

# WNK AVIATION

## Terms and Conditions – Product

Last updated: September 2023

These Terms of Service (“**Agreement**”) govern Customer’s use of WNK Aviation, LLC (“**WNK**”) products and services that are made available by WNK to Customer under this Agreement (“**Products and Services**”). By using any of the Products and Services, Customer agrees to the terms of this Agreement. “Requirements” and “Restrictions” mean, respectively, (a) technical requirements and specifications and (b) limitations on Customer’s use of the applicable Products and Services, as such Requirements and Restrictions are set forth in the FAQs or otherwise made known to Customer. The WNK’ Privacy Policy, Requirements, Restrictions, FAQs, website, and other user manuals and information designed to assist Customer in use and operation of the Products and Services (collectively, the “**Documentation**”), this Agreement are collectively referred to as the “Agreement”.

### Parties to the Agreement

This Agreement is a legal contract between WNK on behalf of itself and its affiliates worldwide (“**WNK**” or “**WNK Aviation**”) and the customer identified in an Order Form (“**Customer**”). Each party represents and warrants that they have the authority to enter into this binding Agreement and doing so does not conflict with any other agreements to which they are a party. If Customer is purchasing Products and Services on behalf of a third party (“**Third-Party End-User**”), Customer represents and warrants that: (a) it is authorized to make the purchase and enter into the Agreement on behalf of the Third-Party End-User as that party’s agent and (b) the Third-Party End-User is bound by this Agreement. If Customer enters into this Agreement on behalf of a Third-Party End-User, Customer agrees that it is jointly and severally liable for any liability arising from this Agreement resulting from Customer’s acts and omissions, or the acts and omissions of the Third-Party End-User or any Authorized User (as defined below) of the Third-Party End-User.

## Software License

- 1. License Grant.** Software is LICENSED, NOT SOLD, and only in accordance with the terms of this agreement. Subject to Customer's continuous compliance with this agreement and payment of the applicable license fees, CIS grants Customer a non-exclusive, non-transferable, and limited license to install and use the Software (a) during the term of such license ("License Term"), and (b) in a manner consistent with the terms of this agreement and applicable Documentation. Nothing in this agreement grants, or is intended to grant, to the Customer any ownership or other interest in the Licensed Products other than the right to use the Licensed Products in accordance with the terms of this agreement. The license granted herein is supplemented by specific provisions in this agreement as related to the use of certain applicable products and components that may be included in the Software.
- 2. License Term.** Unless otherwise defined in this agreement, in the applicable Documentation, or at the time of purchase, License Term shall be term limited. Upon the expiration or termination of the License Term, some or all the Software may cease to operate without prior notice. Upon expiration or termination of the License Term, Customer may not use the Software unless Customer has renewed the license.
- 3. Output Files.** An Output File may be used, disclosed, and distributed by Customer without restriction. However, such use, disclosure, or distribution shall not grant, and does not grant to the recipient any rights in, or access to, the Software.
- 4. Images.** Images of a graphical user interface displayed on a computer screen, and a copy of such images, may be distributed only for purposes of publishing, presenting, or teaching and then only with WNK's prior written authorization, and accompanied by adequate written notice to the recipients that the image is from a proprietary product developed and owned by WNK, which is protected under applicable intellectual property laws, and WNK's rights are not waived.
- 5. Evaluation Software.** The Software, or portions of the Software, that are provided for "evaluation purposes" or other similar designation ("Evaluation Software") may be installed and used on Supported Computers during the License Term for demonstration, evaluation, and training purposes only, and only if any Output Files or other materials produced through such use are used only for internal, non-commercial, and non-production purposes. THE EVALUATION SOFTWARE IS PROVIDED "AS IS." ACCESS TO AND USE OF ANY

OUTPUT FILES CREATED WITH SUCH EVALUATION SOFTWARE IS ENTIRELY AT CUSTOMER'S OWN RISK.

6. **Documentation Copies.** Customer may make copies of the Documentation for its own internal use in connection with use of the Software in accordance with this agreement, but no more than the amount reasonably necessary.
7. **Licensed Computer Registration.** Customer shall provide hardware MAC addresses and IP addresses as appropriate to register the specific Licensed Computer(s). The Customer may re-register a license on different hardware at no charge provided that the Customer has no outstanding balance with WNK. Requests for additional re-registration may incur additional fees.

