

TERMS & CONDITIONS

These Terms and Conditions of Sale cover sales of products and provision of services by ShockWatch, Inc. (“Seller”). We encourage you to read the entire set of terms and conditions.

1. **Applicability:** These Terms and Conditions of Sale are an essential part of, and applicable to any sale of, or offer to sell, products or services by Seller. These Terms and Conditions are integral to, and expressly incorporated by reference into, any document or communication issued by Seller with respect to any sale of, or offer to sell products or perform services. Unless otherwise expressly agreed in writing by Seller, these Terms and Conditions, together with Seller’s order acknowledgment and invoice, constitute the sole terms and conditions with respect to any purchase and sale of products or provision of services by Seller to a buyer or user (“Buyer”). Any additional or inconsistent terms and conditions contained in any written expression of acceptance, purchase order, or any other document issued by the Buyer of such products or services (e.g., a Purchase Order or Sales Acknowledgement) are rejected by Seller. Buyer agrees, acknowledges and consents that Buyer’s competing Terms and Conditions, if any, shall have no force and no effect when a court or other authority of competent jurisdiction makes a legal determination of what contractual terms, conditions and provisions are valid and control the sale of Seller’s products or provision of services to Buyer. Buyer agrees that unless explicitly stated otherwise, any new features that augment or enhance the services, and/or any new services subsequently purchased by Buyer will be subject to this Agreement.

THIS IS A LEGAL AGREEMENT. BY PLACING AN ORDER FOR PRODUCTS OR USING SERVICES FROM SELLER, BUYER IS ACCEPTING AND AGREEING TO THESE TERMS AND CONDITIONS. BUYER REPRESENTS AND WARRANTS THAT BUYER HAS THE RIGHT, AUTHORITY, AND CAPACITY TO ACCEPT AND AGREE TO THESE TERMS AND CONDITIONS. IF BUYER DOES NOT AGREE WITH ANY OF THE PROVISIONS OF THESE TERMS AND CONDITIONS, BUYER SHOULD NOT PURCHASE PRODUCTS OR USE SERVICES FROM SELLER.

Seller reserves the right to change these Terms and Conditions at any time. Buyer should review the Terms and Conditions each time prior to making purchases or using services from Seller.

2. **Order Acknowledgement; Change Orders:** Buyer may submit a written Purchase Order for products to Seller, but no Purchase Order can create a contract for sale unless and until Seller executes a corresponding Order Acknowledgement that is returned to Buyer agreeing to the essential terms of price and quantity. Seller's agreement to enter into a contract with Buyer is also expressly conditioned upon Buyer's acceptance of these Terms and Conditions. Buyer's Purchase Order together with Seller's Order Acknowledgement and the agreed applicability of these Terms and Conditions shall result in an agreement ("Agreement") to enter into a contract between Seller and Buyer with respect to the products specified in the Order Acknowledgement. All changes to an order must be received by Seller at least ten (10) days before shipment and requires Seller's written consent in the form of a revised Order Acknowledgment. Seller's consent to change orders may be given or withheld in Seller's sole discretion.
3. **Delivery:** The delivery terms of equipment purchased pursuant to the Agreement shall be designated in Seller's offer. Insurance for equipment shipped to Buyer, and the cost and risk of loss incurred during shipment, shall be at Buyer's sole expense and risk.
4. **Acceptance of Products:** Buyer, or any user receiving shipment on behalf of Buyer, shall inspect all products immediately upon receipt. Subject to Section 8.A., all products will be deemed to comply with the terms of the Agreement in all respects and to have been accepted by Buyer as delivered, unless Buyer notifies Seller in writing within thirty (30) days of delivery of any defect, shortage, or other failure to conform to the terms of the Agreement.
5. **Deposit; Payments:** Buyer agrees to pay a deposit to Seller at the time an order for equipment is delivered and in the amount required by Seller. The deposit will be applied against the purchase price, subject to these Terms and Conditions. Buyer agrees to pay Seller the full amount due as set forth on each Seller's invoice Buyer receives within thirty (30) days of invoice date, without setoff or deduction. Any amounts outstanding after the stated due date, which is net 30 days of invoice date, will be subject to a 2% per month (24% per annum or, if less, the maximum allowed by law) interest charge.
6. **Order Cancellations:** Unless Buyer orders a custom-made product ("Custom Product"), Buyer may cancel an order without payment of cancellation charges by providing written notice to Seller no later than ten (10) days before shipment. Seller's consent is required to cancel any order for Custom Products and to cancel an order less than ten (10) days before the scheduled shipment date. If Buyer cancels an order for Custom Order, Buyer agrees to pay a cancellation charge in an amount that will be determined by Seller in

accordance with the status of the job at the time of cancellation, which will at least 25% or more of the purchase price as determined by Seller, but in no event less than \$1,000. A "Custom Order" is any order for equipment that does not involve the sale of stocked pre-manufactured inventory.

