

## **OnStarboard LLC**

**Last Modified April 9, 2024**

### **SUBSCRIPTION AGREEMENT**

This Subscription Agreement (“Agreement”) is an agreement between you (“Client”), the purchaser of the Offer, and OnStarboard LLC (“Provider”), a registered limited liability company in the state of Arizona. If Client is purchasing a Subscription on behalf of a company or organization, Client certifies that Client is authorized to agree to this Agreement and enter into a binding agreement on behalf of such organization. “Client” as used in this Agreement will mean all authorized users within your organization. By purchasing a Subscription for the Product, Client is agreeing to and accepting the terms of this Agreement. Do not purchase a Subscription for the Product if Client not willing to accept the Agreement.

#### **1. DEFINITIONS**

- 1.1.** “Affiliate” means, with respect to a Party, any entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control, with such Party, in whole or in part.
- 1.2.** “Product” means the digital goods, data, files, and application programming interface (API) inclusive of their contents and results, offered by Provider and any other data, including any revisions, updates, modifications, enhancements, and additional data Provider provides under this Agreement.
- 1.3.** “Offer” means the subscription for the Product provided by Provider, as set forth in the detail and description of the Product and subject to the terms and conditions of the Agreement.
- 1.4.** “Proprietary Rights” means all intellectual property and proprietary rights throughout the world, whether now known or hereinafter discovered or invented, including, without limitation, all: (a) patents and patent applications; (b) copyrights and mask work rights; (c) trade secrets; (d) trademarks; (e) rights in data and databases; and (f) analogous rights throughout the world.
- 1.5.** “Subscription” means the Client’s entitlement to the Product for the Term listed and provided by Provider under the terms of this Agreement.

#### **2. TERM AND TERMINATION**

- 2.1.** The term (“Term”) of the Agreement shall begin on the date of subscription purchase and continue until the conclusion of the Subscription, unless terminated earlier by either Party as provided by this Agreement.
- 2.2.** Client may terminate this Agreement at any time for convenience upon written notice. Client will not be entitled to a refund for any unused portion of the Subscription. Upon

termination or expiration of a Term, Client must immediately cease use of the Product and destroy all copies of the Product.

**2.3.** Either party may immediately terminate this Agreement by written notice if the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after receipt of such notice, or an additional period of time as agreed to by the parties. Client will not be entitled to a refund for any unused portion of the Subscription.

**2.4.** Provider may suspend Client's right to access or use any portion or all of the Subscription service immediately upon notice to Client if Client's use of the Subscription poses a material risk to the security or operation of the Provider's systems, the Client's use violates this agreement, or if Client fails to pay any amounts after 30 days of being due. Provider will promptly restore the service to the Client upon resolution of the issue and/or payment of the outstanding amounts.

### **3. USAGE RIGHTS**

**3.1. License.** Provider grants Client a limited, non-transferable, non-exclusive license ("License") to possess and use the Product purchased by Subscription hereunder at a Client facility, subject to the terms of this Agreement. Provider will provide Product access keys and other documentation necessary for such access and use of the Product. The Product is licensed for the term of the Subscription. Provider retains all right, title, ownership, and interest in and to the Product, and Client has no rights in the Product except as provided herein. Client is entitled to have the Provider delete or replace keys upon written request and Provider will comply within 30 days.

**3.2. License Renewal.** If the Subscription for a data file Product is renewed prior to the end of the term, the renewed subscription term shall begin on the expiration date of the prior term. Updates and upgrades to the Product may be offered as new versions of the Product as they become commercially available. The subscription for data file Products is not auto-renewable and will not be updated automatically. If Client wishes to receive new data file versions as they become available, Client must elect to update Client's Product by purchase of a new Subscription.

**3.3. Permitted Use.** Except as described in Section 3.4 (Restrictions), the Product may be used in 1 (one) commercial software application per Subscription of Client's choice created by Client's own organization.

#### **3.4. Restrictions.**

**3.4.1.** Client shall not reverse engineer, decompile or disassemble the Product. Client shall not claim ownership or other proprietary rights statements about the Product.

**3.4.2.** Client shall not copy, translate, modify, or create a derivative work (including creating or contributing to a database) of, or publicly display any Product or any part

thereof. Client shall not export, transfer, or save the Product to any third party. Client shall not scrape data from an API Product.

