

OnStak End User License Agreement

DRAFT — FOR LEGAL REVIEW. NOT FOR EXECUTION. Bracketed items [] require confirmation by counsel.

READ CAREFULLY: EXCEPT AS OTHERWISE EXPRESSLY AGREED IN WRITING BETWEEN YOU AND ONSTAK, ONSTAK AUTHORIZES USE OF ITS PRODUCTS ONLY ON THE CONDITION THAT THE CUSTOMER/END USER ACCEPTS ALL THE TERMS CONTAINED OR REFERENCED IN THIS AGREEMENT. BY AGREEING TO THESE TERMS, YOU ACKNOWLEDGE AND AGREE THAT YOU: HAVE READ AND UNDERSTOOD THE TERMS; HAVE THE LEGAL AUTHORITY TO ACT ON BEHALF OF AND BIND YOUR COMPANY OR OTHER LEGAL ENTITY TO THESE TERMS; AND ARE BINDING YOUR COMPANY OR OTHER LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS OR DO NOT HAVE THE AUTHORITY TO ACT ON BEHALF OF AND BIND YOUR COMPANY OR OTHER LEGAL ENTITY, NEITHER YOU NOR THE COMPANY (OR OTHER LEGAL ENTITY) MAY INSTALL, DOWNLOAD, ACCESS, COPY OR USE THE ONSTAK SOLUTION, IN WHOLE OR IN PART, OR ANY RELATED PRODUCTS, SERVICES, OR MATERIALS.

This OnStak End User License Agreement is a legal agreement between your company or other legal entity (referred to in this Agreement as “Customer”) and OnStak, Inc., a [California] corporation, and its affiliates (each and collectively referred to in this Agreement as “OnStak”). OnStak’s principal place of business is 1525 McCarthy Blvd, Suite 1230, Milpitas, CA 95035, USA. In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

1 Definitions.

- 1.1** “OnStak Solution” means OnStak’s proprietary software solution consisting of the Software components described below, whether provided as an onsite solution or as Hosted Solutions (as defined hereafter), as further detailed in the Purchase Order. Unless stated specifically otherwise in this Agreement, the term OnStak Solution shall refer jointly to all the applicable OnStak Solution licensed by the Customer in the Purchase Order, whether the onsite solution, the Hosted Solutions, or both.
- 1.2** “Authorized Reseller” means any third party authorized by OnStak to sell OnStak’s Solution and/or Software to third parties.
- 1.3** “Documentation” means user manuals and any other technical documentation made available to Customer by OnStak, whether in hard copy or electronic form.
- 1.4** “Purchase Order” means the form evidencing the agreed on purchase details, whether online (including through a marketplace or website) or in written form, specifying, among other things, the specific type of Software purchased or licensed by Customer, the applicable prices, payment terms, maintenance and support package (if applicable), and other terms as agreed to between the parties, each such Purchase Order to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Purchase Order, the terms of this Agreement shall prevail).
- 1.5** “Hosted Solutions” means OnStak’s proprietary software solution provided as a Software-as-a-Service solution through a Service Hosting Facility (as the name may be changed from time to time by OnStak).
- 1.6** “Service Hosting Facility” means the platform on which OnStak hosts the OnStak Solution, or any other place where OnStak may choose to host its OnStak Solution from.
- 1.7** “Software” means the object code version of OnStak’s software and any other software programs supplied by OnStak to Customer, including, without limitation, any software module(s) and firmware furnished as part of the onsite OnStak Solution, together with all enhancements, improvements, and modifications thereof, and all Documentation and Hosted Solutions.

2 Purchase, Rights, and License.

- 2.1** This Agreement sets forth the terms and conditions for the purchase and licensing (as applicable) of OnStak Solutions and/or Software. This Agreement, together with the relevant Purchase Order, contains the entire agreement of the parties with respect to the subject matter of this Agreement and applies on an exclusive basis, including when Customer has purchased the OnStak Solution or Software from an Authorized Reseller or any other third party.
- 2.2** The Software (whether by itself or as part of the OnStak Solution, as applicable) is licensed, not sold, under a nonexclusive and nontransferable license to use such Software in connection with Customer's internal business requirements. Such license does not include Software source code. The Software license granted to Customer transfers to Customer neither title nor any proprietary or intellectual property rights to the Software, enhancements to the Software, Documentation, or any copyrights, patents, trademarks, or other intellectual property rights, embodied or used in connection therewith, except for the limited right to use expressly granted herein. All intellectual property rights, whether registered or unregistered, evidenced by or embodied in and/or attached/connected/related to the Software or the Documentation, or part thereof, and any modifications or improvements thereof, are and shall be owned exclusively by OnStak and its licensors. This license authorizes use of the OnStak Solution only on the number of devices, instances, virtual machines, storage, or databases agreed on in the Purchase Order and during the term covered by the license purchased by Customer and/or as set forth in the applicable Purchase Order.
- 2.3** For OnStak Solution installed onsite only, Customer may make a reasonable number of machine-readable copies of the Software for disaster recovery and testing purposes. Copies of the Documentation may be made by Customer for internal use. All copies of the Software and Documentation will be subject to the terms and conditions of this Agreement. Whenever Customer is permitted to copy or reproduce all or any part of the Software or Documentation, all titles, trademark symbols, copyright symbols and legends, and other proprietary markings must also be reproduced.
- 2.4** It should be noted that all changes to configurations, policies, or rules made while using the OnStak Solution (including the addition of any configurations, policies, or rules) are made directly by Customer and under Customer's sole and exclusive liability.
- 2.5** Audit. OnStak reserves the right to audit the Customer's use of the OnStak Solution and Software during normal business hours, no more than once in any twelve (12) month period, and with reasonable prior written notice, and reserves the right, upon its sole discretion, to include means within the OnStak Solution or Software to remotely monitor and/or limit Customer's use of the OnStak Solution and the Software to those licensed under the Purchase Order, but such monitoring devices, if available, shall not limit in any way or manner Customer's full and sole liability for use of the OnStak Solution only subject to the number of licenses under the Purchase Order and use solely according to the terms of this Agreement.

