



HawkSight Software End User Licence Agreement

- (A) This HawkSight Software End User Licence agreement ("**EULA**") is the agreement between End User and HawkSight Security Risk Management Ltd registered in the United Kingdom at the address 79 Chatham House, Race Course Road Newbury Berkshire RG14 7GJ ("**HawkSight**") which sets out the terms upon which HawkSight licences the Software specified in the Order Form to End User.
- (B) Any person who uses the Software shall be subject to the terms of this EULA, whether or not they have signed this EULA, and downloading or use of the Software shall be deemed acceptance of the terms of this EULA.

1. Definitions.

Any capitalised terms not otherwise defined in this EULA shall have the meanings set forth below:

1. "**Associated Companies**" means an entity that directly or indirectly controls, is controlled by, or is under common control with, a party to this Agreement. For purposes of the foregoing, "control" means the ownership of (i) greater than fifty percent (50%) of the voting power to elect directors of the company, or (ii) greater than fifty percent (50%) of the ownership interest in the company;
2. "**Business Hours**" means 09:00hrs (GMT) to 17:00hrs (GMT) on Business Days;
3. "**Business Days**" means Mondays to Fridays except for UK statutory public holidays;
4. "**Documentation**" means the standard Software specifications, user instructions, technical description and all printed materials and electronic documentation for End User's use of the Software;
5. "**EULA**" means this HawkSight Software End User Licence Agreement which sets out the terms upon which HawkSight licenses its Software to End User;
6. "**EULA Effective Date**" has the meaning given in clause 10.1 of this EULA;
7. "**End User**" means [insert name and address of End User] or any person who uses the Software;
8. "**End User Services**" means the services provided by End User Services Provider to End User which includes managing maintenance and support services and certain implementation services related to the Software;
9. "**End User Services Provider**" means the then current company providing the End User Services to End User as notified in writing by End User to HawkSight and which as of the EULA Effective Date is HawkSight;
10. "**Intellectual Property Rights**" means intellectual property rights including without limitation rights in patents, trade marks, service marks, trade names, other trade-identifying symbols and inventions, copyrights, design rights, database rights, rights in know-how, trade secrets and any other intellectual property rights arising anywhere in the world, whether registered or unregistered, and including applications for the grant of any such rights;
11. "**Licence Fee**" means the fee payable for the Software Licences purchased by End User, as set out in the relevant Order Form;
12. "**Licence Term**" means the term of the Software License which is effective as of the date of this Agreement and will continue for a limited time on a subscription basis unless otherwise terminated in accordance with the termination provisions of the EULA;

13. **"Maintenance Release"** means a release of the Software which provides patches, corrects faults, or otherwise amends or updates the Software, but which does not constitute a New Product;
14. **"New Product"** means HawkSight software which from time to time is publicly marketed and released by HawkSight in the course of its normal business, being a product which contains such significant differences from the Software by End User, as determined by HawkSight in its absolute discretion, as constituting a new product and requiring a new licence from HawkSight;
15. **"Open Source Terms"** has the meaning given in clause 2.7 of the EULA;
16. **"Order Form"** means the fully executed Order Form for the purchase of the Software Licences;
17. **"Order Date"** means the date specified in the Order Form as the Order Form effective date or if no date is specified the date of Order Acknowledgement.
18. **"Price List(s)"** means the then current HawkSight Software Price List;
19. **"Software"** means the HawkSight Software as set out in the relevant Order Form which End User has selected to purchase and licence from HawkSight in accordance with the EULA and the relevant Order Form;
20. **"Software Licence(s)"** means the licence of the Software granted to End User by HawkSight for End User's use of the Software in accordance with the scope and limitations of use specified in the EULA and the relevant Order Form; and
21. **"Support Services"** means the support and maintenance services set out in Appendix 1.

