Master Subscription Agreement

Version 21 April 2023

THIS MASTER SUBSCRIPTION AGREEMENT (**"MSA"**) IS A LEGALLY BINDING CONTRACT BETWEEN YOUR ENTITY SPECIFIED IN THE APPLICABLE ORDER AS A CUSTOMER ("**CUSTOMER**") AND THE STACKSTATE ENTITY SPECIFIED IN THE APPLICABLE ORDER ("**STACKSTATE**") THAT GOVERNS THE SOFTWARE AS A SERVICE AND PROFESSIONAL SERVICES. CUSTOMER AGREES THAT THIS MSA, INCLUDING THE ATTACHMENTS HERETO, ANY APPLICABLE ORDERS, AND STATEMENTS OF WORK, CONSTITUTES THE ENTIRE AGREEMENT AND UNDERSTANDING OF THE PARTIES REGARDING THE SUBJECT MATTER HEREOF AND SUPERSEDES ALL PRIOR AND CONTEMPORANEOUS ORAL AND WRITTEN AGREEMENTS.

Definitions

"**Affiliate**" means any person or entity which directly or indirectly owns, controls, or is controlled by, or is under common control with a party, where control is defined as owning or directing more than 50% of the voting equity securities or similar ownership interest in the controlled entity.

"**Application**" means any end-user software application made available by StackState or otherwise for use by Users by means of a Subscription. Applications may be developed by StackState, Customer, or a third party as may be identified on an Order and made available to Customer (collectively, "**StackState Application**").

"**Customer's Customer**" Customer will, when agreed in the Order, identify and provide the Customer's Customers for the Software Service, provided the total number of agreed Customer's Customers is never exceeded.

"**Component**" means a representation of a physical or logical element in Customer's IT landscape on which Customer can plot metrics and checks. A component is represented as a box in the StackState topology.

"**Confidential Information**" means any information, maintained in confidence by the disclosing party, communicated in written or oral form, marked as proprietary, confidential or otherwise so identified, and/or information that by its form, nature, content, or mode of transmission a reasonable recipient would deem confidential or proprietary, including the StackState offer, pricing, and any benchmark data or results produced. The Software Service and/or Subscription may contain valuable trade secrets and Confidential Information of StackState.

"**Documentation**" means all written and electronic information and materials made available by StackState to Customer with the Subscription and/or available on Supplier's website relating to the access, use, operation or functionality of the Subscription and, Support including technical and user manuals and operating instructions.

"**Fair Use**" means the maximization of the total number of relationships between Components. For fair use this is maximized to the total number of Components, as stated in the applicable Order, times two.

"**Foreign Elements**" means viruses, worms, Trojan Horses, time bombs or other alike foreign elements.

"**Host**" means any physical or virtual OS instance on which Customer can run multiple processes (e.g. applications, databases, services and containers). Containers (e.g. Docker) are not counted as Hosts.

"**Hosted Services**" means the Subscription hosted by StackState for Customer.

"**Initial Term**" means the term specified in an applicable Order.

"**License**" means the License defined in clause 2.1 hereafter.

"**Order**" means the document by which Customer or Customer's Affiliates acquire the Subscription and Support and, if applicable, Professional Services (including a Statement of Work). The Order and any subsequent orders by Customer shall be governed by the terms and conditions of this MSA.

"**Production Use**" means use of the Subscription by Customer for its own internal business purposes only.

"**Professional Services**" means those customized services made available to Customer by StackState or its designated subcontractors, and as more fully described in a Statement of Work, including installation, integration, configuration, consulting and training services.

"**Software**" means the object code versions of the Software Service or run-time modules in object code as described on an Order and in the associated Documentation.

"**Software Service**" means for this Agreement, the product(s) that are ordered by Customer from StackState and to which StackState provides online access to Customer.

"**Statement of Work**" means a document describing Professional Services to be provided by StackState to Customer. For purposes of this MSA, a Statement of Work shall constitute an "Order".

"**Subscription**" means StackState's services regarding Customer's the right to use the Software Service as an online service on a term basis, for one or more Applications.

"**Support**" means the technical support for the Subscription as specified in Section 5 below.

"**Territory**" means the territory agreed to by the parties as set forth on the Order.