7. Data Services:

- A. Description and application of data services.** Seller's data services gather data from equipment, processes that data and makes it available to customers in useful form through Seller's proprietary software and computer hardware resources, Seller's websites, and/or direct feed to Buyer's existing information systems. The services are not "airtime" or a simple telecommunications service. Seller consumes telecommunications service in order to collect data so that Seller can provide the service. Buyer is not a purchaser of telecommunications services, and Buyer acknowledges that Buyer has no contractual relationship or right with respect to any carrier providing telecommunications services. Any attempt by Buyer to connect the services to any non-approved data source that threatens the security and functionality of the service is a violation of the license terms.
- B. Access.** Subject to the terms of these Terms and Conditions, Seller will provide Buyer with access to the services on a non-exclusive, revocable basis, for use solely for Buyer's internal business purposes. Buyer shall not make its access credentials or otherwise allow access to any third party. Buyer is fully responsible for all use of services through its access credentials.
- C. Intellectual property rights.** All title and intellectual property rights in and to the services are owned or licensed by Seller. This Agreement grants Buyer no rights to any such intellectual property except for the limited rights expressly granted herein. Buyer will not reverse engineer, decompile or disassemble the service.
- D. Use and Support.**
1. Buyer is not licensed to, and may not, resell the services or act as a service bureau with respect to the services or any component thereof. All rights, including rights of use, not specifically granted under this Agreement are reserved by Seller. Buyer shall not resell data or information content, in any derivative work or application, accessible to anyone not directly employed by Buyer. Buyer agrees it will not attempt to obtain data from the Seller web sites except via normal rendering of HTML.

2. Buyer will not use the services: (i) in connection with the transmission, sale, license or delivery of any infringing, defamatory, offensive, or illegal products, services or materials; (ii) in any manner that threatens the integrity, performance, or availability of the services, including, without limitation, knowing transmission of any virus, worm, trojan, or other harmful code, attempting to gain unauthorized access to any systems or data, or engaging in any type of denial of service or other cyberattack on Seller's systems; or (iii) in violation of local, state, federal or equivalent privacy or other regulations.
3. To the extent that any data derived from products is considered personal data subject to privacy laws or regulations by any country in which the Equipment is used, Buyer represents and warrants that it has obtained and will continue to obtain, update, and maintain adequate consent from the individuals to whom such data relates for Seller to receive, process, and make such data available through the service.
4. Buyer's use of the service will be subject to data practices as set forth in the Seller's privacy statement as it may be posted from time to time on Seller's website. Except for third parties who are providing maintenance or support to the Equipment, Seller will not provide raw data derived from any Buyer products to third parties. However, Seller reserves the right to use the information generated from the data for statistical analysis or other industry purposes. Buyer understands that the technical processing and transmission of Buyer's electronic communications is fundamentally necessary to use of the service. Buyer expressly consents to Seller's interception, storage, analysis and archiving of electronic communications and/or Buyer data, and Buyer acknowledges and understands that Buyer's electronic communications will involve transmission over the internet, and over various networks, only part of which may be owned or operated by Seller. Buyer further acknowledges and understands that electronic communications may be accessed by unauthorized parties when communicated across the internet, network communications facilities, telephone or other electronic means. Seller is not responsible for any electronic communications and/or Buyer data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or

operated by Seller. Seller will endeavor to maintain Buyer data for availability by Buyer for two years after termination of the services.

