

## Software End User License Agreement and Software-as-a-Service Agreement

This End User License Agreement and Software-as-a-Service Agreement and the Purchase Order that by this reference is incorporated herein (together the "**Agreement**") is a binding agreement between PDQ.com Corporation ("**Company**") and the person or entity identified on the Purchase Order as the licensee of the Software and/or the user of the SaaS System ("**Customer**").

COMPANY PROVIDES THE SOFTWARE AND/OR PROVIDES ACCESS TO THE SAAS SYSTEM SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT CUSTOMER ACCEPTS AND COMPLIES WITH THEM. BY CLICKING THE "ACCEPT" BUTTON UPON CREATING AN ACCOUNT AND/OR CREATING OR ACCEPTING A PURCHASE ORDER YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT CUSTOMER IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE 18 YEARS OF AGE OR OLDER/OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF CUSTOMER IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER AND BIND CUSTOMER TO ITS TERMS. IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, COMPANY WILL NOT AND DOES NOT LICENSE THE SOFTWARE AND/OR AGREE TO PROVIDE ACCESS TO THE SAAS SYSTEM TO CUSTOMER AND YOU MUST NOT DOWNLOAD THE SOFTWARE OR DOCUMENTATION AND/OR ACCESS THE SAAS SYSTEM.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR YOUR OR CUSTOMER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE OR RIGHT TO ACCESS IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE OR SAAS SYSTEM THAT IS NOT IDENTIFIED IN A PURCHASE ORDER BETWEEN COMPANY AND CUSTOMER, THAT CUSTOMER DID NOT ACQUIRE LAWFULLY, OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF COMPANY'S SOFTWARE.

1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

"**Administrative Tools**" means software tools that form part of the Software or the SaaS Services for use in remotely scanning or managing or deploying Packages to a virtual or physical computer, server, phone, or other computing device.

"**Administrator**" means an individual person who acts as a computer system administrator for Customer and for whom Customer has been granted a license to the Software by Company as provided for in this Agreement. An Administrator is an individual person who is either an employee or independent contractor of Customer who

accesses or uses the Software, or any part thereof, for or on behalf of Customer at any time.

"**Central Server**" has the meaning defined in Section 2(a)(v).

"**Client software**" means agent software that forms part of the Software or the Downloadable Software that is installed on a virtual or physical computer, server, phone, or other computing device that allows remote management and monitoring.

"**Company**" has the meaning set forth in the preamble.

"**Company IP**" means the Software, the SaaS System, the Documentation, and any and all intellectual property to which the Company gives Customer access in connection with the foregoing.

"**Customer**" has the meaning set forth in the preamble.

"**Device**" means a virtual or physical computer, server, phone, or other computing device on which Customer installs the Client software or a Package or which Customer otherwise scans or manages using the Administrative Tools.

"**Documentation**" means user manuals, technical manuals, and any other materials provided by Company, in printed, electronic, or other form, that relate to the Software or the SaaS System.

"**Downloadable Software**" means downloadable agent software of Company that Company makes available for download specifically for purposes of facilitating access to, operation of, or use with the SaaS Services. Downloadable Software includes any Improvements Company may make available for such downloadable tools or other software. Downloadable Software does not include TPS.

"**Enterprise SL License**" has the meaning defined in Section 2(a)(iii).

"**Fees**" means the license fees or access fees, including all taxes thereon, paid or required to be paid by Customer for the license or access rights granted under this Agreement.

"**Improvement**" means any update, upgrade, fix, correction, patch, maintenance release, revision or supplement to or for the Software or the SaaS System that Company provides or makes available to Customer.

"**Intellectual Property Rights**" means any or all of the following and all rights in, arising out of, or associated therewith worldwide: (i) patents and utility models and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations, and continuations-in-part thereof; (ii) trade secrets, proprietary information, know how, and all documentation embodying or evidencing any of the foregoing; (iii) copyrights, copyright registrations and applications therefor, and moral rights, rights of attribution, rights of integrity, and any other similar rights; (iv) mask

works, mask work registrations and applications therefor, and any equivalent or similar rights in semiconductor masks, architectures, or topology; (v) industrial property, industrial designs, and any registrations and applications therefor; (vi) databases and data collections; (vii) trademarks, service marks, domain names, and trade dress, together with all goodwill associated with any of the foregoing; and (viii) any similar, corresponding, or equivalent rights to any of the foregoing anywhere in the world, whether registered or unregistered, and any other proprietary rights and protections, whether currently existing or hereafter developed or acquired, whether published or unpublished, arising under statutory law, common law, or by contract, and whether or not perfected, including all applications, disclosures and registrations with respect thereto.

**"Package"** means a package of drivers, applications, media, or scripts created or deployed using the Administrative Tools. A Package may consist of certain TPS as selected by Company that Company in its sole discretion chooses to provide or make available to Customer through the Software or the SaaS System.

**"Person"** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

**"Purchase Order"** means the form filled out and submitted by or on behalf of Customer, and accepted by Company, and any subsequently generated documentation for Customer's purchase of the license for the Software and/or access rights for the SaaS System granted under this Agreement. The Purchase Order identifies Customer and states a number of Administrators or Devices. The Purchase Order may be in the form of a quote.

**"SaaS Services"** means any software-as-a-service offering set forth in the Purchase Order for which Customer has purchased a right to access and use subject to the terms of this Agreement.

