

HYBRID CLOUD SUBSCRIPTION TERMS OF SERVICE AND LICENSE AGREEMENT

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS, AND THAT THE PERSON ACCEPTING (WHETHER ELECTRONICALLY OR IN WRITING) ON ITS BEHALF HAS BEEN AUTHORIZED TO DO SO. THE PERSON EXECUTING THIS AGREEMENT ON THE CUSTOMER'S BEHALF REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND THE CUSTOMER TO THESE TERMS AND CONDITIONS.

This Hybrid Cloud Subscription and License Agreement (this "Agreement") by and between KeyStrike Inc., a software company whose address is at 8 The Green, Suite # 1128, Dover, DE 19901, Kent County, Delaware USA (the "Provider"), and the corporation, limited liability company, partnership, sole proprietorship, other business entity or individual executing this Agreement (the "Customer"). The Provider and the Customer are sometimes referred to herein collectively as the "Parties" and individually as a "Party". By accepting this Agreement, either by accessing or using the Solution, the Customer agrees to be bound by this Agreement as of the date of such access or use of the Solution (the "Effective Date"). The Customer's use of and the Provider's provision of the Solution (as defined below in Section 1.8) are governed by this Agreement.

The Provider provides the Solution, which consists of technology hosted on the Provider's computers and accessed remotely, via the Internet, as well as software hosted on the Customers' computers. The Provider also provides professional services related to implementation and installation of the Solution. The Parties hereby agree that the Provider will provide the Solution, as well as such professional services as the Parties may agree, to the Customer pursuant to the terms of this Agreement and one or more Orders. Therefore, in consideration for the mutual covenants and commitments set forth herein, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. DEFINITIONS. The following capitalized terms will have the following meanings whenever used in this Agreement.

- 1.1. "Customer Data" means all information processed or stored through the Solution by the Customer or on the Customer's behalf.
- 1.2. "Cloud Components" means the elements of the System that the Provider hosts on its computers.
- 1.3. "Data Processing Agreement" means the agreement between the Customer and the Provider regarding the processing of personal data.
- 1.4. "Documentation" means the Provider's standard manual related to use of the Solution.
- 1.5. "Initial Subscription Term" is defined in Section 11.1.
- 1.6. "On-Premise Components" means the elements of the Solution that Customer is to run on its computers.
- 1.7. "Order" means an order for access to the Solution and/or other professional services, which the Customer may submit to the Provider through the Provider's webpage or through direct contact with the Provider; provided that an Order is not binding on the Provider unless and until the Provider provides notice of acceptance to the Customer.
- 1.8. "Privacy/Security Law" means laws (a) related to personal data that (b) govern the Provider's handling of Customer Data (if any).

- 1.9. "Renewal Subscription Term" is defined in Section 11.1.
- 1.10. "Software" is defined in Section 6.1.
- 1.11. "Solution" means the Provider's cybersecurity software solution, which consists of a set-up of the Clienton User's workstation(s), a Terminator on remote system(s) and an admin portal. The intended purpose of the Solution, for supported protocols, is to (a) provide an integrity tunnel between workstations and sensitive remote systems, (b) neutralize lateral movement, (c) ensure commands are physically typed on User's workstations, (d) attest every keystroke and mouse click, and (e) block unattested activity and trigger alerts.
- 1.12. "SSP" means the Provider's standard Support Services Policy, as set forth in Appendix 1 of this Agreement.
- 1.13. "Subscription Fees": the subscription fees payable by the Customer to the Provider, as provided for in the Order and this Agreement.
- 1.14. "Subscription Term" means the Initial Subscription Term or a Renewal Subscription Term, as applicable.
- 1.15. "Term" is defined in Section 11.1 below.
- 1.16. "User" means any individual or contractor who uses the Solution on the Customer's behalf or through the Customer's account, whether authorized or not.