3 Restrictions.

- 3.1** Except as expressly permitted in this Agreement, Customer may not itself or through any party: (i) transfer, disclose, make available to, or permit use of the OnStak Solution or Software by any third party; (ii) translate, adapt, circumvent any technical protection or enable any limited or disabled functionality; (iii) decompile, disassemble, or reverse engineer, or make any additions or modifications to the OnStak Solution or Software, except (a) to the extent expressly permitted by law without the possibility of contractual waiver, and (b) to debug changes made by Customer to a third party library to the extent this right is required by the license associated with the library; (iv) write or develop any derivative or other software program or product based upon the OnStak Solution, Software, or Confidential Information; or (v) use the OnStak Solution, Software, or part thereof to provide application hosting, outsourcing, testing, or similar services to any party.

4 Hosted Solutions.

This Section 4 shall apply in addition to all other sections ONLY if Customer is purchasing Hosted Solutions:

4.1 In addition to the above, the following provisions shall apply in connection with the Hosted Solutions:

- 4.1.1** Software Definition shall include the OnStak Hosted Solutions as hosted by the Service Hosting Facility.
- 4.1.2** License pursuant to Section 2.1 shall include license to the Hosted Solutions.
- 4.1.3** Copies pursuant to Section 2.3 is not permitted for Hosted Solutions, which may be accessed solely through the Service Hosting Facility and may not be hosted or sub-hosted in any way or manner.
- 4.1.4** Audit pursuant to Section 2.5, in connection with the Hosted Solutions, may include means within the Service Hosting Facility.
- 4.1.5** In addition to the above Restrictions, in connection with the Hosted Solutions, Customer shall use the Hosted Solutions in compliance with applicable law and shall not: (A) send or store infringing or unlawful material or malicious code; (B) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Hosted Solutions or the data contained therein; (C) access the Hosted Solutions for the purpose of building a competitive product or service or copying its features or user interface or for purposes of product evaluation, benchmarking, or other comparative analysis, or permit access to the Hosted Solutions by a direct competitor of OnStak.
- 4.1.6** Warranty pursuant to Section 7 to the Hosted Solutions shall commence at the time of delivery of the access link to the Hosted Solutions.
- 4.1.7** IN ADDITION TO ALL OF THE WARRANTIES SET IN SECTION 7, CUSTOMER HEREBY NOTES AND CONFIRMS THAT IT IS AWARE THAT THE HOSTED SOLUTIONS MAY BE TEMPORARILY UNAVAILABLE, INCLUDING FOR MAINTENANCE, WHETHER SCHEDULED OR NOT, EITHER BY ONSTAK OR BY THIRD PARTY PROVIDERS, OR BECAUSE OF OTHER CAUSES BEYOND ONSTAK'S REASONABLE CONTROL, AND ONSTAK SHALL NOT BE LIABLE FOR ANY SUCH DISRUPTIONS.
- 4.1.8** CUSTOMER ACKNOWLEDGES THAT IT IS AWARE THAT THE HOSTED SOLUTIONS IS PROVIDED THROUGH A SERVICE HOSTING FACILITY AND ONSTAK DOES NOT WARRANT ANYTHING THAT IS OUT OF ITS DIRECT CONTROL. IN ADDITION TO THE TERMS AND CONDITIONS IN THIS AGREEMENT, THE HOSTED SOLUTIONS WILL BE PROVIDED TO CUSTOMER SUBJECT TO THE SERVICE HOSTING FACILITY'S THEN APPLICABLE TERMS OF USE WITH NO LIABILITY ON ONSTAK'S BEHALF AND UNDER CUSTOMER'S SOLE AND EXCLUSIVE LIABILITY AND FULL UNDERTAKING TO FULLY INDEMNIFY ONSTAK FOR ANY BREACH OR CLAIMS WITH REGARDS TO CUSTOMER OR CUSTOMER'S USERS' BREACH OF SUCH TERMS.
- 4.1.9** In addition to the indemnification provisions set forth in Section 9.3, Customer hereby agrees to defend, indemnify, and hold harmless OnStak and its affiliates and their respective officers, directors, agents, and employees from any and all claims, damages, liabilities, costs, and expenses (including attorney's fees) arising from claims related to Customer or Customer's users' use of the Hosted Solutions, as well as from Customer's failure to comply with this Agreement or the Service Hosting Facility terms.
- 4.1.10** Limitation of Liability pursuant to Section 9.4 shall apply in connection with the Hosted Solutions as well, and in any event be limited to 12 months' fees paid for the aggregate use of both the OnStak Solution and/or the Hosted Solutions.
- 4.1.11** Section 6.2 below shall apply only when Customer is using both cloud-based devices along with on-premise devices.
- 4.1.12** Customer hereby consents that certain behavioral data as a user (including but not limited to length of use, features utilization by Customer, and other usage data) will be shared with OnStak through the Hosted Solutions. OnStak may use such behavioral data for reasonable business purposes including but not limited to product support, license validation, research and development. Should OnStak use any derivative information for marketing purposes, it shall be made in an anonymized manner.