2. Grant and Scope of EULA

- 2.1. In consideration of payment in full of the Licence Fee and in accordance with this EULA and the relevant Order Form, subject to clause 10, HawkSight grants End User a non-exclusive, non-transferable, non-sublicensable right to use the Software and Documentation for the Licence Term on the terms and conditions set out in this EULA and any such additional terms specific to End User's use of the Software as is set out in the relevant Order Form.
- 2.2. End User may:
 - 2.2.1. install and use the Software for End User's business operations only and in accordance with the scope and subject to the limitations of the Software Licences as set out in this EULA and the Order Form;
 - 2.2.2. duplicate the Software only to the extent necessary in order to load, display, run, transfer or save the Software simultaneously by the number of Software Licences set out in the Order Form;
 - 2.2.3. observe, investigate or test the functioning of the Software in order to determine the ideas and principles that underlie any element of the Software provided that this is done only while performing any of the permitted acts of installing, using, loading, displaying, running, transmitting or storing the Software.
- 2.3. End User shall not:
 - 2.3.1. do anything inconsistent with HawkSight's rights and title to the Software;
 - 2.3.2. remove or change the labels, instructions or trade mark signs contained in the Software or the Documentation;
 - 2.3.3. except as expressly permitted by applicable law, disassemble, reverse engineer or decompile the Software or any part, or otherwise derive its source code;
 - 2.3.4. use developer, test or integration versions of the Software for purposes other than for development work or tests and, in particular, End User will not install the developer, test or integration versions of the Software in live or back-up systems;
 - 2.3.5. make the Software or Documentation accessible to third parties or to employees other than those who have been appointed by End User to work in connection with the Software;

2.3.6. make changes or modifications to the core functionality or source code of the Software, nor permit the core functionality or the source code of the Software to be combined with, or become incorporated in, any other programs; and

2.3.7. allow the Software to become the subject of any charge, lien or encumbrance.

- 2.4. Except as set out in this EULA, HawkSight expressly reserves all other rights to publish, duplicate, process, use or exploit the Software.
- 2.5. The Software may contain open source software, freeware or shareware, and HawkSight does not charge any license fee to End User for its use of such open source parts of the Software. HawkSight excludes any warranties and any liability in respect of End User's use of such parts of the Software. End User accepts the specific license conditions of these portions of the Software which are included in the Documentation ("**Open Source Terms**"). Upon request of End User and where required by the Open Source Terms, HawkSight shall provide a copy of the source code of the open source software to the End User. To the extent there is a conflict between this EULA and the Open Source Terms, the terms of the Open Source Terms shall prevail over this EULA with regard to the open source software only.

3. End User's Obligations

- 3.1. End User shall:
- 3.1.1. keep any passwords or other access rights to the Software confidential and only disclose to those employees or Representatives who have a need to know and as necessary for the purpose of this EULA;
- 3.1.2. keep all copies of the Software secure; and
- 3.1.3. not export or re-export the Software or Documentation (or any copies thereof) or in violation of any applicable laws or regulations of the European Union or the country in which End User obtained them.

4. Right to Audit

- 4.1. The End User shall keep complete and accurate records (including without limitation a complete copy of the log files for the Software, where applicable) to permit an accurate assessment of the End User's compliance with its permitted Software usage as set out in this EULA and Order Form. HawkSight may require the End User, no more than once per year, to perform a self-audit of End User's usage of the Software at any time upon thirty days notice. If HawkSight suspects that the End User has breached its obligations under the EULA it may at any time upon notice require the End User to immediately perform a self-audit.
- 4.2. Following review of the End User's self-audit, HawkSight reserves the right to also perform an audit of the End User's use of the Software. HawkSight will endeavour to comply with the reasonable security requirements of the End User and upon written request may provide the End User with a copy of its audit report.
- 4.3. If an audit reveals that the End User has used any Software beyond the scope of the EULA, or has failed to pay associated Licence Fees, the End User shall remedy such breach within 30 days of written notice from HawkSight by paying all applicable Fees in accordance with HawkSight's at that time current Price Lists, together with all HawkSight's costs, if any, associated with the performance of the audit. HawkSight's acceptance of any payment shall be without prejudice to any other rights or remedies it may have under this EULA or applicable law.

5. Exclusion of Warranty

- 5.1. To the maximum extent permitted by applicable law, HawkSight provides no warranty and all warranties, terms and conditions, express, implied or statutory, including warranties, terms and conditions of merchantability, accuracy, correspondence with description, fitness for a purpose, satisfactory quality and non-infringement, all of which are, to the maximum extent permitted by applicable law, expressly disclaimed by HawkSight, its Associated Companies and its suppliers.

6. Intellectual Property Indemnity

- 6.1. End User acknowledges that all Intellectual Property Rights in the Software and Documentation are vested in and shall remain with HawkSight, HawkSight's Associated Companies or its suppliers (as applicable) absolutely, and

End User acknowledges that it has no right, title, ownership or interest in or to any Intellectual Property Rights in the Software and Documentation, except for the right of use provided in this EULA.