**"SaaS System"** means the SaaS Services and the Downloadable Software.

**"Software"** means any software program set forth in the Purchase Order for which Customer has purchased a license to download and install subject to the terms of this Agreement. Software includes any Improvement that Company makes available to Customer for the Software.

**"Subscription Period"** means the number of months or years for which Customer has purchased a license to the Software or access rights to the SaaS System as stated in the Purchase Order.

**"Support Services"** shall mean any support, maintenance, training or other services that may be provided by Company to Customer for or in connection with the Software, the SaaS System, or otherwise under this Agreement.

**"Term"** has the meaning set forth in Section 15.

**"Third Party"** means any Person other than Customer or Company.

**"TPS"** means any and all Third Party software and documentation that Company provides or makes available to Customer through the Software or the SaaS System. TPS does not include any software, documentation, improvements, support services, or any other products or services of Company.

**"Usage Data"** has the meaning set forth in Section 12.

2. License Grant and Scope. If the Purchase Order identifies PDQ Deploy, PDQ Inventory, and/or SmartDeploy, subject to and conditioned upon Customer's payment of the Fees and Customer's strict compliance with all terms and conditions set forth in this Agreement, Company hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable, limited license during the Term to use the Software, solely as set forth in this Section 2 and subject to all conditions and limitations set forth in this Section, Section 7, and elsewhere in this Agreement.

(a) If the Purchase Order identifies PDQ Deploy and/or PDQ Inventory Software, this license grants Customer the right to download, install, access, and use, by the specific number of individual Administrators specified in the Purchase Order, the Software for Customer's internal business purposes only. Unless Company has granted Customer an Enterprise SL License, the Software is licensed to Customer on a per-Administrator basis only, with the PDQ Deploy Software and PDQ Inventory Software each requiring its own separate license for each Administrator.

(i) Each Administrator that Customer selects to use the Software (up to the number of individual Administrators specified in the Purchase Order) may install, access, and use the Software on as many computers of Customer as reasonably necessary for the Administrator to perform the Administrator's duties. For example, each licensed Administrator may install multiple "consoles" of the Software.

(ii) No Floating Licenses. The licenses to the Software granted to Customer are not for seats or floating licenses. Only Administrators selected by Customer (up to the number of individual Administrators specified in the Purchase Order) may access or use the Software. In other words, individuals associated with Customer's organization whom Customer has not selected as Administrators may not access or use the Software, even if they are accessing or using the Software at different times on the same computer. Customer may change which individuals Customer selects as Administrators. For example, when a selected Administrator leaves or otherwise ceases to be associated with Customer's organization, Customer may select a replacement Administrator of Customer, provided that Customer ensures that all Software is removed from any and all computers and other devices retained by the previous Administrator, and provided that Customer gives Company immediate written notice of such reassignment.

(iii) Enterprise SL License. If Customer purchases and is granted an enterprise network server license for the Software (“Enterprise SL License”), then the Software shall be downloaded to and installed by Customer on such Customer network server and the Software may then be accessed and used from such Customer network server by any number of Administrators accessing and using such Customer network server. The license fee for such Enterprise SL License shall be Company’s then current Enterprise SL License fee or such other license fee for such Enterprise SL License as expressly agreed to in writing between Customer and Company.

(iv) Command Lined Interface. Software licensed by Company in the enterprise mode is enabled with a Command Line Interface (“CLI”) mode of operation. This allows the Administrator to send deployment or scan requests to a Software console. The license required with CLI is the same as it is for all other aspects of the Software, in that it is licensed, and license fees may be charged, by Company to Customer on a per Administrator or Enterprise SL License basis. Any Customer employee or independent contractor who initiates, through whatever method, deployment or scan operations using the Software is considered an Administrator for licensing purposes.

(v) The Software may have central server functionality (“Central Server”). Company may use the Central Server to track and enforce licensing of the Software based on the number of concurrent sessions that permits Company to verify whether the Software is being downloaded, installed, accessed, and used by Customer on a per Administrator or Enterprise SL License basis as required in this Agreement. The limit of concurrent sessions to the Central Server is directly tied to the number of Software licenses granted to Customer hereunder. For example, if Customer has purchased for its Administrators a five (5) user PDQ Deploy Enterprise Software license, then Company enabling the Central Server for this license will limit the number of concurrent sessions to a maximum of five (5). If Customer wishes for an Administrator to utilize multiple concurrent sessions, then additional licenses to the Software must be purchased by Customer from Company for each such session. If Customer wishes for an Administrator to maintain consoles in stand-alone mode (i.e. by not connecting to a centralized server), then the requirement to be granted one (1) license per Administrator for the Software is still required.

(vi) Customer shall not download, install, access or use the Software on any storage device (such as a network server) that permits any of the Software to be shared or used concurrently on two or more computers, terminals, workstations, or other devices, except to the extent that Customer has been granted an Enterprise SL License or separate dedicated licenses from Company in writing for each Administrator who so uses the Software on any such computer, terminal, workstation, or other device.

(b) If the Purchase Order identifies SmartDeploy, this license grants Customer the right to download, install, access, and use the Software, specifically, the SmartDeploy

imaging and associated PC management capability, for the total number of Devices specified in the Purchase Order. There is no limit on reimaging, scanning, or deploying Packages within the total number of specified Devices during the Term.

(i) Customer may install, access, and use the Administrative Tools on as many computers of Customer as reasonably necessary for Company to execute administrative tasks in connection with managing Devices. Such administrative tasks may include monitoring Devices, creating or modifying Packages, and deploying Packages.