2. THE SOLUTION.

- 2.1. Use of the Solution. During the Term, the Customer may access and use the Solution solely for its internal business purposes pursuant to the terms of this Agreement and an Order, including such features and functions as the Order requires. Such internal business purposes do not include use by any parent, subsidiary, or affiliate of the Customer, or any other third party, and the Customer shall not permit any such use.
- 2.2. Remedies. The Provider shall provide the remedies listed in the SSP for any failure of the Solution listed in the SSP. Such remedies are the Customer's sole remedy for any failure of the Solution, and the Customer recognizes and agrees that if the SSP does not list a remedy for a given failure, the Customer has no remedy.
- 2.3. Documentation: The Customer may reproduce and use the Documentation solely as necessary to support each authorized Users' use of the Solution.
- 2.4. Solution Revisions. The Provider may revise the Solution's features and functions or the SSP at any time, including without limitation by removing such features and functions or reducing service levels in the SSP. If any such revision to the Solution materially reduces features or functionality provided pursuant to an outstanding Order, the Customer may, within 30 days of notice of the revision, terminate such Order, without cause, or terminate this Agreement without cause if such Order is the only one outstanding.
- 2.5. **ON-PREMISE COMPONENTS.**
 - (a) License. The Provider hereby grants the Customer a nonexclusive and non-transferable license to reproduce and use the On-Premise Components, in such quantities as are set forth on the applicable Order and solely as a component

of the Solution, provided that the Customer complies with the restrictions set forth below in Section 2.5.(b) (*Restrictions on Software Rights*).

- (b) Restrictions on Software Rights. Copies of all On-Premise Components created or transferred pursuant to this Agreement are licensed, not sold, and the Customer receives no title to or ownership of any copy or of the Software itself. Furthermore, the Customer receives no rights to the Software other than those specifically granted in Section 2.5.(a) above (*License*). Without limiting the generality of the foregoing, the Customer shall not: (a) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the On-Premise Components; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from the On-Premise Components; or (c) use the On-Premise Components in any way forbidden by Section 5.1. below (*Acceptable use*). The Provider grants the license in Section 2.5.(a) above under copyright and, solely to the extent necessary to exercise such rights, under any other applicable intellectual property rights of the Provider. The Customer may not use any information provided by the Provider or obtained by the Customer to create any software whose expression is substantially similar to that of the On-Premise Components or the Solution, nor may the Customer use any such information in any manner which would be restricted by any copyright or other intellectual property rights subsisting in it.
- (c) Delivery. The Provider shall provide the On-Premise Components to the Customer, through a reasonable system of electronic download within 3 days of the Effective Date.
- (d) Hosting and Management. The Customer shall host and manage the On-Premise Components as required by the Documentation. The Provider shall have no responsibility or liability for any failure of the Solution, including without limitation pursuant to the SSP, resulting from the Customer's failure to comply with the requirements in the Documentation.

3. PAYMENT.

- 3.1. Subscription Fees. After the free trial period described in Section 11.1, the Customer shall pay the Provider the fee set forth in the Order (the "Subscription Fee") for each Subscription Term. The Provider will not be required to refund any Subscription Fees under any circumstances.
- 3.2. Subscription Fees for the Initial Subscription Term are stated and will be binding on the Customer at the time the Customer's Order has been signed by the Customer and accepted by the Provider. The total amount of Subscription Fees depends on the Customer's requested choice of services. The Customer acknowledges and agrees the Customer's subscription involves a recurring payment of Subscription Fees, and unless the Customer notifies the Provider of cancellation pursuant to Section 11.1, the Customer authorizes the Provider to collect the then applicable fees and any taxes, using payment records, or other information the Customer has provided and uses to pay the Provider.
- 3.3. The Customer shall pay the Subscription Fees to the Provider in accordance with this Article 3 and the Order.

The Customer shall pursuant to a completed Order provide to the Provider up-to-date and complete contact and billing details and the Provider shall invoice the Customer:

- (i) for the Subscription Fees payable in respect of the Initial Subscription Term; and
- (ii) subject to Section 11.1, at least 30 days prior to end of each Subscription Term, for the Subscription Fees payable in respect of the next Subscription Term,

and the Customer shall pay each invoice within 30 days after the date of such invoice.

3.4. If the Provider has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Provider:

- (a) the Provider may, on no less than 5 business days' notice to the Customer and without liability to the Customer, disable the Customer's password, account and access to all or part of the services and the Provider shall be under no obligation to provide any or all of the services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Provider's banks in the USA from time to time, commencing on the due date and continuing until fully paid, whether before or after judgement.

