

Last Modified: March 16th, 2021

IMPORTANT: PLEASE READ THIS AGREEMENT CAREFULLY AND CHECK NIGHTHAWK'S WEBSITE REGULARLY FOR MODIFICATIONS.

IHYDRANT SERVICE AGREEMENT

AMI Investments, LLC, d.b.a. Nighthawk ("Nighthawk") provides a limited license to use the Cloud-based iHydrant utility software, including its associated data collection, data storage and event notification services ("System"). To enable a customer and/or user (individually and collectively, "you") to access, monitor, and control iHydrants, Nighthawk offers its Cloud-based iHydrant Service (the "Service").

1. **SERVICE.**

(a) Each and every access, use, and/or payment of the Service constitutes your acceptance of and agreement to be bound by this Agreement, as modified from time to time. If you do not accept and agree to be bound by this Agreement, as modified from time to time, you shall not access and use and/or continue to access and use the Service. Nighthawk will post any modifications of this Agreement on its website and, therefore, you should check Nighthawk's website regularly to read and review the then-current terms of this Agreement.

(b) Subject to compliance with your obligations under this Agreement (including your payment obligations in paragraph 2 below), Nighthawk will provide the Service.

(c) You shall not access and/or use or permit any other person or entity to access and/or use the Service in violation of any domestic or foreign law or regulation.

(d) You hereby acknowledge and agree that Nighthawk possesses the right to permanently and/or temporarily change, suspend, remove, disable and/or discontinue the Service or your access and/or use of the Service at any time without advance notice. In no event shall Nighthawk be liable for any change, suspension, removal, disablement, and/or discontinuance of the Service or your access and/or use of the Service. Nighthawk may also impose limits on the Service or your access and/or use of the Service without advance notice and without liability.

2. **PAYMENT.**

(a) **Service Fees.** You hereby acknowledge, represent, and agree that you shall pay Nighthawk all fees, expenses, and costs associated with your access and/or use of the Service (collectively, the "Service Fees") in full (without offset or deduction) and in strict compliance with each and every Nighthawk invoice, bill, or other payment demand sent in physical form or electronically.

(b) **Service Fee Increase.** For Service provided on a month-to-month term, Nighthawk may increase the Service Fees at any time on thirty (30) days advance written notice. For service provided for a specified term longer than one month, Nighthawk may increase the Service Fees effective as of the first day of the renewal term or any time after renewal on thirty (30) days advance written notice.

(c) **Interest and Collection Fees.** Any unpaid Service Fees shall bear interest at the rate of one and one-half percent (1.5%) per month or the maximum amount permitted by applicable law, whichever is less. If you fail or refuse to timely pay Nighthawk for access and/or use of the Service, then Nighthawk, in addition to any and all other remedies provided by this Agreement and/or applicable law, may suspend the Service, without waiving Nighthawk's right to payment. If any Service Fees are overdue by more than thirty (30) days, and Nighthawk brings a legal action to collect them, or engages a collection agency to collect them, you shall also pay Nighthawk's reasonable cost of collection, including attorneys' fees, court costs, and other collection costs.

3. **TERM, SUSPENSION, AND TERMINATION.**

(a) **Term.** The initial term of this Agreement begins on the date Nighthawk makes the Service available for your use and continues for the period stated in any written order signed by an authorized agent of Nighthawk. If no period is stated in a written order, then the initial term shall be one month. Upon expiration of the initial term, the order will automatically renew for successive renewal terms of one month each, unless and until Nighthawk or you gives a written notice of an intention not to renew before the expiration of the initial term or then-current renewal term, as applicable.

(b) **Suspension.** Nighthawk may suspend the Service without any liability whatsoever if: (i) Nighthawk believes in its sole and exclusive determination that the Service is being used (or has been or will be used) in violation of this Agreement; (ii) Nighthawk discovers that you are, or are affiliated in any manner with, a person who or entity which has used similar services abusively in the past; (iii) you do not cooperate with Nighthawk's reasonable investigation of any suspected violation of this Agreement; (iv) Nighthawk believes in its sole and exclusive determination that the Service has been accessed or manipulated by a third party without your consent; (v) Nighthawk believes in its sole and exclusive determination that suspension of the Service is necessary to protect its network or its other customers, users, and/or vendors; (vi) a payment for the Service is overdue; or (vii) suspension is required by law. Nighthawk will give you reasonable advance notice of a suspension under this paragraph 3(b) and a chance to cure the grounds on which the suspension are based, unless Nighthawk determines in its sole and exclusive judgment that a suspension on shorter or contemporaneous notice is necessary to protect Nighthawk or its other customers, users, and/or vendors from imminent and significant operational or security risk. If a suspension is based on the breach of your obligations under this Agreement, then Nighthawk may continue to charge you Service Fees during the suspension, and may charge you a reinstatement fee upon reinstatement of the Service.