## Customer Acknowledgements and Obligations

Customer agrees to the following:

8. **Requirements and Environment.**
  - a. Customer acknowledges and agrees that Customer has assessed its data protection needs, network environment and the technical specifications and cost of each of the Products and Services;
  - b. Customer is solely responsible for making the appropriate selection of the Products and Services even if a WNK Aviation LLC representative has provided guidance to Customer regarding the Products or Services that Customer selects;
  - c. Customer is solely responsible for ensuring that Customer complies with the applicable Requirements and Restrictions;
  - d. Customer is solely responsible for ensuring that Customer maintains and operates the information technology infrastructure from which the applicable Products and Services, maintains and transfers the Customer data, including the databases, applications, files, software, computer, server, tablet, smartphone or any other device registered with WNK Aviation LLC (including, to the extent applicable, hardware delivered to Customer as part of any Product or Service) (collectively, the "**Customer Environment**").
9. **Customer Conduct.** The Products and Services include functionality that enables Customer and its Authorized Users to communicate, copy, maintain, sync, transfer and upload data, text, graphics, photos, videos, presentations and other materials or information ("**Customer Content**") pursuant to the terms of this Agreement, including the Requirements and Restrictions. Customer represents and warrants that its Customer Content and Customer's,

and its Authorized User's, use of the WNK Aviation, LLC's website, Products and Services, and the technology related thereto, shall not:

- a. Interfere with the proper working of the Products and Services or impose an unreasonably large load on WNK Aviation's infrastructure;
- b. Give rise to civil or criminal liability, e.g., defamatory, threatening, pornographic, indecent, abusive, libelous, or otherwise objectionable actions;
- c. Violate or infringe upon any law, regulation or third party right, including any intellectual property right or right of privacy, or that abuses, harasses or stalks any other person;
- d. Initiate a denial-of-service attack, software viruses or other harmful or deleterious computer code, files, or programs such as Trojan horses, worms, time bombs, cancelbots, or spyware.

**10. User Restrictions on Intellectual Property.** Customer acknowledges and agrees that it shall not, and shall ensure its Authorized Users do not:

- a. Access or use the Products and Services in any manner or for any purpose other than expressly permitted by the Documentation;
- b. Change, modify or otherwise create derivative works of all or any portion of the Products and Services;
- c. Modify, disassemble, decompile, or reverse engineer any part of the Products and Services or apply any other process or procedure to derive source code of any software included in the Products and Services (except solely to the extent permitted by applicable law);
- d. Access or use the Products and Services in a way intended to avoid exceeding usage limits or quotas;
- e. Use the Products and Services to build a similar or competitive application or service;
- f. Remove, tamper with, or alter any disabling mechanism or circumvent any technical protection measures associated with the Products and Services, or otherwise use any tool to enable features or functionalities that are otherwise disabled in the Products and Services;
- g. Resell or sublicense the Products and Services (except as solely to the extent permitted by applicable law);

- h. Remove or alter any proprietary notices (e.g., copyright and trademark notices) pertaining to the Products and Services or;
- i. Install any more than the limited number of copies authorized herein.

**11. Changes to Products and Services.** WNK Aviation may periodically update or upgrade the Products and Services. Customer acknowledges and agrees that WNK Aviation may download and install such updates and upgrades onto Customer's device(s) or notify Customer of the need to update or upgrade the Products and Services and then Customer or its Authorized Users are solely responsible for applying upgrades and/or updates that WNK Aviation makes available. Where applicable, Customer will grant WNK Aviation access to its device, permitting such updates/upgrades to take place. Customer acknowledges and agrees that WNK Aviation may, at any time and without notice to Customer, discontinue, suspend, or modify

- a. The Products and Services
- b. Any functionality or feature of the Product and Services or
- c. The availability of the Products and Services on any particular device or hardware; subject to:
  - i. Customer's right to terminate this Agreement if such changes render the Products and Services incapable of delivering Customer's requirements; and
  - ii. WNK Aviation shall comply with its continuity of performance obligations in accordance with dispute provisions.

**12. Return Policy.** If Customer is unhappy for any reason, all hardware, accessories, peripherals, parts may be returned within 30 days from the date delivered for a credit or a refund of the purchase price paid, less shipping and handling, and any applicable restocking fees. Customer must prove it deleted all WNK Aviation software and return items in the original packaging and in sellable condition up to 30 days from the date the item was delivered to receive full credit or refund.

**13. Restocking Fee.** Restocking Fee is capped at no more than 10% of the item cost when WNK incurs additional costs due to Customer ordering error. There shall be no restocking fees when the item is returned due to item condition or error on behalf of WNK.

**14. Warranty.** WNK Aviation offers a one (1) year warranty repair & replacement on all hardware products deemed defective by WNK. Warranty exclusions include but are not limited to physical abuse, modifications or tampering to the product or process without concurrence of WNK.

**15. Law Enforcement.** If WNK Aviation reasonably suspects that a Customer has used WNK Products and Services for an unauthorized, illegal, or criminal purpose, or law enforcement requests access to an investigative demand or warrant, Customer hereby gives WNK Aviation express authorization to share information about Customer, and any of its transactions with law enforcement; subject to providing Customer with notice of and a reasonable opportunity to cooperate with such investigation.