3.5. All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in US dollars.
- (b) are non-cancellable and non-refundable;
- (c) are exclusive of any tax, tariff, duty etc., as further outlined in Section 3.7.

3.6. The Provider shall be entitled to increase the Subscription Fees and any fees payable in respect of additional services or users purchased (as per Section 5.2.) at the start of each Renewal Subscription Period upon 40 days' prior notice to the Customer, and the Order shall be deemed to have been amended accordingly.

3.7. Taxes. Amounts due under this Agreement are payable to the Provider without deduction for any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value-added tax, whether or not withheld at the source (collectively, "Sales Tax"). Except as forbidden by applicable law, the Provider may require that the Customer submit applicable Sales Taxes to the Provider. However, the preceding sentence shall not apply to the extent that the Customer is tax exempt, provided it gives the Provider a valid tax exemption certificate within 30 days of the Effective Date. The Provider's failure to include any applicable tax in an invoice will not waive or dismiss its rights or obligations pursuant to this Section 3. If applicable law requires withholding or deduction of Sales Taxes or any other tax or duty, the Customer shall separately pay the Provider the withheld or deducted amount, over and above the fees due. For the avoidance of doubt, this Section 3.7. does not govern taxes based on the Provider's net income.

3.8. Additional services or users: Fees for additional services or User subscriptions purchased by the Customer according to Section 5.2. in the middle of a Subscription Term shall be prorated from the month of activation by the Provider for the remainder of the relevant Subscription Term and billed at the end of such Subscription Term or, at the Provider's sole discretion, within 30 days of the date of the Provider's invoice if

such additional services or the additional user subscriptions are materially different than those originally ordered by the Customer.

4. CUSTOMER DATA AND PRIVACY.

4.1. Management of Customer Data in General. The provisions set forth in this Section 4.1 are subject to applicable law, including Privacy/Security Laws.

- (a) *Limited Use.* The Provider shall not: (i) access, process, or otherwise use Customer Data other than as necessary to facilitate the Solution; or (ii) give any third party access to Customer Data, except the Provider's subcontractors that have a need for such access to facilitate the Solution and are subject to a reasonable written agreement governing the use and security of Customer Data. The Provider shall exercise reasonable efforts to prevent unauthorized disclosure or exposure of Customer Data.
- (b) *De-Identified Data.* Notwithstanding the provisions of this Article 4, the Provider may use, reproduce, sell, publicize, or otherwise exploit as applicable laws allow, De-Identified Data (as defined below) in any way, in its sole discretion, including without limitation aggregated with data from other customers. "De-Identified Data refers to Customer Data with the following removed: information that identifies or could reasonably be used to identify an individual person, a household, or the Customer.
- (c) *Privacy Policy and Data Processing Agreement.* The Customer acknowledges the Provider's privacy policy which is accessible online, and the Customer recognizes and agrees that nothing in this Agreement restricts the Provider's right to alter such privacy policy. The Customer acknowledges that the Provider may process personal data in line with the privacy policy and as further described in the Data Processing Agreement.
- (d) *Required Disclosure.* Notwithstanding the provisions of this Article 4, the Provider may disclose Customer Data as required by applicable law or by proper legal or governmental authority. The Provider shall give the Customer prompt notice of any such legal or governmental demand and reasonably cooperate with the Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at the Customer's expense.
- (e) *Risk of Exposure.* The Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the Solution, the Customer assumes such risks. To the fullest extent permitted by law, the Provider offers no, and expressly disclaims any, representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties.
- (f) *Additional Fees.* To the fullest extent permitted by applicable law, the Customer recognizes and agrees that the Provider may charge additional fees, including, without limitation, for (a) activities (if any) required by Privacy/Security Laws and (b) activities the Customer requests to help it comply with Privacy/Security Laws.

4.2. Data Accuracy. The Provider will have no responsibility or liability for the accuracy of data uploaded to the Solution by the Customer, including, without limitation, Customer Data and any other data uploaded by Users.

