

This PrecisionHawk Enterprise Agreement, including all referenced appendices and documents located at URLs (the “**Agreement**”), is between PrecisionHawk, Inc. (“**we**” or “**PrecisionHawk**”) and the purchaser or user of PrecisionHawk hardware, software, subscriptions or services who accepts the terms of this Agreement (“**you**” or “**Customer**”) (together, the “**Parties**”). The effective date of this Agreement (“**Effective Date**”) is the earlier of the date that you sign or accept this Agreement or the date that you use PrecisionHawk’s hardware, software, subscriptions or services.

## **1. Scope of Agreement**

- 1.1. Framework.** This Agreement establishes a framework that will enable us to provide Hardware, Software, Subscriptions and Services to you. “**Hardware**” means the unmanned aerial vehicle(s) and/or sensors, and accessories thereto, provided to you under this Agreement, or such other physical products as appear in an Order Form. “**Software**” means PrecisionMapper and other software branded by PrecisionHawk, its Affiliates and/or third parties including all modifications, additions or further enhancements delivered by us. “**Subscription**” means a fee-bearing subscription, generally with a term of one to three years, providing you the right to use certain Hardware and Software and related benefits for a defined period of time. “**Services**” means professional services such as training or consulting that we provide to you. The Hardware, Software, Subscriptions and/or Services (each, an “**Offering**”) that we will provide to you will be described in an “**Order Form**”, signed by the parties or otherwise accepted by us, which consists of (a) one or more mutually agreed order forms, statements of work, work orders or similar transaction documents, or (b) an order placed by you through one of our websites. The Parties agree that the terms of this Agreement will govern all Offerings provided to you unless otherwise agreed by the Parties in writing.
- 1.2. Affiliates.** The Parties agree that Affiliates of yours may acquire Offerings from us or our Affiliates by entering an Order Form with PrecisionHawk (or a PrecisionHawk Affiliate) that incorporates the terms and conditions of this Agreement. The Parties acknowledge that adjustments to the terms of this Agreement may be made in a particular Order Form (for example, to address disparate tax and/or legal regimes in various geographic regions). “**Affiliate**” means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a Party, where “control” is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.
- 1.3. Business Partners.** We have entered into agreements with other organizations (“**Business Partners**”) to promote, market, resell and support certain Offerings. When you purchase, lease, license or use our Offerings through a Business Partner, we confirm that we are responsible for providing the Offerings to you under the terms of this Agreement. We are not responsible for (a) the actions of Business Partners, (b) any additional obligations Business Partners have to you, or (c) any products or services that Business Partners supply to you under any separate agreements between a Business Partner and you.

## **2. Fees and Payment**

- 2.1. Fees and Expenses.** Fees for the Offerings (the “**Fees**”) will be identified in an Order Form and are (a) due as described in the Order Form, and (b) payable in accordance with Section 2.3. Fees are stated in United States Dollars, must be paid in United States Dollars and include, unless otherwise specified in writing, shipping costs to destinations within the continental United States. You will reimburse us for all reasonable expenses we incur in connection with the performance of Services. You agree to pay us the applicable Fees for each Unit. “**Unit**” is the measurement of Offering usage defined in the applicable Order Form. Any renewal of Subscriptions will be at the same price per Unit listed in the applicable Order Form. “**Business Days**” means Monday to Friday except for any holidays observed in Raleigh, North Carolina.
- 2.2. Purchase of Units.** You are required to purchase Units in a quantity equal to the total number of Units of that Offering that you use. The Offering may be used by third parties acting on your behalf and for your benefit, such as contractors, subcontractors or outsourcing vendors provided you remain responsible for all of your obligations under this Agreement and for the activities and omissions of the third parties. Any unauthorized use of the Offering is a material breach of the Agreement. This Agreement establishes the rights and obligations associated with Offerings and is not intended to limit your rights to software code under the terms of an open source license.
- 2.3. Payment**