## Fees and Payment

**16. Fees.** Customer agrees to pay all fixed and variable-usage fees (if any) (collectively, the “Fees”) listed on the applicable invoice or Order Form. Payment is due upon receipt, unless otherwise agreed upon in advance. If a payment is not received or payment method is declined, the Customer forfeits the ownership of any items purchased. If no payment is received, no items will be delivered/shipped. Unless otherwise indicated in the applicable Order Form, all Fees exclude sales, use, value-add and similar taxes (collectively, “Sales and Use Taxes”), import tariffs, and shipping and handling fees, which shall be the responsibility of the Customer. Any portion of the Fees that is not paid when due will accrue interest at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. Customer shall pay the Fees without offset or deduction.

**17. Customer Order Forms.** Customer purchases a license to the Product or Service by: (a) executing an Order Form or (b) purchasing a Product or Service through a third party that is authorized to resell the WNK Aviation Products and Services (each such entity, including managed service providers, an “Authorized Partner”). The WNK Aviation document, in either electronic or paper form, that establishes the Products and Services purchased, the Fees (if any) to be paid, any special Restrictions and other material business terms is called an “Order Form.” WNK Aviation reserves the right to terminate the delivery of any Products or Services in the event any order between Customer and any Authorized Partner differs from the corresponding order received by WNK Aviation from the Authorized Partner. Customer acknowledges that any Authorized Partner is an independent contractor and not acting on behalf of WNK Aviation LLC.

**18. Credit History.** Acceptance of any Order Form by WNK Aviation and applicability of WNK Aviation’s standard payment terms are subject to WNK Aviation’s review of Customer’s

credit history and rating. If a Customer's credit history does not meet WNK Aviation's acceptance criteria, WNK Aviation may

- a. Deny Customer's Order Form or;
- b. Require Customer to make deposits and up-front payments until an acceptable credit history is established.

**19. Payment and Credit Cards.** From time to time, Customer's may choose to pay for their order by Credit Card. WNK Aviation utilizes a third party to process credit card payments on WNK Aviation's behalf ("Payment Provider"). Customer agrees to provide WNK Aviation's Payment Provider with a valid credit card (Visa, MasterCard or any other branded credit card accepted by WNK Aviation) as a condition to such transactions. Payment Provider's policies govern the processing of Customer's payment, and Customer must refer to those policies and not this Agreement to determine Customer rights and liabilities. By providing Customer's credit card number and associated payment information, Customer authorizes WNK Aviation, through WNK Aviation's Payment Provider, to immediately charge the Fees to the credit card that is associated with the Customer (the "Card-on-File") for the Initial Term and any Renewal Term. Customer hereby authorizes the Payment Provider to store Customer's credit card information unless Customer otherwise notifies WNK Aviation or its Payment Provider.

**20. Yearly Renewals.**

- a. **Charges for Renewing Yearly Services.** If Customer purchases or renews Products and Services sold on a yearly basis (a "Yearly Service"), Customer shall be billed renewal Fees on the first day of the Renewal Term and such Fees may be different than the initial Yearly Fee. If Customer cancels a Yearly Service (as provided in Section 8, below), Customer will continue to have access to that Service through the end of the then-current Subscription Term, but Customer will not be entitled to a refund or credit for any Fees already due or paid. WNK Aviation reserves the right to increase its Fees annually at a rate not to exceed three percent (3%) to account for CPI. Customer's continued use of Yearly Services after any change to WNK Aviation's Fees will constitute Customer's agreement to such changes.
- b. **Maintenance of Card-On-File.** If Customer makes a purchase via credit card, Customer agrees to notify the Payment Provider of any changes required to keep Customer's Card-on-File information current and accurate. Customer's failure to

maintain its Card-On-File may result in an interruption of Customer's use of the Products and Services.

## Term and Termination

- 21. Term.** The initial length of time that Customer is authorized to use any Product or Service will be as set forth in the applicable Order Form (the "Initial Term"). Except for Customers that are governmental organizations, the Initial Term will automatically renew (each, a "Renewal Term") unless either party provides the other party notice of its intent to terminate the Renewal Term prior to, or on the commencement date of, the Renewal Term. For Customers who are governmental organizations, the "Renewal Term") shall be the period of time authorized by such Customer. All renewable services exclude the cost of the hardware, which is purchased by the Customer with their initial order. Collectively, the Initial Term and any Renewal Term(s) are referred to as the "Term". Renewal Term is identified in the Order Form, as a "Yearly or Yr." service and the Renewal Term will be the same length of time as the Initial Term and typically constitutes a 12-month, yearly period of time unless otherwise requested. Notice of any termination of this Agreement may be given by emailing [info@wnkaviation.com](mailto:info@wnkaviation.com).
- 22. Termination for Material Breach.** Each party may terminate any Order Form and this Agreement at its discretion, effective immediately upon written notice, if the other party materially breaches any provision of this Agreement and does not substantially cure the breach within thirty (30) days after receiving written notice, subject to WNK Aviation complying with its continuity of performance obligations in accordance with dispute provisions.
- 23. Termination Upon Bankruptcy or Insolvency.** WNK Aviation may, at its option, terminate any Order Form and this Agreement immediately upon written notice to Customer, in the event:
- a. Customer becomes insolvent or unable to pay its debts when due;
  - b. Customer files a petition in bankruptcy, reorganization, or similar proceeding, or, if filed against Customer, such petition is not removed within ninety (90) days after such filing;
  - c. Customer discontinues its business; or