4.2 Customer Data uploaded to the Hosted Solutions.

- 4.2.1** Customer hereby warrants to OnStak that it either owns or licenses all data, information, and content submitted or uploaded by Customer to the Hosted Solutions for use with the Hosted Solutions ("Customer Data"), and that such access or use will not violate any third party's privacy rights. It is acknowledged by both Parties that Customer alone controls what Customer Data is submitted to, or accessed by, the Hosted Solutions and is fully and solely liable for such Customer Data and access and use of it by OnStak or on its behalf, including its storage and what is in such Customer Data, and OnStak has no knowledge or way to know what such Customer Data contains. Customer represents and warrants that it has obtained, and will maintain, all rights and authority, consents, permissions, and licenses necessary for granting such rights to make use of Customer Data.
- 4.2.2** OnStak may choose to host the Hosted Solutions, provide the Hosted Solutions through a cloud, or engage third party providers to host or provide features of the Hosted Solutions, including through their cloud or a Service Hosting Facility, and accordingly, data Customer provides OnStak, including Customer Data, or uploads or uses throughout the Hosted Solutions, may be hosted by such third party service providers on servers that they own or control, which may be located in one or more jurisdictions within the United States or elsewhere. Accordingly, Customer Data may be replicated or transferred across multiple servers located in multiple jurisdictions. By uploading data to the Hosted Solutions, Customer is expressly, freely, affirmatively, and unequivocally consenting that its data, including Customer Data, may be transferred to such third party service providers, in each case subject to the data protection commitments set forth in Section 8.3 (Data Protection) and Exhibit A (Data Processing Addendum). Customer's receipt of and use of the Hosted Solutions is a full agreement to all these terms.
- 4.2.3** The Customer Data or any other data entered into the Hosted Solutions should not include any personally identifiable information as regarded to and defined under any applicable law, and Customer hereby confirms that it is aware that such information should not be entered into the Hosted Solutions or provided to OnStak, and if it is provided or entered in the Hosted Solutions, Customer shall remain solely and exclusively liable for any such use of such personally identifiable information and fully indemnify OnStak for any claims relating to such Customer Data or personally identifiable information, including by any jurisdiction, government, or third party. Customer hereby confirms that it is aware that it is not legally obligated to provide OnStak personal information and the Hosted Solutions is not intended for use with such personal information. BY AGREEING TO THE TERMS IN THIS AGREEMENT, CUSTOMER ACCEPTS AND ACKNOWLEDGES THAT IF IT CHOOSES TO UPLOAD ANY PERSONALLY IDENTIFIABLE INFORMATION TO THE ONSTAK SOLUTION IT IS DOING SO AT ITS OWN RISK AND UNDER ITS SOLE AND EXCLUSIVE LIABILITY AND THAT ONSTAK IS NOT AWARE OF AND CANNOT CONTROL OR MONITOR ANY SUCH PERSONALLY IDENTIFIABLE INFORMATION CUSTOMER UPLOADS INTO THE ONSTAK SOLUTION OR PROTECT SUCH PERSONALLY IDENTIFIABLE INFORMATION AS REQUIRED BY APPLICABLE LAWS.
- 4.2.4** Customer hereby acknowledges and agrees that OnStak is acting as a data processor and will use any data disclosed to it by Customer only in accordance with Customer's instructions. Customer hereby warrants and represents that it has obtained all appropriate consents for the use of data, including Customer Data, in accordance with this Agreement, under all applicable law, including the provision of such data to OnStak and the transfer of such data by OnStak to its affiliates and subcontractors, in each case subject to Section 8.3 (Data Protection) and Exhibit A (Data Processing Addendum).

5 Maintenance Support.

- 5.1** Subject to the relevant Purchase Order, when Customer has ordered maintenance support, OnStak or Authorized Reseller, as applicable, will provide such support in accordance with its standard support plans. Any enhancements and changes made by OnStak or an Authorized Reseller to the OnStak Solution or Software as part of maintenance support, and information provided in the course of supplying maintenance support, shall be and remain at all times proprietary to and the sole property of

OnStak, and the provisions in this Agreement relating to the confidential and proprietary nature of the OnStak Solution and Software shall apply with equal force and effect to such enhancements, modifications, and changes.

