



ENTERPRISE CLOUD TERMS AND CONDITIONS

These Terms and Conditions (“Terms”) are incorporated by reference into and made part of the Agreement by and between Stack Exchange, Inc. (“Stack”) and Customer. For good and valuable consideration receipt of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

Capitalized terms will have the meaning as defined in this Section, unless otherwise specifically defined in the Agreement.

“**Affiliate**” means any entity controlling, controlled by, or under common control with the referenced entity, where the term “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, through ownership of voting securities, by contract, or otherwise.

“**Content**” means data or information, including Confidential Information, that is stored, provided, imported, displayed, distributed or transmitted by Customer through the use of the Services. Content shall not include any Feedback or any non-identifiable usage data.

“**Customer**” means the entity identified in the applicable Order Form or the Purchasing Entity as defined in the NASPO ValuePoint Master Terms and Conditions between SHI and State of Utah Cooperative Contract No. AR2488 dated 9/30/2016.

“**Documentation**” means technical specifications and usage documents describing the operation of the Services and available on the Stack Customer Portal.

“**Feedback**” means any suggestion, idea, enhancement request or recommendation related to any Service.

“**Intellectual Property**” means patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in designs, rights in computer software, database rights, trade secrets, and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

“**Order Form**” means a purchasing document that references these Terms and is signed by both Parties.

“**Personal Data**” means any personal information relating to, directly or indirectly, an identified or identifiable natural person of Customer that is collected, accessed, used, disclosed, or otherwise processed by Stack.

“**Personal Data Protection Laws**” means all applicable laws, regulations, or other legal requirements relating to privacy, data security, and protection of Personal Data, and the processing of any Personal Data.

“**Seat(s)**” means a User account for the Services. Customer may deactivate any User who is no longer accessing the Services; provided that only when a Seat’s Content attribution is removed will it be considered deleted for purposes of determining the number of Seats counted. All Seats, whether or not associated with a login credential, count toward the minimum seat quantity unless the Seat’s Content attribution is removed from the service.

“**Service(s)**” means software products and services as specified in an Order Form provided by Stack to Customer hereunder, and which are made available for Customer’s access through connection to a website and/or the Stack Overflow for Teams Application Programming Interface (“API”).

“**Stack Customer Portal**” means the customer portal provided to customers of the Services as set forth at <https://support.stackenterprise.co/support/login> or such other URL as Stack may designate.

“**Subscription Term**” means the period of time of the Initial Term and Renewal Term (if any) as specified in the applicable Order Form.

“**User(s)**” means employees, contractors, and agents of Customer or Customer Affiliates, acting on behalf of Customer for whom a Seat is licensed under the Agreement and Order Forms referencing these Terms. Each User accessing the Services will utilize a Seat and be identified by a unique username and password.

2. LICENSE TERMS; RESTRICTIONS; SERVICES

2.1. License Grant

2.1.1. Stack. Subject to the restrictions set forth in the Agreement, Stack hereby grants to Customer a limited, non-exclusive, worldwide, non-transferable, non-sublicensable license to access and use the Services and Documentation for the Subscription Term solely for its internal business purposes. Except for the license provided herein, Stack retains all Intellectual Property rights in and to the Services.

2.1.2. Customer. Customer grants Stack a worldwide, royalty-free, non-exclusive license to host and use any Content for the purpose of providing the Services during the Subscription Term. Customer hereby irrevocably

transfers to Stack all right, title and interest in and to any Feedback provided by Customer. Except for the license provided herein, Customer retains all Intellectual Property rights in and to the Content.

