

**PKWARE, INC.**  
**SMARTCRYPT AGREEMENT**  
**(Software / Products)**

This Smartcrypt Agreement ("Agreement") is made by and between Licensor and Licensee, as defined below. This Agreement governs the licensing of Software, the sale of Products and the provision of services related to the Licensor's Smartcrypt solution.

BY ACCESSING, USING, OR INSTALLING ALL OR ANY PART OF THE SOFTWARE, PRODUCTS, OR SERVICES AS APPLICABLE, LICENSEE EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT, INCLUSIVE OF ALL SCHEDULES AND EXHIBITS HERETO. IF LICENSEE DOES NOT AGREE TO ANY PART OF THIS AGREEMENT AND DOES NOT WISH TO BE BOUND BY THIS AGREEMENT, LICENSEE MAY NOT ACCESS, USE OR INSTALL ALL OR ANY PART OF THE SOFTWARE, PRODUCTS, OR SERVICES.

LICENSOR'S WILLINGNESS TO ENTER THIS AGREEMENT IS EXPRESSLY CONDITIONED AND CONTINGENT UPON LICENSEE'S ASSENT TO THE TERMS AND CONDITIONS IN THIS AGREEMENT. NO OTHER TERMS AND CONDITIONS FROM LICENSEE WHETHER BY PURCHASE ORDER, ACKNOWLEDGEMENT OR OTHERWISE SHALL APPLY AND ARE HEREBY EXPRESSLY REJECTED BY LICENSOR. THE TERMS OF THIS AGREEMENT MAY BE MODIFIED ONLY THROUGH A WRITTEN AMENDMENT SIGNED BY LICENSOR AND LICENSEE. IN THE ABSENCE OF SUCH A WRITTEN AND SIGNED AMENDMENT, THE TERMS OF THIS AGREEMENT SHALL GOVERN AND CONTROL AND ANY OTHER CONFLICTING OR ADDITIONAL TERMS ARE NULL AND VOID AND HEREBY REJECTED.

This Agreement consists of: Part 1 – Software License; Part 2 – Software Maintenance and Support; Part 3 – Hardware; Part 4 – Professional Services; and Part 5 – General Terms. PLEASE READ THE ENTIRETY OF THIS AGREEMENT FROM PART 1 THROUGH PART 5. ALL PARTS OF THE AGREEMENT CONTAIN IMPORTANT TERMS AND CONDITIONS RELATED TO THE SMARTCRYPT SOLUTION INCLUDING, WITHOUT LIMITATION, TERMS RELATED TO WARRANTY, INDEMNITY, LIMITATIONS OF LIABILITY, USE RIGHTS, GOVERNING LAW AND VENUE. If this Agreement is presented to you in electronic format, you consent to entering into this Agreement through electronic means and are encouraged to print a copy of the Agreement for your records. If you prefer to enter this Agreement in paper form with traditional signatures, please notify Licensor and your desire for a paper Agreement will be accommodated.

## **PART 1 - SOFTWARE LICENSE**

### **1. DEFINITIONS**

"Authorized Number" means:

- (a) for *Windows Desktop, MacOS, iOS, and/or Android versions of the Software*: the number of authorized Users or Devices as set forth on the Order; or
- (b) for *HP-UX, IBM-AIX, Sun Solaris, Linux for x86, and Windows Server versions of the Software*: the number instances (i.e. physical and virtual operating environments) set forth on the Order.

"Documentation" means all written and electronic information generally made available by Licensor to its customers relating to the operation and functionality of the Software, including user manuals, installation guides, and any "read me" or "help" files.

"Effective Date" means the date upon which this Agreement becomes effective as identified in the portion of the Order applicable to the Software.

"Licensee" means the entity licensing the Software as identified in the Order. The term Licensee shall include any subsidiary, affiliate, or other entity which (i) Licensee consolidates into its audited financial statements; and (ii) is at least fifty percent (50%) owned by Licensee (an "Affiliate"), provided that: (a) Licensee shall not include any Affiliate which competes with Licensor, and (b) Licensee shall remain responsible for compliance with this Agreement by each such Affiliate.

"Licensor" means PKWARE, Inc.