(c) **Termination.** Nighthawk may immediately terminate this Agreement if: (i) Nighthawk discovers that the information you provided about yourself or your proposed use of the Service is materially inaccurate or incomplete; (ii) if you (a natural person) have not attained the age of majority or otherwise do not have the legal capacity to enter into this Agreement, or if you (an entity) do not have the legal right or authority to enter into this Agreement for your business or principal; (iii) your payment of Service Fees is overdue and you do not pay the overdue amount within three (3) days of our written notice; (iv) a credit report indicates you no longer meet our reasonable credit criteria; (v) you use the Service in violation of this Agreement or any other agreement applicable to your use of the Service, including, but not limited to, any Rackspace agreement; (vi) you violate Nighthawk's or any other person's or entity's (including Rackspace's) authorized use policy or privacy policy more than once, even if you cure each violation; (vii) you fail to comply with any other provision of this Agreement and do not remedy the failure within ten (10) days of a notice to you describing the failure; (viii) any change in domestic or foreign laws or regulations, or the interpretation thereof, that adversely changes the duties or responsibilities of Nighthawk, or the method or amount of Service Fees or payment for Service under this Agreement; and (ix) upon your bankruptcy, insolvency, or winding up of business for any reason.

(d) **Post-Termination and Survival.** Upon termination of this Agreement, you shall immediately discontinue access and/or use of the Service and shall return and/or destroy all documentation associated with the Service. Paragraphs 2, 4 through 6, and 7(a) and (b) shall survive any termination of this Agreement.

4. **DISCLAIMER AND EXCLUSION OF WARRANTIES.**

(a) **General Disclaimer and Exclusion of Warranties.** YOU HEREBY ACKNOWLEDGE, REPRESENT, AND AGREE THAT THE SERVICE FURNISHED UNDER THIS AGREEMENT IS PROVIDED ON AN “AS IS” BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, TIMELINESS, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, SECURITY, AVAILABILITY, SATISFACTORY QUALITY OR AGAINST INTERFERENCE WITH ANY ENJOYMENT OF THE SERVICE; NOR ARE THERE ANY WARRANTIES CREATED BY THE COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. YOU HEREBY ACKNOWLEDGE, REPRESENT, AND AGREE THAT NIGHTHAWK DOES NOT WARRANT OR REPRESENT THAT THE SERVICE WILL MEET YOUR NEEDS OR REQUIREMENTS, BE ERROR-FREE OR SECURE, THAT ACCESS TO OR USE OF THE SERVICE WILL BE UNINTERRUPTED, OR THAT DEFECTS IN THE SERVICE WILL BE CORRECTED. YOU ACKNOWLEDGE, REPRESENT, AND AGREE THAT NO ORAL OR WRITTEN REPRESENTATION, STATEMENT, OR INFORMATION PROVIDED BY NIGHTHAWK BEFORE, DURING, OR AFTER YOUR FIRST ACCESS AND/OR USE OF THE SERVICE WILL CREATE A WARRANTY. YOU HEREBY ACKNOWLEDGE AND AGREE THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY AND ACTIVITY THAT COULD RESULT IN THE LOSS OF YOUR PRIVACY, DATA, CONFIDENTIAL INFORMATION, AND PROPERTY AND, THEREFORE, YOUR ACCESS AND/OR USE OF THE SERVICE ARE AT YOUR SOLE RISK AND, SHOULD THE SERVICE PROVE TO BE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION.

(b) You hereby acknowledge and agree that you are solely responsible for determining the suitability of the Service for your use, including, but not limited to, the suitability in light of any applicable domestic or foreign laws or regulations, including, but not limited to, the Healthcare Insurance Portability and Accountability Act, the Graham-Leach-Bliley Act, and any data privacy laws or regulations.

(c) The disclaimers and exclusions contained in paragraphs 4(a) and (b) of this Agreement are an essential part of this Agreement and formed the basis for determining the price charged for the Service.