7. Limitation of Liability

- 7.1. Subject to Clause 7.2, the aggregate liability of HawkSight for or in respect of any loss or damage suffered by End User (whether due to breach of contract, tort (including negligence) or otherwise) under or in connection with this Agreement shall not exceed the sum equal to the price paid by the End User for the Software.
- 7.2. The exclusions in this clause 7 shall apply to the fullest extent permissible at law but no party excludes liability for death or personal injury caused by its or its officers, employees, contractors or agents' negligence; fraud or fraudulent misrepresentation; or any other liability which cannot be excluded by law.
- 7.3. Subject to clause 7.2, HawkSight shall have no liability for any special, indirect or consequential losses or damages of any kind which may be suffered by the other party (or any person claiming under or through the respective party) in connection with this Agreement or for loss of profits, anticipated savings, business opportunity, goodwill, or data (including corruption of or damage to data) whether or not such losses or damages are foreseeable; and whether the same arise in contract, tort (including negligence) or otherwise.
- 7.4. End User agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or, if it did rely on any representations (whether written or oral) not expressly set out in this EULA, that it shall have no remedy in respect of such representations and (in either case) HawkSight shall have no liability otherwise than in accordance with the express terms of this Agreement. HawkSight shall have no liability for any losses or damages caused by End User's delay or failure to timely provide any required information or to fulfil its obligations under this EULA.
- 7.5. HawkSight shall have no liability to the End User under the Agreement if it is prevented from, or delayed in, performing its obligations under this EULA or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the HawkSight or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.
- 7.6. HawkSight shall have no liability to the End User in relation to any acts or omissions carried out by the End User in relation to any event following the use of the Software. For the avoidance of doubt, the End User is responsible for the information which may be inputted into the Software for their use of the Software and the End User shall interpret and respond to any report generated by the Software at their own risk at all times, and HawkSight gives no warranty as to the accuracy of any information generated by the use of the Software.

8. Confidentiality

- 8.1. Except as permitted by clause 8.2, each party undertakes that it shall not at any time during the Term and for a period of two years after termination or expiration of this EULA disclose to any third party any confidential information disclosed to it by the other party concerning the business and/or affairs of the other party, including but not limited to information relating to a party's operations, technical or commercial know-how, specifications, inventions, processes or initiatives, plans, product information, pricing information, know-how, designs, trade secrets, software, documents, data and information which, when provided by one party to the other: a) are clearly identified as "Confidential" or "Proprietary" or are marked with a similar legend; b) are disclosed orally or visually, identified as Confidential Information at the time of disclosure and confirmed as Confidential Information in writing within 10 days; or c) a reasonable person would understand to be confidential or proprietary at the time of disclosure ("**Confidential Information**"). Each party agrees that it shall take all reasonable measures to protect the secrecy of, and avoid disclosure or use of, Confidential Information of the other party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorised under this EULA. Such measures shall include, but not be limited to, the highest degree of care that the receiving party utilises to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Each party agrees to notify the other in writing of any actual or suspected misuse, misappropriation or unauthorised disclosure of Confidential Information of the disclosing party which may come to the receiving party's attention.
- 8.2. Each party may disclose the other party's Confidential Information to its employees, officers, agents, consultants or sub-contractors ("**Representatives**") who need to know such information for the purposes of

carrying out the obligations under this EULA, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 8; and as may be required by law, court order or any governmental or regulatory authority. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause.

- 8.3. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this EULA are granted to the other party or are to be implied from this EULA. In particular, unless otherwise expressly stated in this EULA, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.
- 8.4. Notwithstanding the foregoing, the receiving party shall have no liability to the disclosing party with regard to any Confidential Information which the receiving party can prove:
 - 8.4.1. was in or has entered the public domain at the time it was disclosed through no fault of the receiving party;
 - 8.4.2. was known to the receiving party, without restriction, at the time of disclosure;
 - 8.4.3. is disclosed with the prior written approval of the disclosing party;
 - 8.4.4. was independently developed by the receiving party without any use of the Confidential Information;
 - 8.4.5. becomes known to the receiving party, without restriction, from a source other than the disclosing party, without breach of this EULA by the receiving party and otherwise not in violation of the disclosing party's rights; or
 - 8.4.6. is disclosed pursuant to an order of a court or other governmental or regulatory body; provided that the receiving party shall, to the extent permitted by law, provide the disclosing party with prompt notice of such court order to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

9. End User Indemnity

- 9.1. End User shall indemnify HawkSight and its Associated Companies against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by HawkSight as a result of End User's breach of this EULA or any negligent or wrongful act of End User, its officers, employees, contractors or agents in relation to its misuse of the Software.