- 2.3.1.** If you desire credit terms with respect to the payment of Fees, you will reasonably cooperate with us in establishing and periodically re-confirming your creditworthiness. If credit terms are provided to you, we will invoice you for the Fees as described in the applicable Order Form and upon acceptance of any future order. Unless otherwise specified in an Order Form and subject to our approval of credit terms, you will pay Fees and expenses, if any, no later than thirty (30) days from the date of each invoice; provided, however, that unless otherwise specified in the applicable Order Form, Fees for Services are due prior to performance of those Services. Except as otherwise provided in this Agreement, any and all payments made by you pursuant to this Agreement are non-refundable. We reserve the right to suspend or cancel performance of all or part of the Services and/or change its credit terms, halt the shipment of Hardware, suspend all Subscription access or restrict your access to Software, or take such other actions as PrecisionHawk determines is appropriate, if actual payment has not been received within thirty (30) days of the invoice date, and at least ten (10) Business Days following provision of a late payment notice by us to you.
- 2.3.2.** If you are paying by credit card, you (a) authorize us to charge your credit card for the Offerings and for the amounts due in connection with renewals, and (b) agree to provide updated credit card information to us as needed.
- 2.4. Taxes.** All Fees are exclusive of Taxes. You will pay us an amount equal to any Taxes arising from or relating to this Agreement or an applicable Order Form which are paid by or are payable by us. Taxes, if applicable, will be charged separately unless you provide, in advance, a valid tax exemption certificate authorized by the applicable taxing authority. “**Taxes**” means any form of sales, use, value added or other form of taxation and any fines, penalties, surcharges or interest, but excluding any taxes based solely on our net income. If you are required to withhold or deduct any portion of the payments due to us, you will increase the sum payable to us by the amount necessary so that we receive an amount equal to the sum we would have received had you made no withholdings or deductions.
- 2.5. Payment Set-Off.** We will be entitled to set-off and apply, in whole or in part, any amount held by us or payments made to you under this Agreement against amounts otherwise owed to us by you under this Agreement, under a separate agreement, or otherwise incurred by you. We will notify you of such a set-off if payments made hereunder are so applied. Without limiting the foregoing, if we set-off payments made hereunder against such amounts already owed by you, such action shall not create an obligation by us to perform our various obligations under this Agreement (including any individual Order Form), including providing an Offering hereunder until you fulfil your remaining obligations, including, but not limited to, paying Fees due hereunder in full, nor shall such a set-off relieve you of your obligation to pay any additional or remaining Fees under this Agreement. Our failure to provide timely notice of such a set-off will not constitute a waiver of our right to set-off payments, and we will not be liable for any penalties or other amounts as a result of such a failure.
- 2.6. Late Payment.** If any payment, or any other sum due to us under this Agreement, becomes past due for more than twenty (20) Business Days, we may charge you a late payment charge of one percent (1%) per calendar month or the maximum rate allowed by law, whichever is less.

### **3. Customer’s Use of the Offerings**

- 3.1. User Accounts.** You are responsible for activity occurring by individuals (“**Users**”) to whom you provide access to the Offerings, and shall ensure that you and your Users abide by all local, state, national and foreign laws, treaties and regulations applicable to your use of the Offerings. You shall: (i) notify us promptly of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) notify us promptly and use reasonable efforts to promptly stop any unauthorized use, copying, or distribution of the Offerings that is known or suspected by you or your Users; (iii) not impersonate another PrecisionHawk user or provide false identity information to gain access to or use the Offerings; and (iv) restrict each User account to only one authorized User at a time.
- 3.2. Restrictions.** You shall not (i) license, sublicense, sell, resell, transfer, rent, lease, assign (except as provided in Section 13.3 (Assignment)), distribute, disclose, or otherwise commercially exploit or make available to any third party the Offerings; (ii) copy, modify or make derivative works based upon the Offerings; (iii) “frame” or “mirror” the Offerings on any other server or device; (iv) access the Offerings for any benchmarking or competitive purposes or use the Offerings for timesharing or service bureau purposes, or any purpose other than your own use, (v) decompile, disassemble, reverse engineer or attempt to discover any source code or underlying ideas or algorithms of the Offerings (except to the extent reverse engineering restrictions are prohibited by applicable law), (vi) remove, obscure or modify a copyright or other proprietary rights notice in the Offerings; (vii) use the Offerings to send or store infringing, obscene, threatening, libelous, or otherwise unlawful material, including material that violates third party privacy rights; (viii) use the Offerings to create, use, send, store, or run material containing software viruses, worms, Trojan horses or otherwise engage in any malicious act or disrupt the security, integrity or operation of the

Offerings; (ix) attempt to gain or permit unauthorized access to the Offerings or its related systems or networks; (x) use the Offerings other than in compliance with all applicable laws and regulations or (xi) permit or assist any other party (including any User) to do any of the foregoing.