5. **LIMITATION OF LIABILITY AND DAMAGES.**

(a) Nighthawk and you have considered the risks and rewards associated with this Agreement. Nighthawk and you agree to allocate certain of the risks so that, to the fullest extent permitted by law, Nighthawk’s total aggregate liability to you, if any, shall be limited to the *lesser of* \$1,000.00 or the value of the Service provided by Nighthawk for the three (3) month period immediately preceding the filing or submission of a claim, suit, demand, action, cause of action, proceeding, demand, complaint, loss, grievance, injury, relief or liability (individually and collectively, “Claim”), regardless of the legal,

equitable, statutory, or other theory under which such liability may be imposed. Nighthawk shall not be liable for any monetary or equitable relief associated with a Claim brought by another person or entity against you arising from, concerning, or relating to this Agreement or the business relationship between Nighthawk and you, regardless of the legal, equitable, statutory, or other theory under which such liability may be imposed.

(b) NOTWITHSTANDING PARAGRAPH 5(A) ABOVE, IN NO EVENT SHALL NIGHTHAWK, OR ITS DIRECTORS, OFFICERS, SHAREHOLDERS, MEMBERS, PARTNERS, AFFILIATES, EMPLOYEES, AGENTS, REPRESENTATIVES OR ANY OTHER PERSON AND/OR ENTITY ACTING FOR, IN CONCERT WITH, OR ON BEHALF OF NIGHTHAWK (INDIVIDUALLY AND COLLECTIVELY, "NIGHTHAWK AFFILIATES"), BE LIABLE TO YOU FOR PERSONAL INJURY OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, REGARDLESS OF THE LEGAL, EQUITABLE, STATUTORY, OR OTHER THEORY UNDER WHICH SUCH LIABILITY MAY BE IMPOSED (INCLUDING, BUT NOT LIMITED TO THIRD PARTY CLAIMS; DAMAGES CONCERNING OR RELATING TO DELAYS, MALFUNCTIONS, LOSS OF OR DAMAGE TO DATA, LOSS OF USE, INTERRUPTION OF SERVICE, LOSS OF ACTUAL OR PROSPECTIVE CONTRACTS, BUSINESS RELATIONS, REVENUE OR PROFITS, OR LOSS OR DAMAGE TO REPUTATION OR GOODWILL; DAMAGES CONCERNING OR RELATING TO INJURY TO ANY PERSON OR DAMAGE TO ANY REAL OR PERSONAL PROPERTY; LOSS OF OR DAMAGE SUSTAINED AS A RESULT OF WORK STOPPAGE; DAMAGES CONCERNING OR RELATING TO ANY OTHER COMMERCIAL OR ECONOMIC LOSS; DAMAGES FOR ANY LOSSES WHATSOEVER ARISING FROM OR RELATING TO THE USE OR RELIANCE UPON THE SERVICE), EVEN IF NIGHTHAWK OR THE NIGHTHAWK AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES AND EVEN IF A LIMITED REMEDY IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LIMITATION OF LIABILITY CONTAINED IN THIS PARAGRAPH 5(B) SHALL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL OR MATERIAL BREACH OF THIS AGREEMENT BY NIGHTHAWK.

6. **INDEMNIFICATION.** You shall, and do hereby acknowledge, agree, and represent that you will, indemnify, defend and hold Nighthawk and Nighthawk Affiliates harmless from any Claim, including reasonable attorneys' fees, made by any third party due to, concerning, relating to or arising out of your or any other person's or entity's access and/or use of Service, your or any other person's or entity's negligent, wanton, and/or intentional acts or omissions, your or any other person's or entity's infringement of a third-party's intellectual property, and your or any other person's or entity's breach of this Agreement or any other applicable agreement, including, but not limited to, any Rackspace agreement. You shall use your best efforts to cooperate with Nighthawk in the defense of any such Claim. Nighthawk reserves the right, but not the obligation, to employ separate counsel and assume the exclusive defense and control of any such Claim subject to indemnification by you.

7. **GENERAL TERMS.**

(a) **Ownership of Intellectual Property.** Nighthawk shall own and retain all right, title, and interest in and to its ideas, inventions, and intellectual property (including, but not limited to, trademarks, service marks, copyrights, patents, trade secrets, industrial designs, geographic indications and other intellectual property). Any ideas, inventions, or intellectual property developed by Nighthawk during the performance of the Service shall belong to Nighthawk. Your use of any software associated with the Service, if any, shall be subject to and governed by the applicable license for such software. All rights not expressly granted in this Agreement by Nighthawk are reserved.