- d. A receiver is appointed or there is an assignment for the benefit of Customer's creditors, subject to WNK Aviation complying with its continuity of performance obligations in accordance with dispute provisions.

**24. Suspension.** WNK Aviation may, at any time and in its sole discretion, suspend access to any Product or Service for one or all of Customer's Authorized Users, including but not limited to, the following reasons:

- a. A threat to the security or integrity of the Products and Services;
- b. Customer has materially breached this Agreement or
- c. Any amount due under this Agreement is not received by WNK Aviation within fifteen (15) days after it was due, subject to WNK Aviation complying with its continuity of performance obligations in accordance with dispute provisions.

**25. Effects of Termination.** Upon termination or expiration of an Order Form or this Agreement for any reason:

- a. Any amounts owed to WNK Aviation before such termination or expiration will become immediately due and payable;
- b. All license and access rights granted will immediately cease;
- c. Access to applicable services will immediately cease; and
- d. If Customer's subscription included Hardware, Customer will return the Hardware in accordance with the Terms. Those provisions of this Agreement that by their nature are intended to survive termination or expiration of an Order Form or this Agreement shall so survive, subject to WNK Aviation complying with its continuity of performance obligations in accordance with dispute provisions.

## Security

**26.** WNK Aviation has implemented administrative, physical and technical safeguards designed to secure Customer account information from accidental loss and unauthorized access, use, alteration or disclosure. To secure the enterprise IT environment, WNK has selected the cybersecurity framework published by the National Institute of Standards and Technology (NIST) Special Publication 800.53, Security and Privacy Controls for Federal Information Systems and Organizations (<https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>) (Revision 4 – moderate controls) from the NIST Computer Security Resource Center (<https://csrc.nist.gov/publications/sp>), as the minimum security controls for all WNK IT.

However, WNK Aviation cannot guarantee that unauthorized parties will never be able to defeat WNK Aviation's safeguards or access Customer account information for improper purposes. Customer provides its Customer Account details to WNK Aviation at its own risk.

## Proprietary Rights

**27. Reservation of Rights.** As between the parties, Customer acknowledges and agrees that the software, code, hardware, trademarks, trade secrets, proprietary methods, and systems used to provide the Products and Services ("WNK Aviation Technology") and the WNK content provided by WNK Aviation through the Products and Services, including all text, graphics, images and the look and feel of such Products and Services (collectively "WNK Aviation Content") are owned by or licensed to WNK Aviation, including all intellectual property rights therein. Nothing in this Agreement or any of the Documentation shall be considered an assignment or other transfer of ownership in and to the WNK Aviation Technology or the WNK Aviation Content to Customer, either expressly, or by implication, estoppel, or otherwise. Other than the authorizations or licenses as may be conferred or granted by WNK Aviation to Customer in this Agreement or any of the Documentation, WNK Aviation reserves all right, title and interest in and to WNK Aviation Technology and WNK Aviation Content. No right or license is granted by WNK Aviation to Customer or its Authorized Users to use any WNK Aviation trademark, trade name, service mark, product name or other source designator. WNK Aviation hereby grants Customer a non-exclusive, world-wide, limited, revocable license during the Term to use the number of instances of the Products and Services set for on the Order for the limited purpose described herein. Such license does not include access to or use of the underlying source code or WNK Aviation that is not required to so use the Products and Services.

**28. Professional Services; Managed Services.** The Products and Services do not include any professional or managed services, changes, upgrades, updates, improvements or other modifications to the Products and Services, WNK Aviation's Technology and WNK Aviation's Content. Any such services shall be governed by separate agreement.

**a. Support and Continuous Development.** WNK Aviation will provide Customer with limited technical support during the Term; provided that such support does not exceed what WNK Aviation provides its other customers. WNK Aviation may develop and provide ongoing innovation to the Products and Services in the form of new features, functionality, and efficiencies. In the event WNK Aviation adds new features

or functionality (collectively, "Functionality") to a particular Product or Service. WNK Aviation may offer the Functionality to Customer at no additional charge or, if WNK Aviation generally charges customers for such functionality, WNK Aviation may condition Customer's use of the Functionality on the payment of additional Fees.