- 3.3. Protected Information.** The intended purpose of the Offerings is to permit you to gather data remotely and analyze it and you acknowledge and agree that use of the Offerings does not require you to provide any Protected Information to us or store it on the Offerings. Protected Information should not be stored by any Offering, and we will have no liability to you or your Users (or any other party) related to any Protected Information. You will not (and will ensure that your Users do not) upload, provide or submit any Protected Information to the Offerings. We may upon notice suspend all or portion of your access to the Offerings if we have a good faith belief that you have breached the restrictions in this Section. We will provide you with reasonable prior notice to cure before exercising any suspension under this Section. **"Protected Information"** means Protected Health Information and Regulated Information. **"Protected Health Information"** has the meaning given to it in the United States Health Insurance Portability and Accountability Act. **"Regulated Information"** means an individual's first name and last name (or first initial and last name) in combination with any one or more of the following data elements that relate to such individual: (i) Social Security or other national identity number; (ii) driver's license number or state-issued identification card number; or (iii) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to an individual's financial account.
- 3.4. Customer Data.** As between you and us, you exclusively own all rights, title and interest in and to all you collect or provide via use of the Hardware or Software (**"Customer Data"**). You have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of and right to use all Customer Data, and hereby warrant that that you have and will have all rights and consents necessary to allow us to use all such data as contemplated by this Agreement. You hereby grant to us a royalty-free, fully-paid, non-exclusive, non-transferable (except as set forth in Section 13.3 (Assignment)), sub-licensable, worldwide right to use and process Customer Data solely for the purpose of providing you the Offerings and any other activities expressly agreed to by you.
- 3.5. Use of Aggregate Data.** You agree that we may collect, use and disclose quantitative data derived from the use of the Offerings for industry analysis, benchmarking, analytics, marketing, and other business purposes. All data collected, used, and disclosed will be in aggregate form only and will not identify you or your Users.

#### 4. License and Ownership

- 4.1. PrecisionHawk's Intellectual Property Rights.** As between you and us, all rights, title, and interest in and to all intellectual property rights in the Offerings (including all derivatives, modifications and enhancements thereof) are and shall be owned exclusively by us notwithstanding any other provision in this Agreement or Order Form. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Offerings. The PrecisionHawk name, logo and product names associated with the Offerings are our trademarks, and no right or license is granted to you to use them. All rights not expressly granted to you are reserved by us. We alone shall own all rights, title and interest in and to any suggestions, enhancement requests, feedback, recommendations or other information provided by you or any third party relating to the Offerings.
- 4.2. Software.** Each type of Software is governed by a license grant or an end user license agreement, which license terms are contained or referenced in the appendices to this Agreement or the applicable Order Form. You may use the Software only as set forth in the applicable license.
- 4.3. PrecisionHawk Developments.** Subject to Section 10 (Confidentiality) and notwithstanding anything to the contrary contained in this Agreement or an Order Form, the ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information and materials developed in and during the course of providing the Offerings may be used by us, without an obligation to account, in any way we deem appropriate, including by or for ourselves or our clients or customers.
- 4.4. Marks.** Unless expressly stated in an Order Form, no right or license, express or implied, is granted in this Agreement for the use of any PrecisionHawk, PrecisionHawk Affiliate, or third-party trade names, service marks or trademarks, including, without limitation, the distribution of the Software utilizing any PrecisionHawk or PrecisionHawk Affiliate trademarks.

#### 5. Hardware

To the extent the Subscription you purchase provides you use of Hardware, the following terms will apply to such Hardware.