(b) **Consent for Collection and Use of Technical Data.** You hereby acknowledge, represent, and agree that Nighthawk may periodically collect, process, analyze and store technical data or information about you and your access and/or use of the Service, devices, systems, applications, and peripherals, including, but not limited to, internet protocol addresses, hardware identification, software usage and statistics, and other similar technical data. Nighthawk will use technical data for internal statistical and analytical purposes to facilitate support, invoicing, and/or improvement of the Service. Nighthawk may transfer technical data to other persons or entities from time to time.

(c) **Amendment.** Nighthawk and you understand that this Agreement and any other documents incorporated by reference may be modified from time to time. When we modify this Agreement, we will notify you by email; therefore, it is important that you make sure Nighthawk has your email address and you tell Nighthawk if and when your email address changes. Any modifications of this Agreement will also be posted on Nighthawk's website, so you should check Nighthawk's website regularly to read and review the then-current terms of this Agreement. If you do not accept and agree to be bound by this Agreement, as modified from time to time, you shall not access and use and/or continue to access and use the Service. With the exception of amendment(s) or modification(s) to this Agreement by Nighthawk, no amendment or modification of any provision of this Agreement or any right, power, or remedy under this Agreement shall be effective unless made in writing and signed by Nighthawk's authorized representative.

(d) **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the state of Alabama without regard to its choice of law rules, and the laws of the United States of America, as applicable. This Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. You hereby acknowledge, represent, and agree that the federal and/or state courts situated in Madison County, Alabama shall be the sole and exclusive jurisdiction and venue for any Claim brought by you against Nighthawk and/or any Nighthawk Affiliates and that no other federal and/or state court may exercise jurisdiction or venue over any Claim brought by you against Nighthawk and/or any Nighthawk Affiliate. You hereby waive and disclaim any right to assert or adjudicate a Claim against Nighthawk or any Nighthawk Affiliate in a court other than the federal or state courts situated in Madison County, Alabama.

(e) **Export Compliance.** You hereby acknowledge, represent, and warrant that you are not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specifically Designated National and Blocked Persons and are not otherwise a person or entity from which Nighthawk is legally prohibited to provide the Service. You shall not provide administrative access to the Service to any person or entity that is located in or is a national of any country that is embargoed or highly restricted under United States export regulations.

(f) **Waivers.** Any term or condition of this Agreement may be waived at any time by the party which is entitled to the benefit thereof, but only if such waiver is evidenced in writing signed by such party that makes specific reference to this Agreement. No failure on the part of any party to exercise, and no delay in exercising, any right, power, or remedy created under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy by any party preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. No waiver by any party of any breach of or default in any term or condition of this Agreement shall constitute a waiver of or assent to any succeeding breach of or default in the same or any other term or condition hereof.

(g) **Force Majeure.** Neither party shall be liable for any failure to meet its obligations under this Agreement if the failure is due to acts of God; fire or explosion (except to the extent caused by the negligence or willful misconduct of the affected party); unusually severe weather; war, invasion, riot, or other civil unrest; governmental laws, orders, restrictions, actions, embargoes, or blockages; national or

regional emergency, including a pandemic; and injunctions, strikes, lockouts, labor trouble, or other industrial disturbances. The party claiming excusable delay shall give notice to the other party, in writing, as soon as possible after the occurrence of the cause relied upon as well as after termination of the condition and no payments shall be owed during any such excusable delay.

(h) **Assignment.** You shall not assign your rights and/or obligations under this Agreement to another person or entity without the advance written consent of Nighthawk. Nighthawk may assign this Agreement in whole or in part to a Nighthawk Affiliate or as a part of a corporate reorganization or a sale of Nighthawk's business.

(i) **Severability.** All rights and restrictions contained in this Agreement may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable domestic or foreign laws and are intended to be limited to the extent necessary to render this Agreement legal, valid, and enforceable. If any term of this Agreement, or part thereof, not essential to the commercial purpose of this Agreement shall be held to be illegal, invalid, or unenforceable under applicable law, it is the intention of the parties that the remaining terms of this Agreement, or part thereof, shall constitute their agreement with respect to the subject matter of this Agreement, and all such remaining terms, or parts thereof, shall remain in full force and effect. To the extent legally permissible any illegal, invalid, or unenforceable provision of this Agreement shall be replaced by a valid provision which will implement the commercial purpose of the illegal, invalid, or unenforceable provision.