"Order" means: either (a) Licensor's valid quote accepted in writing by Licensee; or (b) an attachment to this Agreement issued by Licensor identifying the Authorized Number, Software, Product, and/or Professional Services as applicable. The terms of this Agreement and the Order shall govern except to the extent expressly set forth to the contrary in any subsequent written agreement executed by both Licensor and Licensee. If Licensee issues a Purchase Order, it shall not constitute an "Order" for purposes of this Agreement, but rather shall be for Licensee's internal administrative purposes only and shall not be binding upon Licensor. Any language or terms contained on a Purchase Order or other document from Licensee contrary or in addition to the terms of the Order or this Agreement is expressly rejected and shall be void and of no effect.

"Software" means the object code version of the software program(s) identified on the Order, and associated Documentation.

"User" means Licensee or Licensee's employees engaged in Licensee's internal business activities.

### **2. LICENSE AND USE OF THE SOFTWARE**

**2.1 License Grant.** In consideration of the applicable license fee and subject to the limitations set forth below, Licensor grants to Licensee a perpetual, non-transferable (except as permitted herein), non-exclusive, license to install and use the Software specified in the applicable Order up to the Authorized Number only for its own internal business purposes unless otherwise mutually agreed by the parties in writing. Licensee is solely responsible for the installation and configuration of the Software.

For desktop or mobile versions of the Software known as Smartcrypt on Windows Desktop, MacOS, iOS, and/or Android operating systems:

- (i) A "User License" entitles Licensee to install and use the Software under such license on up to three (3) total devices (each of which may be a desktop or mobile device) running Windows Desktop, MacOS, iOS, and/or Android operating systems, provided that no other User is authorized to use the Software on such devices.
- (ii) A "Device License" entitles Licensee to install and use the Software on the Authorized Number of desktop or mobile devices running Windows Desktop, MacOS, iOS, or Android operating systems. Any authorized User may use the Software on any installed device under a Device License.

For HP-UX, IBM-AIX, Sun Solaris, Linux for x86, and Windows Server versions of the Software known as Smartcrypt or Smartcrypt Enterprise Manager: A license is required for each physical and virtual operating environment in which the Software is installed (i.e. each "Instance").

Licensee may utilize remote access technologies (e.g. Citrix® Access Platform or Microsoft® Terminal Services) to access and use its licensed installations of the Software provided Licensee also purchases, at minimum, the same Authorized Number of licenses of the Software as Licensee's number of Users accessing the remote access technologies. In the event Licensee installs the Software in a virtual operating environment, Licensee is required to purchase a Software license for each guest operating system which runs within a host-based virtual machine environment or a hypervisor. In the event Licensee makes the Software available for use through application virtualization, Licensee is required to purchase a Software license for each user who can access the Software via such virtualization.

**2.2 Non-production Usage.** Licensee is permitted, at no additional cost, to make a reasonable number of copies of the Software only for non-production archival or cold-backup purposes. Licensee will ensure that each copy, if contained on physical media, includes Licensor's copyright and other proprietary notices as they appear on the Software provided by Licensor. Such copies may only be installed to minimize interruption and/or replace the production installation of the Software in the event such installation is damaged or destroyed due to disaster. Licensee will pay all applicable license and maintenance fees to Licensor if it installs any non-production, disaster-recovery (aka "hot back-up" or "failover") and/or test/development copies of the Software.

**2.3 Restrictions on Use.** Licensee acknowledges and agrees that the Software is copyrighted material proprietary to Licensor and its licensors, and that Licensee may not, except as expressly provided in this Agreement or by law: (i) copy, modify, alter, translate, decompile, disassemble, reverse engineer, or create derivative works of the Software; (ii) remove, alter or cause not to be displayed any copyright notice or start-up message contained in the Software program(s); (iii) use the Software or any part thereof directly or indirectly to create a product competitive with any of Licensor's products; or (iv) display and/or allow access to the Software by any third party, except for Licensee's consultants, provided that such consultant-access is exclusively on behalf of Licensee's internal business and the consultant is bound in writing to comply with Licensee's restrictions and obligations herein; or (v) sell, loan, rent, lease, sublease, give, sublicense or otherwise transfer the Software or any copy or modification thereof, in whole or in part, to any person except as provided herein. Additionally, Licensee shall be fully responsible for the acts and omissions of any of its consultants with respect to the Software as if each were an employee of Licensee.