10. Term and Termination

- 10.1. Unless otherwise expressly stated in the Order Form, this EULA is effective from the Order Date ("**EULA Effective Date**") and shall continue for the Licence Term unless terminated in accordance with this clause 10.
- 10.2. HawkSight may terminate this EULA at any time upon written notice if:
 - 10.2.1. End User is in breach of its obligations under this EULA, and in the case of a breach which is capable of remedy, End User fails to remedy such breach within thirty (30) days following notice of the breach; or
 - 10.2.2. End User has a receiver or administrative receiver appointed of it or any of its assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if End User shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business; or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 10.3. For the avoidance of doubt, a breach under clause 10.2.1 includes, without limitation, End User's failure to pay the Licence Fee or allowing unauthorised persons to gain access to the Software.
- 10.4. On expiration or termination of this EULA for any reason, all rights granted to the End User under this EULA shall cease and End User shall particularly:

10.4.1. promptly pay all unpaid monies due or to become due to HawkSight;

10.4.2. cease all activities authorised by this EULA;

10.4.3. immediately delete the Software from all equipment, storage media and from all other files and return the Documentation, other original materials and any existing copies thereof to HawkSight and certify in writing to HawkSight that it has done so; and

10.4.4. return to HawkSight any materials of HawkSight including without limitation all Confidential Information belonging to HawkSight.

11. Support & Maintenance

11.1. Subject to End User complying with its obligations set out in Appendix 1, HawkSight will provide the Support Services in accordance with the terms of Appendix 1.

12. General

12.1. **Entire Agreement.** This EULA sets out the entire agreement and understanding between the parties and supersedes any previous agreement between the parties relating to its subject matter. Unless otherwise expressly agreed in writing this EULA applies in place of and prevails over any terms or conditions contained in or referred to in any correspondence or elsewhere or implied by trade custom or course of dealing. Any general terms of business or other terms and conditions of any order or other document issued by the End User in connection with this EULA shall not be binding on HawkSight. In entering into this EULA each party acknowledges and agrees that it has not relied on any representations made by the other. Any such representations are excluded. Nothing in this clause shall limit liability for any representations made fraudulently.

12.2. **Warranty of Authority.** Each party represents and warrants to the other that it is duly organised, validly existing and in good standing under the laws of the jurisdiction of its organisation, and has the requisite power and authority to execute and deliver, and to perform its obligations under, this EULA. Each party represents and warrants to the other that this EULA has been duly authorised, executed and delivered by such party and constitutes a valid and binding obligations of such party enforceable against such party according to its terms.

12.3. **Governing Law and Jurisdiction.** This EULA shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts. The United Nations Convention on the International Sale of Goods (CISG) shall not apply.

12.4. **Third Party Rights.** Subject to clause 2.6 of the EULA, a person who is not a party to this EULA has no rights under the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce, or to enjoy the benefit of, any term of this EULA, but this does not affect any right or remedy of a third party which exists or is available apart from the Act or that is expressly provided for under this EULA.

12.5. **Assignment.** HawkSight may, at any time by notice in writing to the End User, assign, sub-contract or otherwise transfer its rights and obligations under this EULA to any of its Associated Companies, successors or assigns. End User may assign, or otherwise transfer its rights and obligations under this EULA to any of its Associated Companies with the prior written consent of HawkSight. Except as otherwise provided in this EULA, neither party may assign, sub-contract or otherwise transfer this EULA or any of its rights or obligations or purport to do any such acts under it to any third party without prior written consent from the other party. Any attempted assignment, sub-contracting or other transfer in violation of this provision shall be null and void.

12.6. **Notices.** All notices to be given under this EULA shall be given in English in writing to the address stated at the beginning of this EULA, or to such other address as shall be given by either Party to the other in writing. Any notice involving non-performance, termination, or renewal shall be hand-delivered or sent by recognized overnight courier or by certified mail, return receipt requested. Notices given by HawkSight regarding price changes, discount category changes, product discontinuance, product changes, and logistics centre changes may in addition be sent by e-mail or fax to the person(s) specified by End User from time to time. All other notices not referred to elsewhere in this clause 11.6 may be sent by (i) recognised overnight courier or (ii) by fax or e-mail and confirmed by first class mail. All notices shall be deemed to have been given and received on the earlier of actual receipt or three (3) days from the date of postmark.