5. Buyer agrees to accept the Seller website reports in their existing format and system architecture as such may be reasonably modified by Seller from time to time as provided below. Any customization of the products, services or reports is not included in the subscription fees.
6. Seller may, in its sole discretion, make feature or functionality updates to the services from time to time. Seller will provide advance notice of such service updates, and will make commercially reasonable efforts to identify service updates that may require modifications to Buyer's applications that interface with it. For those types of update (such as a major version release) that Seller reasonably believes will necessitate significant modification of interfacing applications of all users of the services, Seller will maintain the immediately previous version (one version back) of the service for no less than 12 consecutive months starting from the date of release of the new version. Buyer's failure to upgrade its interfacing applications to be compatible with the latest version of the service during this time may result in an interruption or termination of Buyer's access to the services without liability on the part of Seller.
7. Seller will make commercially reasonable efforts to maximize the availability of its web sites; however, Buyer acknowledges that system maintenance and backups, as well as server and network malfunctions, may and do occur and Seller will not be liable to Buyer for outages and service issues that occur despite Seller's commercially reasonable efforts, regardless of whether the causes of those outages were within Seller's actual or theoretical control.
8. Seller will provide reasonable technical support to Customer, limited to and consisting of general instructions for getting users started and connected with the Seller website. Seller assumes no responsibility to provide support for Buyer's applications or for Internet access issues or other issues not under Buyer's direct control.
9. Seller shall maintain storage of the data on its servers located in the United States. If Buyer requires storage in any other country, it shall request such storage of Seller and Seller will evaluate such request and let Buyer know the customization and charges that would be required for such storage.

- E. Term.** The duration of all new services shall be a minimum term of six (6) months and shall automatically renew from for such period until or unless either party gives notice to the other. Seller reserves the right to change rates and term duration at the end of any minimum term.
- F. Pricing.** Unless otherwise agreed by the parties in writing, service fees shall be specified in each order, except that fees for renewal terms may be adjusted by Seller for any subsequent term.
- G. Overages.** Buyer shall not be responsible for message overages, unless it uses any SIM card provided in connection with the services in an improper manner as determined in the sole discretion of Seller.
- H. Suspension.** Seller may, at its discretion and after written notice and without refund, suspend or disconnect Buyer's device(s) from the service if there is a breach of any of Buyer's obligations hereunder or reasonable cause to suspect fraudulent use of a payment card. If Buyer breaches any of its undertakings under these Terms and Conditions of if Buyer is using the services in a fraudulent, abusive or improper manner; unless the reason for such suspension or disconnection is cured to the reasonable satisfaction of Seller within thirty (30) days of such notice.
- I. Liability.** In addition to the limitations of liability contained elsewhere in these Terms and Conditions, Buyer shall not be liable for acts, omissions or failures of cellular/GSM operators or equipment failures or modifications.
- J. FAA.** No products or services provided pursuant to these Terms and Conditions have been FAA approved.
- K. Software.** "Software Components" means software and/or firmware programs or scripts embedded in the products or otherwise furnished with or in connection to the products by Seller, but does not include Seller's services. The Software Components are proprietary intellectual property owned by Seller or owned by a third-party provider and licensed to Seller. The Software Components shall remain the property of such owner. Buyer is only granted a personal, non-exclusive, non-transferable license to use the Software Components while resident on and in connection with the use of the products. Buyer shall not make any copies of the Software Components, download the Software Components off the products, reverse engineer or decompile the Software Components, or disclose the Software Components to any third party. Customer shall have no

rights in the Software Components except as expressly provided in this Section. To the extent that Buyer purchase products for resale to Buyer's customers, Buyer shall be permitted to sublicense the Software Components to its customers, but only on the same terms and subject to the same restrictions, stated in this Section.

8. Returns:

A. Warranty Returns. If a product fails to conform to Seller's Specifications (as defined in Section 9.A.), Buyer may return such product to Seller at any time prior to the product's specified expiration date or, if no expiration date is specified, within one year from the date of shipment of such product from Seller to Buyer. Upon receipt of a product returned in accordance with this Section 8.A., Seller shall, at Seller's election, either (1) refund the purchase price paid by Buyer for such product (without interest) or (2) repair and/or replace such product at no additional cost to Buyer. Repair or replacement shall be determined at Seller's sole discretion and Seller may use new or reconditioned replacement parts. The repaired or replaced product will remain under its original warranty period based on the original date of sale and the warranty period shall not recommence. The warranty is only valid and exercisable for the original Buyer and may not be assigned. Notwithstanding the foregoing, no warranty will apply to, and Buyer may not return, any product that, after shipment by Seller, has been modified or altered in any way or subjected to any misuse, neglect, accident, fire, flood or normal wear and tear, or installation or operation contrary to published specifications, improper or inadequate maintenance. All claims regarding any defect or failure of a product to conform to Seller's Specifications shall be deemed waived unconditionally and absolutely unless Seller receives written notice of such claim prior to the Product's specified expiration date or, if no expiration date is specified, within one year from the date of shipment of such product from Seller to Buyer.