- 2.2. **Use Restrictions.** Except as provided herein, Customer shall not: (a) license, sublicense, sell, resell, distribute, rent or lease, transfer, assign, time share or otherwise commercially exploit or make available the Services to any third party other than Users; (b) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or algorithms of the Services; (c) copy, modify or create derivative works based on the Services or conduct benchmark, load, storage or other similar testing; (d) permit sharing of Seats by more than one User per Seat; (e) probe, scan, or test the vulnerability of any system or network, or breach or circumvent any security or authentication measure associated with the Services; (f) access or search the Services by any means other than as permitted hereunder; (g) use the Services in violation of any applicable laws or third party rights including, but not limited to, to store or send infringing, libelous, obscene, threatening or otherwise unlawful or tortious material, including materials that are harmful to children or violate any privacy rights or store or send malicious code; (h) use the Services to commercialize any product or service that is similar to or competitive with the Services; or (i) delete from the Services any Documentation, legal notices, disclaimers or proprietary notices, such as copyright or trademark notices, or modify any logos that Customer does not own or have express permission in writing to modify.
- 2.3. **Deployment.** Stack will provision the Services by emailing a specific URL that allows access by Customer, and delivery of such access will constitute complete delivery of the Services by Stack and acceptance by Customer.
- 2.4. **Usage Information.** Customer agrees that Stack may create and derive anonymized and/or aggregated data regarding Customer's use of the Services under the Agreement to provide support, to improve Stack's products and services, and for the provision, use, and performance of the Services.
- 2.5. **Support; Accessibility.** Stack will provide technical support and deployment services as set forth at <https://s.tk/sla> and <https://s.tk/success>, which are respectively incorporated herein by reference. Delivery of the Services listed herein will be confirmed by Stack via email upon Stack's delivery of the provisioned Services to Customer. Stack will provide to Customer reasonable notice of any updates to the Services; provided, however, updates to the Services to address critical security or functionality fixes may be implemented upon limited notice. As applicable to the entity purchasing the Services, Stack will comply with the Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Additional information on the accessibility of the Services is available here: <https://accessibility.stackoverflow.net/>.

3. PAYMENT

- 3.1. **Invoices.** Upon receipt of an Order Form, Stack shall invoice Customer, and Customer shall pay all fees as stated on the Order Form. Fees for each Renewal Term shall be invoiced upon the expiration of the applicable Subscription Term (based on the then current number of Seats), unless the Order Form is terminated pursuant to Section 4 herein. Except for any taxes due in connection with Stack's income derived from the Agreement, Customer will bear responsibility for any and all taxes due in connection herewith.
- 3.2. **Late Payment.** Disputes concerning invoices must be raised in writing to Stack within ten (10) days of receipt of the applicable invoice. If any undisputed invoiced amount is not received by Stack by such due date, then without limiting its rights or remedies, Stack will notify Customer and may: (a) charge interest at the rate of three percent (3%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower; (b) immediately suspend or terminate its performance; and/or (c) charge Customer for all reasonable expenses (including attorneys' fees and costs) incurred by Stack in collecting such amounts.

4. TERM AND TERMINATION

- 4.1. **Expiration.** The Agreement shall be effective on the date of last signature of the first Order Form, and, unless terminated earlier pursuant to Sections 3.2 or 4.3, shall continue until expiration or termination of the applicable Order Form.
- 4.2. **Renewal.** The Initial Term of each Order Form shall begin on the date listed and continue for the term identified therein. Each Order Form shall automatically renew for additional Subscription Terms of the same length as the previous Subscription Term ("Renewal Term") unless Customer notifies Stack of its intent not to renew at least ninety (90) days prior to the end of the then current Subscription Term.

4.3. Termination for Breach. Either Party may terminate the Agreement or an Order Form if the other Party materially breaches any of its obligations set forth in the Agreement and such breach is not cured within thirty (30) days after delivery of written notice from the Party claiming breach.

4.4. Post Termination. Except as otherwise provided herein, upon the effective date of termination or expiration of the Agreement: (a) each Party shall return to the other Party any Confidential Information, as described in Section 5, except that: (1) Customer may maintain any Confidential Information located in its electronic backup files made pursuant to its standard backup policies, which shall remain subject to Section 5 of the Terms; and (2) Stack may maintain any Confidential Information and Personal Data located in its electronic backup files made pursuant to its standard backup and retention policies, which shall remain subject to Sections 5 and 6 of the Agreement, respectively; and (b) the rights and obligations of the Parties shall terminate. For a period of thirty (30) days after termination of the Agreement, Stack will make available to Customer for download a copy of the Content as a .bacpac file in a secure location designated by Stack. Subject to additional fees, Stack will also make available to Customer for download a copy of the Content during the term of an Order Form.

5. CONFIDENTIALITY

5.1. Definition. Each Party ("Discloser") may disclose to the other ("Recipient") in writing, orally, visually or in electronic or other format, certain confidential and proprietary business, technical or financial information in connection with the Services provided under the Agreement, including, but not limited to, specifications, pricing, methods and processes and information marked "proprietary" or "confidential" or which by its nature reasonably should be understood to be confidential ("Confidential Information").

