

# RightStar ScanStar Barcode License Terms of Use

THIS IS A LEGAL AGREEMENT (THIS "AGREEMENT") BETWEEN YOU AND RIGHTSTAR, INC. REGARDING YOUR ACQUISITION AND USE OF OUR SERVICES.

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

## 1. DEFINITIONS

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

**"Malicious Code"** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

**"Non RightStar Applications"** means online applications and offline software products that are provided by entities or individuals other than Us and are clearly identified as such, and that interoperate with the Services, including but not limited to those listed on the RightStar Applications (if any).

**"Order Form"** means the customer agreement or other documents or online form(s) for placing orders hereunder, including addenda thereto, that are entered into between You and Us or any of Our Affiliates from time to time, including addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Order Forms shall be deemed incorporated herein by reference. **"Purchased Services"** means Services that You or Your Affiliates purchase under an Order Form. **"RightStar Applications"** means the applications that You subscribe to on the Order Form and that interoperate with the Services.

**"Services"** means the products and services that are ordered by You under an Order Form and made available by Us online via the customer login link at <http://www.rightstar.com> and/or other web pages designated by Us, including associated offline components.

"Services" exclude Non-RightStar Applications.

**"Service Description"** means the online service description for the Services, accessible via login at <http://www.rightstar.com>, as updated from time to time.

**"Users"** means the named individuals who are authorized by You to use the Services, for whom subscriptions to a Service have been ordered, and who have registered for user

identifications and passwords. Users may include but are not limited to Your employees, consultants, contractors and agents, and third parties with which You transact business.

“**We**,” “**Us**” or “**Our**” means RightStar, Inc., a Virginia corporation.

“**You**” or “**Your**” means the company or other legal entity for which you are accepting this Agreement and Affiliates of that company or entity.

“**Your Data**” means all electronic data or information (i) submitted by You to the Purchased Services and (ii) generated by You through Your use of the Purchased Services.

## 2. PURCHASED SERVICES

**2.1. Provision of Purchased Services.** We shall make the Purchased Services available to You pursuant to this Agreement, the underlying GSA Schedule Contract, Schedule Pricelist and the relevant Order Form(s) during a subscription term. You agree that Your purchases here under are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

**2.2. User Subscriptions.** Unless otherwise specified in the applicable Order Form, (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the applicable subscription term at the GSA Schedule Contract and Schedule Pricelist pricing, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

## 3. USE OF THE SERVICES

**3.1. Our Responsibilities.** We shall: (i) provide Our basic support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 8 hours notice via the Purchased Services and which We shall schedule to the extent practicable during the weekend hours from 9:00 p.m. Friday to 3:00 a.m. Monday Pacific Time), or (b) any unavailability caused by circumstances beyond Our reasonable control (f), Excusable Delays, and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.**3.2. Our Protection of Your Data.** We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 7.3 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services and

prevent or address service or technical problems, or at Your request in connection with customer support matters. We may compile usage statistics with Your Data, provided, however, We will not disclose or review the content of Your Data or breach the confidentiality and integrity of Your Data.

**3.3. Your Responsibilities.** You shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the Service Description and applicable laws and government regulations. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

**3.4. Usage Limitations.** Services may be subject to other limitations, such as, for example, limits on disk storage space, bandwidth usage and/or processor usage. Any such limitations are specified in the Service Description. The Services provide real-time information to enable You to monitor Your compliance with such limitations.

#### 4. NON-RIGHTSTAR PROVIDERS

**4.1. Acquisition of Non-RightStar Products and Services.** We or third parties may from time to time make available to You (e.g., through the RightStar Applications) third-party products or services, including but not limited to Non-RightStar Applications and implementation, customization and other consulting services. Any acquisition by You of such non-RightStar products or services, and any exchange of data between You and any non-RightStar provider, is solely between You and the applicable non-RightStar provider. We do not warrant or support non-RightStar products or services, whether or not they are designated by Us as "certified" or otherwise, except as specified in an Order Form. Subject to Section 4.3 (Integration with Non-RightStar Services), no purchase of non-RightStar products or services is required to use the Services except a supported computing device, operating system, web browser and Internet connection.

**4.2. Non-RightStar Applications and Your Data.** If You install or enable Non-RightStar Applications for use with Services, You acknowledge that We may allow providers of those Non-RightStar Applications to access Your Data as required for the interoperation of such Non-RightStar Applications with the Services. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Non-RightStar

Application providers. The Services shall allow You to restrict such access by restricting Users from installing or enabling such Non-RightStar Applications for use with the Services.

**4.3. Integration with Non-RightStar Services.** The Services may contain features designed to interoperate with Non-RightStar Applications (e.g., barcode scanners, Androids, iPhones). To use such features, you may be required to obtain access to such Non-RightStar Applications from their providers. If the provider of any such Non-RightStar Application ceases to make the Non-RightStar Application available for interoperation with the corresponding Service features on reasonable terms, We may cease providing such Service features without entitling You to any refund, credit, or other compensation.