(ii) A license is required for each Device. If Customer exceeds the number of Devices stated in the Purchase Order, Company will automatically charge Customer for the additional number of Devices for the remainder of the Subscription Period.

(iii) A server may be used for the Administrative Tools, as a Device, to store Packages, or as a backup for the Software. Other network use is prohibited by any user not licensed to use the Software through a valid license from Company.

3. Access and Use of SaaS Services. If the Purchase Order identifies SimpleMDM and/or PDQ Connect, subject to and conditioned on Customer's payment of Fees and compliance with the terms and conditions of this Agreement, Company hereby grants Customer a non-exclusive, non-transferable right to access and use the SaaS Services during the Term in connection with the total number of Devices specified in the Purchase Order in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Company shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the SaaS Services. Customer must maintain the confidentiality of assigned password(s) and ensure that passwords assigned to individuals authorized to access the Software are not shared with unauthorized individuals. Customer agrees to immediately notify Company if a password is lost, stolen, disclosed to an unauthorized third party, or has otherwise been compromised. Customer is solely responsible for any and all activities made under Customer's account, including, but not limited to, exceeding the number of authorized Devices, whether or not Customer permitted the use of Customer's account.

(a) **Downloadable Software.** If the Purchase Order identifies PDQ Connect, subject to the terms and conditions contained in this Agreement, Company grants to Customer a non-exclusive, non-sublicensable, non-transferable limited license during the Term to install and use Downloadable Software of Company, in object code format, on the total number of Devices specified in the Purchase Order solely for Customer's internal use in connection with Customer's use of the SaaS Services.

(b) If Customer exceeds the number of Devices stated in the Purchase Order, Company will automatically charge Customer for the additional number of Devices for the remainder of the Term.

(c) **Suspension.** Notwithstanding anything to the contrary in this Agreement, Company may temporarily suspend Customer's access to any portion or all of the SaaS Services if: (i) Company reasonably determines that (A) there is a threat or attack on any of the Company IP; (B) Customer's use of the Company IP disrupts or poses a security risk to the Company IP or to any other customer or vendor of Company; (C) Customer is using the Company IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Company's provision of the SaaS Services to Customer is prohibited by applicable law; or (ii) any vendor of Company has suspended or terminated Company's access to or use of any third-party services or products required to enable Customer to access the Services (any such suspension described in subclause (i) or (ii), a "**Service Suspension**"). Company shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Company shall use commercially reasonable efforts to resume providing access to the SaaS Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Company will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer may incur as a result of a Service Suspension.

#### 4. Free Version and Trial Version.

(a) **Free Version.** Customer may have received access to a "free" version of the Software and/or SaaS System. This paragraph applies to Customer's access to and use of the free version of the Software and/or SaaS System. Customer may access and use, under the terms of this Agreement, any version of the Software or the SaaS System that Company expressly designates in writing as being a free version without payment of any fees to Company. Company may revoke access to a free version of the Software and/or the SaaS System at any time and without notice. Company may change what is available in connection with a free version of the Software and/or the SaaS System at any time and without notice.

(b) **Trial Version.** Customer may have received access to a "trial" version of the Software and/or the SaaS System. If so, this paragraph also applies to Customer's access to and use of the trial version of the Software and/or the SaaS System. Any version of the Software and/or the SaaS System that Company expressly designates in writing as being a trial version may be accessed and used by Customer under this Agreement only for the trial period specified.

(c) ANY FREE VERSION OR TRIAL VERSION OF THE SOFTWARE OR THE SAAS SYSTEM IS NOT ELIGIBLE FOR ANY SUPPORT SERVICES FROM COMPANY AND IS PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS WITHOUT ANY REPRESENTATIONS, WARRANTIES, OR GUARANTEES WHATSOEVER AND SUBJECT TO ALL THE DISCLAIMERS PROVIDED FOR IN THIS AGREEMENT.

5. Prerelease Software. If the Customer has received access to precommercial release or beta software or SaaS services (“Prerelease Software”), then this Section applies. To the extent that any provision in this Section is in conflict with any other term or condition in this Agreement, this Section shall supersede such other term(s) and condition(s) with respect to the Prerelease Software, but only to the extent necessary to resolve the conflict.

(a) Customer acknowledges that the Prerelease Software is a prerelease version, does not represent a final product from Company, and may contain bugs, errors, and other problems that could cause system or other failures and data loss.

CONSEQUENTLY, CUSTOMER RECEIVES ACCESS TO THE PRERELEASE SOFTWARE “AS IS” AND WITH ALL FAULTS, AND COMPANY EXPRESSLY DISCLAIMS ANY WARRANTY OR LIABILITY OBLIGATIONS TO CUSTOMER OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY. WHERE LEGALLY LIABILITY CANNOT BE EXCLUDED FOR PRERELEASE SOFTWARE, BUT IT MAY BE LIMITED, COMPANY’S TOTAL LIABILITY TO CUSTOMER OR TO ANY THIRD PARTY UNDER THIS AGREEMENT (AND THAT OF ITS SUPPLIERS) SHALL BE LIMITED TO THE SUM OF FIFTY DOLLARS (US \$50) IN TOTAL.

(b) Customer acknowledges that Company has not promised or guaranteed that Prerelease Software will be announced or made available to anyone in the future, that Company has no express or implied obligation to Customer to announce or introduce the Prerelease Software, and that Company may not introduce a product similar to or compatible with the Prerelease Software. Accordingly, Customer acknowledges that any research or development that Customer performs regarding the Prerelease Software or any product associated with the Prerelease Software is done entirely at Customer’s own risk.