5.2. Exceptions. Confidential Information shall not include information that: (a) is or becomes generally publicly available through no fault of the Recipient; (b) was rightfully in the Recipient's possession without restriction prior to disclosure by the Discloser; (c) is rightfully received without restriction from a third party that did not violate any obligation of confidentiality; or (d) was independently developed by the Recipient without reference to the Confidential Information.

5.3. Use of Confidential Information. The Recipient agrees not to: (i) use the Confidential Information for any purpose except as expressly provided in the Agreement; (ii) disclose the Confidential Information to any person other than those with a need to know for purposes of performing the obligations under the Agreement; or (iii) provide access to the Confidential Information to any third party unless authorized in the Agreement or with the Discloser's written permission. Notwithstanding the foregoing, each Party shall have the right to disclose the other Party's Confidential Information to such of its directors, officers, employees, consultants, accountants, financial advisors, outside counsel, collaborators and other representatives with a bona fide need to know the Confidential Information (each a "**Representative**") for the purposes of the Agreement, provided that prior to any such disclosure to a Representative, the Recipient has a written confidentiality agreement requiring the Representative to protect the Confidential Information under terms and conditions no less restrictive than those contained herein. In addition, each Party shall be responsible for any breach of the Agreement by its Representatives.

5.4. Standard of Care. Each Party shall protect the other Party's Confidential Information with the same degree of care it uses with its own information of like kind, but in no event less than reasonable care.

5.5. Forced Disclosure. Notwithstanding anything in the Agreement to the contrary, Recipient and its Representatives may disclose Confidential Information as required by court order, duly authorized subpoena, governmental authority, or applicable law, as long as Recipient (a) to the extent legally permissible, provides prompt notice of such requirement to Discloser so that Discloser may attempt to seek a protective order for such Confidential Information, and (b) discloses only such Confidential Information as Recipient is legally required to disclose.

5.6. Injunctive Relief. Each Party agrees that any actual or threatened disclosure or misappropriation of Confidential Information would constitute immediate, irreparable harm to the other Party for which monetary damages may be an inadequate remedy. Therefore, in addition to any other rights and remedies that may be available to the parties at law or in equity, each Party may seek injunctive relief for any such actual or threatened disclosure without the posting of a bond.

6. PERSONAL DATA PROTECTION

Each Party shall comply with all Personal Data Protection Laws through the course of using and providing the Services, as applicable, and the exercise and performance of its respective rights and obligations under the

Agreement. The Parties shall further enter into the Data Processing Addendum, as applicable, available here: <https://policies.stackoverflow.co/teams/data-processing-addendum/>.

7. WARRANTIES

- 7.1. **Stack.** Stack warrants that the Services provided under the Agreement will be performed in a professional and workmanlike manner and in accordance with industry standards and will conform to the Documentation. EXCEPT AS PROVIDED HEREIN, ALL PRODUCTS, INFORMATION, SERVICES AND DOCUMENTATION ARE PROVIDED ON AN AS-IS BASIS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, STACK EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE INFORMATION, SERVICES AND DOCUMENTATION, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DATA LOSS, TITLE OR NONINFRINGEMENT. STACK MAKES NO WARRANTY THAT THE INFORMATION, SERVICES OR DOCUMENTATION WILL BE UNINTERRUPTED, TIMELY OR ERROR FREE. IN THE EVENT THAT APPLICABLE LAW LIMITS THE EXCLUSION OF IMPLIED WARRANTIES ABOVE, THE MAXIMUM AMOUNT OF EXCLUSIONS ALLOWED UNDER APPLICABLE LAW SHALL BE APPLIED.
- 7.2. **Customer.** Customer represents and warrants on behalf of itself, its Affiliates and its Users that it: (a) shall use the Services solely in accordance with the terms of the Agreement, any accompanying Documentation, and all applicable laws, rules and regulations; (b) has all necessary rights to use the Content and to permit Stack to use the Content in connection with the Services without infringing any third party intellectual property right or violating any fiduciary duty, duty of confidentiality, contractual obligation or applicable law; (c) will not use, or permit the use of, the Services for illegal, fraudulent or unethical purposes; and (d) will not interfere with or impede the ability of others to use the Services. Customer shall be liable for any and all use of and access to the Services by its Users, including its Affiliates.
- 7.3. **Mutual.** Each Party represents and warrants that: (a) it has the right to enter into the Agreement; (b) the signatory authorized to execute the Agreement is authorized to do so on behalf of such Party; (c) it has reviewed the Agreement with its legal counsel; (d) the Agreement constitutes a legal, valid, and binding obligation enforceable against such Party in accordance with its terms; and (e) such Party is not subject to any agreement with any third party that will or may be violated by such Party's performance of the Agreement.