"**Threat Event**" means a message containing anonymized threat related data from the End User.

"**Use**" means use of the Subscription by Customer for its own internal business purposes, in accordance with the Documentation, and not as a service bureau, application service provider, or other service provided to third parties.

Use of the Subscription

2.1 Subject to the terms and conditions of this MSA, StackState grants Customer a non-exclusive, non-transferable, revocable, and non-sublicensable Subscription for the term of the applicable Order and the Applications mentioned therein, solely for Customer's (Fair) Use, and on platforms (as applicable) specified in such Order as licensed (the "**License**"). The License is limited to the then-current license term and licensing metric(s) indicated on the applicable Order.

2.2 Customer shall not circumvent, or attempt to circumvent, any license management, security devices, access logs, or other measures provided, or permit or assist any User or any third party to do the same. Customer must follow the recommended installation procedures for the Subscription.

2.3 Customer shall ensure that its third party consultants only access and use the Subscription for Customer's operations

provided any such third party consultant(s) have first signed an agreement with Customer protecting StackState's intellectual property with terms no less stringent than the terms and conditions of this MSA and that Customer ensures that each such consultant's use of the Subscription complies with the terms of this MSA. For the avoidance of doubt, Customer shall be fully liable for any breach of this MSA by Customer's third-party consultants.

2.4 Customer's Affiliates may use the Subscription the Documentation, provided any such Affiliate agrees to be bound by the terms and conditions of this MSA by executing a participation amendment. Any such use by Affiliates will count toward and abide with the stated metrics in the Order and does not relieve the Customer of its obligations under the MSA.

2.5 Customer agrees that StackState may collect and use technical data and related information (including, but not limited to, technical information about Customer's devices, server, system and application software, and peripherals, and device fingerprints) that is gathered periodically to improve the Software Service and/or the Subscription, facilitate the provision of Software Service updates, Software Service support, and other services to Customer and to monitor compliance with and determine billing.

2.6 For certain Software Services, Customer shall provide all data processed to StackState. StackState reserves the right, and Customer authorizes StackState, to remove all collected data thirty (30) days after such data has been received, and in such a manner that the data may be irretrievable. Customer agrees that processing, utilization and storage of data may be limited to a certain amount agreed to by the parties.

2.7 Customer will not, directly or indirectly, (i) sublicense transfer, lease, rent or otherwise assign its rights in the Software Service and/or the Subscription or the Documentation to any third party; (ii) modify the Software Service or the Documentation, create or attempt to create any derivative works of the Software Service or the Documentation, or translate, reproduce, reverse engineer, re-engineer, de-compile, or disassemble the Software Service or the Documentation; (iii) make use of any of the Software Service or the Documentation for which it has not paid (iv) export the Software Service or Documentation in violation of US laws, (v) use the Software Service for any prohibited use, such as but not limited to nuclear technology applications, missile, or other military guidance systems and biological weaponry, (vi) alter or remove any of StackState's or its licensor's copyright or proprietary rights notices or legends appearing on or in the Software Service; or (vii) modify, distribute or otherwise use the Software Service in any manner that causes any portion of the Software Service that is not already subject to an open source license to become subject to the terms of any open source license, in whole or in part, without the prior written consent of StackState. Customer must use the Subscription in accordance with applicable law. Customer must not Subscription in an electronic communications network that is used wholly or mainly for the provision of publicly available electronic communications services ("**Public Network**") in a manner that violates the rights to privacy or freedom of expression as outlined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (collectively the "**International Human Rights Standards**") of any individual user who directly accesses the Internet or otherwise transmits data through a Public Network, provided the foregoing shall not limit use of the Software Service in a Public Network to restrict, monitor, collect or process data accessed or transmitted by individual users based upon exceptions to the rights of privacy or freedom of expression that are recognized by International Human Rights Standards. In order to better understand and meet its customers' needs, StackState may collect, use, analyze and retain Customer's metadata, system topography information, and/or operations data and, in a confidential and anonymous manner, aggregate such data with similar usage data of other StackState's customers including license key numbers, IP addresses or other applicable device identifier (including MAC address or unique device identifier (UDID)).

2.8 StackState will supply default administrator login credentials for Customer to assign usernames and passwords to all personnel that will access the Subscription. Customer assumes sole responsibility for use of any such credentials and shall notify StackState immediately if such credentials are, or are suspected to have been, misappropriated.