- 5.1. Lease.** You acknowledge and agree that we will hold legal title to the Hardware, it being expressly understood that you are leasing the Hardware from us for a defined period of time. You will keep the Hardware free from any markings or labeling which might be interpreted as a claim of ownership thereof by you or any party other than us. Notwithstanding the foregoing, if applicable, you must register the Hardware (listing you as the operator) with the Federal Aviation Administration, or such other governmental authority having jurisdiction over your operation of the Hardware. You agree to use commercially reasonable efforts to protect our interest in the Hardware, including, among other things by promptly executing such documents or taking such other actions as we may reasonably request from time to time, to implement the agreements of the Parties hereto or to comply with applicable law. You may not transfer, sell, assign, sublicense, pledge, or otherwise dispose of, encumber, or suffer a lien or encumbrance upon or against the Hardware.
- 5.2. Alterations.** You may not make any alterations, additions, or improvements to any Hardware without our prior written consent. All alterations, additions, or improvements made to Hardware shall belong to us at no charge to us.
- 5.3. Maintenance and Operation.** You (a) may not remove, alter, disfigure, or cover any numbering, lettering, or insignia displayed upon the Hardware; (b) will use the Hardware in a careful manner, and only permit use by people who have been properly trained; and (c) will comply with all applicable laws and regulations relating to possession, use, and maintenance of the Hardware in the jurisdiction in which the Hardware is used, including any operator licensure or certification requirements. If you are not the owner of the property over which the Hardware flies, you will get the consent of the owner of the property before operation over the property. You will maintain the Hardware, including any appurtenances thereto, in good operating condition and repair, and return it in such condition to us, subject only to ordinary wear and tear resulting from proper use thereof. Where the Hardware is damaged due to your negligence or improper operation, we may assess you a fee equal to the cost to repair or replace the Hardware (if it is not commercially reasonable to repair).
- 5.4. Assumption of Risk.** You agree and understand that there are certain inherent risks associated with the operation of the Hardware, and you assume full responsibility for personal injury, including death and dismemberment, and property damage in connection with the use, maintenance, transportation, or storage of the Hardware.
- 5.5. Delivery.** We will deliver the Hardware to the location specified on the respective Order Form. Promptly upon receipt of the Hardware, you must examine the Hardware to determine whether there exists any shortage, defect or patent damage, and notify us within three (3) Business Days of any of the aforesaid circumstances. Within five (5) Business Days after the receipt of the above notice, we will begin investigation of the claims. If we agree with such claims, we will replace or repair the relevant Hardware as soon as practicable, and the term of the applicable Subscription will be tolled until the Hardware is replaced or repaired.
- 5.6. Return.** Prior to the expiration of the Subscription, we will provide you with materials that will permit you to pack the Hardware and place it with our designated carrier for shipment back to us at our expense (if you are within the continental United States). You will re-pack and deliver the Hardware to our designated carrier within five (5) Business Days of the end of the term of the Subscription.
- 5.7. Hardware Changes.** If a Hardware re-configuration or change (such as the addition of a sensor) requires Hardware to be returned to us, we will provide you with materials that will permit you to pack the Hardware and place it with our designated carrier for shipment back to us at our expense (if you are within the continental United States).

## **6. Technical Support**

- 6.1. General Technical Support.** During the term of a Subscription, we will provide you with reasonable ongoing technical support.
- 6.2. Hardware Support.** Should you believe the Hardware is not operating within its specifications, you should contact us. If we are not able to resolve the issue remotely, we will ship replacement Hardware and you will return the Hardware suffering the support issue.

## **7. Representations and Warranties**

- 7.1. General Representations and Warranties.** We represent and warrant during the term of the applicable Order Form that (a) the Offerings shall materially conform to our specifications; (b) the functionality of the Offerings at the time of the Order Form shall not materially decrease; (c) the Services will be performed in a professional and workmanlike manner by qualified personnel; (d) we have the authority to enter into this Agreement with you; and (e) to our knowledge, our branded Software does not, at the time of delivery to you, include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software.

- 7.2. On-Site Obligations.** If our personnel are working on your premises (a) you will provide a safe and secure working environment for our personnel; (b) you will notify us of any hazards on the premises which may pose a risk to the safe provision of Services; and (c) we will comply with all reasonable workplace safety and security standards and policies, applicable to your employees, of which we are notified in writing by you in advance.
- 7.3. Disclaimer of Warranty.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1 OR BY A THIRD-PARTY VENDOR DIRECTLY TO YOU UNDER A SEPARATE AGREEMENT, THE OFFERINGS, SERVICES, SOFTWARE AND ANY HARDWARE ARE PROVIDED BY US "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. YOU ACKNOWLEDGE THAT THE HARDWARE MAY NOT BE NEW. WE DO NOT GUARANTEE OR WARRANT THAT THE USE OF THE OFFERINGS, SERVICES, SOFTWARE OR HARDWARE WILL BE UNINTERRUPTED, COMPLY WITH REGULATORY REQUIREMENTS, BE ERROR FREE OR THAT WE WILL CORRECT ALL SOFTWARE ERRORS. FOR THE BREACH OF THE WARRANTIES SET FORTH IN SECTION 7.1, YOUR EXCLUSIVE REMEDY, AND OUR ENTIRE LIABILITY, WILL BE THE REPERFORMANCE OF THE DEFICIENT OFFERING, OR IF WE CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, AS DETERMINED BY US, YOU MAY TERMINATE THE RELEVANT OFFERING AND RECEIVE A PRO RATA REFUND OF THE FEES PAID FOR THE DEFICIENT OFFERING AS OF THE EFFECTIVE DATE OF TERMINATION.