(c) If Customer has been provided access to the Prerelease Software pursuant to a separate written agreement, Customer’s use of the Prerelease Software is governed by such agreement. Customer may not sublicense, lease, loan, rent, distribute, or otherwise transfer the Prerelease Software. Upon receipt of a later unreleased version of the Prerelease Software or release by Company of a publicly released commercial version of the Prerelease Software, whether as a stand-alone product or as part of a larger product, Customer agrees to return or destroy all earlier Prerelease Software received from Company and to abide by the terms of the license agreement for any such later versions of the Prerelease Software.

6. Third-Party Materials. The Software and/or SaaS System may provide access to or instructions for installing, updating, or upgrading TPS. The TPS may be included in Packages. Company may make TPS and Packages available to Customer over the Internet subject to Customer’s payment of the applicable subscription fees. Customer is solely responsible for obtaining, securing, and maintaining any and all hardware, operating system software, Internet services, and any and all other products and services necessary for Customer to download, install, access, receive, or use such TPS and Packages.



(a) Company in its sole and absolute discretion determines any TPS, and the versions of any TPS, to include in any Package provided by Company and whether and when, if at all, to provide or make available any updated, upgraded, corrected, or additional TPS or Packages. Company makes no representations or warranties whatsoever regarding the compatibility of any TPS with any third-party hardware, operating system software, Internet services, or any other products or services. TPS and Packages are not eligible for any Support Services from Company. **ALL TPS AND PACKAGES ARE PROVIDED OR MADE AVAILABLE STRICTLY ON AN “AS IS” BASIS WITHOUT ANY REPRESENTATIONS, WARRANTIES, OR GUARANTEES WHATSOEVER, AND ARE SUBJECT TO ALL THE DISCLAIMERS PROVIDED FOR IN SECTION 16 BELOW.**

(b) Customer acknowledges and agrees that Customer is not purchasing or being granted any licenses or rights to any TPS from Company and Company does not make any modifications or alterations to any TPS or the applicable licenses or terms therefor. Customer is bound by and shall comply with all applicable licenses and terms for all TPS and represents and warrants that Customer shall legally, timely, and properly accept, agree to, and comply with all applicable licenses and terms for all TPS. Customer shall defend, indemnify, and hold harmless Company, its owners, affiliates, and subsidiaries, and their respective officers, directors, shareholders, employees, contractors, and agents, from and against any and all claims, demands, actions, causes of action, lawsuits, proceedings, damages, awards, liabilities, losses, fines, costs, and expenses (including without limitation attorneys’ fees, court costs, expert witness fees, and other expenses or costs incurred) of whatever kind or nature and regardless of the legal theory based on, arising from or otherwise relating to any: (i) Customer failure to legally, timely and properly accept, agree to or comply with any third party licenses or terms applicable to any TPS; (ii) Customer failure to legally, timely and properly license any TPS; and/or (iii) Customer access to or use of, or inability to access or use, or unsatisfactory access to or use of, any TPS or Packages.

7. Use Restrictions. Customer shall not, and shall require all persons to whom Customer gives access, directly or indirectly, to Company IP to not:

(a) use (including make any copies of) Company IP beyond the scope of the license granted under Section 2 and/or the access right granted under Section 3 (as applicable);

(b) provide any other Person, including any subcontractor, independent contractor, affiliate, or service company of Customer, with access to or use of the Company IP;

(c) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of Company IP or any part thereof;

(d) combine Company IP or any part thereof with, or incorporate Company IP or any part thereof, in any other programs;

(e) reverse engineer, disassemble, decompile, decode, translate, or otherwise attempt to derive or gain access to the source code or underlying ideas, structure, or algorithms of Company IP or any part thereof;

(f) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with Company IP, including any copy thereof;

(g) except as expressly permitted under this Agreement, copy Company IP, in whole or in part;

(h) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, time-share, or otherwise make available Company IP, or any features or functionality of Company IP, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service;

(i) use Company IP to provide any services as an application service company (ASP) or on a software-as-a-service (SaaS) basis, or use or provide Company IP on a service bureau basis or through any other method;

(j) use Company IP in, or in association with, the design, construction, maintenance, or operation of any hazardous environments or systems, including:

(i) power generation systems;

(ii) aircraft navigation or communication systems, air traffic control systems, or any other transport management systems;

(iii) safety-critical applications, including medical or life-support systems, vehicle operation applications, or any police, fire, or other safety response systems; and

(iv) military or aerospace applications, weapons systems, or environments;

(k) use Company IP in violation of any law, regulation, or rule;

(l) use Company IP for purposes of competitive analysis of Company IP, the development of a competing software product or service, or any other purpose that is to the Company's commercial disadvantage;

(m) directly or indirectly, encumber or suffer to exist any lien or security interest on Company IP;

(n) knowingly take any action that would cause Company IP to be placed in the public domain; or

(o) create, make available, or distribute, either directly or indirectly, any application that would enable others to utilize the tools and features available only to licensed or authorized users of Company IP, or that would otherwise circumvent the need for any third party to purchase a valid license or access rights.