Warranty

3.1 StackState warrants that (i) it is entitled to make available the Subscription to Customer and (ii) the Software Service does not contain Foreign Elements during delivery of the Subscription to the Customer. The parties acknowledge and understand that the Subscription is permitted to contain customary license keys, such as keys limiting the number of Users in accordance with the applicable Orders and restricting access after termination or expiration of a then-current license term.

3.2 StackState warrants that the Subscription shall conform in all material respects to the Documentation. StackState does not warrant that operation of the Subscription will be uninterrupted or "bug" or error free.

3.3 If Customer or any End User is located in the European Economic Area, Customer represents and warrants that it shall obtain all appropriate consents, make all necessary disclosures, otherwise conform to all applicable laws of the EEA related to any End Users' personal data collected or otherwise processed by the Subscription and/or Application.

3.4 THE FOREGOING WARRANTIES ARE EXCLUSIVE. STACKSTATE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES REGARDING THE SOFTWARE SERVICE AND/OR THE SUBSCRIPTION OR THE DOCUMENTATION, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IF STACKSTATE BREACHES THE APPLICABLE FOREGOING WARRANTY AND CUSTOMER PROMPTLY NOTIFIES STACKSTATE IN WRITING OF THE NATURE OF THE BREACH, STACKSTATE SHALL MAKE COMMERCIALLY REASONABLE EFFORTS TO PROMPTLY REPAIR OR REPLACE THE NON-CONFORMING SOFTWARE SERVICE WITHOUT CHARGE.

Fees and Audit

4.1 Amounts specified in an Order are exclusive of applicable sales, use, VAT, consumption, and any other taxes. Customer shall timely pay all such taxes. Customer will indemnify StackState and hold StackState harmless from and against any such taxes and will promptly reimburse StackState for the amount of any taxes that StackState is required to or otherwise pays as a result of Customer's failure to pay such amount. Amounts payable are free from any withholding tax or deductions. If, however, the Customer is required by applicable law to deduct or withhold the applicable tax but the deduction or withholding is not removed, StackState shall have the right to increase the amount due in the invoice in order to arrive at a net sum originally owed by Customer under that invoice.

4.2 If Customer agrees to a Subscription fee, that will remain Customer's price for the duration of the then current term; however, fees are subject to change at the end of the then current term. Upon expiration of the then current term, StackState may apply an indexation increase to its Subscription fee(s) or prices and may be indexed by StackState during the then current term of this MSA and/or Order in accordance with the derived CPI service price index of the previous year plus a maximum of 5% per each subsequent renewal term.

4.3 After all conditions and agreements have been met regarding the purchase of a Subscription, StackState shall issue the invoice for payment. The invoice shall include the fees attached to the Software Services inclusive of the relevant tax charges. Each Order will be due and payable annually in advance, within thirty (30) days from the date of StackState's invoice. StackState will distribute temporary license keys to Customer until such time an applicable invoice is paid in full. StackState may assess finance fees of 1.5% per month for any late payments. Additionally,

StackState reserves the right to suspend or terminate Customer's access to the Subscription without liability to Customer if Customer fails to cure any instance of non-payment within fifteen (15) days of receipt of notice from StackState.

4.4 Customer's Affiliates may license under this MSA provided they agree to be bound by the terms and conditions herein and execute an Order. Any Affiliate Order does not relieve Customer of its obligations under this MSA.

4.5 Customer agrees that, upon StackState's request during or after any Subscription period, Customer shall provide StackState in writing with a summary of its usage of the Subscription. Customer shall immediately owe and pay fees associated with usage in excess of the Subscription amounts licensed and promptly (and in no event more than fifteen (15) days after becoming aware thereof) remedy any underpayments revealed during an audit both retroactively as well as prospectively for the remainder of the Subscription term.

4.6 Customer shall maintain complete, current and accurate records of the location of each copy of the Subscription in Customer's possession for at least five (5) years. Furthermore, Customer shall maintain the location of all Users thereof, the number of all Users under the MSA.