(j) **Notices.** All routine communications concerning or relating to the Service should be sent to our customer support team. All notices and other communications required or permitted to be given or made by this Agreement shall be in writing and delivered personally or sent by pre-paid, first class, certified or registered mail, return receipt requested or by nationally recognized overnight delivery service to:

AMI Investments, LLC, dba Nighthawk
2304 Tarpley Road, Suite 110B
Carrollton, TX 75006

(k) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

(l) **Independent Parties.** None of the provisions of this Agreement are intended to create, nor shall they be deemed to construe or create, any relationship other than that of independent parties contracting with each other for the purpose of effecting the provisions of this Agreement. The parties are not, and shall not be construed to be without limitation, in a relationship of joint venture, partnership or employer-employee. The parties acknowledge that they are independent parties and do not control the activities of one another. The parties and each of their employees, shall be liable for their own debts, obligations, acts and omissions, including the payment of all required withholding, social security, and other taxes and benefits.

(m) **Duty to Cooperate.** You hereby acknowledge that your cooperation is critical to the ability of Nighthawk to successfully and efficiently perform its duties under this Agreement. Accordingly, you hereby agree to cooperate with Nighthawk fully in formulating and implementing the goals and objectives of this Agreement.

(n) **Headings.** The headings in this Agreement are for convenience only and shall not affect the construction or interpretation of any term or provision of this Agreement.

(o) **Construction.** This Agreement shall be construed without regard to any presumption or other rule requiring construction against any party drafting or causing this Agreement to be drafted. Whenever the context of this Agreement directs, the plural shall be read as the singular and the singular as the plural. “And” and “or” are terms of inclusion and not of exclusion, and shall be construed either disjunctively or conjunctively as necessary to ensure this Agreement is broadly applied.

(p) **Third-Party Rights.** Except as expressly provided in this Agreement, nothing in this Agreement shall be construed as giving any person or entity, other than Nighthawk, you and any successors, and permitted assigns, any right, remedy, or claim under or in respect of this Agreement or any provision of this Agreement.

(q) **Complete Agreement.** This Agreement with its exhibits and other documents incorporated by reference constitutes the entire understanding and agreement between Nighthawk and you and supersedes all prior communications, representations, understandings or agreements, oral or written, regarding its subject matter. If there is a conflict between the terms of another agreement and this Agreement, then this Agreement shall control with respect to your access and/or use of the Service, and the other agreement shall control with respect to the subject matter of such other agreement.

(r) **Authorization for Agreement.** You hereby represent that you have been duly authorized by all necessary laws, resolutions, votes and other action to enter into this Agreement and bind yourself and/or your principal, and this Agreement constitutes a valid and enforceable obligation of you and your principal.

Appendix A (Applicable in Canada Only)

1. **Limitations on Service.** If Subscriber utilizes any services/products provided by Rogers Communications Canada Inc. (“Rogers Services”) when using the System, the System may only work if within range of the wireless network operated by Rogers (“Rogers facilities”). In addition, Rogers Services

may be temporarily refused, interrupted, or limited at any time and individual data transmissions may be involuntarily delayed.

2. Security of Transmissions. Privacy cannot be guaranteed when using Rogers Services. If Subscriber requires secure transmission of data, Subscriber must provide for its own means of doing so. Subscriber assumes full responsibility for the establishment of appropriate security measures to control access to their own respective equipment and information.

3. Identifiers. Subscriber shall not have any property right in any Roger's codes and identifiers, including, but not limited to, MSISDNs, IMSIs, Internet Protocol addresses and personal identification numbers.

4. Limitations on Roaming Service. Rogers may, at its discretion, provide certain roaming services to Subscribers. Rogers may in its sole discretion suspend roaming privileges to any Subscriber at any time.

5. Rogers Limited Warranty. Rogers makes no warranty, express or implied, as to the Rogers Services and facilities and/or services made available to Rogers and/or Nighthawk from a third party vendor ("Third Party Facilities and/or Services"), including without limitation, any implied warranties as to merchantability or fitness for a particular purpose, nor does Rogers warrant uninterrupted working of, or the privacy of any communications using, the Rogers Services or the Rogers Facilities, and/or Third Party Facilities and/or Services.

6. CRTC Mandatory Provisions. Subscriber shall comply with the consumer safeguard obligations that are listed in Appendix 1 of Telecom Regulatory Policy 2017-11 (posted on the following link: <http://crtc.gc.ca/eng/archive/2017/2017-11.htm>), as such safeguards may be updated from time to time by the CRTC. Subscriber understands that the CRTC may change, modify or amend its policies at any time. As required, Subscriber must abide by all other CRTC obligations.