6 Third Party Software Requirements.

- 6.1** The products licensed hereunder may contain, incorporate, and/or are based on software licensed from third parties ("Licensed Software"). Any and all usage of the Software and products containing, incorporating, or based on the Licensed Software is strictly subject to this Agreement. No use may be made of the Licensed Software other than as provided for in this Agreement. Licensed Software and the terms applicable to the use of such Licensed Software are detailed in a text file accompanying the Software.
- 6.2** Use of the Software requires that Customer have certain network components, as set forth in the Documentation or as required from time to time. It is the responsibility of Customer to purchase, install, and maintain the network components.

7 Warranty.

- 7.1** OnStak warrants that at the time of delivery of the OnStak Solution or Software, Hosted Solutions, and for ninety (90) days thereafter, the OnStak Solution or Software, as applicable, will perform in substantial accordance with the Documentation. If during such period the OnStak Solution or Software does not perform as warranted and OnStak is notified of the purported failure to perform, OnStak, including through an Authorized Reseller, will, at its option, undertake to correct the OnStak Solution or Software, replace the OnStak Solution or Software free of charge, or, if neither of the foregoing can be accomplished on a commercially reasonable basis, terminate this Agreement and refund to Customer the amount actually paid by Customer for the OnStak Solution or Software, as applicable. The foregoing are Customer's sole and exclusive remedies for breach of warranty. The warranty set forth above is made to and for the benefit of Customer only. The warranty will apply only if: (a) the OnStak Solution or Software, as applicable, have been properly installed and/or used in accordance with the instructions for use; and (b) no alteration, modification, or addition has been made to the OnStak Solution or Software. EXCEPT AS SET FORTH ABOVE, ONSTAK (INCLUDING THROUGH AN AUTHORIZED RESELLER IF APPLICABLE) MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING OR RELATING TO THE ONSTAK SOLUTION OR SOFTWARE OR ANY MATERIALS OR SERVICES PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. ONSTAK (INCLUDING THROUGH AN AUTHORIZED RESELLER IF APPLICABLE) SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE ONSTAK SOLUTION OR SOFTWARE AND ANY OTHER MATERIALS AND SERVICES PROVIDED HEREUNDER. NO WARRANTIES GIVEN BY AN AUTHORIZED RESELLER SHALL BIND ONSTAK. FURTHER, ONSTAK SPECIFICALLY DISCLAIMS ANY WARRANTY IN CONNECTION WITH THE ACCURACY OF THE OUTPUT AND RECOMMENDATION PROVIDED TO YOU WHILE USING ONSTAK'S SOLUTION OR THE SOFTWARE, AND ANY ACTIONS BASED THEREUPON SHALL BE AT YOUR RISK. ONSTAK DISCLAIMS ANY SUCH WARRANTIES GIVEN BY AN AUTHORIZED RESELLER AND SHALL NOT BEAR ANY LIABILITY WITH RESPECT THEREOF.
- 7.2** CUSTOMER ACKNOWLEDGES THAT USE OF HOSTED SOLUTIONS, THE ONSTAK SOLUTION, OR THE SOFTWARE MAY NOT BE UNINTERRUPTED, WITHOUT DELAY, OR ERROR FREE. WHILE ONSTAK TAKES REASONABLE PHYSICAL, TECHNICAL, AND ADMINISTRATIVE MEASURES TO SECURE THE HOSTED SOLUTIONS, ONSTAK SOLUTION, OR THE SOFTWARE, ONSTAK DOES NOT GUARANTEE THAT THE HOSTED SOLUTIONS, ONSTAK SOLUTION, OR THE SOFTWARE CANNOT BE COMPROMISED. ONSTAK IS NOT LIABLE FOR ANY CONTENT USED WITH HOSTED SOLUTIONS, THE ONSTAK SOLUTION, OR THE SOFTWARE, INCLUDING CUSTOMER DATA, AND SHALL BE LIABLE ONLY FOR DEPLOYMENT OF THE SERVICES SPECIFICALLY ACCORDING TO THE TERMS OF THIS AGREEMENT.

- 7.3 Service Levels.** For Hosted Solutions, OnStak will use commercially reasonable efforts to make the Hosted Solutions available in accordance with the service level commitments set forth in Exhibit B (Service Level Agreement), which is incorporated into this Agreement. Exhibit B sets forth Customer's sole and exclusive remedies (including any service credits) for OnStak's failure to meet the applicable availability commitment. Scheduled maintenance and causes beyond OnStak's reasonable control are excluded from availability measurement as set forth in Exhibit B.