4.3. Erasure. The Provider may permanently erase Customer Data if the Customer's

account is delinquent, suspended, or terminated for 30 days or more, without limiting the Provider's other rights or remedies.

5. THE CUSTOMER'S RESPONSIBILITIES AND RESTRICTIONS.

- 5.1. Acceptable Use. The Customer will not allow any User subscription to be used by more than one individual authorized User unless it has been reassigned in its entirety to another individual authorized User, in which case the prior authorized User shall no longer have any right to access or use the Solution or the Documentation. The Customer shall not: (a) use the Solution for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Solution; (b) provide Solution passwords or other log-in information to any third party; (c) share non-public Solution features or content with any third party; (d) access the Solution in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the Solution, or to copy any ideas, features, functions or graphics of the Solution; or (e) engage in web scraping or data scraping on or related to the Solution, including without limitation collection of information through any software that simulates human activity or any bot or web crawler. In the event that it suspects any breach of the requirements of this Section 5.1, including without limitation by Users, the Provider may suspend the Customer's access to the Solution without advanced notice, in addition to such other remedies as the Provider may have. This Agreement does not require that the Provider take any action against the Customer or any User or other third party for violating this Section 5.1 or this Agreement, but the Provider may take any such action as it sees fit.
- 5.2. Adding New Users and Services: The Customer may, from time to time during any Subscription Term, purchase additional service subscriptions or add new authorized Users. An authorized User will be counted as such throughout each calendar month, in which such authorized User is marked as active. Any additional purchase shall be made by the Customer's admin directly through the admin portal of the Solution. If such additional services or user subscriptions are purchased by the Customer during the Subscription Term, such fees shall be prorated from the date of activation by the Provider for the remainder of the relevant Subscription Term and billed at next renewal period, or in any event within 30 days of the date of the Provider's invoice for such additional services, in case of no renewal.
- 5.3. Unauthorized Access. The Customer shall take reasonable steps to prevent unauthorized access to the Solution, including without limitation by protecting its passwords and other log-in information. The Customer shall notify the Provider immediately of any known or suspected unauthorized use of the Solution or breach of its security and shall use best efforts to stop said breach and mitigate any damages or harm caused by such breach.
- 5.4. Compliance with Laws. In its use of the Solution, the Customer shall comply with all applicable laws, including without limitation Privacy/Security laws.
- 5.5. Users and Solution Access. The Customer is responsible and liable for: (a) each Users' use of the Solution, including without limitation unauthorized User conduct and any User conduct that would violate the requirements of this Agreement; and (b) any use of the Solution through the Customer's account, whether authorized or unauthorized.

6. IP AND FEEDBACK.

- 6.1. Intellectual Property Rights to the Solution. The Provider retains all right, title, and interest in and to the Solution, including without limitation all software used to provide

the Solution (the “Software”) and all graphics, user interfaces, logos, and trademarks reproduced through the Solution. This Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other intellectual property license or rights in or to the Solution or any of its components, except to the limited extent that such rights are necessary for the Customer’s use of the Solution as specifically authorized by this Agreement. The Customer recognizes that the Solution and its components are protected by copyright, patent and other intellectual property laws.

6.2. Feedback. The Provider has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that the Customer, the Customer’s customers, or Users give to the Provider, and nothing in this Agreement or in the Parties’ dealings arising out of or related to this Agreement will restrict the Provider’s right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting the Customer. Customer, on behalf of itself, its customers and Users, hereby assigns any rights in such Feedback to the Provider and agrees to reasonably assist the Provider in obtaining intellectual property protection for such Feedback as the Provider may reasonable request. For the avoidance of any doubt, Feedback shall not be considered the Customer’s trade secret. “Feedback” means any suggestion or idea for improving or otherwise modifying any of the Provider’s products or services.