8. INDEMNIFICATION

- 8.1 **Customer.** Customer shall defend and indemnify Stack and its affiliates, subsidiaries, employees, officers, directors and owners for any third party claims arising as a result of Customer's use of the Services alleging: (a) the Content infringes the intellectual property rights of any third party; or (b) any gross negligence or willful misconduct by Customer.

8.2 Stack

8.2.1 Obligation. Stack will defend and indemnify Customer and its affiliates, subsidiaries, employees, officers, directors and owners for any third party claims against Customer alleging: (a) the Services as delivered to the Customer infringe the intellectual property rights of a third party; or (b) any gross negligence or willful misconduct by Stack.

8.2.2 Exceptions. Notwithstanding the foregoing, Stack shall have no liability or obligation under this Section with respect to any claim of infringement based upon: (a) modifications to any Service not performed by or on behalf of Stack; or (b) the combination, operation, or use of any of the Services with any third party product or service where such combination, operation or use causes the claimed infringement.

8.2.3 Options. If any Service, or portion thereof is subject to a suit or other legal proceeding claiming that the Service or such portion infringes a third party's intellectual property right, or in Stack's opinion is likely to become the subject of such a claim, Stack shall, at its option, have the right to: (a) procure for Customer the right to continue using the Services; (b) modify or substitute the Services so that it becomes non-infringing; or (c) if neither (a) nor (b) is commercially reasonable to provide, Customer may terminate the relevant Order Form in whole or in part, and Stack will promptly refund to Customer all fees paid for the affected Services, pro-rated to the date of termination. THIS SECTION 8.2 STATES THE ENTIRE LIABILITY OF STACK

AND THE EXCLUSIVE REMEDY OF CUSTOMER FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF PATENT, COPYRIGHT, TRADE SECRET OR ANY OTHER INTELLECTUAL PROPERTY RIGHT BY OR IN CONNECTION WITH ANY SERVICE.

- 8.3 Indemnification Procedures.** The indemnified party agrees to provide the other Party with prompt written notice of any claim, control of the defense and settlement thereof and all reasonable assistance therewith at the indemnifying Party's expense. The indemnified Party may participate in such investigation, trial, defense and settlement of such claim and any appeal arising therefrom, through its attorneys or otherwise, at its own cost and expense. Notwithstanding the foregoing, any settlement that does not contain a full release of the indemnified Party or admits any liability of the indemnified Party requires the indemnified Party's written consent.

9. LIMITATION OF LIABILITY

- 9.1. General Limit.** UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING FROM THE SUBJECT MATTER OF THE AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, BUSINESS, PROFITS OR GOODWILL. THE FOREGOING SHALL APPLY REGARDLESS OF THE LEGAL THEORIES, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THESE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

- 9.2. Aggregate Limit.** Except for a Party's obligations under Section 5 (Confidentiality) and Section 8 (Indemnification), each Party's total aggregate liability to the other Party for all claims arising under or relating to the Agreement will not exceed the amount paid or payable to Stack by Customer in the twelve-month period immediately preceding the date of the claim.

- 9.3. Exceptions.** Notwithstanding the foregoing, each Party's total aggregate liability under Section 5 (Confidentiality) and for its obligations under Section 8 (Indemnification) shall not exceed the lesser of three times fees paid or payable to Stack by Customer in the twelve-month period immediately preceding the date of the claim or five hundred thousand dollars (\$500,000). Subject to this Section 9.3, for any such indemnification claims, the indemnifying Party shall: (a) pay all reasonable costs to defend the indemnified Party; and (b) pay any damages or fines assessed against the indemnified Party in a final judgment by a court or authority of competent jurisdiction or any settlement agreed upon with such third party.