8. Feedback. If Customer provides to Company any feedback, suggestion, idea, comment, or information regarding or in connection with Company IP (“Feedback”), Customer assigns and grants to Company all right, title, and interest in and to the Feedback. Company will own the Feedback and will be entitled to use the Feedback without restriction, without compensation to Customer, and without Customer’s prior approval. All Intellectual Property rights that result or arise from Company’s use of the Feedback, including any research, development, use, or commercialization of such Feedback, belong exclusively to Company, and Company shall have no obligation to Customer whatsoever in relation thereto or in connection therewith. Customer agrees to provide Company (at Company’s expense) any assistance Company may require to document, perfect, and maintain its rights in the Feedback.

9. Responsibility for Use of Software and/or the SaaS System.

(a) Customer acknowledges and agrees that the Software and the SaaS System require use of compatible hardware and operating system software. It is Customer’s sole responsibility to obtain and pay for any and all such compatible hardware and operating system software, including any required licenses for such software. Customer is solely responsible for the download, installation, deployment, operation, and/or use (as applicable) of the Software and the SaaS System on Customer hardware and software.

(b) Customer acknowledges and agrees that Customer is solely responsible to back-up and safeguard any and all information, documents, data, software, materials, and other contents (including any TPS or Packages) stored or installed in or on any hardware, software, systems or devices, including those where the Software or the SaaS System is accessed or used by Customer. Company has no responsibility or liability whatsoever for any damage, loss or harm to any such information, documents, data, software, material, or other contents (including any TPS or Package), or to any such hardware, software, systems or devices, and Customer assumes all risk of any and all such damage, loss, and harm. Any and all information, documents, data, software, materials, and/or other contents (including any TPS or Package) downloaded or otherwise obtained through use of the Software or the SaaS System is at Customer’s sole discretion and risk, and Customer is solely responsible for any damage, loss, or harm to Customer hardware, software, systems, or devices and any other damage, loss or harm, that results therefrom, including any damage, loss, or harm resulting from computer viruses, malware, or any other malicious software, code or materials.

(c) Customer is responsible and liable for all uses of Company IP through access thereto provided by Customer, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Customer is responsible and liable for all actions and failures to take required actions with respect to Company IP by Administrators and by any other Person to whom Customer or an Administrator may provide access to or use of Company IP, whether such access or use is permitted by or in violation of this

Agreement. Customer is responsible and liable for any breach of this Agreement by any individual having any access to Company IP by or through Customer, including any Administrator.

10. Compliance Measures.

(a) In addition to any other compliance measures provided for in this Agreement, Company may retain administrative access to Customer's account for purposes of auditing Customer's compliance with the terms of this Agreement, including without limitation Customer's usage of the Software and/or the SaaS System.

(b) Company and/or its designees, at its sole expense, shall have the right, upon at least thirty (30) days prior notice to Customer, and no more than once per year, to audit and inspect Customer's records for purposes of determining Customer's compliance with this Agreement. Customer agrees to cooperate with Company in connection with any such audit.

(c) Company also may, in its sole discretion, audit Customer's systems within six months after the end of the Term to ensure Customer has ceased use of Company IP and removed all copies of Company IP from such systems as required hereunder. The Customer shall cooperate with Company's personnel conducting such audits and provide reasonable access requested by the Company to records, systems, equipment, information, and personnel, including machine IDs, serial numbers, and related information.

(d) If any of the measures taken or implemented under this Agreement determines that Customer's use of the Software and/or the SaaS System exceeds or exceeded the use permitted by this Agreement, then Company may revoke Customer's license to the Software and/or access to the SaaS System.

(e) Company's remedies set forth in this Section are cumulative and are in addition to, and not in lieu of, all other remedies the Company may have at law or in equity, whether under this Agreement or otherwise.

11. Maintenance and Support.

(a) Customer acknowledges and agrees that Company has no obligation or responsibility whatsoever to provide any Support Services. Company may determine in its sole and absolute discretion to provide Support Services, if any, to Customer. Company makes no representations, warranties, or guarantees regarding or in connection with any such Support Services, including as to performance or compatibility, or that such Support Services will meet Customer's needs or operate adequately for Customer or with any hardware, operating system software, Internet services, or any other products or services. The fact that Company, in its sole and absolute discretion, may provide certain Support Services to Customer hereunder without additional charge, such as resources that may be available without charge on Company's designated website, shall not be construed as any agreement, understanding, or obligation of or by Company to continue to provide to Customer any such Support Services or resources, or to continue to provide

such Support Services or resources at no charge. If Customer requests any Support Services from Company, and Company agrees to provide such Support Services to Customer, then Company may charge Customer for such Support Services at Company's then current fees for such Support Services, and Company may require Customer to upgrade or update the Software or SaaS System version Customer is then currently using to the latest version indicated by Company, which requirement may include payment of additional license fees by Customer to Company.

(b) Company may in its sole discretion provide or make Improvements available to Customer. Customer agrees that Company has no obligation to develop any Improvements at all or for particular issues. Customer further agrees that all Improvements will be deemed Company IP, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement unless Company makes an Improvement available under and subject to a separate agreement. Customer acknowledges that Company may provide some or all Improvements via download from a website designated by Company and that Customer's receipt thereof will require an internet connection, which connection is Customer's sole responsibility. Company has no obligation to provide Improvements via any other media.

## 12. Collection and Use of Information.

(a) Customer acknowledges that Company may, directly or indirectly, collect and store information regarding the download, installation, deployment, access, navigation, and/or use of the Software, the SaaS System, any TPS included with or through the Software or the SaaS System, and the equipment on which the Software or Downloadable Software is installed or through which the Software or the SaaS System is accessed and used ("**Usage Data**"). Usage Data is owned exclusively by Company.