**2.4 Restrictions on Distribution of Self-Extracting Files.** Unless otherwise provided in an Order, Licensee may only use the Software to create Self-Extracting Files for Licensee's internal use and specifically may not sell, transfer, assign, license, or otherwise distribute to any third party any Self-Extracting File created through use of the Software where Licensee derives any compensation, in whatever form, or any commercial gain whatsoever. For the sake of clarity, nothing herein prevents Licensee from sending non-Self-Extracting Files (e.g. zipped files) to external recipients in the normal course of Licensee's business.

**2.5 Acknowledgment and Reservation of Rights.** Licensee acknowledges and agrees that Licensor and its licensors own all intellectual property and other proprietary rights in and to the Software. Licensee possession, installation, or use of the Software does not transfer any title to the intellectual property in the Software and Licensee acquires no rights to the Software except as expressly set forth in this Agreement. All rights not expressly granted herein are reserved to Licensor and its licensors.

**2.6 Privacy/Collection of Data.** During the Term of this Agreement, Licensee acknowledges and agrees that Licensor may periodically collect a license report containing the total activated licenses, anonymized Software usage statistics, email domain, user credentials, and/or public encryption key(s). If Licensee runs the Software in an offline mode, Licensee agrees to send a license activation report generated by the Software to Licensor at least once in each twelve (12) month period.

**2.7 Compliance.** Upon written request by Licensor, Licensee shall submit to Licensor a statement of compliance confirming Licensee's compliance with its obligations under this Agreement.

**2.8 Audit Right.** Licensee shall maintain true, complete, and correct copies of books and records reflecting the location and use of each copy of the Software in Licensee's possession or control. On at least thirty (30) days prior written notice to Licensee, but no more frequently than once in any twelve (12) month period, for any reason, Licensor at its expense and through its agents shall be entitled to audit such records and systems of Licensee as Licensor may reasonably request to determine Licensee's use of the Software pursuant to this Agreement.

**2.9 Evaluation Trial License.** If the applicable Order is limited to a free trial license of the Software or Licensee is otherwise provided a free trial license of the Software ("Evaluation Software"), then notwithstanding Section 16.1 of this Agreement, the term will be limited to the free trial period specified in the Order or for the duration of the temporary Software license provided by Licensor (the "Evaluation Period"). The license rights for the

Evaluation Software granted hereunder will automatically terminate at the end of the Evaluation Period, and there will be no renewal term. Licensee may install and use the Evaluation Software solely for the purpose of determining whether to purchase a commercial license to the Software, and not for any commercial activity or other business or developmental purpose. Any license authorization provided for a free trial will automatically expire and may cause the Evaluation Software to become non-operational at the end of the Evaluation Period. If Licensee wishes to use the Evaluation Software after the Evaluation Period expires, Licensee agrees to purchase the applicable license. By continuing to use the Evaluation Software after the Evaluation Period expires, Licensee acknowledges and agrees Licensee shall be responsible for any and all fees required for such use.

### **3. LIMITED SOFTWARE WARRANTY, DISCLAIMER OF WARRANTIES**

**3.1 Limited Money Back Software Warranty.** Licensee shall have thirty (30) days from the Effective Date of the initial term of this Agreement (the "Warranty Period") to test the Software to its satisfaction. If Licensee is not fully satisfied with the Software, Licensee may, within the Warranty Period, return the Software to Licensor for a full refund of any license and maintenance fees actually received by Licensor from Licensee pursuant to this Agreement as Licensee's sole and exclusive remedy and Licensor's sole and exclusive obligation. Upon such return, this Agreement shall immediately terminate in accordance with the terms of Section 16.4 of this Agreement. Licensor agrees to pass through to Licensee all warranties provided to Licensor by third parties relating to any third party software embedded in the Software or otherwise licensed or provided to Licensee by Licensor hereunder. Notwithstanding the foregoing, in the event Software contains any software code developed by third parties and licensed pursuant to either the GNU General Public License or the GNU Lesser General Public License such code is supplied without warranty of any kind.