8 Confidentiality and Privacy.

- 8.1** Each party agrees that at all times during the term of this Agreement, and thereafter, it will hold in confidence, and will not, other than for purposes of this Agreement, use or disclose to any third party, the Confidential Information of the other party. The term "Confidential Information" means all non-public information that the disclosing party designates as being confidential, which the nature of the information or circumstances of disclosure makes reasonably clear should be treated as confidential, and, in any case, Software and the technology, trade secrets, and know-how embodied in the OnStak Solution and Software. In the event of actual or threatened breach of this Section, the disclosing party will have no adequate remedy at law and will be entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual money damages. At the earlier of the disclosing party's first request or the expiration or termination of this Agreement for any reason, the receiving party shall return or (except where return is required hereunder) permanently destroy all Confidential Information of the disclosing party (including all copies, summaries, excerpts, extracts, or other reproductions). At the disclosing party's request, the receiving party will confirm in writing that it has met the foregoing obligations. The obligations set forth in this Section shall survive termination or expiration of this Agreement.
- 8.2** OnStak acts in accordance with its Privacy Notice, available at <https://onstak.com/privacy> (as updated from time to time).
- 8.3 Data Protection; Service Provider Status.** To the extent OnStak Processes any Personal Information (as "Personal Information" and "Process/Processing" are defined under the California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act, and its implementing regulations (collectively, the "CCPA")) on behalf of Customer in connection with the OnStak Solution, OnStak acts as a "service provider" (as defined in the CCPA), and the parties agree to the Data Processing Addendum attached as Exhibit A, which is incorporated into and forms part of this Agreement. With respect to such Personal Information, OnStak shall: (a) not sell or share the Personal Information (as "sell" and "share" are defined in the CCPA); (b) not retain, use, or disclose the Personal Information for any purpose other than the specific business purpose of performing the services under this Agreement and the applicable Purchase Order, or as otherwise permitted by the CCPA; (c) not retain, use, or disclose the Personal Information outside the direct business relationship between the parties; (d) not combine the Personal Information with personal information that OnStak receives from, or on behalf of, another person, or collects from its own interaction with the consumer, except as permitted by the CCPA; (e) comply with the applicable obligations under the CCPA and provide the same level of privacy protection as is required of businesses under the CCPA; (f) promptly notify Customer if OnStak determines that it can no longer meet its obligations under the CCPA; (g) grant Customer the right, upon notice, to take reasonable and appropriate steps to stop and remediate unauthorized use of Personal Information; and (h) ensure that any subcontractor or subprocessor engaged to Process such Personal Information is bound by a written contract containing the same restrictions and obligations set forth in this Section. Customer may take reasonable and appropriate steps to confirm OnStak's compliance with this Section, consistent with Section 2.5. To the extent the European Union General Data Protection Regulation (GDPR), the UK GDPR, or other non-U.S. data protection law applies to OnStak's Processing of Customer personal data, the parties will execute the additional terms (including, where required, Standard Contractual Clauses) set forth in or referenced by Exhibit A.

9 Indemnification and Limitation of Liability.

- 9.1** OnStak will defend or settle any third-party claims against Customer, by final court ruling, that claim that the OnStak Solution or Software, not related to Customer Data, which has been used in accordance

with this Agreement, violates a copyright, patent, trademark, or other intellectual property right of a third party, if Customer: promptly notifies OnStak of the claim in writing; reasonably cooperates with OnStak in the defense; and allows OnStak to solely control the defense or settlement of the claim. OnStak will only settle a claim if it contains no admission of liability or financial obligation on the part of Customer. OnStak will not be liable for any claim if the alleged claim is based on a modification of the OnStak Solution or Software by anyone other than OnStak; is based upon third party rights and licenses or as detailed in the Software components, or separately detailed to Customer (except to the extent OnStak is indemnified by the third party vendor); is based on use of the OnStak Solution or Software with software or equipment not supplied by OnStak; or is based on the use of the OnStak Solution or Software other than in accordance with the Documentation. OnStak has no obligation for any claim arising from: Customer Data or a combination of the OnStak Solution or Software with other services, technology, aspects, or processes where the claim would not occur but for the combination; or services, technology, aspects, or processes not provided by OnStak. This Section states OnStak's entire liability and Customer's exclusive remedy for such third party claims.