Support Services

5.1 Support is included in the Subscription during the term of the applicable Order, pursuant to StackState's Support Handbook of which a copy is available to Customer upon request. When Customer encounters a problem or a bug in the Software Services and the problem is not described in StackState's online forum, Customer may submit a technical support ticket on StackState's technical support website (https://support.stackstate.com/).

Professional Services

6.1 StackState shall perform the Professional Services with reasonable care and skill and pursuant to an applicable Order. Unless specified otherwise in the applicable Order, all Professional Services are performed on a time and materials basis. Nothing in the Order may be construed as an obligation of StackState to deliver a certain result. Unless specified otherwise in the applicable Order, Customer shall reimburse StackState's reasonable cost for travel and expenses connected to the performance of the Professional Services insofar as (i) such cost are in compliance with Customer's travel policy; and (ii) StackState substantiates such cost with receipts. All cost for living and expenses in compliance with Customer's travel policy which have already been incurred by StackState prior to an early termination of the Order by Customer, shall be borne by Customer.

6.2 Except for Customer's pre-existing intellectual property, all rights, titles and interest, including moral rights in intellectual property to or arising from any Professional Services shall solely be owned by StackState or its licensors. StackState grants to Customer a non-exclusive, non-licensable, non-sublicensable, non-transferable right to use the Professional Services and all works derived therefrom during the applicable Subscription term and solely in connection with the Subscription.

Indemnification

7.1 Except for the limited license rights granted pursuant to this MSA, title, ownership rights and all intellectual property rights in and to the Subscription and Documentation shall remain the sole and exclusive property of StackState and its licensors.

7.2 StackState will defend Customer against any third-party claim brought against Customer that Customer's use of the Subscription in accordance with the terms herein infringes or misappropriates any patent subsisting, copyright, trademark or trade secret, provided however that Customer with regard to any such claims: (i) promptly notifies StackState; (ii) reasonably cooperates with StackState; and (iii) allows StackState to control the defense and all related settlement negotiations. StackState will pay such damages or costs as are finally awarded by a court of competent jurisdiction against or agreed to by StackState in settlement for

such claim. Customer will have the right to participate with StackState in the defense or appeal of any such claim, at Customer's own expense (such expense not being indemnified by StackState), but StackState will have sole control and authority with respect to any such defense, compromise, settlement, appeal or similar action, provided that StackState obtains Customer's prior consent to any settlement that requires Customer to make any admission of fault or pay any amounts in connection with such settlement.

7.3 If an injunction is sought or obtained against Customer's use of the Subscription as a result of a third party infringement claim, StackState may, at its sole option and expense, (i) procure for Customer the right to continue using the affected Subscription, (ii) replace or modify the affected Subscription with functionally equivalent software so that it does not infringe, or, if either (i) or (ii) is not commercially feasible, (iii) terminate the Subscription and refund the Subscription fee received from Customer for the affected Subscription less a usage charge based on a 12-month amortization schedule.

7.4 StackState shall have no liability for any third-party claim of infringement based upon: (i) use of other than the then current, unaltered version of the applicable Subscription, unless the infringing portion is in the then current, unaltered release; or (ii) use, operation or combination of the applicable Subscription with non-StackState programs, data, equipment or documentation if such infringement would have been avoided but for such use, operation or combination.

7.5 Customer agrees to release, indemnify and hold StackState, its Affiliates and licensors, and each of their respective officers, employees, directors, managers, partners, and agents harmless from any and all losses, damages, expenses, including reasonable attorneys' fees, rights, claims, actions of any kind arising out of or relating to any third party claims arising from or related to (i) Customer's or any User's breach of Section 2 of this MSA or (ii) any allegation that materials (a) maintained on Customer or any Users' behalf or (b) uploaded to the Subscription or used in connection with the Subscription infringe or misappropriate any patent subsisting, copyright, trademark or trade secret.

7.6 If the Customer has licensed the Subscription for Software Services, Customer will defend at its expense, indemnify, and hold harmless StackState from and against any losses, costs or damages resulting from or in connection with any claims brought by a third party against StackState resulting from or in connection with the use by Customer and Customer's direct and indirect End Users in any country, provided that StackState gives Customer prompt written notice of any such claim, tenders to Customer the defense or settlement of any such claim at Customer's expense, and cooperates with Customer, at Customer's expense, in defending or settling such claim. This indemnification obligation shall not apply to infringement actions or claims if such actions or claims are based solely on the use of the Subscription in the form provided by StackState.