**3.4.3.** Client is not permitted to use the Product as part of an application programming interface (API), software development kit (SDK), or any other means of redistribution that enables multiple applications to share a common license. Affiliate and subsidiary organization applications shall require their own license.

**3.4.4.** Location coordinates contained within the Product, latitude and longitude, shall not be publicly displayed, downloadable, or accessible to any third party or application user under any circumstance.

**3.4.5.** Client and Client's Affiliates shall not attempt to recreate or replicate the Product, in whole or in part.

**3.4.6.** If the Client allows Affiliates (including Contractors) access to the Product for a Permitted Use: (a) Client remains responsible for all obligations hereunder arising in connection with such Affiliate's and processing of the Product, including safeguarding of API keys; and (b) Client agrees to be directly liable for any and all acts and omissions by such Affiliate to the same degree as if the act or omission were performed by the Client such that a breach by an Affiliate of the provisions of this Agreement will be deemed to be a breach by the Client. The performance of any act or omission under this Agreement by an Affiliate for, by or through the Client will be deemed the act or omission of the Client.

**3.4.7.** U.S. Government Restricted Rights. If the Product is being used or accessed by or on behalf of the United States government, such use is subject to the following additional terms. As defined in FARS §2.101, the Product constitutes "commercial items". Consistent with FARS §12.212 and DFARS §227.7202, any use, modification, reproduction, release, performance, display, or disclosure of such commercial Product by the U.S. government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

**3.4.8.** The Product is not designed or developed for use in high risk, hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, or weapons systems, or any other application in which the failure of the Product could lead to severe physical or environmental damages.

**3.5. Destruction.** Except as provided herein, Client must cease use and destroy the Product, including any copies, upon the earlier of: (i) termination of the Agreement; or (ii) expiration of the license period described above. Client is solely responsible to keep record of the expiration date and comply with the destruction requirements on the date of termination or expiration. Upon request, Client will provide written certification of destruction to Provider.

**3.6.Laws; Regulations.** Client will comply with applicable laws, rules and regulations governing use of the Product, including, without limitation, any data protection or privacy laws. Client will be solely responsible for the Product and will comply with all laws, rules and regulations relating to the use, disclosure and transmission of such Product.

**4. TAXES.** The subscription fees do not include any amount for taxes unless specifically noted. Client will pay all federal, state and local sales, use, property, excise, privilege, ad valorem, Internet-related, and other taxes imposed on or with respect to this Agreement for the Product licensed hereunder.

## **5. WARRANTIES.**

**5.1.Mutual Warranty.** Each Party represents and warrants that: (a) it has full power and authority to enter in and perform this Agreement and that the execution and delivery of this Agreement has been duly authorized; and (b) this Agreement and such Party's performance hereunder will not breach any other agreement to which the Party is a party or is bound or violate any obligation owed by such Party to any third party, and (c) the Agreement does not violate any law, statute, or regulation.

**5.2.Warranty Exclusions.** Provider will have no liability or obligation with respect to any warranty to the extent any nonconformity is attributable to any: (a) use of the Product by the Client in violation of this Agreement or applicable law; or (b) modifications to the Product made by the Client or its personnel; where in each of (a) and (b) such nonconformity would not have occurred absent such use or modification by the Client.

**5.3.Warranty Disclaimers.** EXCEPT FOR THE WARRANTIES SPECIFIED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, REGARDING THE PRODUCT, AND EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. Provider does not warrant: (a) that the Product will meet the Client's requirements; or (b) that the Product will be accurate, uninterrupted, error-free, complete, or up-to-date. The Product is provided "as-is". Product that contains location based information is for reference purposes and not an absolute location, implied or otherwise, for any physical feature.

**5.4.Remedies.** Provider's sole obligation and Client's exclusive remedy for any claim of defective Product is to correct or re-deliver, as applicable, the Product in question without charge. The Client shall agree that it is up to Provider's sole discretion to determine the reasonableness of the Product deemed defective and the timeline to make corrections. Missing Product or location based Product, whose reference point has been moved or altered is not considered defective. Client must provide written notice to Provider of any such claim in sufficient detail with any necessary backup information or

documents. With respect to the Product, Client acknowledges that some corrections of errors in the Product are dependent on the availability of the applicable data.