(b) Customer agrees that the Company may retain, disclose, and use Usage Data to:

(i) improve the performance of the Software and the SaaS System, develop Improvements, and provide Support Services;

(ii) verify Customer's compliance with the terms of this Agreement and enforce the Company's rights, including all Intellectual Property Rights in and to the Software and the SaaS System; and

(iii) generate research, statistical, performance, and marketing reports. Such reports will use aggregated Usage Data and will not disclose Customer's identity in connection with Usage Data.

(c) Customer acknowledges and agrees that Company may provide the name of Customer and report Customer's Usage Data, including in aggregated and statistical forms, to the relevant company or company of TPS downloaded or installed by Customer if Company determines that Customer is or may be violating this Agreement or the relevant third-party license or terms. Company will not otherwise disclose Customer's identity in connection with Usage Data. Company is not, however, prohibited from

disclosing aggregated Usage Data that includes Customer's Usage Data for the purposes listed in Section 12(b) above.

13. Intellectual Property Rights. Customer acknowledges and agrees that Company IP is not sold to Customer. Customer does not acquire any ownership interest in Company IP under this Agreement, or any other rights thereto, other than to use the same in accordance with this Agreement and subject to all terms, conditions, and restrictions stated in this Agreement. Company reserves and retains its entire right, title, and interest in and to Company IP and all Intellectual Property Rights arising out of or relating to Company IP, except as expressly granted to the Customer in this Agreement.

(a) Customer acknowledges and agrees that Company IP and Support Services contain confidential, proprietary, and commercially valuable information and trade secrets owned by Company ("Confidential Information"). Such Confidential Information includes any and all source code, object code, program architecture, program flow information, design definitions, design specifications, data structures, data compilations, techniques, interfaces, calculations, formulas, algorithms, screens generated, graphics, and other features and functionality. Customer shall protect and not disclose or provide any such Confidential Information to any third party without the express prior written consent of Company. Nevertheless, this provision does not prohibit Customer from allowing individuals that are part of its nonemployed workforce to access and use the Software and/or the SaaS System (as applicable) to manage Customer Devices on behalf of Customer as may otherwise be permitted under this Agreement. Customer shall safeguard all Company IP (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access.

(b) Company IP is protected by copyright, including without limitation by United States copyright law, international treaty provisions, and applicable laws in the country in which it is being used. This Agreement does not grant Customer any licenses or rights in or to any source code of the Software or the SaaS System. This Agreement does not grant to Customer any licenses or rights in or to any Intellectual Property of Company, except for the limited rights to the Software and/or the SaaS System as expressly set forth in this Agreement, and no other licenses or rights are granted by Company under or in connection with this Agreement by implication, estoppel, operation of law, or otherwise. Customer will take no actions which adversely affect Company's Intellectual Property Rights in Company IP. Company reserves all rights not expressly granted in this Agreement.

14. Payment. All Fees are payable in advance in the manner set forth in the Purchase Order and are non-refundable. Any renewal of the license or access rights hereunder shall not be effective until the fees for such renewal have been paid in full. Except as otherwise specified in a Purchase Order or in this Agreement: (a) fees are based on the license rights and/or access rights purchased and not actual usage; (b) payment obligations are noncancelable and fees paid are nonrefundable; and (c) quantities purchased cannot be decreased during the relevant contract period.

(a) If Customer pays for a subscription to the Software and/or the SaaS System and does not cancel Customer's subscription as set forth in Section 14(b) below, Customer's subscription will be automatically extended at the end of each Subscription Period for a successive Subscription Period. Such renewal will be for the same number of Administrators or Devices (as applicable) for which Customer is paying at the time of renewal. Unless otherwise indicated in any applicable additional terms or communications that Company sends to Customer's registered email address at least thirty (30) days before the end of Customer's current Subscription Period, such renewal will be at the same rate per Administrator or Device as was applicable at the time Customer first subscribed or most recently renewed, whichever is later. Customer acknowledges and agrees that Customer's payment method will be automatically charged for such subscription fees, plus any applicable taxes, upon each such automatic renewal. Customer acknowledges that Customer's subscription is subject to automatic renewals and consents to and accepts responsibility for all recurring charges to Customer's payment method based on this automatic renewal feature without further authorization from Customer and without further notice except as required by law. Customer further acknowledges that the amount of the recurring charge may change if the applicable tax rates change or if Customer is notified that there will be an increase in the applicable subscription fees.

(b) Unless Customer's Subscription Period is one month, Customer must cancel Customer's subscription at least thirty (30) days before the end of Customer's current Subscription Period. If Customer's Subscription Period is one month, Customer must cancel Customer's subscription at least three (3) days before the end of Customer's current Subscription Period. To change or cancel Customer's subscription, use the link on the PDQ.com website. If Customer cancels Customer's subscription, Customer's subscription benefits will continue until the end of Customer's then-current Subscription Period (and will be automatically renewed unless Customer canceled at least thirty (30) days before the end of Customer's current Subscription Period). Customer will not be entitled to a prorated refund of any portion of the subscription fees paid for the then current Subscription Period, except as required by applicable law.

15. Term and Termination. This Agreement and the license and/or access rights granted hereunder shall remain in effect until terminated as set forth herein (the "**Term**"). The Term commences as of the earliest date of Customer downloading the Software or accessing the SaaS System and continues for the period for which Customer has purchased a subscription, unless earlier terminated as set forth in this Section.