10. MISCELLANEOUS

- 10.1. Export.** Customer agrees to comply with all applicable U.S. export control laws and regulations applicable to the Services.

- 10.2. Force Majeure.** Neither Party will be liable for any delay or failure to perform under the Agreement (other than with respect to payment obligations) to the extent such delay or failure is a result of an act of God, war, earthquake, civil disobedience, court order, labor dispute, pandemic or other cause beyond such Party's reasonable control.

- 10.3. Entire Agreement.** The Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous proposals, whether written or oral. No pre-printed or other terms that appear on Customer's purchase order currently or hereinafter provided shall be of any force or effect.

- 10.4. Independent Parties.** The Parties are independent contractors, and no employment, agency, partnership or joint venture is created hereunder. Stack is an independent contractor of Customer. Neither Party is, nor shall either Party represent itself as, an employee, agent, representative, or joint venture partner or corporate entity partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for or on behalf of the other Party, to incur any obligation or liability, or otherwise bind the other Party. The Agreement is not intended to create an association, agency, joint venture, or partnership between the Parties, or to impose any partnership liability upon either Party, and each Party hereby disclaims any such liability. The Agreement is nonexclusive in nature and is not to be construed as establishing an exclusive arrangement between the Parties.

- 10.5. Notice.** Any notice or other communication made under the Agreement shall be provided in writing and shall be transmitted by personal delivery or nationally recognized overnight courier service, addressed to a Party at the address stated in the Order Form (or such other address as is provided by like notice) or electronically by email at the address



stated below. All notices shall be deemed given upon the earlier of evidence of receipt or two (2) business days after transmission.

Stack: legal@stackoverflow.com

Customer: At the email address listed on the Order Form

- 10.6. Governing Law.** The Agreement and the relationship between Customer and Stack are governed by the laws of the state of New York without regard to its conflict of law provisions. Each Party hereby consents to personal jurisdiction in any action brought in federal or state court in New York County, New York.
- 10.7. Assignment.** Neither Party will assign, sublicense or transfer its rights or obligations under the Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; except that either Party may upon written notice to the other assign the Agreement in connection with a merger, acquisition, business combination, change in control or transfer of all or substantially all of such Party's assets or voting securities. Any purported assignment in violation of the foregoing will be void. The Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.
- 10.8. Amendment.** No amendment to, or waiver of, any provision of the Agreement will be effective unless in writing and signed by an authorized representative of each Party.
- 10.9. Interpretation.** The Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous proposals, whether written or oral. The section headings contained in the Terms are for convenience only and shall not be considered in its interpretation.
- 10.10. Waiver; Severability.** The failure of either Party to enforce its right under the Agreement at any time for any period will not be construed as a waiver of such rights. If any provision of the Agreement is held to be invalid, illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that the Agreement otherwise remains in full force and effect and enforceable. Each of the provisions contained in the Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the Parties waive any provision of law which renders any provision of the Agreement invalid or unenforceable in any respect. The Parties shall endeavor in good-faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.
- 10.11. Order of Precedence.** In the event of a conflict among these Terms, the Order Form and exhibits, the language of the documents shall control in the following order: Order Form, the Terms and exhibits.
- 10.12. Execution.** The Agreement may be electronically signed, and such signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
- 10.13. Survival.** Sections 3, 4.4, 5, 6, 8, 9 and 10 shall survive termination of the Agreement.
- 10.14. Publicity.** Customer agrees that Stack may identify Customer as a user of the Services on Stack's website or any third-party website where Stack or its designated agents may promote the Services, in its business deals, press releases, marketing materials, advertising, newsletters, mailings, tradeshow, or other promotional materials. Customer hereby grants Stack and its agents an irrevocable, perpetual, worldwide, non-exclusive, fully paid-up, royalty-free license (with right to sublicense) to use, reproduce, publish, and display Customer's name, trademarks, service marks, designs, logos, and symbols (collectively, "Marks") in connection with such purpose and in accordance with Customer's written guidelines provided to Stack. Upon Customer's successful implementation of the Services, Customer agrees to participate in a Stack customer case study, provide customer references, and provide quotes for marketing purposes. All such participation and content will be pre-approved by Customer, which consent shall not be unreasonably withheld.