**3.2 Maintenance and Support Limited Warranty.** Licensor warrants that the maintenance and support services provided hereunder for the Software (as more specifically described in Part 2 below) shall be performed in a professional and workmanlike manner in accordance with the generally accepted industry standards, subject to the exceptions set forth in Section 6.7 below.

**3.3 DISCLAIMER OF WARRANTIES. LICENSEE IS SOLELY RESPONSIBLE FOR INSTALLATION AND CONFIGURATION OF THE SOFTWARE. THE WARRANTIES SET FORTH ABOVE ARE LICENSOR'S EXCLUSIVE WARRANTIES AND NO OTHER WARRANTIES OR REPRESENTATIONS ARE PROVIDED WITH RESPECT TO THE SOFTWARE, THE MAINTENANCE AND SUPPORT, OR OTHERWISE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL BE FREE FROM PROGRAM ERRORS.**

**3.4 Legal Rights.** The foregoing limited warranties give Licensee specific legal rights and Licensee may have other rights which vary from state to state and jurisdiction to jurisdiction. Some states and jurisdictions may not allow limits on how long an implied warranty lasts. In those cases, the above limits may not apply to Licensee.

## **PART 2 – SOFTWARE MAINTENANCE AND SUPPORT**

Maintenance and Support will be available to Licensee for the Software if Licensee is current on all maintenance payments with Licensor and Licensee is running a currently supported version(s) of the Software. Licensor reserves the right to increase the annual maintenance fee applicable to the Software by an amount not to exceed five percent (5%) per year.

**4. ADDITIONAL DEFINITIONS.** For purposes of Part 2 of this Agreement:

**"Business Hours"** means the hours from 8:00 a.m. through 5:00 p.m., Monday through Friday (excluding Licensor's holidays) in either the United States Eastern Time Zone or the Central European Time Zone, whichever is closest in proximity to the Licensee.

**"Error Condition"** means any demonstrable, reproducible defect, program error, or other non-conformance of the Software with its Documentation caused solely by errors or defects in the code of the Software.

**"Maintenance Term"** means, initially, the Maintenance Term identified in the Order. Upon expiration of the initial Maintenance Term, the Maintenance Term shall automatically renew for additional one (1) year periods unless terminated earlier by either party, at its option, by written notice at least sixty (60) days prior to the end of the then-current Maintenance Term. The Maintenance Term shall immediately terminate upon the termination, expiration, or cancellation of this Agreement for any reason.

**"Modification"** means a partial or complete replacement of the executable code of the Software in machine-readable form which provides product function or correction that is delivered outside the standard announced "New Version" and "New Release" delivery methods.

**"New Release"** means a partial or complete replacement of the executable code of the Software in machine-readable form, which may provide new features or functions. A New Release may incorporate some or no enhancements. A New Release involves only such alterations that change the release number to the immediate right of the decimal point. Changes to the release number are made solely at the discretion of the Licensor.

**"New Version"** means a complete replacement of the executable code of the Software in machine-readable form, to provide significant new features or functions. A New Version may incorporate one or more enhancements. A New Version involves only such enhancements that change the version number immediately to the left of the decimal point. Changes to the version number are made solely at the discretion of the Licensor.

**"Nonqualified Product"** means any product not listed as compatible with Software in Licensor's promotional materials.

**"Pre-Release Change"** means any enhancement, the development or testing of which is not yet completed, such that it is not yet generally released to Licensor's customers.

## 5. MAINTENANCE TERM

**5.1** Licensor agrees to provide maintenance and support for the Latest Versions of the Software (excluding Appliance Software as defined in Part 3 of the Agreement) pursuant to the terms of this Part 2 during the Maintenance Term, provided the maintenance fee is fully paid and current and Licensee is also in full compliance and current with all of its other obligations under this Agreement. "Latest Versions" means versions of Software used for the fulfillment of new license orders and/or the versions for which Licensor continues to provide technical support. Latest Versions are specified in the Support section of Licensor's web site.