(a) This Agreement immediately terminates with or without notice to Customer if Customer commits a material breach of any of the terms or conditions of this Agreement.

(b) This Agreement immediately terminates with or without notice to Customer if Customer attempts to assign, transfer, publish, or dispose of Company IP, except as expressly permitted by this Agreement or as otherwise expressly authorized in writing in advance by Company in Company's sole and absolute discretion.

(c) Company may terminate this Agreement immediately upon notice to Customer as this Agreement applies to any portion of Company IP as specified in such notice, and/or any portion of any TPS or Package as specified in such notice which was made available for download or installation through the Software or the SaaS System. Company may provide such notice of termination to Customer in writing, by e-mail, or generally through Company's designated website or other electronic means.

(d) Company may terminate this Agreement, effective immediately, if Customer files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.

(e) Company reserves the right to clean any software from Customer's devices that was added with the Software or the SaaS System, as well as the right to delete your account and account data.

(f) Upon expiration or earlier termination of this Agreement, any license or access right granted hereunder shall also terminate, and Customer shall cease using the Software, the SaaS System, and Documentation and destroy all copies of the Software, Downloadable Software, and Documentation. No expiration or termination shall affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund. CUSTOMER FURTHER AGREES THAT COMPANY'S SERVERS AND COMPUTER NETWORK CONSTITUTE A "PROTECTED COMPUTER" AS DEFINED BY THE COMPUTER FRAUD AND ABUSE ACT (18 U.S.C § 1030 ET SEQ.) AND THAT YOUR ACCESS OF COMPANY'S SERVERS AND COMPUTER NETWORK FOLLOWING THE TERMINATION OF THIS AGREEMENT IS WITHOUT AUTHORIZATION.

(g) The following Sections of this Agreement shall survive any termination of this Agreement: Sections 1, 2(a)(v), 4, 6(a), 6(b), 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, and 21.

(h) Notwithstanding anything in this Agreement to the contrary, Customer acknowledges and agrees that if this Agreement is terminated as provided for herein, or if Customer fails to make any payment to Company when due of the applicable subscription fees charged by Company for availability of any TPS or Package, then Company shall have no responsibility, obligation or liability whatsoever to provide or make available any TPS or Package, or any updated, upgraded, corrected, or additional TPS or Package, to Customer.

16. Disclaimer/Warranty Disclaimer. THE COMPANY IP, SUPPORT SERVICES, AND ANY AND ALL OTHER PRODUCTS OR SERVICES PROVIDED BY COMPANY UNDER OR IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED TO CUSTOMER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, COMPANY, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS



AND THEIR RESPECTIVE COMPANYS AND SERVICE COMPANYS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, ORAL OR IN WRITING, STATUTORY, OR OTHERWISE, WITH RESPECT TO COMPANY IP, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, CONTENT AVAILABILITY, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THE COMPANY PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND, THAT THE COMPANY IP WILL MEET THE CUSTOMER'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

17. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) IN NO EVENT WILL COMPANY OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE COMPANYS OR SERVICE COMPANYS, BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE COMPANY IP; LOST RESOURCES OR TIME; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; BREACHES IN SYSTEM SECURITY; DAMAGES TO, CAUSED BY, OR RESULTING FROM DAMAGE TO, ANY SYSTEM OR DEVICE CONTROLLING, CONTROLLED, OR OTHERWISE AFFECTED BY COMPANY IP; DAMAGES OR COSTS FOR OBTAINING SUBSTITUTE PRODUCTS OR SERVICES; OR CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, COMPANY IP, SUPPORT SERVICES, OR ANY AND ALL OTHER PRODUCTS OR SERVICES PROVIDED BY COMPANY UNDER OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) ANY AND ALL LIABILITY OF COMPANY AND ITS COMPANYS UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITH RESPECT TO COMPANY IP, SUPPORT SERVICES, AND ANY AND ALL OTHER

PRODUCTS OR SERVICES PROVIDED BY COMPANY UNDER OR IN CONNECTION WITH THIS AGREEMENT, SHALL BE LIMITED IN ALL CASES TO DIRECT DAMAGES ONLY, AND IN NO EVENT WILL COMPANY'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE COMPANYS' AND SERVICE COMPANYS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE COMPANY BY THE CUSTOMER PURSUANT TO THIS AGREEMENT FOR THE COMPANY IP THAT IS THE SUBJECT OF THE CLAIM.

(c) THE LIMITATIONS OF LIABILITY PROVIDED IN THIS AGREEMENT ABOVE SHALL APPLY EVEN IF COMPANY OR ITS COMPANYS HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES, LOSSES, COSTS OR HARM, AND EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES ARE EXPRESSLY SET FORTH IN THIS AGREEMENT AND REPRESENT THE AGREED TO ALLOCATION OF RISK BETWEEN THE PARTIES HERETO UNDER OR IN CONNECTION WITH THIS AGREEMENT, AND WHICH ALLOCATION OF RISK IS REFLECTED IN THE LICENSE FEES FOR THE SOFTWARE AND/OR ACCESS FEES FOR THE SAAS SYSTEM HEREUNDER.