- 9.2** If a claim appears likely, then OnStak may modify the OnStak Solution or Software, procure the necessary rights, or replace the OnStak Solution or Software with the functional equivalent, or terminate the OnStak Solution or Software and provide a refund of any prepaid and unused amounts, upon its sole discretion.
- 9.3** Customer will indemnify, defend, or settle any claims against OnStak in relation to the Customer Data or any access or use by OnStak of the Customer Data for the performance of or in relation to the OnStak Solution or Software, including any claims of breach of privacy, intellectual property, or breach of any other laws or rights.
- 9.4** EXCEPT WITH RESPECT TO THE EXCLUDED CLAIMS DEFINED IN SECTION 9.5, IN NO EVENT WILL ONSTAK OR THE AUTHORIZED RESELLER (AS APPLICABLE) BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA (INCLUDING CUSTOMER DATA), COST OF COVER, OR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE FURNISHING, PERFORMANCE, OR USE OF THE ONSTAK SOLUTION, SOFTWARE, OR ANY OTHER MATERIALS OR SERVICES SUPPLIED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT, TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, OR OTHERWISE, EVEN IF ONSTAK OR THE AUTHORIZED RESELLER (AS APPLICABLE) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A LIMITED OR EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE. ONSTAK'S MAXIMUM LIABILITY, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE FURNISHING, PERFORMANCE, OR USE OF THE ONSTAK SOLUTION OR SOFTWARE, INCLUDING INABILITY TO USE OR ACCESS SUCH ONSTAK SOLUTION OR ANY OTHER MATERIALS OR SERVICES SUPPLIED HEREUNDER, WILL NOT, IN ANY EVENT, EXCEED IN THE AGGREGATE THE FEE ACTUALLY PAID BY CUSTOMER FOR THE ONSTAK SOLUTION OR SOFTWARE DURING THE 12 MONTHS PERIOD PRIOR TO ANY CLAIM. THE FOREGOING EXCLUSIONS AND LIMITATIONS DO NOT APPLY TO THE EXCLUDED CLAIMS DEFINED IN SECTION 9.5. IN NO EVENT WILL ONSTAK BE LIABLE FOR ANY OF THE ACTIONS OR OMISSIONS OF AN AUTHORIZED RESELLER.
- 9.5** Excluded Claims. For purposes of Section 9.4, "Excluded Claims" means: (a) Customer's breach of the license scope or use restrictions in Sections 2, 3, and 4; (b) either party's breach of its confidentiality obligations under Section 8.1; (c) OnStak's indemnification obligations under Section 9.1; (d) Customer's indemnification obligations under Sections 4.1.9 and 9.3; (e) a party's gross negligence, willful misconduct, or fraud; (f) Customer's payment obligations under the applicable Purchase Order; and (g) any liability that cannot be limited or excluded under applicable law. Nothing in this Agreement excludes or limits either party's liability for death or personal injury caused by its negligence, for fraud or fraudulent misrepresentation, or for any other liability that may not be limited or released under applicable law, including, in the State of California, any liability described in California Civil Code Section 1668.

10 Termination.

10.1 OnStak may terminate this Agreement and Customer's right to use the OnStak Solution and Software, effective upon written notice, if Customer is in material breach of any term, condition, or provision of this Agreement and, where the breach is capable of cure, fails to cure such breach within thirty (30) days after written notice of the breach. In addition, and only to the extent enforceable under applicable law (including Section 365(e) of the United States Bankruptcy Code, 11 U.S.C. § 365(e)), either party may terminate this Agreement upon written notice if the other party terminates or suspends its business, becomes insolvent, admits in writing its inability to pay its debts as they mature, makes a general assignment for the benefit of creditors, or becomes subject to any bankruptcy or insolvency proceeding that is not dismissed within sixty (60) days of filing. The parties acknowledge and agree that the licenses granted under this Agreement are licenses of rights to "intellectual property" for purposes of Section 365(n) of the United States Bankruptcy Code, and that Customer, as licensee, shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code, including under Section 365(n), in the event of a bankruptcy proceeding by or against OnStak. Within thirty (30) days after the date of termination of this Agreement, Customer will stop using, return, or permanently destroy the Software and all links including all copies. The provisions of Sections 3, 4, 8, 9, and 11 will survive expiration or termination of this Agreement for any reason.

11 Miscellaneous.

11.1 This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to said subject matter. All rights not expressly granted in this Agreement to Customer are retained by OnStak. No terms, provisions, or conditions of any Purchase Order, acknowledgment, or other business form that Customer may use in connection with the acquisition or licensing of the OnStak Solution or Software will have any effect on the rights, duties, or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of OnStak to object to such terms, provisions, or conditions. This Agreement may not be amended, except by a writing signed by both parties. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, that provision will be deemed stricken and the remainder of this Agreement will continue in full force and effect insofar as it remains a workable instrument to accomplish the intent and purposes of the parties; the parties will replace the severed provision with the provision that will come closest to reflecting the intention of the parties underlying the severed provision but that will be valid, legal, and enforceable.

11.2 Neither this Agreement nor any rights or license granted under this Agreement may be assigned or otherwise transferred by Customer, in whole or in part. Any assignment or transfer made contrary to the foregoing shall be null and void. Subject to the foregoing, this Agreement shall apply to, inure to the benefit of, and be binding upon the Parties hereto and their permitted successors and assigns. This Agreement does not confer a benefit on any third party, is not intended to be enforceable by any third party, and there are no third-party beneficiaries to this Agreement. Customer agrees that OnStak may publicly identify Customer (by name and/or logo) as an entity to which OnStak has provided products and/or services and to be presented only among other global customers (e.g., on OnStak's website at <https://onstak.com>). Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, or (c) sent by overnight air courier, in each case properly posted and fully prepaid.

11.3 Governing Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to principles of conflict of laws and without regard to the United Nations Convention on the International Sale of Goods. Subject to Section 11.5 (Dispute Resolution; Binding Arbitration), the parties agree that the state and federal courts located in Santa

Clara County, California shall have exclusive jurisdiction over any action arising out of or relating to this Agreement that is not subject to arbitration (including any action to compel arbitration, to confirm or enforce an arbitral award, or to seek injunctive relief), and the parties waive any objection to venue in these courts. Customer may not export or re-export (directly or indirectly, including via remote access) the OnStak Solution or Software or any technical data or product associated therewith except in accordance with United States export control laws and regulations (including the Export Administration Regulations) and the economic sanctions laws and regulations administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), and with any required United States and other necessary government licenses and approvals. Customer represents and warrants that it is not located in, organized under the laws of, or ordinarily resident in any country or territory subject to comprehensive U.S. sanctions, and that it is not identified on any U.S. government list of prohibited or restricted parties.