- b. Feedback.** While using the Products and Services, Customer or Authorized Users may provide WNK Aviation reports, comments, suggestions, or ideas relating the Products and Services ("Feedback"). WNK Aviation shall have no obligation to incorporate Feedback into any Product or Service, and Customer shall have no obligation to provide Feedback. WNK Aviation shall have no obligation to treat such Feedback as Customer's confidential or trade secret information. Customer, on behalf of itself and its successors in interest, grants WNK Aviation a world-wide, non-exclusive, irrevocable, perpetual, royalty-free and fully paid-up right and license to use, profit from, disclose, publish, or otherwise exploit any Feedback. Without limiting the generality of the foregoing, Customer agrees that its provision of Feedback does not give it any intellectual property or any other right, title, or interest in or to any aspects of the Products and Services, even if such Feedback leads Company to create new Products or Services. No representations, warranties, or indemnities as may be granted by either party to the other under this Agreement or the Documents shall apply to Feedback.
- c. Open-Source Software.** The Products and Services may contain redistributables, agents or other code resident on Customer's devices that includes open-source software. Some of the provisions of the licenses granted to WNK Aviation may apply to Customer's use of such open-source software.

## Infringement Indemnification

- 29.** WNK Aviation shall indemnify the Customer against and defend any third-party claim, suit or proceeding (including paying any settlement amounts agreed by Licensor or damages awarded by a court of final jurisdiction) with respect to claims that the Software infringes a third party's United States copyright or patent; provided, however, that Customer shall notify Licensor in writing within thirty days of becoming aware of the claim, suit or proceeding. Customer may choose to be represented by counsel at own expense. Customer shall provide reasonable assistance requested by WNK in the defense of any claim. WNK shall reimburse Customer for reasonable out of pocket expenses incurred in providing such

assistance. Customer shall immediately, upon notice of a claim, discontinue access to and use of the Software that is the subject of the claim of infringement. WNK shall have no obligation to defend or indemnify Customer against a claim of infringement of intellectual property rights if such claim is based upon modifications made to the Software by the Customer or a third party; operation, use or combination of the Software with materials not supplied by WNK; or, if a claim of infringement could have been avoided by the use of a subsequent version or release of the Software. When the end user is an instrumentality of the US Government, representation of the US Government in any patent indemnity action is by the US Department of Justice. In the event the Software is held or determined by WNK to infringe, WNK shall have the option, at its expense, to:

- a.** Modify the Software to be non-infringing;
- b.** Obtain for Customer the right to continue to use the Software;
- c.** Terminate WNK License for the infringing Software and refund to the Customer the license fees paid for the Software prorated over a one (1) year term calculated from delivery date. This section states WNK's entire liability and Customer's exclusive remedy for claims that the Software or use of the Software infringes any copyright, patent, or other intellectual property right.

## Audits

**30.** Customer acknowledges and agrees WNK Aviation shall have the right to audit Customer records upon reasonable written notice in order to ensure compliance with the terms of this Agreement. Audits may be conducted by WNK Aviation personnel or by an independent third-party auditor appointed by WNK Aviation. Customer shall grant WNK Aviation and/or an independent third-party auditor appointed by WNK Aviation reasonable access to its personnel, records, and facilities during normal business hours for such purpose. In the event results of the audit indicate that Customer has underpaid any Fees, WNK Aviation will deliver to Customer an invoice and Customer agrees to pay the applicable amount within fifteen (15) days of receipt of the applicable invoice. WNK Aviation will pay for the cost of the audit unless, as a result of the audit the discrepancy between the amount owed and the amount previously paid is greater than five percent (5%), in which case Customer will reimburse WNK Aviation for the reasonable costs of the audit.

## General Disclaimers

**31.** THE USE OF “WNK AVIATION” MEANS WNK AVIATION & ITS AFFILIATES, PARTNERS, PROCESSORS, SUPPLIERS, AND LICENSORS (AND THEIR RESPECTIVE SUBSIDIARIES, AFFILIATES, AGENTS, DIRECTORS AND EMPLOYEES). EXCEPT AS EXPRESSLY SETFORTH HERIN, THE PRODUCTS AND SERVICES ARE PROVIDED “AS IS” WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, WNK AVIATION SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE AND QUIET ENJOYMENT OR FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. WNK AVIATION DOES NOT WARRANT (AND SPECIFICALLY DISCLAIMS) THAT THE PRODUCTS AND SERVICES ARE ACCURATE, RELIABLE OR CORRECT, THAT THE PRODUCTS AND SERVICES WILL MEET CUSTOMER’S REQUIREMENTS, THAT THE PRODUCTS AND SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, BE UNINTERRUPTED, ERROR-FREE OR WITHOUT DEFECT, THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED, THAT THE PRODUCTS AND SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT ANY ENCRYPTION ALGORITHMS, ASSOCIATED KEYS AND OTHER SECURITY MEASURES WILL BE SECURE OR EFFECTIVE OR THAT THE PRODUCTS AND SERVICES GENERALLY WILL BE SECURE. WNK AVIATION DOES NOT WARRANT THAT THE PRODUCTS AND SERVICES: (i) WILL RUN PROPERLY ON ALL HARDWARE OR INFORMATION TECHNOLOGY ENVIRONMENTS; OR (ii) WILL MEET CUSTOMER’S NEEDS OR REQUIREMENTS OR THOSE OF CUSTOMER’S AUTHORIZED USERS; OR (iii) WILL OPERATE IN COMBINATIONS THAT MAY BE SELECTED FOR USE BY CUSTOMER OR CUSTOMER’S AUTHORIZED USERS.