## 6. SUPPORT

**6.1 Non Error Condition Support.** During the Maintenance Term, Licensor shall provide support for non-Error Condition-related questions regarding the Software by e-mail, telephone, telefax or online consultation during Business Hours.

**6.2 Error Condition Support.** During the Maintenance Term, Licensor shall provide support for reporting and resolving Error Conditions through the standard support line during Business Hours.

**6.3** Regardless of the nature of the Error Condition, Licensor may provide a resolution in the form of a Pre-Release Change, a Modification, or such other information, instructions or patches as are sufficient to eliminate or reduce the Error Condition.

**6.4** Licensee agrees to promptly notify Licensor in writing following the discovery of any Error Condition. Further, upon discovery of an Error Condition, and at the request of Licensor, Licensee agrees to submit a listing of output and any other information that Licensor may require in order to reproduce the Error Condition and/or the operating conditions under which the Error Condition occurred or was discovered.

**6.5** Licensee agrees to acquire, install and/or implement as directed, certain services, hardware, software, software versions, releases, and the like, as may be deemed necessary by Licensor from time to time for proper operation of the Software. Such items may be at an additional cost for which Licensee is financially responsible.

**6.6** Licensee is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Software and to obtain support from Licensor. Licensor shall not be responsible for delays or inability to provide maintenance or support caused by events or circumstances beyond its reasonable control.

**6.7 Exceptions.** The following matters are not covered by Licensor's maintenance and support obligations hereunder: (a) problems resulting from misuse, improper use, or damage of the Software, to the extent caused by Licensee, provided that Licensee's actions were not directed by Licensor or set forth in the Documentation; (b) problems resulting from any unauthorized modification made to the Software, but only to the extent of such modification; and (c) problems resulting from any Nonqualified Product or from failure of equipment. If Licensor provides support services for a problem caused by a Nonqualified Product, or from failure of equipment, Licensor will charge on a time and materials basis for such extra service at its then current rates for customer support services. If, in Licensor's opinion, performance of any support hereunder is made more difficult or impaired because of Nonqualified Products, Licensor shall so notify Licensee, and Licensee will immediately remove the Nonqualified Product at its own risk and expense during any efforts to render support hereunder. Licensee shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Software.

**6.8 Licensee's Responsibilities.** In connection with Licensor's provision of support hereunder, Licensee acknowledges that Licensee has the responsibility to do each of the following with respect to the Software: (a) maintain the designated computer system and associated peripheral equipment in good working order in accordance with the manufacturers' specifications; (b) maintain the designated computer system at a supported revision level prescribed by the Documentation for proper operation of the Software; (c) perform any tests or procedures recommended by Licensor for the purpose of identifying and/or resolving any problems submitted by Licensee for servicing under the terms of this Agreement; (d) maintain a procedure external to the Software for reconstruction of lost or altered files, data, or programs to the extent deemed necessary by Licensee; (e) at all times follow routine operator procedures as specified in the Documentation; and (f) provide all information in American English in a form discernible by Licensor.

## 7. MAINTENANCE

**7.1 Data Format/Content Changes.** If the format and/or content of raw data which is processed by the Software changes as a result of vendor changes in the operating system and sub-systems which create the data, Licensor agrees to provide for the continued compatibility of the Software. Licensor will make necessary corrections to the Latest Version(s), at Licensor's sole option. Licensor has no obligation to modify prior versions of the Software (i.e. non-Latest Versions) to run with the latest versions of operating systems, software, or hardware.

**7.2 Modifications and New Releases.** Provided Licensee is current on all of its obligations pursuant to the Agreement and any Schedules attached thereto, during the Maintenance Term, Licensor shall provide to Licensee at no additional charge all Modifications and New Releases to the Software, the schedule, nature, and scope of which shall be in the Licensor's sole discretion.

**7.3 New Versions.** Licensee may choose to license New Versions of the Software at the time of their availability under the terms and conditions of the Agreement and its attached Schedules, subject to the applicable pricing for such New Versions as set forth by Licensor in an appropriate supplement or Order executed by the parties. Licensee is under no obligation to license any such New Versions.