7. CONFIDENTIAL INFORMATION.

“Confidential Information” refers to the following items the Provider discloses to the Customer: (a) any document the Provider marks as “Confidential”, “Proprietary” or with words of similar import; (b) any information the Provider orally designates as “Confidential”, “Proprietary” or with words of similar import at the time of disclosure, provided that the Provider confirms such designation in writing within 30 business days; (c) the Documentation whether or not marked or designated confidential; and (d) any other nonpublic, sensitive information a reasonable person would consider to be confidential, proprietary and/or a trade secret. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the Customer’s possession at the time of disclosure as evidenced by reliable records; (ii) is independently developed by the Customer without use of or reference to Confidential Information as evidenced by reliable records; (iii) becomes known publicly, before or after disclosure, other than as a result of the Customer’s improper action or inaction; or (iv) is approved for release in writing by the Provider. The Customer is on notice that the Confidential Information may include the Provider’s valuable trade secrets.

7.1. Nondisclosure. The Customer shall not use Confidential Information for any purpose other than a purpose for which the Provider has formally agreed to in writing (the “Purpose”). The Customer: (a) shall not disclose Confidential Information to any employee or contractor of the Customer unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with the Customer with terms no less restrictive than those of this Article 7; and (b) shall not disclose Confidential Information to any other third party without the Provider’s prior written consent. Without limiting the generality of the foregoing, the Customer shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. The Customer shall promptly notify the Provider of any misuse or misappropriation of Confidential Information that comes to the Customer’s attention. Notwithstanding the foregoing, the Customer may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. The Customer shall give the Provider prompt written notice of any such legal or governmental demand

and reasonably cooperate with the Provider in any effort to seek a protective order or otherwise to contest such required disclosure, at the Provider's expense.

- 7.2. Termination and Return. Obligations related to Confidential Information constituting the Provider's trade secrets will continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, the Customer shall return all copies of Confidential Information to the Provider or certify, in writing, the destruction thereof.
- 7.3. Injunction. The Customer agrees that: (a) no adequate remedy exists at law if it breaches any of its obligations in this Article 7; (b) it would be difficult to determine the damages resulting from its breach of this Article 7, and such breach would cause irreparable harm to the Provider; and (iii) a grant of injunctive relief provides the best remedy for any such breach, without any requirement that the Provider prove actual damage or post a bond or other security. The Customer waives any opposition to such injunctive relief or any right to such proof, bond, or other security. (This Section 7.3 does not limit either party's right to injunctive relief for breaches not listed.)
- 7.4. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. The Provider will retain all right, title, and interest in and to all Confidential Information.
- 7.5. Exception and Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), the Customer is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:
- (a) *Immunity*. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
 - (b) *Use of Trade Secret Information in Anti-Retaliation Lawsuit*. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

8. REPRESENTATIONS AND WARRANTIES.

- 8.1. From the Provider. The Provider represents and warrants that it is the holder of rights to the Solution and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights to use the Solution set forth in this Agreement without the further consent of any third party. The Provider's representations and warranties in the preceding sentence do not apply to use of the Solution in combination with hardware or software not provided by the Provider. In case of breach of the warranty above in this Section 8.1, the Provider, at its own expense, shall promptly: (a) secure for the Customer the right to continue using the Solution; or (b) replace or modify the Solution to make it non-infringing; provided that, if such remedies are not commercially practical in the Provider's reasonable opinion, the Provider may refund the fees paid for the Solution for every month remaining in the then-current Subscription Term following which the Customer shall promptly cease all use of the Solution and all reproduction and use of the Documentation and erase or destroy all copies in its possession or control. This

Section 8.1, in conjunction with the Customer's right to terminate this Agreement where applicable, states the Customer's sole remedy and the Provider's entire liability for breach of the warranty above in this Section 8.1.

8.2. From the Customer. The Customer represents and warrants that: (a) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement; (b) it has accurately identified itself and it has not provided any inaccurate information about itself to or through the Solution; and (c) it is a corporation, limited liability company, partnership, sole proprietorship, other business entity or individual 18 years or older, as applicable, and authorized to do business pursuant to applicable law.