You agree that you are solely responsible for the results obtained from the use of the Offerings.

## **8. Reporting and Inspection**

- 8.1. Reporting.** You will notify us (or the Business Partner from whom you purchased an Offering) promptly if the actual number of Units utilized by you exceeds the number of Units for which you have paid the applicable Fees. In your notice, you will include the number of additional Units and the date(s) on which such Units were first utilized. We (or the Business Partner) will invoice you for the applicable Offerings for such Units and you will pay for such Offerings no later than thirty (30) days from the date of the invoice.
- 8.2. Inspection.** During the term of this Agreement and for one (1) year thereafter, we or our designated agent may inspect your facilities and records to verify your compliance with this Agreement. Any such inspection will take place only during your normal business hours and upon no less than ten (10) days prior written notice from us. We will give you written notice of any non-compliance, including the number of underreported Units of Offerings, and you will have fifteen (15) days from the date of the notice to make payment to us for the applicable Offerings provided with respect to the underreported Units. If you underreport the number of Units utilized by more than five percent (5%) of the number of Units for which you paid, you will also pay us for the cost of such inspection.

## **9. Limitation of Liability and Disclaimer of Damages**

- 9.1. Limitation of Liability; Indemnification.** FOR ALL EVENTS AND CIRCUMSTANCES, OUR AND OUR AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ALL ORDER FORMS, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE AMOUNTS RECEIVED BY US DURING TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY, WITH RESPECT TO THE PARTICULAR OFFERING GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDER FORM. THE FOREGOING SHALL NOT BE INTERPRETED TO LIMIT THE AVAILABILITY OF INJUNCTIVE RELIEF IN THE EVENT OF THE OTHER PARTY'S BREACH OF SECTION 10 (CONFIDENTIALITY) OF THIS AGREEMENT.
- 9.2. Disclaimer of Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR AN ORDER FORM, IN NO EVENT WILL WE OR OUR AFFILIATES BE LIABLE TO YOU OR YOUR AFFILIATES FOR DAMAGES OTHER THAN DIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION: ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, REGULATORY NON-COMPLIANCE, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, OR LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF WE OR OUR AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR THESE DAMAGES WILL BE LIMITED AND EXCLUDED EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.
- 9.3. Indemnification.** YOU WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS, US (INCLUDING OUR AFFILIATES, AND OUR AND THEIR RESPECTIVE DIRECTORS, OFFICERS, AND EMPLOYEES) IN ANY ACTION OR SUIT, (I) ALLEGING THAT YOU

VIOLATED ANY LAW OR REGULATION, OR (II) RELATING TO ANY USE OF THE HARDWARE INCLUDING, WITHOUT LIMITATION, ANY PROPERTY DAMAGE, INJURY OR DEATH CAUSED IN CONNECTION WITH THE USE OF THE HARDWARE (ITEMS (I) TO (II) HEREINAFTER REFERRED TO AS THE “CUSTOMER CLAIMS”) AND SHALL PAY ANY FINES OR PENALTIES IMPOSED BY A GOVERNMENTAL ENTITY AND ANY SETTLEMENT AMOUNTS AGREED BY US AND/OR ANY LOSSES, DAMAGES, EXPENSES, OR COSTS (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS’ FEES) AWARDED AGAINST US BY A COURT OF COMPETENT JURISDICTION IN SUCH CUSTOMER CLAIM.

