

TESCO Nighthawk

Solution as a Service

Terms and Conditions

The Customer is considering purchasing or has otherwise acquired devices manufactured by Nighthawk, such as AMI (Advanced Metering Infrastructure) electric meters, electric disconnect collars, radio transmit heads for water meters, etc. which require recurring services for proper Solution operation. The Solution is defined and comprised of any version of devices and software being utilized in the network and shall be collectively known as “the Solution”.

The Purpose of this Agreement is to define the respective rights and responsibilities of the Parties regarding the use and performance of the Solution, and the mechanisms available to settle disputes between the Parties with respect to those matters.

I. Rights and Responsibilities

1. **Termination of Services.** The Term of this agreement starts with any purchase of Nighthawk devices or services. Termination of services will occur if any of the following are satisfied:
 - a.) The Customer provides written notice of at least 60 days that the Customer seeks to terminate this Agreement as of a specific future date;
 - b.) The Customer declines to pay a periodic invoice for services, associated with the upcoming use of the Solution, issued by Nighthawk in advance of such usage; or,
 - c.) Nighthawk notifies the Customer that Nighthawk can no longer provide the required services for specific devices in the Solution, typically related to discontinued telecommunications services.
2. **Rights of the Customer.** During the Term, this Agreement grants the Customer the rights to:
 - a.) Access to the Solution as detailed in the Nighthawk Service Level Agreement (SLA);
 - b.) Access to Customer data stored by the Solution as detailed in the Nighthawk Customer Data Retention (CDR) Policy; and,
 - c.) Own the Customer Device Data, as detailed in the Nighthawk Customer Data Retention (CDR) Policy.

Should there be any conflict between these Appendices, then the Nighthawk SLA Agreement shall over-ride the contents of the Nighthawk Customer Data Retention (CDR) Policy.

3. **Responsibilities of Nighthawk.** During the Term, Nighthawk will, to the best of its ability:
 - a.) Maintain 24 hours per day, 7 days per week, 365 days per year availability to the Solution for Customer use, as detailed in the Service Level Agreement (SLA); and,
 - b.) Preserve Customer Data, as detailed in the Customer Data Retention (CDR) Policy.
 - c.) Adjust billing fees as devices are added or removed from service

4. Responsibilities of the Customer. During the Term, the Customer will:

- a.) Issue and cancel log-in credentials for the Customer's various staff members who need to use the Solution; and, manage the authorization levels as to which Solution functions the Customer's individual staff members are allowed to perform or not.
- b.) Supply both Internet access and Web browsing hardware and software to their staff, sufficient to enable Customer staff members to fulfill the "client" aspects of the industry standard "client-server" hosted Solution usage model.
- c.) Provide monthly accounting of devices that have been removed from service and should be deactivated.

II. Solution Services

1. Services.

Nighthawk provides Customers with the 24 hours per day, 7 days per week, 365 days per year ability, subject to availability restrictions detailed further below, to log into the Solution which, in turn, provides control and remote access to Customer deployed Nighthawk Devices; and, more specifically, the "Services" to:

- a.) Remotely acquire information from deployed Devices;
- b.) Remotely issue and deliver commands authorized for that Customer to their Devices; and to
- c.) Report and download historical data to Customer desktop computers from Customer Devices.

These Services are on a hosted cloud server, which receives log-ins from Customer "client" computers and Nighthawk delivers its Services to its Customers over this client-server link, where the Customer is responsible for all costs associated with those desktop "client" computers and providing their staff with Internet availability, and Nighthawk is responsible for the costs associated with maintaining the cloud "server"-based Services, including data storage.

2. Billing.

The solution is provided as a service (SaaS). All purchased devices are subject to recurring quarterly service fees. Fees are based on the number of active devices within the Solution plus any other services or devices not covered under these terms and conditions.

Service invoices will be sent quarterly and are calculated based on the last reported number of devices in service, plus any new devices that have been shipped, and subtracting any devices that have been reported as out of service 45 days prior to the start of the next quarter. For clarity, the cutoff date for billing calculations will be the 15th of the month 45 days prior to the start of the next quarter (mid quarter).

In order to keep invoicing accurate, it is incumbent on the Customer to keep accurate information on devices in service and to promptly inform your support representative. Please reference Section I.3.c and

I.4.c for each party's responsibilities.

3. Solution Availability.

Nighthawk is fully committed to providing quality service to all customers. To support this commitment, Nighthawk provides the following commitments:

- a) Solution Availability. Nighthawk targets a 99.6% monthly average of scheduled availability of the Solution, including all of its servers and of the cellular communications capabilities which support much of the Solution. Nighthawk has its servers installed on site in the Dallas, TX with Rackspace, a major multinational data center company. Please refer to item 3.d for further details regarding legacy networks.
- b) Internal Watchdog. Nighthawk's Solution and Devices have been designed to provide continuous and autonomous monitoring of system services and will restart any service that fails to provide a routine status avoiding delays in data retrieval.
- c) External Monitoring. To verify Solution availability, Nighthawk uses a 3rd-party automated monitoring service which attempts to connect with various Solution services many times throughout the day from multiple geographic locations. If the 3rd party automated monitoring fails to receive the desired response, it contacts Nighthawk technical support for resolution.
- d) Communications Availability. Many Nighthawk Devices directly or indirectly use a cellular communications network. Nighthawk provides services for the direct negotiation and administration of carrier services. As carriers develop and rollout new protocols, legacy services are discontinued such as GSM and CDMA. Where Customers continue to try to use Devices which were designed for specific carrier protocols that have been end of life or have had the service discontinued, Nighthawk is absolved of failures on the part of the Solution when it cannot communicate with such Devices.
- e) Network Availability. Defined as Nighthawk's ability to transact incoming and outgoing TCP/IP or client- server traffic with Customers via the Solution website. Nighthawk does not include outages of any kind, including denial of service or similar attacks, that are not under direct Nighthawk control in uptime calculations.
- f) Scheduled Maintenance. Nighthawk will perform maintenance on its servers on a routine basis ensuring optimal performance of its servers, including installation of Solution upgrades, improvements, or bug fixes. Nighthawk reserves two hours of server unavailability per month for such maintenance purposes and will provide the Customers with advance notice of such activities. This routine downtime is not included in server uptime calculations. Scheduled maintenance is typically performed during off-peak hours.

4. Technical Support.

Nighthawk provides the Customer with technical support in two ways:

- a.) Nighthawk operates a Help Desk from 8:30 am to 4:30 pm Central Time during normal business days (i.e. not on weekends or holidays) with a knowledgeable technical person available to discuss technical matters about the Solution with Customers; and,
- b.) Nighthawk's servers are monitored automatically 24 hours per day, 7 days per week, 365 days per year to ensure that all Customer Services are continuously available. When automated monitoring detects a problem, some corrections can be done in an automated manner, such as restarting a stopped service; and, where detected problems cannot be automatically corrected, Nighthawk personnel are alerted to the issue, on an escalating basis, to correct the problem.

5. Online Documentation

The Customer is provided certain online documentation, and Nighthawk expects the Customer to consult such guidance in their use of the Solution. Nighthawk personnel are available for basic technical support should it be required. However, basic technical support should not be considered to be training or require Nighthawk personnel to perform tasks that the Customer can perform themselves. If training is required, please contact your sales representative for a quotation.

6. Escalation.

If a Customer is dissatisfied with Nighthawk's Services or responsiveness, or if the Customer has been unable to resolve a technical support issue within the parameters defined in these Terms and Conditions, please escalate to Nighthawk's General Manager, who will review the Customer's concerns, investigate, and respond to Customer within one (1) business day of having been contacted. As issues may be complex or require extensive investigation, the foregoing response time does not imply that a resolution is guaranteed within that one (1) business day.

7. Server Storage Capacity.

Each Customer is allotted storage capacity on the Nighthawk's servers according to the Devices operated by the Customer. Nighthawk reserves the right to archive Customer data, according to its Customer Data Retention Policy.

8. Ownership of Data.

All data (a) entered by a Customer and/or (b) received from Customer Devices is securely stored, by Customer, on dedicated Nighthawk servers. The data stored on Nighthawk's servers is the Customer's property and such data is for each Customer's exclusive use unless the Customer authorizes 3rd-party access to such data. Nighthawk makes no claim of ownership of any data which has originated from Customer Devices, or which has been data entered by Customers, and which is stored on Solution



servers.

For optimal support, direct Nighthawk personnel (no third party) will have access to Customer data on a limited basis. Any access to Customer data by Nighthawk personnel will be in compliance with Nighthawk's Privacy Policy.

9. Data Integrity.

Nighthawk employs sophisticated RAID techniques to ensure the integrity of the data on its servers, and the data is written to two disks simultaneously to prevent data loss in the event of hardware failure, although Nighthawk reserves the right to place Customer data on non-RAID servers as necessary. Routine backups are performed for emergency recovery purposes only.

In the event of data corruption, hardware failure or other data loss, Nighthawk will make efforts to restore lost or corrupted data from server backups. Nighthawk shall not be responsible for lost data or site content. Nighthawk recommends that the Customer maintain a local copy of all essential (such as billing) data at least once a month.

12. Privacy Statement.

Nighthawk values the privacy of its customers and restricts access to, and information about Customer Devices on a per Customer basis. Please refer to The Nighthawk's Privacy Policy for further information.

10. Warranty and Returns.

Nighthawk products carry a two (2) year limited warranty. A Return Material Authorization (RMA) number is required before shipment. Nighthawk will not accept collect or C.O.D. shipments of any kind unless it has been prearranged. Items provided for the solution that are not manufactured by Nighthawk carry the same warranty as given by their manufacturer. Please contact your support representative for an RMA number prior to return of defective products to the factory. The Customer is responsible for freight costs to the factory. Nighthawk shall pay for all return freight for products under warranty to the customer. The assigned RMA# should be included on shipping label of shipping box for easy identification.

11. Out-of-Warranty Service.

A Return Material Authorization (RMA) number is required before shipment. Nighthawk will not accept collect or C.O.D. shipments of any kind unless it has been prearranged. Defective unit must be returned with a Purchase Order or credit card number. Estimates of repair costs must be requested and if the repair is not made, the cost of labor to obtain the estimate will be invoiced at the then hourly rate. All freight charges are the responsibility of the Customer.