8.3. Warranty Disclaimers. Except to the extent set forth in the SSP and in Section 8.1 above, THE CUSTOMER ACCEPTS THE SOLUTION "AS IS," WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) THE PROVIDER HAS NO OBLIGATION TO INDEMNIFY OR DEFEND THE CUSTOMER OR USERS AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) THE PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SOLUTION WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (c) THE PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SOLUTION IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

9. INDEMNIFICATION. The Customer shall defend, indemnify, and hold harmless the Provider and the Provider Associates (as defined below) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of or related to the Customer's alleged or actual use of, misuse of, or failure to use the Solution, including without limitation: (a) claims by Users or by the Customer's employees, as well as by the Customer's customers; (b) claims related Data Incidents (as defined below); (c) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the Solution through the Customer's account, including without limitation by Customer Data; and (d) claims stemming from use of the Solution through the Customer's account, including by Users, that allegedly harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising. INDEMNIFIED CLAIMS INCLUDE, WITHOUT LIMITATION, CLAIMS ARISING OUT OF OR RELATED TO THE PROVIDER'S NEGLIGENCE. The Customer's obligations set forth in this Article 9 include, without limitation: (i) settlement at the Customer's expense and payment of judgements finally awarded by a court of competent jurisdiction, as well as payment of court costs and other reasonable expenses; and (ii) reimbursement of reasonable attorneys' fees incurred before the Customers' assumption of the defense (but not attorneys' fees incurred thereafter). If the Customer fails to timely assume the defense, to avoid prejudicing the defense, the Provider may defend the Indemnified Claim, without loss of rights pursuant to this Article 9. Provider will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it or a Provider Associate admit wrongdoing or liability or subject either of them to any ongoing affirmative obligation. ("Provider Associates" are the Provider's officers, directors, shareholders, parents, subsidiaries, agents and other representatives, successors, and assigns. A "Data Incident" is any (1) unauthorized disclosure of, access to, or use of

Customer Data, or (2) violation of Privacy/Security Law through the Customer's account. Data Incidents include, without limitation, such events caused by the Customer, by the Provider, by the Customer's customers or other users, by hackers, and by any other third party.)

10. LIMITATION OF LIABILITY.

- 10.1. Dollar Cap. THE PROVIDER'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE ANNUAL SUBSCRIPTION FEE FOR THE SUBSCRIPTION TERM IN WHICH SUCH LIABILITY AROSE OR RELATES. FOR THE AVOIDANCE OF DOUBT, THIS LIMITATION OF LIABILITY COVERS ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING ANY ATTORNEYS FEES, COURT COSTS, SETTLEMENTS, JUDGEMENTS, AND REIMBURSEMENT OF COSTS.
- 10.2. Excluded Damages. IN NO EVENT WILL THE PROVIDER BE LIABLE FOR LOST PROFITS OR LOSS OF BUSINESS OR FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 10.3. Clarifications and Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 10 APPLY FOR THE BENEFIT OF THE PROVIDER, PROVIDER ASSOCIATES AND THE PROVIDER'S THIRD PARTY CONTRACTORS, AS WELL AS: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF THE PROVIDER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF THE CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. The Customer acknowledges and agrees that the Provider has based its pricing on and entered into this Agreement in reliance upon the limitations of liability and disclaimers of warranties and damages in this Article 10 and that such terms form an essential basis of the bargain between the parties. If applicable law limits the application of the provisions of this Article 10, the Provider's liability will be limited to the maximum extent permissible.

11. TERM AND TERMINATION.

- 11.1. Term. The term of this Agreement (the "Term") will commence on the Effective Date and, unless earlier terminated in accordance with this Agreement, will continue on annual subscription basis as provided in this Section 11.1. The first 30 days following the Effective Date is a trial period and will be free of charge. At the end of the trial period, the Customer's access to the Solution will be disabled unless the Customer has submitted an Order to the Provider. If the Customer submits an Order to the Provider, the Term of this Agreement will continue for 12 months beginning at the end of the free trial period (the "Initial Subscription Term") and thereafter will automatically renew for one or more successive 12 month periods (each, a "Renewal Subscription Term"), unless either party provides written notice of its intent not to renew the Term at least 30 days before the end of the applicable Subscription Term.
- 11.2. Termination for Cause. Either Party may terminate this Agreement for the other Party's material breach by written notice specifying in detail the nature of the breach, effective in 30 days unless the other Party cures such breach, or effective immediately if the breach is not subject to cure. Without limiting the Provider's other rights and remedies, the Provider may suspend or terminate a User's access to the Solution at any time, without advance notice, if the Provider reasonably concludes such User has conducted

themselves in a way that is not consistent with the requirements of this Agreement (inter alia acceptable use) or in a way that may subject the Provider to potential liability.