- 9.4. IP Indemnity.** Subject to this Agreement, we shall: (i) defend you, your officers, directors and employees against any third-party suit, claim, or demand (each a “Claim”) that alleges the Software used in accordance with this Agreement and the applicable Order Form infringes any issued patent, copyright, trademark or misappropriation of any trade secret of such third party; and (ii) pay any court-ordered award of damages or settlement amount to the extent arising from such Claims. Notwithstanding the foregoing, if we reasonably believe that your use of any portion of the Software is likely to be enjoined by reason of any Claims then we may, at our expense and in our sole discretion: (i) procure for you the right to continue using the Software; (ii) replace the same with other software of substantially equivalent function and efficiency that are not subject to any Claims of infringement; or (iii) modify the applicable Software so that there is no longer any infringement, provided that such modification does not materially and adversely affect the functional capabilities of the Software. If (i), (ii), and (iii) above are not available on commercially reasonable terms in our judgment, we may terminate the license relating to the affected Software and refund to you the fees paid by you covering the remaining portion of the applicable Subscription Term for the affected Software after the date of termination. Our foregoing indemnification obligation shall not apply: (1) if the Software is modified by any party other than us, but solely to the extent the alleged infringement is related to such modification; (2) the Software is combined with other non-PrecisionHawk products, applications, or processes not authorized by us, but solely to the extent the alleged infringement is related to such combination; (3) to the extent the Claim arises in connection with any unauthorized use of the Software, or use that is not in compliance with all applicable laws and related Documentation; (4) to any third party products, processes or materials that are not provided by us; or (5) to any Claims arising as a result of the content of the Customer Data. THIS SECTION SETS FORTH OUR SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.
- 9.5. Indemnity Process.** Each party’s indemnity obligations are subject to the following: (i) the indemnified party shall promptly notify the indemnifier in writing of any Claims; (ii) the indemnifier shall have sole control of the defense and all related settlement negotiations with respect to any Claims (provided that the indemnifier may not settle any Claims that require the indemnified party to admit any civil or criminal liability or incur any financial obligation without the indemnified party’s consent, which consent shall not be unreasonably withheld); and (iii) the indemnified party shall cooperate fully to the extent necessary at the indemnifier’s cost in such defense and settlement.

## 10. Confidentiality

- 10.1. Obligations.** During the term of this Agreement, each Party agrees that (a) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (b) it will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care; and (c) the Confidential Information may be disclosed only to its employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written or professional obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. Both Parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information. “Confidential Information” means all information disclosed by either us or you (“Disclosing Party”) to the other party (“Recipient”) during the term of this Agreement that is (i) marked confidential; (ii) disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure; or (iii) which the Recipient would reasonably understand to be confidential or proprietary due to the nature of the information itself or the circumstances of its disclosure.
- 10.2. Exclusions.** Confidential Information will not include information which: (a) is known to the Recipient at the time of disclosure by the Disclosing Party; (b) is or later becomes publicly available without breach of this Agreement; (c) is independently developed by the Recipient without use of the Confidential Information; (d) becomes lawfully known or available to the Recipient without restriction from a third-party having the lawful right to disclose the information; or (e) is generally known or easily ascertainable by parties of ordinary skill in the business of the Recipient. The Recipient will not be prohibited from complying with disclosure mandated by applicable law if, where reasonably practicable and without breaching any legal or regulatory requirement, it gives the Disclosing Party advance notice of the disclosure requirement.

- 10.3. Remedies.** Each Party acknowledges that any breach of the terms and conditions of this Section 10 by them may result in significant damage to the Disclosing Party, not completely compensable monetarily, and agree that, notwithstanding any contrary provisions of this Agreement, the Disclosing Party shall be entitled to apply for injunctive relief in a court of appropriate jurisdiction in the event of the breach or threatened breach of any of the terms of this Section 10. The party in default shall not oppose any such application on the basis that money damages would be a satisfactory or sufficient remedy.

## **11. Term and Termination**

- 11.1. Term and Termination of Agreement.** The term of this Agreement will begin on the Effective Date and will terminate at the expiration of ninety (90) days following written notice of termination given by one Party to the other. Termination of this Agreement will not operate to terminate any Order Form and the terms and conditions of this Agreement will continue in full force and effect to the extent necessary to give effect to any Order Form in effect at the time of termination of this Agreement and until such time as the applicable Order Form expires or is terminated in accordance with Section 11.2 below.