18. Indemnification. Customer agrees to indemnify, hold harmless, and defend Company, its agents, officers, directors, employees, successors, assigns, owners, and affiliates (each, a "Company Indemnitee"), from and against any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind (including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers), incurred by such Company Indemnitee arising out of or resulting from, or are alleged to arise out of or result from (collectively, a "Claim Against Company Indemnitee"): (i) any information, data and content, in any form or medium that is collected, downloaded, or otherwise received, directly or indirectly from Customer or through the SaaS Services or SaaS System (collectively, the "**Customer Data**"), including (x) any processing of Customer Data by or on behalf of Company in accordance with this Agreement, and (y) any noncompliance with respect to any applicable international, federal, state or local privacy laws and regulations; (ii) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer, including Company's compliance with any specifications or directions provided by or on behalf of Customer to the extent prepared without any contribution by Company; (iii) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants, or obligations under this Agreement; (iv) negligence or more culpable act or omission (including gross negligence, recklessness or willful misconduct) by Customer or any person, including any third party, on behalf of Customer, in connection with this Agreement; or (v) unauthorized use of Company IP.

19. Export Regulation. The Company IP may be subject to US export control laws, rules, and regulations, including the Export Control Reform Act and its associated regulations.

Customer shall not, directly or indirectly, export, re-export, or release the Company IP to, or make the Company IP accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Customer shall not access, download, redistribute, or use (as applicable) the Company IP in any form in or to any country prohibited by U.S. export laws, rules, or regulations, or to residents or nationals of any such countries. The Customer shall comply with all applicable federal and international laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Company IP available outside the US. By downloading, accessing, installing, and/or otherwise using the Software or SaaS System, Customer: (i) represents and warrants that Customer is not restricted from downloading, accessing, installing, and/or otherwise using the Software, the SaaS System, or any other U.S. products or services and that Customer shall comply with all applicable U.S. export and other laws, rules, and regulations, and all host country import laws, rules, and regulations; (ii) shall not export or re-export the Software or the SaaS System, any part thereof, or any process or service that is the product of the Software or the SaaS System, in violation of any applicable laws or regulations of the U.S. or of any country in which Customer obtains, installs, accesses, uses and/or possesses the Software or the SaaS System; and (iii) shall promptly report any violation of the foregoing to Company at sales@PDQ.com and thereafter fully cooperate with Company, at Customer sole cost and expense, to resolve the relevant violation thereof.

20. U.S. Government Rights. The Software and the SaaS System are commercial computer software, as such term is defined in 48 C.F.R. § 2.101. Accordingly, if Customer is the U.S. Government or any contractor therefor, Customer receives only those rights with respect to the Software, the SaaS System, and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other U.S. Government licensees and their contractors.

21. Miscellaneous.

(a) **Governing Law; Jurisdiction; Venue.** All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Utah without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts or the state courts located in Salt Lake County, Utah, and each party irrevocably submits and consents to the personal and exclusive jurisdiction and venue of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth in the Purchase Order shall be effective service of process for any suit, action, or other proceeding brought in any such court. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement and are excluded from this Agreement and from any transaction under or in connection with this Agreement.

(b) **No Jury.** CUSTOMER ACKNOWLEDGES AND AGREES THAT IT SHALL NOT REQUEST OR DEMAND A JURY IN ANY LEGAL ACTION OR

PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. CUSTOMER EXPRESSLY WAIVES ANY AND ALL RIGHT TO ANY JURY IN ANY SUCH ACTION OR PROCEEDING.

(c) **Attorney Fees.** In any legal action or proceeding arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its costs, expenses, and reasonable attorney fees.

(d) **Force Majeure.** Company will not be responsible or liable to Customer, deemed in default or breach hereunder, or subject to any claim for any damages or loss by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is caused by or due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, pandemic, hostilities, war, terrorist attack, the public enemy, embargo, natural disaster, acts of God, flood, fire, severe weather, sabotage, outages or interruptions in the availability of electrical power, heat, light, air conditioning, Internet, or Customer equipment, loss and destruction of property, expropriation or confiscation of facilities, or any other circumstances or causes beyond Company's reasonable control.

(e) **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Purchase Order.

(f) **Entire Agreement.** This Agreement (which includes the Purchase Order) constitutes the sole and entire agreement between Customer and Company with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(g) **No Assignment.** Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Company's prior written consent, which consent Company may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which Company's prior written consent is required. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this paragraph is void. Company may

freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Customer's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(h) **No third-party beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

(i) **Amendment.** This Agreement may be amended, modified, or supplemented only by an agreement in writing that expressly refers to this Agreement and the specific provision to be amended or modified and is signed by each party hereto.

(j) **Waiver.** No waiver by any party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or is construed as a waiver thereof; nor does any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(k) **No agency.** Neither party to this Agreement is a partner, joint venturer, franchisee, franchisor, or representative of the other party hereto. Neither Company nor Customer has any authority to make any representation or to incur any obligation or liability on behalf of the other party to this Agreement, or to make any representation inconsistent with this paragraph.

(l) **Remedies.** No right or remedy of Company in this Agreement is exclusive of any other right or remedy that may be available to Company hereunder, at law or in equity, but rather each such right and remedy of Company shall be cumulative of every other right and remedy of Company hereunder, at law or in equity.

(m) **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(n) **Interpretation.** No legal or equitable principles or rules that might require or permit the interpretation or construction of this Agreement or any provision hereof against Company as the party drafting this Agreement shall apply or be used or employed in the construction or interpretation of this Agreement. For purposes of this Agreement, (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. This Agreement is written in and governed by the English language only. In the

event of any conflict between the English language version of this Agreement and any translation of it, this English language version shall control for all purposes.

(o) **Headings.** The headings in this Agreement are for convenience of reference only and do not affect the interpretation of this Agreement.