B. Non-Warranty Returns. Except as provided in Section 8.A., Buyer may return products only on the following conditions: (1) returned products must be new and may not be Custom Products; (2) Buyer must notify Seller in writing of the return and ship the products to Seller or as directed by Seller, at Buyer's sole expense and risk, so that the returned products are received by Seller no later than 35 days after Seller's delivery of the products to Buyer; (3) on or before the return

date, Buyer must pay Seller a restocking charge equal to 15% of the purchase price for the returned products; and (4) Buyer must either return the products in their original packaging in reusable condition or pay an additional restocking charge as specified by Seller to replace the original packaging. If the purchase price for the returned products has been paid in full prior to the return date, the foregoing charges and any other amounts owed by Buyer to Seller will be deducted from the purchase price and the remaining amount will be remitted to Buyer.

C. This section does not affect the warranties under Section 9 below.

9. LIMITATION OF SELLER'S LIABILITY:

A. Seller makes no warranties, expressed or implied, with respect to the services provided or the products purchased hereunder, except that the products sold hereunder shall conform to Seller's written specifications for such products as in effect and provided to Buyer by Seller at the time of sale of such products to Buyer ("Seller's Specifications"). This warranty as to conformance with Seller's Specifications shall only apply to non-conformities which appear within one year from the date of delivery of the product.

B. SELLER'S WARRANTY SET FORTH IN SECTION 9.A. IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER WARRANTIES, REPRESENTATIONS, AND COVENANTS, EXPRESS OR IMPLIED, STATUTORY, UNDER COMMON LAW OR OTHERWISE. EXCEPT AS PROVIDED IN SECTION 9.A., SELLER MAKES NO, AND EXPRESSLY DISCLAIMS, AND BUYER HEREBY EXPRESSLY WAIVES, IN EACH CASE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL WARRANTIES, GUARANTEES, PROMISES, OR REPRESENTATIONS WITH RESPECT TO THE PRODUCTS OR SERVICES, WHETHER WRITTEN, ORAL, EXPRESSED, OR IMPLIED, AND WHETHER IN FACT OR BY OPERATION OF LAW, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR ANY WARRANTY OF NON-INFRINGEMENT (INCLUDING PATENT INFRINGEMENT, BOTH DIRECT AND

INDIRECT, AND INCLUDING BOTH CONTRIBUTORY AND INDUCING PATENT INFRINGEMENT). SELLER MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE OPERATIONS OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE AND SELLER MAKES NO WARRANTY THAT THE SERVICES WILL OPERATE PROPERLU AS INTEGRATED WITH BUYER'S SYSTEMS AND APPLICATIONS. BUYER ACKNOWLEDGES THAT TEMPORARY INTERRUPTIONS OF THE SERVICES MAY OCCUR FROM TIME TO TIME.

- C.** NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT OR THESE TERMS AND CONDITIONS, BUYER ASSUMES ALL RISK WHATSOEVER, AND SELLER (AND SELLER'S SHAREHOLDERS, DIRECTORS, MANAGERS, OFFICERS, EMPLOYEES, AND OTHER AFFILIATES (COLLECTIVELY, "SELLER'S AFFILIATES")) SHALL NOT BE LIABLE, FOR ANY LOSS, DAMAGE, OR LIABILITY OF ANY KIND WHATSOEVER (INCLUDING ATTORNEYS' FEES) IN ANY WAY DUE TO, RESULTING FROM OR ARISING IN CONNECTION WITH THE PRODUCTS SOLD TO BUYER OR SELLER'S PROVISION OF SERVICES TO BUYER, WHETHER SINGLY OR IN CONJUNCTION WITH ANY OTHER EQUIPMENT OR PROCESS OR SERVICES, AND REGARDELSS OF THE FORM OF ACTION, WHETHER IT BE IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) AND REGARDLESS OF WHETHER SUCH DAMAGES ARE FORESEEABLE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE LIABILITY OF SELLER AND SELLER'S AFFILIATES FOR ANY SERVICES OR FAILURE OF A PRODUCT TO CONFORM TO SELLER'S SPECIFICATIONS SHALL BE LIMITED EXCLUSIVELY TO, AT SELLER'S ELECTION, EITHER (1) REFUND OF THE PURCHASE PRICE PAID BY BUYER FOR SUCH PRODUCT OR SERVICES (WITHOUT INTEREST) OR (2) REPAIR OR REPLACEMENT OF SUCH PRODUCT (OR, IN THE CASE OF SERVICES, REPERFORMANCE OF SUCH SERVICES). IN THE EVENT A COURT OF COMPETENT JURISDICTION SHOULD RULE THAT SELLER OR ANY OF SELLER'S AFFILIATES IS ANSWERABLE IN DAMAGES