Confidentiality

8.1 Each party that receives Confidential Information of the other party agrees that, unless the disclosing party gives its prior written authorization, the receiving party shall not: (i) use such Confidential Information other than for the purposes of this MSA; or (ii) disclose any such Confidential Information to any third party except those directors, managers, officers, employees, subcontractors, consultants, representatives and agents of the receiving party (collectively, the "**Representatives**") who are required to have such Confidential Information in order to carry out the purposes of this MSA and who have signed a non-disclosure agreement or are otherwise bound by confidentiality obligations at least as restrictive as the provisions of this MSA. The receiving party shall prevent the unauthorized use, disclosure, dissemination or publication of Confidential Information by itself and by its Representatives using at least the same degree of care that the receiving party uses to protect its own confidential information of a similar nature, but in no event less than a commercially reasonable

degree of care.

8.2 The obligations of the parties under this Section 8 shall not apply to the extent of any disclosure required pursuant to a duly authorized subpoena, court order, or government authority of competent jurisdiction, provided that the receiving party has provided, to, and full cooperation with, the disclosing party prior to such disclosure so that such party may seek a protective order or other appropriate remedy to protect against disclosure.

8.3 Upon request by the disclosing party, the receiving party will certify to the disclosing party in writing that all copies, abstracts, summaries, and documents have been destroyed.

8.4 Any breach of the confidentiality obligations set forth in this Section would constitute a material breach of this MSA, which the parties acknowledge may cause irreparable harm to the disclosing party, leaving it without an adequate remedy at law. As such, any such breach shall entitle the disclosing party to seek injunctive relief in addition to all other remedies, without necessity of posting of a bond or other security in connection therewith.

8.5 This Section 8 will remain in effect during the term of this MSA and for a period of two (2) years following the termination of this MSA or the applicable Order and, in the case of Confidential Information that constitutes a trade secret under applicable law, for so long as such Confidential Information remains a trade secret.

Limitation of Liability

9.1 Except for a party's: (i) willful breach of a material term of this MSA; or (ii) breach of its confidentiality obligations under Section 8, a party's aggregate liability for damages (direct or otherwise) concerning performance or non-performance in any way related to or arising from or under this MSA, and regardless of whether the claim for such damages is based in contract, tort, strict liability, or otherwise, shall not exceed the portion of the fees received by StackState from Customer for the 12 month Subscription period preceding the occurrence of such liability.

9.2 Notwithstanding anything to the contrary, in no other event shall a party be liable for lost data, lost profits, lost revenues, loss of data, loss of use, loss of business, or any indirect, incidental, special, punitive, exemplary or consequential damages, whether or not foreseeable, related to or arising from or under this MSA.

9.3 Under no circumstances will StackState be liable in any way for Customer Applications, including for any errors or omissions in any content, or for any loss or damage of any kind incurred as a result of the use of any content uploaded or emailed in connection with or via Hosted Services for or by Customer. Customer acknowledges that StackState and its designees will have the right (but not the obligation) in their sole discretion to refuse or remove any Customer App that is available in connection with or via Hosted Services, including for violations of this MSA.

Term and Termination

10.1 The term of this MSA shall commence upon Customer's acceptance thereof (the "**Effective Date**") and shall continue until the termination or expiration of the last then-current Order. Any associated Orders shall automatically extend for additional one-year periods (each, an "**Extension Term**") at the end of the Initial Term or, as applicable, any Extension Term.

10.2 Customer will continue to receive the Subscription for any Extension Term of an Order in exchange for StackState's then-current fees. Unless otherwise expressly provided in an Order, any extension fees shall be due and payable to StackState no later than thirty (30) days prior to the start of the applicable Extension Term.

10.3 Either party may terminate any or all existing Order(s) immediately by providing written notice to the other party of such termination if the other party: (i) breaches any material provision of this MSA; (ii) is adjudicated as bankrupt or makes an assignment

for the benefit of creditors, or if a receiver, liquidator, administrator or a trustee is appointed for such party's affairs; or (iii) if a party is dissolved. None of the foregoing termination for cause rights shall be valid if the breaching party is able to cure such breach within thirty (30) days (or ten (10) days in the case of non-payment) after the non-breaching party delivers notice of such breach to the breaching party. Either party may terminate an Order at the end of the Initial Term or an Extension Term thereof by giving the other party at least ninety (90) days' prior written notice before the beginning of the next Extension Term.