### **11.2. Term and Termination of Order Form**

- 11.2.1.** The term of an Order Form begins on the date the Order Form is executed ("**Order Form Effective Date**") and continues for the term stated in the Order Form. Thereafter, the term for Subscriptions will automatically renew for successive terms of one (1) year each, unless either Party gives written notice to the other of its intention not to renew at least sixty (60) days before the commencement of the next renewal term. You must use any other Services set forth in an Order Form during the term specified in the Order Form or within one (1) year of the Order Form Effective Date, whichever is shorter; if unused, such Services will be forfeited.
- 11.2.2.** If either Party materially breaches the terms of an Order Form or this Agreement, and such breach is not cured within twenty (20) days after written notice of the breach is given to the breaching Party, then the other Party may, by giving written notice of termination to the breaching Party, terminate the applicable Order Form and/or this Agreement; provided, however, that no cure period will be required for a breach of Section 10 of this Agreement. The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination. Without prejudice to any other right or remedy of PrecisionHawk, in the event either Party terminates an Order Form, you will pay us (or the Business Partner from whom you purchased such Offering) for all portions of an Offering provided up to the effective date of termination.

- 11.3. Survival.** If this Agreement or an Order Form is terminated for any reason, Sections 2 (Fees and Payment), 4 (License and Ownership), 7.3 (Disclaimer of Warranty), 8.2 (Inspection), 9 (Limitation of Liability and Disclaimer of Damages), 10 (Confidentiality), 11.3 (Survival), 12 (Choice of Law and Forum), 13.1 (Continuing Business), 13.2 (Notices), and 13.6-13.14 (Non-solicitation; Export and Privacy; Headings; Severability; Waiver; Complete Agreement; Amendment; Changes to Work and Delays; and Counterparts and Facsimile Signature) of this Agreement (as the same are incorporated into each Order Form) will survive such termination.

## **12. Choice of Law and Forum**

- 12.1. Governing Law.** The validity, interpretation and enforcement of this Agreement will be governed by and construed in accordance with the laws of the United States and of the State of New York without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.
- 12.2. Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT.
- 12.3. Dispute Resolution.** Each party agrees that if a dispute arises in the performance of this Agreement, the parties will make a good faith effort to amicably resolve any dispute before commencing any proceeding. Notwithstanding the foregoing, either party may take any action reasonably required to protect such party's rights. Any dispute arising under this Agreement which is not resolved through the amicable consultation of the parties will be subject to binding arbitration by a single Arbitrator with the American Arbitration Association (AAA), in accordance with its relevant industry rules, if any. The arbitration will be held in Raleigh, North Carolina. The Arbitrator will have the authority to grant injunctive relief and specific performance to enforce the terms of this Agreement. Judgment on any

award rendered by the Arbitrator may be entered in any court of competent jurisdiction. No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.