## 5. FEES AND PAYMENT FOR PURCHASED SERVICES

**5.1. Fees.** You shall pay all fees specified in all Order Forms: (i) fees are based on services purchased, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form. User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for User subscriptions added in the middle of a monthly period will be invoiced for that full monthly period and the monthly periods remaining in the subscription term.

**5.2. Invoicing and Payment.** We will invoice You in advance and otherwise in accordance with the relevant Order Form, and applicable terms and conditions.

## 6. PROPRIETARY RIGHTS

**6.1. Reservation of Rights in Services.** Subject to the limited rights expressly granted hereunder, we reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

**6.2. Restrictions.** You shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Services except as authorized herein, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

**6.3. Your Applications and Code.** If You, a third party acting on Your behalf, or a User creates applications or program code using the Services, You authorize Us to host, copy, transmit, display and adapt such applications and program code, solely as necessary for Us

to provide the Services in accordance with this Agreement. Subject to the above, We acquire no right, title or interest from You or Your licensors under this Agreement in or to such applications or program code, including any intellectual property rights therein.

**6.4. Your Data.** Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein.

**6.5. [Reserved]**

## 7. CONFIDENTIALITY

**7.1. Definition of Confidential Information.** As used herein, “**Confidential Information**” means all confidential information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**7.2. Protection of Confidential Information.** The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other party’s prior written consent.

## 8. WARRANTIES AND DISCLAIMERS

**8.1. Our Warranties.** We warrant that (i) We have validly entered into this Agreement and have the legal power to do so, (ii) the Services shall perform materially in accordance with

the Service Description, (iii) subject to Section 4.3 (Integration with Non-RightStar Services), the functionality of the Services will not be materially decreased during a subscription term, and (iv) We will not transmit Malicious Code to You, provided it is not a breach of this subpart (v) if You or a User uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code. For any breach of a warranty above, Your exclusive remedy shall be as provided in Section 11.3 (Refund or Payment upon Termination) below.

**8.2. Your Warranties.** You warrant that You have validly entered into this Agreement and have the legal power to do so.

**8.3. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 9. INDEMNIFICATION

**9.1. Indemnification by Us.** We shall defend You to the extent permitted under 28 U.S.C. 516 against any claim, demand, suit, or proceeding made or brought against You by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a “**Claim Against You**”), and shall indemnify You for any damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court-approved settlement of, a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You; (b) allow Us to consult on the matter and give Us the right to participate in the defense at Our expense; and (c) provide to Us all reasonable assistance, at Our expense. In the event of a Claim Against You, or if We reasonably believe the Services may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the Services so that they no longer infringe or misappropriate, without breaching Our warranties under “Our Warranties” above, (ii) obtain a license for Your continued use of the Services in accordance with this Agreement, or (iii) terminate Your User subscriptions for such Services upon 30 days’ written notice and refund to You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.

**9.2. Exclusive Remedy.** This Section 9 (Indemnification) states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of claim described in this Section.

## 10. LIMITATION OF LIABILITY

**10.1. Limitation of Liability.** OUR LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL NOT EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR PURCHASED SERVICES).

**10.2. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

The foregoing limitations of liability in 10.1 and 10.2 shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

## 11. TERM AND TERMINATION

**11.1. Term of Agreement.** This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated.

**11.2. Term of Purchased User Subscriptions.** User subscriptions purchased by You commence on the date of execution of the applicable Order Form and continue for the subscription term specified therein.

**11.3. Refund or Payment upon Termination.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

**11.4. Return of Your Data.** Upon request by You made within 30 days after the effective date of termination of a Purchased Services subscription, We will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, We shall have no obligation to maintain or

provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

**11.5. Surviving Provisions.** Section 5 (Fees and Payment for Purchased Services), 6 (Proprietary Rights), 7 (Confidentiality), 8.3 (Disclaimer), 9 (Indemnification), 10 (Limitation of Liability), 11.4 (Return of Your Data), 12.1 (Manner of Giving Notice) and 13 (General Provisions) shall survive any termination or expiration of this Agreement.

## 12. NOTICES, GOVERNING LAW AND JURISDICTION

**12.1. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You. Notice to Us shall be sent to the following:

RightStar, Inc.  
1951 Kidwell Drive, Suite 110  
Vienna, VA 22182

**12.2 Governing Law.** The laws of the Commonwealth of Virginia shall govern this agreement.

## 13. GENERAL PROVISIONS

**13.1. Export Compliance.** The Services, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use Services in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

**13.2. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**13.3. Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

**13.4. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**13.5. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld).

**13.6. Entire Agreement.** This Agreement, including all exhibits and addenda hereto, Schedule Pricelist and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations,



written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail.

RIGHTSTAR, INC.

NAME: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_