10.4 If this MSA or any Order is terminated, Customer must within thirty (30) days after such termination, at StackState's direction, destroy or return all affected Subscription and Documentation and certify in writing that it has complied with this Section 10.4. Upon expiration or termination of the MSA, if Customer was granted a run-time License, then in addition, Customer shall: (a) cease the reproduction and distribution of the Run-Time Modules (except as provided below); and (b) shall promptly certify to StackState that Customer has done so. However, for those Applications that have previously been distributed and if Customer allows for that Application to continue with the run-time licenses post termination, may retain one (1) copy of the Run-Time Modules to support existing End Users provided that Customer is then current with payments due to StackState.

10.5 All provisions and obligations of this MSA or any Order which by their nature should survive any termination of this MSA or an Order will survive any such termination, including provisions and obligations with regard to accrued rights to payment, confidentiality obligations, warranty disclaimers, limitations of liability, engaging of third parties and liability for taxes and premiums.

Miscellaneous

11.1 *Force Majeure.* StackState shall not be liable for, nor shall StackState be considered in breach of this MSA due to, any failure to perform its obligations under this MSA as a result of a cause beyond its reasonable control, including any act of God or a public enemy, terrorist act, act of any military, civil or regulatory authority, change in any law or regulation, epidemic, pandemic, freight embargo, strike, fire, flood, earthquake, storm or other like event, disruption or outage of communications, power or other utility, labor problem, unavailability of supplies, introduction of a virus, worm or similar disabling code in the Subscription by Customer or a third party or any other cause, whether similar or dissimilar to any of the foregoing.

11.2 *Assignment.* Either party may assign this MSA and any of its rights or obligations hereunder to its affiliates or in connection with the transfer or sale of all or substantially all of its business, or in the event of its merger, consolidation, reorganization, or change in control or similar transaction.

11.3 *Severability.* If any part of this MSA is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other parts of this MSA.

11.4 *Waiver.* Any failure by either party to detect, protest, or remedy any breach of this MSA will not constitute a waiver or impairment of any such term or condition, or the right of such party at any time to avail itself of such remedies as it may have for any breach or breaches of such term or condition. A waiver can only occur pursuant to the prior written express permission of an authorized officer of the other party.

11.5 *Notices.* All notices, instructions, requests and other communications required or permitted under this MSA shall be in writing and shall be delivered in person or sent by either commercial overnight courier or certified or registered mail, return receipt requested, or electronic transmission to either party at the respective addresses set forth on the applicable Order or to such other address as specified in writing by a party to the other party in accordance with the terms of this Section. All such notices, instructions, requests and other communications shall be deemed effective (i) immediately if delivered in person; (ii) the next business day if delivered by commercial overnight courier; (iii)

three (3) days after deposit with the United States Postal Service, postage prepaid, if delivered by certified or registered mail; or (iv) when delivered, if delivered by electronic transmission such as electronic mail.

11.6 *Open Source Software.* The Subscription may contain open source software ("OSS") licensed under such OSS's own applicable license terms. Any such OSS listed under this MSA is listed only for Customer's convenience and solely for information purposes and, if licensed, is licensed to Customer only under the terms set forth in the corresponding open source license, which Customer may find on the Internet at the designated URL, or in the header files of such software.

11.7 *Export Restrictions.* Export laws and regulations of the United States and any other applicable jurisdictions apply to the Subscription. Customer agrees that such applicable export control laws govern Customer's use of the Subscription and agrees to comply with all such applicable export laws and regulations (including "deemed export" and "deemed re-export" regulations). Customer agrees that no data, information or Subscription will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws, including nuclear, chemical, or biological weapons proliferation, or development of missile technology. Customer represents and warrants that Customer is not: (i) located in a country that is subject to a U.S. Government embargo (e.g., an embargoed country as designated by the Office of Foreign Asset Control of the U.S. Treasury Department), or that has been designated by the U.S. Government as a "terrorist supporting" country; or (ii) listed on any U.S. Government list of prohibited or restricted parties (e.g., the prohibited persons list maintained by the Bureau of Industry and Security of the U.S. Department of Commerce).