## Specific Disclaimers

- 32.** CUSTOMER ASSUMES ALL RESPONSIBILITY FOR THE SELECTION AND USE OF AND RESULTS OBTAINED FROM THE PRODUCTS AND SERVICES.
- a.** CUSTOMER ASSUMES ALL RESPONSIBILITY AND LIABILITY FOR THE SECURITY OF CUSTOMER’S DATA.
  - b.** CUSTOMER’S ACCESS TO AND USE OF THE PRODUCTS AND SERVICES ARE AT ITS SOLE DISCRETION AND RISK AND CUSTOMER IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER’S DEVICE OR ENVIRONMENT, ANY HARDWARE PROVIDED

AS PART OF THE PRODUCTS AND SERVICES, AND THE LOSS OR DAMAGE OF CUSTOMER'S CUSTOMER DATA.

- c. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR THE BACKING UP AND RECOVERY OF ALL CUSTOMER DATA.
- d. THE PRODUCTS AND SERVICES MAY ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. CUSTOMER ACKNOWLEDGES AND AGREES THAT WNK AVIATION DOES NOT OPERATE OR CONTROL THE INTERNET AND THAT: (i) VIRUSES, WORMS, TROJAN HORSES AND OTHER UNDESIRABLE DATA OR COMPONENTS; (ii) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE CUSTOMER'S CUSTOMER CONTENT, WEBSITES, DEVICES AND NETWORKS; (iii) CUSTOMER IS SOLELY RESPONSIBLE FOR MAINTAINING ITS OWN INTERNET AND DATA CONNECTIONS; AND (iv) COMPONENTS OF THE PRODUCTS AND SERVICES THAT ARE ACCESSED OR USED THROUGH INTERNET CONNECTIONS MAY BE SUBJECT TO CUSTOMER'S INTERNET SERVICE PROVIDER'S FEES AND DOWNTIME. CUSTOMER ACKNOWLEDGES AND AGREES WNK AVIATION IS NOT RESPONSIBLE FOR SUCH ACTIVITIES.
- e. CUSTOMER IS SOLELY RESPONSIBLE FOR THE SECURITY AND INTEGRITY OF THE CUSTOMER'S DATA, CONTENT, DEVICES AND ANY HARDWARE PROVIDED AS PART OF THE PRODUCTS AND SERVICES. CUSTOMER ACKNOWLEDGES AND AGREES THAT WNK AVIATION SHALL HAVE NO LIABILITY ASSOCIATED WITH OR ARISING FROM CUSTOMER'S FAILURE TO CRITICAL COMMUNICATION ABOUT THE PRODUCTS AND SERVICES.
- f. CUSTOMER ACKNOWLEDGES AND AGREES THAT NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY WNK AVIATION OR ANY WNK AVIATION EMPLOYEE, PARTNER OR AGENT WILL CREATE ANY WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF WNK AVIATION'S OBLIGATIONS HEREUNDER.

## Disclaimers of and Limitations on Certain Remedies

**33. No Consequential and Similar Damages.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL WNK AVIATION BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR ANY OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR PERSONAL INJURY, LOST

PROFITS, LOSS OF DATA, LOSS OF CUSTOMER CONTENT, LOSS OF USE, LOST REVENUE, BUSINESS INTERRUPTION OR PROPERTY OR ENVIRONMENT DAMAGE ARISING OUT OF OR RELATED TO CUSTOMER'S USE OF THE PRODUCTS AND SERVICES, EVEN IF WNK AVIATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE) OR OTHERWISE).