## **PART 3 – HARDWARE SALES TERMS**

For Orders for Products (defined below), the additional terms and conditions of this Part 3 set forth below also apply. In the event of a conflict with any other terms of the Agreement, Part 3 shall control solely regarding any Hardware and/or Appliance Software.

### **8. ADDITIONAL DEFINITIONS.** For purposes of Part 3 of this Agreement:

"Hardware" means the tangible product(s) or parts thereof that Licensor agrees to deliver to Licensee, excluding any Appliance Software that may be contained therein.

"Appliance Software" means the Software installed on the Hardware provided by or on behalf of Licensor in fulfillment of an Order.

"Product" means the Hardware together with Appliance Software, as identified on the applicable Order.

### **9. APPLIANCE SOFTWARE**

**9.1 License Grant.** In consideration of Licensee's purchase of the Product and subject to the limitations set forth in the Agreement, Licensor and its licensors grant Licensee a non-exclusive, limited term, non-transferable (except as provided herein) license to use the Appliance Software and any associated Documentation for its own internal business purposes for the life of the Hardware on which it was supplied unless otherwise mutually agreed by the parties in writing.

**9.2 License Restrictions.** In addition to the license restrictions set forth in Section 2 of the Agreement, Licensee is not permitted to: (i) make copies of the Appliance Software, or (ii) transfer, move, install, or otherwise use the Appliance Software on any hardware or electronic equipment other than the Hardware on which the Appliance Software was supplied. In the event Licensee destroys, decommissions, transfers, sells, or otherwise discontinues use of the Hardware, the license for the Appliance Software shall immediately terminate.

**9.3 Acknowledgment and Reservation of Rights in the Appliance Software.** Licensee acknowledges and agrees that Licensor and its licensors own all intellectual property and other proprietary rights in and to the Appliance Software. Licensee's possession, installation, or use of the Appliance Software does not transfer any title to the intellectual property in the Appliance Software and Licensee acquires no rights to the Appliance Software except as expressly set forth in this Agreement. All rights not expressly granted herein are reserved to Licensor and its licensors.

### **10. DELIVERY**

**10.1 Delivery Terms.** Product deliveries shall be made Delivered At Place (Incoterms 2010) to Licensee's designated delivery point. Licensor or its agents will obtain appropriate insurance coverage and arrange transportation for the delivery of the Products. Risk of loss and title for the Hardware shall pass to Licensee at the time of delivery (the "Delivery Date"). For shipments outside the United States of America, Licensee shall be the importer of record responsible for import clearance and any applicable local taxes or import duties unless otherwise set forth in the Order. Installment deliveries shall be permitted.

**10.2 Shipping and Handling Fees.** Licensee shall be responsible for payment of all delivery costs and charges for the Product(s).

**10.3 Delivery Time.** Delivery times are approximate and are dependent upon prompt receipt by Licensor and its authorized representatives of all information necessary to fulfill the Order and delivery requirements.

**10.4 Acceptance.** Licensee shall notify Licensor within ten (10) days of Delivery Date of acceptance or rejection of the Product(s) if Products do not correspond to those itemized in the applicable shipping documents or otherwise. If Licensee fails to notify Licensor of rejection and rejection reason within ten (10) days of Delivery Date, the Product delivery shall be deemed accepted by Licensee.

**10.5 Cancellation.** Prior to release of the Product to the applicable carrier, Licensee may cancel any delivery of Products with written notice to and approval by Licensor, and upon payment of cancellation charges as determined by Licensor in its discretion.

**10.6 Rescheduling.** Prior to shipment, Licensee may reschedule delivery of Products with written notice to and approval by Licensor, and upon payment of rescheduling charges as determined by Licensor in its discretion and any resulting change in shipping or handling fees associated with such rescheduling.