**6. PROPRIETARY RIGHTS.** Provider will retain all right, title and interest it may have in and to the Product, including all Proprietary Rights therein. Nothing in this Agreement will be construed or interpreted as granting to the Client any rights of ownership or, except as expressly provided herein, any other Proprietary Rights in or to the Product. If the Client provides any suggestions, ideas, enhancement requests, recommendations, or feedback regarding the Product (“Feedback”), Provider may use, incorporate, and otherwise practice Feedback in any products and services. The Client had no obligation to provide Feedback, and all Feedback is provided by the Client “as is” and without warranty of any kind.

## **7. CONFIDENTIALITY.**

**7.1. Confidential Information.** “Confidential Information” means the Product (including the selection, arrangement, and compilation thereof) and any nonpublic information directly or indirectly disclosed or made accessible by Provider to the Client pursuant to this Agreement that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information will not, however, include any information which: (a) was publicly known or made generally available to the public prior to the time of disclosure; (b) becomes publicly known or made generally available after disclosure through no fault of the Receiving Party; (c) is in the possession of the Receiving Party, without restriction as to use or disclosure, at the time of disclosure by the Disclosing Party; (d) was lawfully received, without restriction as to use or disclosure, from a third party (who does not have an obligation of confidentiality or restriction on use itself); (e) is developed by the Receiving Party independently from this Agreement and without use of or reference to the Disclosing Party’s Confidential Information or Proprietary Rights; or (f) was required by law or regulation to be disclosed by the Client to the extent so disclosed. Except for rights expressly granted in this Agreement, each Party reserves all rights in and to its Confidential Information.

**7.2. Obligations.** The Client agrees not to use or disclose the Confidential Information other than as expressly authorized by this Agreement. The Client agrees to safeguard the Confidential Information against unauthorized use or disclosure with means at least as stringent as those it uses to safeguard its own confidential information, and in no event with less than reasonable means. The Client will promptly provide notification if it becomes aware of any unauthorized use or disclosure of the Confidential Information, and reasonably cooperate in attempts to limit disclosure. If and to the extent required by law, the Client may disclose or produce Confidential Information but will give reasonable prior notice (and where prior notice is not permitted by applicable law, notice will be given as soon as the Client is legally permitted) to Provider for the purpose of intervening and to request protective orders or confidential treatment therefore or other appropriate remedy regarding such disclosure.

**7.3. System Data.** “System Data” means data and data elements (other than Client Data) collected by the Product, service or Provider’s computer environment regarding

configuration, environment, usage, performance, vulnerabilities and security of the Product or service that may be used to generate logs, statistics and reports regarding performance, availability, integrity and security of the Product or service. Provider may only collect and use identifiable System Data internally to administer, provide and improve the Product and services as a generally available service offering, to identify opportunities for Client to optimize its use of the Product, including the provision of additional training, and to identify to Client complementary uses of Provider's other products and services. Provider will not target any data analysis at, or otherwise use any identifiable System Data to derive or attempt to derive information regarding, Client and its Affiliates, their businesses, operations, finances, users, customers, prospective customers, suppliers or other persons interacting with Client and its Affiliates. Provider will not target any development efforts arising from its use of identifiable System Data at any person on the basis of the intended recipient's relationship with Client or any of its Affiliates or the intended recipient being in same industry or market as Client or any of its Affiliates. Provider will not use or disclose any identifiable System Data for any purpose other than as permitted in this Section unless otherwise agreed in writing by the Parties, and will, except for the use permitted in this Section, maintain the confidentiality and security of identifiable System Data as confidential information.

## **8. LIMITATION OF LIABILITY.**

**8.1.Disclaimer.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF INCOME, REVENUE, OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, TORT OR OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**8.2.General Cap.** NEITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES THAT ARISE OUT OF OR ARE RELATED TO THIS AGREEMENT SHALL EXCEED THE FEES PAID BY THE CLIENT UNDER THIS AGREEMENT.

**8.3.Exceptions.** The exclusions of or limitations on liability set forth in Section 8.1 and 8.2 will not apply to damages or liability arising from a Party's gross negligence, willful misconduct, fraud, or violation of law. The limitations on liability set forth in Section 8.2 will not apply to: (a) A Party's defense and indemnification obligations hereunder; or (b) a Party's breach of the confidentiality requirements under this agreement. "Gross negligence" shall mean the intentional failure to perform a manifest duty in reckless disregard of the consequences. Each Party shall have a duty to mitigate damages for which the other Party is responsible.