NOTWITHSTANDING THE LIMITATION OF LIABILITY SET FORTH HEREIN, THE AGGREGATE AMOUNT OF SUCH DAMAGES FOR WHICH SELLER AND SELLER'S AFFILIATES ARE LIABLE SHALL NOT EXCEED THE TOTAL OF ALL PAYMENTS MADE BY BUYER TO SELLER UNDER THE AGREEMENT WITH RESPECT TO THE RELEVANT PRODUCTS OR SERVICES. SELLER AND SELLER'S AFFILIATES SHALL IN NO EVENT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR FOR DIMINUTION IN VALUE, LOST PROFITS, OR LOST BUSINESS OPPORTUNITY DAMAGES OF ANY NATURE, ARISING OUT OF OR RELATING IN ANY WAY TO THE PERFORMANCE UNDER OR BREACH OF THE AGREEMENT OR THE PURCHASE OR SALE OR USE OF PRODUCTS OR SERVICES.

D. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, BUYER EXPRESSLY ACKNOWLEDGES THAT SELLER HAS TESTED THE PRODUCTS ONLY AS SET FORTH IN THE SELLER'S SPECIFICATIONS AND NOT FOR USE WITH OR INCORPORATION INTO ANY PARTICULAR APPLICATION, AND BUYER ASSUMES AND BEARS ALL RISK AND RESPONSIBILITY OF DETERMINING THE SUITABILITY OF THE PRODUCTS FOR THE PURPOSE INTENDED BY BUYER OR BUYER'S CUSTOMER AND THE APPROPRIATE PLACEMENT AND METHOD OF MOUNTING OF THE PRODUCTS. BUYER SHALL NOT MAKE ANY REPRESENTATION TO ANY THIRD PARTY (1) REGARDING THE RELIABILITY OR ACCURACY OF THE PRODUCTS EXCEPT AS EXPRESSLY SET FORTH IN SELLER'S SPECIFICATIONS OR (2) TO THE EFFECT THAT SELLER HAS TESTED THE PRODUCTS FOR THE USE INTENDED BY BUYER OR SUCH THIRD PARTY.

F. BUYER SHALL INDEMNIFY, DEFEND, AND HOLD SELLER AND SELLER'S AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, RESPONSIBILITIES, OBLIGATIONS, LIABILITIES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION ATTORNEY FEES, COURT COSTS, COSTS OF ALTERNATIVE

DISPUTE RESOLUTION PROCEEDINGS, AND COSTS OF SETTLEMENT) BROUGHT BY ANY PARTY REGARDING PRODUCTS SOLD BY SELLER AND INCORPORATED INTO OTHER ITEMS MANUFACTURED OR SOLD BY BUYER, INCLUDING BUT NOT LIMITED TO ANY CLAIM OF DIRECT OR INDIRECT PATENT INFRINGEMENT.