- a. No Procurement of Substitute Products and Services or Customer Content.** IN NO EVENT WILL WNK AVIATION BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY COST TO PROCURE SUBSTITUTE PRODUCTS OR SERVICES, CUSTOMER CONTENT, LOST OR DAMAGED CUSTOMER CONTENT OR THE COST OF RETRIEVING LOST CUSTOMER DATA OR CONTENT. UNDER NO CIRCUMSTANCES WILL WNK AVIATION BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE PRODUCTS AND SERVICES, OR THE CUSTOMER DATA OR CONTENT.
- b. Limitation on Aggregated Damages.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND WITHOUT LIMITING THE FOREGOING, THE ENTIRE LIABILITY OF WNK AVIATION FOR ALL DAMAGES OF EVERY KIND AND TYPE (WHETHER ARISING IN CONTRACT, BREACH OF WARRANTY OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY)) WILL BE LIMITED TO THE LESSER OF: (i) THE FEES PAID BY CUSTOMER TO WNK AVIATION IN THE THREE (3) CALENDAR MONTHS IMMEDIATELY PRIOR TO THE DAMAGES ARISING; OR (ii) TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00). IF THE PRODUCTS AND SERVICES ARE PROVIDED TO CUSTOMER WITHOUT CHARGE, THEN WNK AVIATION WILL HAVE NO LIABILITY TO CUSTOMER WHATSOEVER. THE FOREGOING LIMITATIONS SET A LIMIT ON THE AMOUNT OF DAMAGES PAYABLE AND ARE NOT INTENDED TO ESTABLISH LIQUIDATED DAMAGES.
- c.** CUSTOMER EXPRESSLY RECOGNIZES AND ACKNOWLEDGES THAT THE DISCLAIMERS AND LIMITATIONS SET FORTH IN THIS SECTION ARE AN ESSENTIAL PART OF THE

AGREEMENT AND AN ESSENTIAL FACTOR IN ESTABLISHING THE PRICE OF THE PRODUCTS AND SERVICES AND WNK AVIATION'S WILLINGNESS TO PROVIDE CUSTOMER THE PRODUCTS AND SERVICES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES OR THE LIMITATION ON HOW LONG AN IMPLIED WARRANTY LASTS, THEREFORE SOME OF THE FOREGOING TERMS MAY NOT APPLY TO CUSTOMER.

- d. THE FOREGOING DISCLAIMERS AND LIMITATIONS WILL APPLY TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW AND NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY PROVIDED IN THIS AGREEMENT.

## Indemnity

**34.** Except for Customers who are governmental organizations, Customer will indemnify, defend and hold WNK Aviation (and its processors, respective employees, directors, agents, affiliates and representatives) harmless from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, interest and expenses (including, without limitation, reasonable attorneys' fees) arising out of any claim, action, audit, investigation, inquiry or other proceeding instituted by a person or entity that arises out of or relates to: (a) any actual or alleged breach of Customer's representations, warranties or obligations set forth in this Agreement; (b) Customer's wrongful or improper use of the Products and Services; (c) Customer's violation of any third party's rights, including without limitation, any right of privacy, publicity rights or intellectual property rights; (d) Customer's violation of any law, rule or regulation of the United States or any other country; (e) any other party's access and/or use of the Products or Services using Customer's Access Credentials or the Access Credentials of any of Customer's Authorized Users; and (f) use of Customer Content. WNK Aviation reserves the right, at Customer's expense, to assume the exclusive defense and control of any matter for which Customer is required to indemnify WNK Aviation and Customer agrees to cooperate with WNK Aviation's defense of these claims. Customer agrees not to settle any matter without WNK Aviation's prior written consent. WNK Aviation will use reasonable efforts to notify Customer of any such claim, action or proceeding upon becoming aware of it. "Indemnity Obligations" means each of the obligations in the foregoing Section.

- a. For Customers who are governmental organizations, such Customer shall comply with the Indemnity Obligations if and to the extent sufficient funds to pay for such



Indemnity Obligations were appropriated, allocated, funded, and obligated to this Agreement prior to the events that give rise to such Indemnity Obligations.

## Export Controls and Trade Sanctions Compliance

**35.** Customer's use of the Products and Services is subject to compliance with United States and other applicable export control and trade sanctions laws, rules and regulations, including without limitation, the U.S. Export Administration Regulations, administered by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") and U.S. trade sanctions, administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") (collectively, "Export Control Laws"). Customer will not export, re-export, download or otherwise transmit the Products and Services, or technical data relating thereto, in violation of any applicable Export Control Laws. In particular, Customer acknowledges that the Products and Services, or any part thereof, may not be exported, transmitted, or re-exported to, or otherwise used in: (a) any country subject to a U.S. embargo or comprehensive trade sanctions or that has been designated a state sponsor of terrorism by the U.S. Government ("Sanctioned Countries"); or (b) anyone identified on any U.S. Government restricted party lists (including without limitation, the Specially Designated Nationals and Blocked Persons List, Sectoral Sanctions Identifications List, and Foreign Sanctions Evaders List, administered by OFAC, and the Entity List, Denied Persons List, and Unverified List administered by BIS) (collectively, "Restricted Party Lists"). By purchasing a Product or Service, Customer represents and warrants that it is not located in any Sanctioned Country or on any Restricted Party List. Customer acknowledges that the Products and Services may not be available in all jurisdictions and that Customer is solely responsible for complying with applicable Export Control Laws related to the manner in which Customer chooses to use the Products and Services, including Customer's transfer and processing of the Customer Content and the region in which any of the foregoing occur.