## **9. INDEMNIFICATION.**

**9.1.General Indemnity.** Each party will, at its expense, indemnify, defend and hold the other party harmless and each other's respective officers, directors, employees, agents, representatives, successors, and assigns from and against any and all claims, actions,

proceedings, and suits brought by a third party, and any and all associated liabilities, losses, damages, settlements, penalties, fines, deficiencies, judgments, awards, costs, and expenses of whatever kind, including reasonable attorneys' fees, to the extent arising out of or relating to (a) any actual or alleged failure to obtain and hold sufficient legal right and any consents, authorizations, and other rights and permissions necessary to transmit to, or provide access to the Product for the purposes set forth in this Agreement and to authorize Client to access and use the Product as set forth in this Agreement (without any payment by Client to any third party and without the need for Client to clear or obtain additional rights to access and use the Product as authorized hereunder); (b) any actual or alleged infringement, misappropriation, or violation of any Proprietary Rights, right of publicity, or privacy or other rights of a third party by the Product or Client's exercise of its rights under this Agreement; (c) any Product that actually or allegedly is libelous, defamatory, obscene, or unlawful; or (d) any Product that actually or allegedly does not include all information and disclosures required by applicable laws and regulations.

**9.2. Indemnification Process.** The party(ies) seeking indemnification pursuant to this Section 9 (Indemnification) will give the other party (or its successor or assign), as the indemnifying party pursuant to Section 9.1 (General Indemnity), sole control over the defense and/or settlement of each Claim (subject to the provisions of this Section 9.2 (Indemnification Process) below), prompt notice of each Claim for which it seeks indemnification, provided that failure or delay in providing such notice will not release the Indemnifying Party from any obligations hereunder except to the extent that the Indemnified Parties will give the Indemnifying Party their reasonable cooperation in the defense of each Claim for which indemnity is sought, at the Indemnifying Party's expense. The Indemnifying Party will keep the Indemnified Parties informed of the status of each Claim. Notwithstanding anything to the contrary, an Indemnified Party may participate in the defense at its own expense. The Indemnifying Party, without the Indemnified Parties' prior written consent: (a) will not enter into any settlement that (i) includes any admission of guilt or wrongdoing by any Indemnified Party, (ii) imposes any financial obligations on any Indemnified Party that Indemnified Party is not obligated to pay under this Section 9 (Indemnification), (iii) imposes any non-monetary obligations on any Indemnified Party, and (iv) does not include a full and unconditional release of any Indemnified Parties; and (b) will not consent to the entry of judgment, except for a dismissal with prejudice of any Claim settled as described in clause (a) of this Section 9.2 (Indemnification Process). The Indemnifying Party will ensure that any settlement into which it enters for any Claim is made confidential, except where not permitted by applicable law.

**9.3. Infringement Remedy.** In addition to obligations under Section 9.1 (General Indemnity), if the Product is held, or in Provider's opinion is likely to be held, to infringe, misappropriate, or violate any Proprietary Rights or other rights of a third party, or, if based on any claimed infringement, misappropriation, or violation of any Proprietary Rights or other rights of a third party, an injunction is obtained, or in Provider's opinion an injunction is likely to be obtained, that would prohibit or interfere with Client's use of the Product under this Agreement, then Provider will at its expense either: (a) procure for Client the right to continue using the affected Product in

accordance with the authorization provided under this Agreement; or (b) modify or replace the affected Product so that the modified or replacement Product are reasonably comparable and do not infringe, misappropriate, or violate any Proprietary Rights or other rights of a third party. If, in such circumstances, Provider does not successfully accomplish any of the foregoing actions on a commercially reasonable basis, either Party may terminate the Subscription and this Agreement and Provider will refund to Client all prepaid, unused amounts for the Subscription beginning at the time the cause of action giving rise to the infringement or misappropriation claim first arose.

**9.4. Limitations.** Provider will have no liability or obligation under this Section 9 (Indemnification) with respect to any infringement or misappropriation Claim to the extent attributable to any modifications to the Product by Client or its Personnel or use of the Product by Client in breach of this Agreement, where such infringement Claim would not have arisen absent such modification or use.