G. The limitations set forth in this Section 9 shall survive the termination of this Agreement.

10. **Patents and Infringement.** Seller shall, at its own expense, defend any suits that may be instituted against the Buyer for alleged infringement of United States patents to the extent relating to equipment which Seller manufactures and which is sold pursuant to the Agreement, provided such alleged infringement consists only in the use of such equipment itself and not as a part of any combination with other devices and parts, and provided the Buyer gives Seller immediate notice in writing of any alleged infringement and of the institution of any such suit and permits Seller, through its counsel, to answer the allegation of infringement and to defend such suit, and provided the Buyer gives all information, assistance, and authority required to enable Seller to so answer and defend. In case of a final award of damages in any suit Seller defends pursuant to this Section 10, Seller will pay such award, provided, however, that Seller shall not be responsible for any settlement compromise made without its written consent. If a claim of infringement is brought or threatened relating to Seller's provision of services, Seller shall at its sole option and expense, use commercially reasonable efforts either (a) to procure a license that will protect Buyer against such claim without cost to Buyer; (b) to modify or replace all or portions of services as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and refund Buyer a pro-rata refund of the service fees paid for under the Agreement for the terminated portion of the term. The rights and remedies granted Buyer under this paragraph state Seller's entire liability, and Buyer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party.
11. **Taxes:** In addition to the purchase price, Buyer is responsible for paying any and all taxes, tariff, duties, or imposts (including sales, use, occupation, or possessor taxes, or export or import tariffs or duties) (collectively, "Taxes") applicable to Buyer's purchase of the Products. For shipments to addresses located within the United States, Seller's

invoice shall include Seller's good faith estimate of any Taxes to be paid by Buyer (unless, prior to the date of shipment, Buyer furnishes Seller with tax-exemption certificates acceptable to the applicable taxing authorities). Buyer shall promptly pay any Tax (including any penalty for non-payment) that is not reflected in the applicable invoice but is later determined to be due. For shipments to addresses located outside the United States, Seller will not be responsible for estimating applicable VAT, PST, HST, GST, and similar Taxes or other charges, and all such Taxes and charges, along with any applicable brokerage fees, will be the sole responsibility of Buyer and due at the time of delivery.

12. **Confidential Information:** All confidential information, written or oral, provided by Seller to Buyer relating to the products or services furnished pursuant to the Agreement is deemed proprietary to Seller, and shall not be reproduced or duplicated by Buyer without the prior written consent of Seller except as provided in Section 7.D.4. or this Section 12. Applicable written information will be marked "Confidential" by Seller and any verbal discussions about that information, whether between Seller and Buyer or internally among Buyer's employees, agents or representatives is considered oral confidential information. Buyer shall prevent the disclosure of any confidential information to any third party, and shall disclose such information only to those employees of Buyer whose function necessitates their knowledge of such information.
13. **Governing Law; Venue; Waiver of Jury Trial:** THIS AGREEMENT IS GOVERNED IN ITS INTERPRETATION, PERFORMANCE, AND ENFORCEMENT BY THE LAWS OF THE STATE OF TEXAS. Subject to Section 21, Buyer agrees to submit to the non-exclusive jurisdiction of the courts located within the County of Dallas, State of Texas, provided that any lawsuits or other claims brought by Buyer must be brought exclusively within the County of Dallas, State of Texas. Buyer hereby consents and submits to the exclusive in personam jurisdiction of such courts, waive any objection based on forum non conveniens and waive any objection to venue of any action instituted hereunder to the extent that an action is brought in the courts identified above. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BUYER AND SELLER HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS

AGREEMENT, ANY INDEMNITY, OR ANY OF THE PRODUCTS OR SERVICES TO BE PROVIDED HEREUNDER.

14. **Resale.** Purchases of products are intended for end users and are not authorized for resale, except with the specific authorization of Seller and in accordance with the following terms: (1) Any repurchase of products is specifically subject to these Terms and Conditions and any re-purchaser shall be bound to these Terms and Conditions to the same extent as if such re-purchaser is a Buyer, (2) Buyer is responsible for complying with all applicable laws and regulations of the country for which the Products are destined, (3) Buyer shall remain fully liable for the compliance of any re-purchaser with these Terms and Conditions and agrees to indemnify and hold harmless Seller from all damages, losses, costs or expenses incurred by Seller arising in any manner from any act of omission on the part of any of Buyer's re-purchasers and for any violation by Buyer of this Section 14, (4) Buyer will comply at all times with any laws, regulations, rules and guidelines dealing with the export, re-export, or transfer of goods, software and technology to the extent related to the products and services sold hereunder, (5) Buyer will comply at all times with any and all aspects of the Foreign Corrupt Practices Act of 1977 and (6) Buyer will make no representations or warranties with respect to the Products beyond those made by Seller.
15. **Force Majeure:** Any delay by Seller in furnishing equipment or services pursuant to the Agreement or in performing any of its obligations hereunder shall be excused and shall not allow the Buyer to terminate the Agreement, nor to delay payment or performance, nor to take any other contractual action, including imposition of liquidated or actual damages, if such failure to perform arises out of causes beyond the reasonable control of Seller. Such causes include, but are not limited to, acts of God or of the public enemy, acts of any foreign or domestic government body in either the sovereign or contractual capacity, war, fires, earthquakes, floods, epidemics, labor disturbances, strikes, freight embargoes, severe weather, mobilization or military call-up, confiscation, revolt or riot, or delays or defaults of subcontractors. In the event of a delay as described in this Section 15, an appropriate adjustment of the delivery schedule set forth in the Agreement shall be made. In the event the delay described continues for a period of six (6) months or more, Seller may terminate this Agreement without further liability to Seller, subject to any terms hereof that survive termination.
16. **Buyer's Default:** If Buyer fails to pay or perform any of its obligations under the Agreement, advises Seller of its intention not to pay or perform any of such obligations,