### **11. LIMITED PRODUCT WARRANTY AND DISCLAIMER**

**11.1 Limited Warranty.** Licensor warrants that, from the Delivery Date through the duration of the Warranty Period, the Product will (a) function properly in accordance with Licensor's published performance specifications under normal use; and (b) be free from significant defects in materials or workmanship, subject to the following limitations and exclusions. Licensee has no warranty rights with respect to defects or non-conformities caused by (i) use of the Products with hardware or software that Licensor has not specified as suitable; (ii) Licensee's failure to properly store, use, operate, and maintain the Products in accordance with Documentation or failure to keep accurate and complete records of operation and maintenance of the Products; (iii) failure to implement any updates, upgrades, and other new releases of Appliance Software made available to Licensee; (iv) acts or omissions of persons other than Licensor or its authorized representatives including but not limited to installation, modification, repair, or maintenance of the Products; (v) normal wear and tear; (vi) abuse, use at an unsafe or not suitable site, or unusual physical or electrical stress; or (vii) any relocation of Products without a prior written authorization by Licensor.

**11.2 Warranty Period.** Unless otherwise agreed by the parties in writing, the warranty period for Products manufactured by Licensor shall be twelve (12) months beginning on the Delivery Date (the "Warranty Period") of the Product. Licensee shall have no warranty claims against Licensor, unless Licensor receives from Licensee, during the Warranty Period, (i) a written notice describing the warranty breach in reasonable detail (a "Warranty Claim"), and (ii) remote and physical access to the affected Product(s) as well as information in sufficient detail to enable Licensor or its agents to reproduce and/or analyze the failure.

**11.3 Exclusive Remedies.** If a Product manufactured by a third party materially fails to conform to the limited third party warranty set forth above, Licensee shall seek the remedies made available by the third party manufacturer and Licensor agrees to reasonably support Licensee in submitting its claim to the third party manufacturer. If a product manufactured by Licensor fails to conform to the Licensor Product limited warranty above, Licensor shall at its option either (i) repair or replace the non-conforming Product to remedy the non-conformity or (ii) refund or credit Licensee the amounts paid for the Product in exchange for return of the non-conforming Product. THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION WILL BE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES LICENSEE MAY HAVE AGAINST LICENSOR WITH RESPECT TO ANY NON-CONFORMING PRODUCTS.

**11.4 Costs and Procedure.** If Licensor receives a Warranty Claim, Licensee shall bear the costs of access for Licensor or its authorized representative's remedial warranty efforts (including removal and replacement of systems, structures, or other parts of Licensee's facility), de-installation, re-installation, and transportation of defective Products to Licensor or its authorized representative and back to Licensee. If Licensee's Warranty Claim fails to meet any of the requirements set forth above, Licensor's then-current time & materials rates shall apply to any error identification or correction efforts, repair, replacement, and shipment costs by Licensor and Licensee shall compensate Licensor accordingly.

**11.5 Disclaimer.** EXCEPT AS SPECIFIED ABOVE, LICENSOR MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR DISCLAIMS ALL IMPLIED WARRANTIES AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT AND, WITHOUT LIMITING THE FOREGOING, MAKES NO WARRANTY THAT ANY OF THE PRODUCTS WILL BE ERROR-FREE OR THAT THEIR PERFORMANCE OR OPERATION WILL BE UNINTERRUPTED. LICENSOR SHALL HAVE NO LIABILITY FOR ANY LICENSEE LOSS OF DATA DUE TO FAILURE TO BACKUP, FAILURE TO IMPLEMENT REDUNDANT SYSTEMS, OR OTHERWISE.

## **12. WEEE COMPLIANCE**

For Products delivered to the European Union, Licensee is solely obligated to comply with and bear the associated costs of compliance with the European Community Directive 2012/19/EU on Waste Electrical and Electronic Equipment (WEEE) and any related laws applicable in Licensee's jurisdiction.

## **13. PRODUCT MAINTENANCE AND SUPPORT.**

Licensor agrees to provide maintenance and support for the Product(s) pursuant to the terms below during the Product Maintenance Term, provided the maintenance fee is fully paid and current and Licensee is also in full compliance and current with all of its other obligations under this Agreement. "Product Maintenance Term" means, initially, the Product Maintenance Term identified in the Order. Prior to the expiration of the initial Product Maintenance Term, the Product Maintenance Term may be extended for additional sequential annual terms not to exceed a cumulative duration of three (3) years with any further extension requiring separate written agreement by the parties. The Product Maintenance Term shall immediately terminate upon the termination, expiration, or cancellation of this Agreement for any reason.