### 13. Miscellaneous

- 13.1. Continuing Business.** Nothing in this Agreement will preclude or limit us from providing hardware, software, materials, or services for itself or other clients, irrespective of the possible similarity of such software, hardware, materials or services to those that might be delivered to you. The terms of confidentiality in Section 10 will not prohibit or restrict either party's right to develop, use or market products or services similar to or competitive with the other party; provided, however, that neither party is relieved of its obligations under this Agreement.
- 13.2. Notices.** Notices must be in English, in writing, and will be deemed given when delivered by hand or five (5) days after being sent using a method that provides for positive confirmation of delivery to the respective addresses indicated in an Order Form; provided that any notice from you to us includes a copy sent to: PrecisionHawk, Inc., Attention: General Counsel, 8601 Six Forks Road #600, Raleigh, North Carolina 27615, United States.
- 13.3. Assignment.** This Agreement is binding on the parties to this Agreement, and other than the rights conferred on Business Partners in Sections 8.1 and 11.2.2, nothing in this Agreement or in any Order Form grants any other person or entity any right, benefit or remedy of any nature whatsoever, except for the Parties' Affiliates as expressly provided in this Agreement. This Agreement is assignable by either Party only with the other Party's prior written consent, which will not be unreasonably withheld, conditioned or delayed; provided, however, either Party may, upon written notice and without the prior approval of the other Party, (a) assign this Agreement to an Affiliate as long as the Affiliate has sufficient credit to satisfy its obligations under this Agreement and the scope of Service is not affected; and (b) assign this Agreement pursuant to a merger or a sale of all or substantially all of such Party's assets or stock. For the avoidance of doubt, you may not rent, sublease, or otherwise assign or transfer the Hardware or the Software without our express written permission.
- 13.4. Independent Contractor.** PrecisionHawk is an independent contractor and nothing in this Agreement or related to our performance of any Order Form will be construed to create an employment or agency relationship between you (or any of your personnel) and us (or any of our personnel). Each Party will be solely responsible for supervision, direction, control and payment of its personnel, including applicable taxes, deductions, other payments and benefits. We may subcontract Services under an Order Form to third parties or Affiliates without the approval of you; provided, however, that (a) subcontractors agree to protect your Confidential Information, and (b) we remain responsible to you for performance of our obligations hereunder.
- 13.5. Force Majeure.** Neither Party will be liable for nonperformance or delays caused by acts of god, wars, riots, strikes, fires, floods, weather, hurricanes, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control.
- 13.6. Non-solicitation.** You agree not to solicit or hire any PrecisionHawk employees or independent contractors involved with the delivery of Offerings in connection with any Order Form during the term of and for twelve (12) months after termination or expiration of such Order Form; provided that you may hire an individual employed by us who, without other solicitation, responds to advertisements or solicitations aimed at the general public.
- 13.7. Export and Privacy.** We may supply you with technical data or hardware that is subject to export control restrictions. We will not be responsible for compliance by you with applicable export obligations or requirements for this hardware or technical data. You agree to comply with all applicable export control restrictions. If you breach this Section 13.7 or the export provisions of an applicable end user license agreement for the Software or Hardware, or any provision referencing these sections, we may terminate this Agreement and/or the applicable Order Form and its obligations thereunder without liability to you. You acknowledge and agree that to provide the Subscriptions or Services, it may be necessary for certain information from or about you to be transferred between PrecisionHawk, its Affiliates, Business Partners, and/or subcontractors, which may be located worldwide.
- 13.8. Headings.** All headings contained in this Agreement are inserted for identification and convenience and will not be deemed part of this Agreement for purposes of interpretation.
- 13.9. Severability.** If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the Parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement.



- 13.10. Waiver.** The delay or failure of either party to exercise any rights under this Agreement will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the party against whom such waiver is sought to be enforced.
- 13.11. Complete Agreement.** Each Order Form (a) is a separate agreement and is deemed to incorporate this Agreement, unless otherwise expressly provided in that Order Form; (b) constitutes the exclusive terms and conditions with respect to the subject matter of that Order Form, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by you to place orders or otherwise effect transactions under this Agreement; and (c) represents the final, complete and exclusive statement of the agreement between the parties with respect thereto, notwithstanding any prior written agreements or prior and contemporaneous oral agreements with respect to the subject matter of the Order Form. In the event of any conflict between this Agreement, any Order Form and any end user license agreement for Offerings, this Agreement will take precedence unless otherwise expressly provided in the Order Form or other applicable agreement between the parties. Notwithstanding any provision to the contrary in this Agreement, any applicable end user license agreement will be governed by the laws of the State of New York and of the United States, without regard to any conflict of laws provisions. Any claim relating to the provision of the Offerings by PrecisionHawk, its Affiliates or their respective personnel will be made against PrecisionHawk, Inc. alone.
- 13.12. Amendment.** Neither this Agreement nor any Order Form may be amended or modified except in a writing signed by the parties thereto, which writing makes specific reference to this Agreement or the applicable Order Form.
- 13.13. Changes to Work and Delays.** Changes to the Services will be made only through a written change order signed by both parties. In the event that (a) you fail to timely fulfill your obligations under an Order Form, and this failure adversely impacts the provision of Services, or (b) events outside of either party's reasonable control, such as weather, cause a delay in or otherwise affect our ability to perform our obligations under an Order Form, we will be entitled to appropriate relief, including adjusting the timing of its delivery of applicable Services.
- 13.14. Counterparts and Facsimile Signature.** In the event this Agreement is executed with signatures, this Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one and the same document. The parties may exchange signature pages by electronic transmission and such signatures will be effective to bind the parties to all the terms contained in this Agreement.
- 13.15. Authorized Signature.** Each of the Parties has executed this Agreement (or the Order Form to which it applies) by its duly authorized representative as of the Effective Date.