11.4 OnStak's address for any notices is OnStak, Inc., 1525 McCarthy Blvd, Suite 1230, Milpitas, CA 95035, USA, Attn: Legal Department, email: info@onstak.com. OnStak may provide written (including via email) or website notice of any change in address.

11.5 Dispute Resolution; Binding Arbitration. Except for the Excluded Disputes described below, any dispute, claim, or controversy arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation, or validity thereof (a "Dispute"), shall be finally resolved by binding arbitration administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures then in effect. The arbitration shall be conducted in the English language before a single arbitrator, seated in Santa Clara County, California, and the arbitrator's award may be entered as a judgment in any court of competent jurisdiction. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any Dispute relating to the interpretation, applicability, enforceability, or formation of this arbitration agreement, except that a court may determine whether a Dispute falls within the Excluded Disputes. CLASS ACTION WAIVER: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES THAT ANY DISPUTE WILL BE BROUGHT AND ARBITRATED SOLELY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE, CONSOLIDATED, OR REPRESENTATIVE PROCEEDING, AND THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN THE CLAIMS OF MORE THAN ONE PARTY. If this class action waiver is found unenforceable as to a particular claim, then that claim (and only that claim) shall be severed from the arbitration and may be brought in a court of competent jurisdiction, while all remaining claims shall continue to be arbitrated. "Excluded Disputes" means (a) any claim seeking injunctive or other equitable relief to protect a party's intellectual property rights or Confidential Information, and (b) any claim that qualifies for small-claims court. If for any reason a Dispute proceeds in court rather than in arbitration, then to the fullest extent permitted by applicable law the parties waive any right to a jury trial, and because a pre-dispute jury waiver is not enforceable under California law, the parties instead agree that all issues of fact and law shall be submitted to a referee for a general reference and determination pursuant to California Code of Civil Procedure Sections 638 et seq., with the referee's decision entered as a judgment in the same manner as if the action had been tried by the court.

11.6 Subscription Term; Automatic Renewal. The term and renewal of any subscription to the Hosted Solutions are set forth in the applicable Purchase Order. If a Purchase Order or ordering process provides that a subscription automatically renews, then, to the extent required by applicable law (including the California Automatic Renewal Law, California Business and Professions Code Sections 17600 et seq., as amended, and any applicable U.S. Federal Trade Commission rule): (a) OnStak (or its Authorized Reseller) will obtain Customer's express affirmative consent to the automatic-renewal or continuous-service terms before charging; (b) OnStak will present the automatic-renewal terms, recurring charges, the length of the renewal term, and the cancellation procedure in a clear and conspicuous manner before the order is completed; (c) OnStak will provide renewal reminders and notice of any material change to the price or terms within the timeframes required by applicable law; (d) Customer may cancel the automatic renewal at any time before the next renewal date by the cancellation method described in the Documentation or applicable Purchase Order, or by emailing [billing@onstak.com], using a method at least as easy to use as the method by which the subscription

was initiated; and (e) OnStak will retain records of Customer's consent as required by applicable law. Cancellation takes effect at the end of the then-current term unless applicable law requires otherwise.

OnStak, Inc. — Contact Information

Email: info@onstak.com | Phone: +1 855 811 2345

Headquarters: 1525 McCarthy Blvd, Suite 1230, Milpitas, CA 95035, USA

Office: 6701 Koll Center Parkway, Suite 250, Pleasanton, CA 94566, USA

Exhibit A — Data Processing Addendum (DPA)

DRAFT STUB — framework only. To be completed and reviewed by counsel before use.

A1 Scope and Roles.

A1.1 This Data Processing Addendum (“DPA”) forms part of the OnStak End User License Agreement (the “Agreement”) and applies where OnStak Processes Personal Information on behalf of Customer through the OnStak Solution or Hosted Solutions. In the event of a conflict between this DPA and the Agreement with respect to data protection, this DPA controls.

A1.2 With respect to Personal Information subject to the CCPA, the parties acknowledge that Customer is the “business” and OnStak is the “service provider.” With respect to personal data subject to the GDPR or UK GDPR, Customer is the “controller” (or processor acting on behalf of a controller) and OnStak is the “processor.”

A2 Details of Processing.

A2.1 Subject matter: provision of the OnStak Solution and Hosted Solutions under the Agreement. Duration: the term of the Agreement plus any wind-down period. Nature and purpose: hosting, storage, and processing necessary to deliver and support the services. Categories of data subjects and categories of Personal Information: [to be specified by Customer / as configured by Customer in the OnStak Solution].

A3 Service Provider / Processor Obligations.

A3.1 OnStak shall Process Personal Information only on documented instructions from Customer (including those set out in the Agreement and the applicable Purchase Order), for the limited and specified purposes of performing the services, and not for any other purpose. OnStak shall not sell or share Personal Information, shall not retain, use, or disclose it outside the direct business relationship, and shall not combine it with other data except as permitted by the CCPA. The restrictions in Section 8.3 of the Agreement are incorporated by reference.