or otherwise appears unable to so pay or perform, Seller may give Buyer written notice of default. If, within ten (10) days of receipt of such notice, Buyer has not corrected such failure to pay or perform or has not otherwise given Seller adequate assurance of payment or performance, Seller may, in its sole discretion, declare the Agreement terminated (subject to the survival of any provisions hereof which survive termination), stop all further performance, and elect either of the following remedies:

- A.** Hold Buyer liable for (i) all costs committed or incurred by Seller up to the date of termination, (ii) all costs incurred by Seller in connection with or as a result of such termination, (iii) the profit which Seller would have realized on completion of performance (such profit shall be calculated from actual costs incurred plus Seller's estimated cost to complete its performance of the Agreement (if such computation results in a projected loss, zero profit shall be assumed and no reduction of the sums set forth in (i), (ii), and (iii) shall be made), and (iv) all fees and expenses, including reasonable attorney's fees, court costs, collection agency fees, incurred by Seller in the collection of this amount. Buyer, upon payment of the assessments set forth above, shall be entitled to possession of any hardware items which are complete on the date of such termination. All incomplete hardware and all data and software shall remain the property of Seller; or

- B.** Retain all equipment, data and software manufactured as of the date of termination. In such event, Seller's damages will be difficult or impossible to determine, and in lieu of any actual damages, Buyer shall pay to Seller, as liquidated damages and not as a penalty, a sum equal to ten percent (10%) of the total contract price, plus any and all fees and expenses, including attorney's fees, incurred by Seller in the collection of such sum.

Nothing in the Agreement or in this Section 16 shall be construed as limiting Seller's remedies for breach, and Seller may, in addition to the remedies set forth in this Section 16, exercise any and all other rights and pursue any and all other remedies available under applicable law.

17. **Assignment:** Buyer shall not assign the Agreement or any rights or obligations under the Agreement without the prior written consent of Seller, and no purported assignment by Buyer shall be binding on Seller without such prior consent.

18. **Publicity:** Buyer shall not make or authorize any news release, advertisement, or other disclosure using Seller's name without Seller's prior written approval.
19. **Separability:** If any portion of these Terms and Conditions is found by any court or other judicial or administrative authority to be unenforceable or otherwise void, the remaining provisions of the Agreement shall not be affected thereby, and shall remain in full force and effect.
20. **Waiver:** The failure of Seller to insist on the performance of any obligation of Buyer hereunder shall not be construed as a waiver by Seller of such obligation or any other obligation of Buyer hereunder, and the same shall remain an obligation of Buyer.
21. **Dispute Resolution:** Buyer agrees that, prior to initiating any lawsuit, arbitration or other civil action against Seller for any concerns or problems about the Agreement(s), or for any other reason, Buyer must first:
 - A. Notify Seller in writing, delivered by certified mail, return receipt requested, or by personal service, of the nature of any claim, error or omission, problem or issue ("Problem"), and briefly describe the Problem in sufficient detail to determine the general nature of the Problem and any damages claimed to have been caused by the Problem. Buyer will then allow Seller thirty (30) days to access the problem and fifteen (15) days to communicate with Buyer to resolve the problem.
 - B. In the event Seller denies liability for the Problem or Buyer disagrees with Seller's proposed solution to the Problem, Buyer expressly agrees to participate in good faith in mediation conducted by a mutually acceptable third party in Dallas, Texas, before exercising its rights under Texas law. In the event the parties reach a successful conclusion, in whole or in part, the agreement thereby shall be reduced to writing by the mediator and the parties shall each sign it and it shall be binding upon the parties. Either party may enter the agreement with a court of competent jurisdiction for enforcement if necessary.
 - C. In the event the parties fail to resolve their dispute by mediation or mediation is not completed within forty-five (45) days of commencement, then Buyer and Seller specifically agree to submit the dispute to binding arbitration in Dallas, Texas, in accordance with the rules of the American Arbitration Association. If the dispute is for less than \$25,000, arbitration will be by a single independent arbitrator. If the parties cannot agree on the arbitrator, they agree to let the