## Governing Law

**36.** This Agreement and any dispute arising hereunder will be governed by the laws of the US Federal Laws. To the extent the parties are permitted under this Agreement to initiate litigation in a court, both Customer and WNK Aviation agree that all claims and disputes

arising out of or relating to the Agreement will be litigated exclusively in the federal courts located in the State of Virginia.

## Governing Language

- 37.** Customer acknowledges that any translation of the English language version of this Agreement or any portion thereof is provided for convenience only, and that the English language version will take precedence over the translation in the event of any conflicts arising from translation.

## Electronic Communications

- 38.** By using the Products and Services, Customer acknowledges that WNK Aviation shall communicate with Customer electronically using the email address in the Customer Account. It is the Customer's responsibility to keep its email address current for notice purposes. For contractual purposes, Customer (a) consents to receive communications from WNK Aviation in an electronic form and (b) agrees that all terms and conditions, agreements, notices, disclosures, and other communications that WNK Aviation provides to Customer electronically satisfies any legal requirement that such communications would satisfy if it were to be in writing. Customer agrees that all disclosures, notices, and communications are considered received by Customer within twenty-four (24) hours of the time posted to WNK Aviation's website, or within twenty-four (24) hours of the time emailed to Customer.

## Contacting WNK Aviation

- 39.** To contact WNK Aviation regarding this Agreement email [info@wnkaviation.com](mailto:info@wnkaviation.com).

## Changes in this Agreement

- 40.** Except for material changes to this Agreement, WNK Aviation may amend the Agreement, any Product and Service Specific Terms, or WNK Aviation's Documentation, at any time in its sole discretion, by posting the revised version on WNK Aviation's website and/or communicating it to Customer (each, a "Revised Version"). The Revised Version will be effective thirty (30) days from the time it is posted. Customer's continued use of the

Products and Services after the posting of a Revised Version constitutes Customer's acceptance of such Revised Version.

## Assignment

**41.** This Agreement and any rights and licenses granted hereunder, may not be transferred or assigned by either party and any attempted transfer or assignment will be null and void; provided that, WNK Aviation may assign this Agreement to any person or entity that is an affiliate, or acquires by sale, merger or otherwise, all, substantially all or a portion of WNK Aviation's assets, stock or business. If another entity merges with or acquires WNK Aviation or all, substantially all or a portion of WNK Aviation's assets, stock or business Customer agrees that Customer's encrypted stored data and information that WNK Aviation has collected from Customer, including personally identifiable information, may, and Customer consents to, the secure transfer of such information to such successor or assignee.

## Force Majeure

**42.** Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party. The affected party will use reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

## Government Use

**43.** The Products and Services constitute Commercial Off the Shelf ("COTS") items as that term is defined in the U.S. Government Federal Acquisition Regulations ("FAR"). Government use rights are limited to those minimum rights required by the appropriate provisions of the FAR. WNK Aviation created and developed the Products and Services, WNK Aviation Technology and WNK Aviation Content (collectively, "WNK Assets") at its private expense without Federal funds. Furthermore, WNK Aviation customarily provides and sells the WNK Assets to the public and the WNK Assets are "commercial items" as such term is defined and used in the Federal Acquisition Regulation and agency supplements. Customer shall

electronically, physically, and verbally reproduce, place and state the following notice (“Notice”) on all WNK Assets provided under this Agreement. The Notice shall not be removed.

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NOTICE

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All materials, documents, images, videos, information, inventions, ideas, works, materials, marks, goodwill, processes, procedures, techniques, software, deliverables, intellectual property, inventions, ideas, works, marks, goodwill, processes, procedures, techniques, software, trade secrets, data and intangible assets provided or created by WNK Aviation, LLC (“WNK”) under this agreement (“WNK Assets”) are commercial items developed at private expense without Federal funds, and are “commercial items” as that term is defined and used in the Federal Acquisition Regulation and agency supplements. The WNK Assets are customarily sold to and provided by WNK to the public. This Notice shall not be removed and shall be electronically, physically, and verbally reproduced, placed and stated on and during all WNK Assets. Copyright © WNK Aviation LLC All Rights Reserved

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NOTICE

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## Other Provisions

**44.** This Agreement and the Documentation are a complete statement of the agreement between Customer and WNK Aviation regarding the Products and Services and the matters covered in this Agreement. Customer acknowledges and agrees there are no third-party beneficiaries to this Agreement. If any provision of the Agreement is invalid or unenforceable under applicable law, then it will be changed, interpreted, or severed, as appropriate to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect. This Agreement does not limit any rights that WNK Aviation may have under trade secret, copyright, patent, or other laws. No waiver of any term of this Agreement will be deemed a further or continuing waiver of such term or any other term.