A3.2 OnStak shall ensure that personnel authorized to Process Personal Information are bound by confidentiality obligations and shall provide the same level of privacy protection as required of a business under the CCPA.

A4 Security.

A4.1 OnStak shall implement and maintain appropriate technical and organizational measures designed to protect Personal Information against accidental or unlawful destruction, loss, alteration, and unauthorized disclosure or access, consistent with [OnStak’s SOC 2 Type II control environment / the measures described in Schedule 1 to this DPA].

A5 Subprocessors.

A5.1 Customer authorizes OnStak to engage subprocessors to Process Personal Information, provided that OnStak (a) maintains a current list of subprocessors available to Customer on request, (b) imposes data protection obligations on each subprocessor no less protective than those in this DPA, and (c) remains liable for its subprocessors’ performance. OnStak will give Customer [reasonable / 30 days’] prior notice of any new subprocessor and an opportunity to object on reasonable data protection grounds.

A6 Data Subject Requests and Assistance.

A6.1 Taking into account the nature of the Processing, OnStak shall provide reasonable assistance to enable Customer to respond to verifiable consumer/data subject requests (access, deletion, correction, opt-out) and to fulfill Customer’s obligations relating to security, breach notification, and data protection impact assessments under applicable law.

A7 Security Incident Notification.

A7.1 OnStak shall notify Customer without undue delay, and in any event within [seventy-two (72) hours], after becoming aware of a confirmed Security Incident affecting Customer Personal Information, and shall provide information reasonably available to OnStak to assist Customer in meeting its breach notification obligations under applicable law.

A8 Return or Deletion.

A8.1 Upon termination or expiration of the Agreement, OnStak shall, at Customer's election and within [thirty (30) days], return or permanently delete Customer Personal Information in its possession, except to the extent retention is required by applicable law.

A9 International Transfers.

A9.1 Where OnStak transfers personal data subject to the GDPR or UK GDPR to a jurisdiction that does not provide an adequate level of protection, the parties shall implement an approved transfer mechanism (including the EU Standard Contractual Clauses and the UK International Data Transfer Addendum), which are incorporated by reference and completed in Schedule 2.

A10 Audits.

A10.1 OnStak shall make available information reasonably necessary to demonstrate compliance with this DPA and shall allow for and contribute to audits, including inspections, conducted by Customer or its mandated auditor no more than once in any twelve (12) month period (or more frequently if required by a supervisory authority or following a Security Incident), subject to reasonable confidentiality and security conditions.

Exhibit B — Service Level Agreement (SLA)

DRAFT STUB — commitment percentages and credit tiers are placeholders to be set by OnStak and reviewed by counsel.

B1 Availability Commitment.

B1.1 OnStak will use commercially reasonable efforts to make the Hosted Solutions Available at least [99.9%] of the time during each calendar month (the “Availability Commitment”), measured as the Monthly Uptime Percentage and excluding Excluded Downtime.

B2 Definitions.

B2.1 “Available” means the Hosted Solutions are accessible and materially functioning in accordance with the Documentation. “Downtime” means any period during which the Hosted Solutions are not Available, excluding Excluded Downtime. “Monthly Uptime Percentage” = $((\text{Total Minutes in Month} - \text{Downtime Minutes}) \div \text{Total Minutes in Month}) \times 100$. “Excluded Downtime” means unavailability caused by: (a) Scheduled Maintenance for which OnStak gave at least [forty-eight (48) hours] notice; (b) emergency maintenance; (c) factors outside OnStak’s reasonable control (including force majeure events and failures of third-party networks or the Service Hosting Facility); (d) Customer’s acts, omissions, equipment, or third-party software; or (e) suspension or termination of Customer’s access in accordance with the Agreement.

B3 Service Credits.

B3.1 If the Monthly Uptime Percentage falls below the Availability Commitment in a given calendar month, Customer is eligible for a service credit calculated as a percentage of the monthly fee for the affected Hosted Solutions, as follows: $[\geq 99.0\% \text{ and } < 99.9\% \rightarrow 10\% \text{ credit}; \geq 95.0\% \text{ and } < 99.0\% \rightarrow 25\% \text{ credit}; < 95.0\% \rightarrow 50\% \text{ credit}]$.

B3.2 To receive a credit, Customer must submit a request to [support@onstak.com] within thirty (30) days after the end of the month in which the shortfall occurred, including reasonable supporting detail. Service credits are applied against future invoices, are non-refundable, and in the aggregate may not exceed [100%] of one month’s fee for the affected Hosted Solutions in any single month.

B4 Sole and Exclusive Remedy.

B4.1 The service credits described in this Exhibit B are Customer’s sole and exclusive remedy for any failure by OnStak to meet the Availability Commitment, except where applicable law provides otherwise or as expressly stated in the Agreement.

B5 Support.

B5.1 Support scope, severity levels, target response times, and hours of coverage are as set forth in the applicable Purchase Order or OnStak’s then-current support plan referenced in Section 5 of the Agreement.