American Arbitration Association assign an independent arbitrator. If the dispute is in the amount of \$25,000 or greater, then arbitration will be by a panel of three arbitrators. When a panel of three arbitrators is used, each of the parties shall name one arbitrator. The third arbitrator shall be selected by the two named arbitrators from the list of the current active members of the American Arbitration Association. The parties agree that discovery shall be limited to only those facts and issues needed to resolve the Problem described in Section 21.A. The arbitration shall be binding, final, not appealable, enforceable and in lieu of any right to sue or seek other arbitration in any court or tribunal. Attorney fees and costs may be awarded at the discretion of the arbitrator. In no instance may punitive or exemplary damages be awarded. Any award hereunder shall be construed in strict accordance with Texas law. Notwithstanding the foregoing, either party shall be entitled to apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, permanent injunction or other equitable relief, without breach of this arbitration provision.

22. **Complete Agreement:** There are no oral agreements between the parties. The Agreement, including these Terms and Conditions, constitutes the entire agreement and understanding of the Buyer and Seller as to the subject matter hereof and shall replace and supersede all prior or contemporaneous agreements, written or oral, as to such subject matter. No addition to or modification of the Agreement or of these Terms and Conditions shall be binding upon Seller unless in writing and signed by an authorized representative of Seller. If Buyer believes that it is entitled or obligated to act in a manner that is contrary to these Terms and Conditions and mandatory law, Buyer agrees to provide Seller with a detailed and substantiated explanation of its reasoning in writing at least thirty (30) days before it acts contrary to the Agreement and these Terms and Conditions, to allow Seller to access whether it may, at its sole discretion, provide an alternative remedy for the situation, though it is under no obligation to do so.
23. **Headings:** The headings to the foregoing paragraphs are for convenience or reference only and do not form a part of the Agreement and shall not in any way affect the interpretation thereof.
24. **Notices:** Unless otherwise expressly agreed in writing, all notices and other communications required or permitted to be made under the Agreement shall be in writing (including by facsimile transmission) delivered to the address specified for notices in the Order Acknowledgement or such other address as shall be designated by

Buyer or Seller in a written notice to the other party. All such notices shall be deemed to have been given or made upon the earliest to occur of (i) actual receipt by the intended recipient or (ii) (A) if delivered by hand or courier, when signed for by the designated recipient; (B) if delivered by mail, four business days after deposit in the mail, postage prepaid; or (C) if delivered by facsimile when sent and receipt has been confirmed by telephone. Electronic mail (email) shall be allowed only for routine communications and not for any other purpose.

Notices shall be addressed to the following recipient:

ShockWatch, Inc.

Attn: CFO

5501 LBJ Freeway

Suite 350

Dallas, TX 75240

(214) 630-9625 phone

(214) 638-4512 fax

25. **Legal/Export Compliance.** In the case of an international sale, that is, one in which Buyer has designated a destination address for products that is outside the United States, Seller shall be responsible for obtaining any required export licenses from the United States Government to cover such sale to such designated destination. Customer shall be responsible for obtaining from any government all necessary licenses and permission to import the products to such designated destination. Customer shall not violate the terms of the applicable export license, divert or suffer the diversion of any shipment of products from its designated destination and shall not otherwise export (as the term is defined in applicable United States laws), re-export, re-import, or forward any of the products without all necessary licenses from the United States Government and any other government with jurisdiction over such transaction. Buyer represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, (ii) Buyer shall not permit users to access or use the service or purchase products in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which its Users are located.