11.8 *Counterparts.* This MSA, if applicable, and any Order, may be executed in multiple counterparts, each of which when so executed shall be deemed to be an original, and all such counterparts shall, together, constitute one instrument. Signatures to this MSA or any Order may be exchanged by facsimile, portable document format or other similar electronic format, and all signatures exchanged in such manner shall constitute and be deemed original signatures.

11.9 *Governing Law.* For StackState B.V. this MSA shall be governed by the laws of the Netherlands and for StackState, Inc. this MSA shall be governed by the laws of the State of Delaware, United States which governing law for either of these two jurisdictions shall control without giving effect to conflict of law principles and excluding the U.N. Convention on Contracts for the International Sale of Goods, even where adopted as a part of the domestic law of the country whose law governs this MSA. Any suit or proceeding relating to this MSA shall for StackState B.V. be brought exclusively before the courts of Amsterdam, The Netherlands and for StackState, Inc. be brought exclusively before the federal courts located in the State of Delaware, The United States of America.

Any disputes arising in countries not recognizing or not executing court verdicts from any of StackState's jurisdiction hereinabove mentioned shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("**ICC**"). Such disputes or claims shall be settled by simplified arbitration arranged by ICC in accordance with the rules of arbitration procedure adopted by ICC and in force at the time when such proceedings are commenced. Arbitration shall be conducted either in Paris, France for StackState B.V. or in the State of Delaware, United States for StackState, Inc. before one arbitrator appointed in accordance with the ICC Rules. All arbitration shall be conducted in English. The award rendered thereon by the arbitrator shall be final and binding on the parties thereto, and judgement thereon shall be confidential and may be entered in any court of competent jurisdiction. Nothing in this section shall prevent either Party from applying to a court of competent jurisdiction for equitable or injunctive relief. Customer may only resolve disputes with StackState on an individual basis and Customer agrees not to bring or participate in any class, consolidated, or representative action against StackState or any of StackState's employees or Affiliates.

11.10 *Third Party Offerings.* Elements of the Software Service licensed hereunder may contain, be derived from, and/or connect to materials of third party licensors ("**Third Party Software**"). In addition to the terms of the MSA, such Third Party Software may be subject to additional terms, which, if any, are set forth in the Third Party Software file that is included with the Documentation. To the extent that use of the Software Service [or Hosted Services] requires use by Customer of Third Party Software or services, StackState makes no representations or warranties regarding such third party offerings. Such Third Party Offerings may be subject to their own terms of service and Customer agrees to comply with all such terms of service.

11.11 *Interpretation.* The following rules of interpretation must be applied in interpreting this MSA: (i) the section and subsection headings used in this MSA are for reference and convenience only, and will not enter into the interpretation of this MSA, (ii) all references to Sections are to the Sections in this MSA or, as applicable, an Attachment to this MSA, and (iii) as used in this MSA, the term "including" will always be deemed to mean "including without limitation".

11.12 *Publicity.* After prior written consent of Customer, StackState may use Customer's name and may disclose that Customer is a licensee of the Subscription in StackState advertising, press, promotion and similar public disclosures with respect to the Subscription and professional services; provided, however, that such advertising, promotions or similar public disclosures shall not indicate that Customer in any way endorses any Subscription, without prior written permission from Customer.

11.13 *Independent Contractors.* In the performance of this MSA, each party is an independent contractor, and the employees, officers and agents of one party will act only in the capacity of representatives of that party and not as employees, officers or agents of the other party.

11.14 *Notice for California Users.* Under California Civil Code Section 1789.3, users of the Subscription and other StackState solutions from California are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

11.15 *Security Emergencies.* If StackState reasonably determines that the security of its Subscription or infrastructure may be compromised due to hacking attempts, denial of service attacks, or other malicious activities, then, notwithstanding anything to the contrary, StackState may, without liability to Customer, temporarily suspend the Subscription and related services and StackState will take action to promptly resolve such security issues.

11.16 *Order of Precedence.* If there is a conflict between the terms contained in this Agreement or an executed Order, the conflict will be resolved in that order, but only for the specific Subscription [or Hosted Services] described in the applicable Order.