11.3. Effects of Termination. Upon termination of this Agreement, the Customer shall cease all use of the Solution and delete, destroy, or return all copies of the Documentation in its possession or control. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of the Customer to pay fees incurred before termination; (b) Articles and Sections 2.5.(b) (Restrictions on Software Rights), 6 (*IP and Feedback*), 7 (*Confidential Information*), 8.3 (*Warranty Disclaimers*), 9 (*Indemnification*), 10 (*Limitation of Liability*) and 13 (Miscellaneous); and (c) any other provision of this Agreement that must survive to fulfil its essential purpose.

12. MISCELLANEOUS.

12.1. Independent Contractors. The Parties are independent contractors and shall so represent themselves in all regards. Neither Party is the agent of the other, and neither may make commitments on the other's behalf.

12.2. Notices. The Provider may send notices pursuant to this Agreement to the Customer's designated email contact points, and such notices will be deemed received 24 hours after they are sent. The Customer may send notices pursuant to this Agreement to notice@keystrike.com and such notices will be deemed received 72 hours after they are sent.

12.3. Force Majeure. Neither party shall be in breach of this agreement or otherwise liable for any failure or delay in the performance of its obligations (other than the payment of fees) if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, acts of war, terrorism, hurricanes, earthquakes, epidemics, pandemics, acts of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, government orders responding to any of the foregoing, electrical or internet outages, or other causes beyond the performing party's reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

12.4. Assignment and Successors. The Customer may not assign this Agreement or any of its rights or obligations hereunder without the Provider's express written consent. Except to the extent forbidden in this Section 12.4, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.

12.5. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

12.6. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

12.7. Choice of Law and Jurisdiction: This Agreement and all claims arising out of or related to this Agreement will be governed solely by the internal laws of the State of Delaware,

USA, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The Parties consent to the personal and exclusive jurisdiction of the federal and state courts of the State of Delaware, USA. This Section 12.7 governs all claims arising out of or related to this Agreement, including without limitation tort claims.

- 12.8. Conflicts. In the event of any conflict between this Agreement and any Provider policy posted online, including without limitation the Privacy Policy and Data Processing Agreement, the terms of this Agreement will govern to the extent permitted by law, such as the GDPR regulations in the European Union and European Economic Area.
- 12.9. Technology Export. The Customer shall not: (a) permit any third party to access or use the Solution in violation of any U.S. law or regulation; or (b) export any software provided by the Provider or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, the Customer shall not permit any third party to access or use the Solution in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).
- 12.10. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 12.11. Amendment. The Provider may amend this Agreement from time to time by posting an amended version on its website and sending the Customer written notice thereof. Such an amendment will be deemed accepted and become effective 30 days after such notice (the "Proposed Amendment Date") unless the Customer first gives the Provider written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of the next Subscription Term following the Proposed Amendment Date (unless the Customer first terminates this Agreement pursuant to Article 11, *Term and Termination*). The Customer's continued use of the Service following the effective date of an amendment will confirm the Customer's consent thereto. This Agreement may not be amended in any other way except through a written agreement by authorized representatives of each party. The Provider may revise the Privacy Policy and Acceptable Use Policy at any time by posting a new version of either at the Website, and such new version will become effective on the date it is posted; provided if such amendment materially reduces the Customer's rights or protections, notice and consent will be subject to the requirements above in this Section 12.11.

Appendix 1

Support Services Policy

1.1 The Provider shall use commercially reasonable effort to make the services available 24 hours a day, seven days a week, except for:

(a) planned maintenance carried out during the maintenance window of 00.00am to 04.00 am GMT time; and

(b) unscheduled maintenance for critical updates, including security updates, when needed.

1.2 The Provider will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Provider's standard customer support services during Normal Business Hours in accordance with the Provider's Support Services Policy in effect at the time that the Services are provided. The Provider may amend the Support Services Policy in its sole and absolute discretion from time to time.