**10. FORCE MAJEURE.** Neither Party will be liable hereunder for any failure or delay in the performance of its obligations in whole or in part, on account of causes beyond its reasonable control. This includes riots, fire, flood, earthquake, explosion, epidemics, war, strike, or labor disputes (not involving the Party claiming force majeure), embargo, civil or military authority, act of God, governmental action, or other causes beyond its reasonable control and without the fault or negligence of such Party.

**11. INDEPENDENT CONTRACTOR.** Each party will act as an independent contractor and employees of each party will not be considered to be employees of the other party. No agency, partnership, joint venture or other joint relationship is created by this Agreement. Neither party may make any commitments binding on the other, nor may either party make any representation that they are acting for, or on behalf of, the other.

**12. MARKETING.** Provider may include Client on its client list in presentations, white papers, website, or reports made to clients or potential clients, provided no representation, express or implied, is or will be made as to Client's opinion of Provider's products. Any proposed press releases, advertising, or other promotional materials that use the other party's name or trademark must be sent to the other party for approval.

**13. ASSIGNMENT.** Neither Party may assign or transfer this Agreement or any rights or delegate any duties herein without the prior written consent of the other Party, which will not be unreasonably withheld, delayed, or conditioned. Notwithstanding the foregoing, and without gaining the other Party's written consent, either Party may assign this Agreement, in whole or part, and delegate its obligations to its Affiliates or to any entity acquiring all or substantially all of its assets or the assigning Party's entire business, whether by sale of assets, sale of stock, merger, or otherwise. Any attempted assignment, transfer, or delegation in contravention of this Section 13 (Assignment) will be null and void. This Agreement will inure to the benefit of the Parties hereto and their permitted successors and assigns.

**14. APPLICABLE LAW.** This Agreement will be governed by, and construed in accordance with, the laws of the State of Arizona without regard to its principals of conflict of laws. In the event of any dispute arising out of or relating to this Agreement, a suit will be brought



only in a federal or state court of competent jurisdiction located in Maricopa County in the State of Arizona.

- 15. NOTICES.** To be effective, notice under this Agreement must be given in writing. Each Party consents to receiving electronic communications and notifications from the other Party in connection with this Agreement. Each Party agrees that it may receive notices from the other Party regarding this Agreement: (a) by email to the email address designated by such Party as a notice address for the Offer; (b) by personal delivery; (c) by registered or certified mail, return receipt requested; or (d) by nationally recognized courier service. Notice will be deemed given upon written verification of receipt.
- 16. SURVIVAL OF TERMS.** Any provision of this Agreement which contemplates performance or observance subsequent to any termination of this Agreement, including all provisions with respect to payment of accrued amounts, intellectual property and transition, confidentiality, limitation of liability, and indemnification, shall survive any termination of this Agreement and continue in full force and effect.
- 17. HEADINGS; CONSTRUCTION.** The headings throughout this Agreement are for reference purposes only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement. As used herein, (a) the terms “include” and “including” are meant to be inclusive and shall be deemed to mean “include without limitation” or “including without limitation,” (b) the word “or” is disjunctive, but not necessarily exclusive, (c) words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa, (d) references to “dollars” or “\$” shall be to United States dollars, and (e) all references to days, months or years shall be deemed to be preceded by the word “calendar.”
- 18. NO THIRD PARTY BENEFICIARIES.** No provision of this Agreement, express or implied, is intended to confer rights or other benefits to any third party.
- 19. MODIFICATION, SEVERANCE, AND NONWAIVER.** The Agreement may only be amended in writing. If any one or more of the provisions of the Agreement shall for any reason be held to be invalid or unenforceable, the same shall not affect any of the other portions thereof. Failure or delay by either party in exercising any right hereunder shall not operate as a waiver of such right.
- 20. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and there are no other representations, understandings or agreements between the Parties relating to the subject matter hereof. This Agreement supersedes all proposals, purchase orders, prior agreements or communications related thereto. This Agreement also supersedes any preprinted terms contained on a purchase order or similar document issued by Client and any such terms will have no force or effect. Client has not been induced to enter into this Agreement by any representations or promises not specifically stated herein.