- 12.7. Variations. Save as otherwise expressly stated in this EULA, this EULA may only be modified or varied in writing executed by duly authorised representatives of both parties.
- 12.8. Should parts of this EULA be or become invalid, this shall not affect the validity of the remaining provisions of this EULA, which shall remain unaffected. The invalid provision shall be replaced by the parties with such term which comes as close as possible, in a legally permitted manner, to the commercial terms intended by the invalid provision.
- 12.9. In addition to those provisions which by their nature are intended to survive any termination of this EULA, clauses 5, 7, 8, 9 and 10 of this EULA shall survive such termination or expiration of this EULA.

The parties hereto have caused this HawkSight Software End User Licence Agreement to be executed by their duly authorised representatives on the date(s) shown below:

Hawk Sight Security Risk Management Ltd

End User

Signature _____

Signature _____

Printed _____

Printed _____

Title _____

Title _____

Date _____

Date _____

Appendix 1 – Support and Maintenance Terms and Conditions

1. DEFINITIONS.

All definitions set forth in the main body of the EULA shall also apply to this Appendix.

2. SUPPORT SERVICES.

The Support Services for the Software consist of the following, during Business Hours: (i) using reasonable efforts to remedy failures of Software to function substantially in accordance with its the user guide, access to which the End User is provided with on or around the date of this Agreement; (ii) providing English-language assistance via web or email; and (iii) providing, or enabling End User to download, Software Releases and Documentation updates made generally available by HawkSight at no additional charge to other purchasers of Support Service for the Software. HawkSight reserves the right to change the scope of the Support Services on sixty (60) days' prior written notice to Customer. Support Services are provided for the current Software release only, unless otherwise agreed.

Alternative Support Words:

Scope of Standard Technical Support: During the maintenance term Authorised users will receive the level of technical support corresponding to the respective life cycle phase. Hawksight will publish the product life cycles on its website *here*. Hawksight does not provide technical support for a) Applications being developed to integrate with Hawksight, b) Hardware, graphics cards, monitors or plotters or any other tools that have not been provided by Hawksight.

Authorised representatives: Customers may nominate a limited number of Authorised representatives to log and manage technical issues using the Hawksight on line portal.

Authorised representatives may request technical assistance by completing an on line web form available at *TBC*. Requests made through this channel are received 24 hours a day, seven days a week, but will be acknowledged and assigned to a technical representative the next business day.

3. CUSTOMER RESPONSIBILITIES.

A. Cooperation. End User shall: (i) promptly notify HawkSight when the Software fails and provide HawkSight with sufficient details of the failure such that the failure can be reproduced by HawkSight; (ii) allow HawkSight remote and on-site (when determined necessary by HawkSight) access to the Software to provide Support Services; and (iii) furnish necessary facilities (which for on-site access means suitable work space, computers, power, light, phone, internet network availability, software and equipment reasonably required by HawkSight), information and assistance required to provide the Support Services.

B. Support Contacts. End User shall designate in writing a reasonable number of authorized contacts, as determined by End User and HawkSight, who shall initially report problems and receive Support Services from HawkSight. Each End User representative shall be familiar with End User's requirements and shall have the expertise and capabilities necessary to permit HawkSight to fulfill its obligations. A change to the authorized support contacts by End User shall be submitted to HawkSight in writing.

4. ADDITIONAL TERMS.

A. Software Releases. Upon use of a Software Release, End User shall remove and make no further use of all prior Software Releases, and protect such prior Software Releases from disclosure or use by any third party. End User is authorized to retain a copy of each Software Release properly obtained by End User for Customer's archive purposes and use such as a temporary back-up if the current Software Release becomes inoperable. End User shall use and deploy Software Releases strictly in accordance with terms of the original license for the Software.

7. TERM AND TERMINATION.

A. Software Support Services Term. Software related Support Services shall commence on the date of this End User License Agreement and continue for as long as the End User has a valid licence or licences for the Software.

B. Termination for Breach. Either party may terminate the Support Services for the Software for cause due to a failure of the other party to comply with the terms of this Appendix 1 with regard to the Software, provided that the terminating party has given thirty (30) days' written notice specifying the failure and the other party has not remedied such failure within such time. If HawkSight terminates the Support Services for the Software affected by such a failure by End User,

such termination shall be without further liability for HawkSight and without any obligation to refund any fees already paid therefore. If End User terminates for HawkSight's breach, End User's sole and exclusive remedy and HawkSight's sole and exclusive obligation shall be either to issue a credit for use against current or future purchases of Software or Support Services or grant a refund (as selected by End User) for that portion of any pre-paid Support Service fee that corresponds to the period between the effective date of the termination for breach and the end of the then current Support Services period.