of any modifications to this Agreement, You agree to be bound by the modified terms. It is Your responsibility to check the StreamGuard Site regularly for modifications to this Agreement. We last modified this Agreement on the date listed at the beginning of this Agreement.

## 17. CONFIDENTIALITY

17.1 Definition of Confidential Information. "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 disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Service Offering Forms (including pricing), 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 (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

17.2 Use of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) 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 not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Service Offering Form to any third party other than its Affiliates, legal

counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, We may disclose the terms of this Agreement and any applicable Services Offering Form to a subcontractor or Non-StreamGuard Application Provider to the extent necessary to perform Our obligations to You under this Agreement, under terms of confidentiality materially as protective as set forth herein.

17.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## 18. MISCELLANEOUS.

18.1 Assignment. You will not assign or otherwise transfer this Agreement or any applicable Services Offering Form or any of Your rights and obligations under this Agreement, without Our prior written consent. Any assignment or transfer in violation of this Section 18.1 will be void. We may assign this Agreement or any applicable Service Offering Form without Your consent (a) in connection with a merger, acquisition or sale of all or substantially all of Our assets, or (b) to any Affiliate or as part of a corporate reorganization; and effective upon such assignment, the assignee is deemed substituted for StreamGuard as a party to this Agreement and StreamGuard is fully released from all of its obligations and duties to perform under this Agreement. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective permitted successors and assigns.

18.2 Entire Agreement. This Agreement incorporates the Policies and any applicable Services Offering Form by reference and is the entire agreement between You and Us regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between You and Us, whether written or verbal, regarding the subject matter of this Agreement (but does not supersede prior commitments to purchase Services such as Upgraded 24/7 Support Services). We will not be bound by, and specifically object to, any term, condition or other provision that is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) including for example, any term, condition or other provision (a) submitted by You in any order, receipt, acceptance, confirmation, correspondence or other document, (b) related to any online registration, response to any Request for Bid, Request for Proposal, Request for Information, or other questionnaire, or (c) related to any invoicing process that You submit or require Us to complete. If the terms of this document are inconsistent with the terms contained in any Policy, the terms contained in this document will control, except that the Service Terms will control over this document.

18.3 Force Majeure. We and Our affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond Our reasonable control, including acts of God, labor disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

18.4 Governing Law. The Governing Laws, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between You and Us. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

18.5 Disputes. Any dispute or claim relating in any way to Your use of the Service Offerings, or to any products or services sold or distributed by StreamGuard will be adjudicated in the Governing Courts, and You consent to exclusive jurisdiction and venue in the Governing Courts; any such dispute will be resolved by binding arbitration as provided in this Section 18.5, rather than in court, except that You may assert claims in small claims court if Your claims qualify. The Federal Arbitration Act and federal arbitration law apply to this Agreement. There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would. To begin an arbitration proceeding, You must send a letter requesting arbitration and describing Your claim to Our registered agent McArdle, Perez & Franco, P.L., 806 S. Douglas Road, Suite 625, Coral Gables, FL 33134, Attn: StreamGuard. The arbitration will be conducted by the American Arbitration Association (AAA) under its rules, which are available at [arbitration.com](#) or by calling 1-800-778-7879. Payment of filing, administration and arbitrator fees will be governed by the AAA's rules. You may choose to have the arbitration conducted by telephone, based on written submissions, or at a mutually agreed location. We and You agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration We and You waive any right to a jury trial. Notwithstanding the foregoing We and You both agree that You or We may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

18.6 Trade Compliance. In connection with this Agreement, each party will comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to a U.S. company, such as the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, You are solely responsible for compliance related to the manner in which You choose to use the Service Offerings, including Your transfer and processing of Your Content, the provision of Your Content to End Users, and the StreamGuard region in which any of the foregoing occur. You represent and warrant that You and Your financial institutions, or any party that owns or controls You or Your financial institutions, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions



Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce), the European Union or its Member States, or other applicable government authority.

18.7 Independent Contractors; Non-Exclusive Rights. We and You are independent contractors, and this Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship. Neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. We reserve the right (a) to develop or have developed products, services, concepts, systems, or techniques that are similar to or compete with the products, services, concepts, systems, or techniques developed or contemplated by You and (b) to assist third party developers or systems integrators who may offer products or services which compete with Your products or services.

18.8 Language. All communications and notices made or given pursuant to this Agreement must be in the English language. If We provide a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

18.9 Notice.

(a) To You: We may provide any notice to You under this Agreement by: (i) posting a notice on the StreamGuard Site; or (ii) sending a message to the email address then associated with Your account. Notices We provide by posting on the StreamGuard Site will be effective upon posting and notices We provide by email will be effective when We send the email. It is Your responsibility to keep Your email address current. You will be deemed to have received any email sent to the email address then associated with Your account when We send the email, whether or not You actually receive the email.

(b) To Us: To give Us notice under this Agreement, You must contact StreamGuard, Inc, a Delaware Corporation, by email to [notices@StreamGuard.com](mailto:notices@StreamGuard.com) or personal delivery, overnight courier or registered or certified mail to 806 S. Douglas Road, Suite 625, Coral Gables, FL 33134. We may update the facsimile number or address for notices to Us by posting a notice on the StreamGuard Site. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.

18.10 No Third-Party Beneficiaries. Except as set forth in Section 13, this Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.

18.11 U.S. Government Rights. The Service Offerings are provided to the U.S. Government as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data” with the same rights and restrictions generally applicable to the Service Offerings. If You are using the Service Offerings on behalf of the U.S. Government and these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, You will immediately discontinue Your use of the Service Offerings. The terms “commercial item” “commercial computer software,”

“commercial computer software documentation,” and “technical data” are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

18.12 No Waivers. The failure by Us to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit Our right to enforce such provision at a later time. All waivers by Us must be in writing to be effective.

18.13 Severability. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect the intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement, but the rest of the Agreement will remain in full force and effect.