### **13.1 Support**

**13.1.1 Non Error Condition Support.** During the Product Maintenance Term, Licensor shall provide support for non-Error Condition-related questions regarding the Product by e-mail, telephone, or online consultation during Business Hours.

**13.1.2 Error Condition Support.** During the Product Maintenance Term, Licensor shall provide support for reporting and resolving Error Conditions with the Product through the standard support line during Business Hours.

**13.1.3** For Appliance Software issues regardless of the nature of the Error Condition, Licensor may provide a resolution in the form of a Pre-Release Change, a Modification, or such other information, instructions or patches as are sufficient to eliminate or reduce the Error Condition.

**13.1.4** Licensee agrees to promptly notify Licensor in writing following the discovery of any Error Condition. Further, upon discovery of an Error Condition, and at the request of Licensor, Licensee agrees to submit a listing of output and any other information that Licensor may require in order to reproduce the Error Condition and/or the operating conditions under which the Error Condition occurred or was discovered.

**13.1.5** Licensee is responsible for procuring, installing, and maintaining all equipment, telephone lines and utilities, communications interfaces, and other hardware necessary to operate the Product and to obtain support from Licensor. Licensor shall not be responsible for delays or inability to provide maintenance or support caused by events or circumstances beyond its reasonable control.

**13.1.6 Exceptions.** The following matters are not covered by Licensor's maintenance and support obligations hereunder: (a) problems resulting from misuse, improper use, or damage of the Product, to the extent caused by Licensee or any third party, provided that Licensee's actions were not directed by Licensor or set forth in the Documentation; (b) problems resulting from any unauthorized modification made to the Software, but only to the extent of such modification; and (c) problems resulting from any Nonqualified Product or from failure of equipment other than the Product(s). If



Licensor provides support services for a problem caused by a Nonqualified Product, or from failure of other equipment, Licensor will charge on a time and materials basis for such extra service at its then current rates for customer support services. Licensee shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Software.

## **13.2 Maintenance.**

**13.2.1 Modifications and New Releases.** Provided Licensee is current on all of its obligations pursuant to the Agreement, during the Product Maintenance Term, Licensor shall provide to Licensee at no additional charge all Modifications and New Releases to the Appliance Software, the schedule, nature, and scope of which shall be in the Licensor's sole discretion.

**13.2.2 New Versions.** Licensee may choose to license New Versions of the Appliance Software at the time of their availability under the terms and conditions of the Agreement, subject to the applicable pricing for such New Versions as set forth by Licensor in an appropriate supplement or Order executed by the parties. Licensee is under no obligation to license any such New Versions.

## **13.3 Hardware Failures.**

**13.3.1 Definition.** A "Hardware Failure" means a physical failure effecting the functionality or performance of the Hardware or any component thereof.

**13.3.2 Repair.** In the event of a Hardware Failure, Licensor will provide an authorized agent on the Licensee site to conduct the repair action.

**13.3.3 Responsibility.** Where Hardware Failure rectification is accepted as a Licensor responsibility by Licensor, Licensor and its suppliers will bear the cost to rectify the Hardware Failure. Licensee will not unreasonably hold Licensor responsible for hardware failure.

**13.3.4 Third Parties.** Where a Hardware repair action is conducted by a party other than Licensor or a Licensor authorized agent, Licensor will take no responsibility for, and Licensee shall not hold Licensor responsible for a failure to repair the Hardware as a result of the action, or for a failure caused by an attempted repair action by such party

**13.3.5 Returns.** In the event a Hardware return is required due to Hardware Failure and on notice from Licensor or its authorized agents, Licensee will return the Hardware or component at its cost according to Licensor or its authorized representative's directions. If the Hardware Failure is a result of Licensor or its agents' actions, manufacturing errors, or design omissions, the courier fee will be reimbursed to Licensee upon presentation of copies of invoices from the shipping service providers. Licensor will not be responsible for any loss or damage to the Hardware upon return shipping.

## **PART 4 – PROFESSIONAL SERVICES**

The terms and conditions contained in this Part 4 will apply if the parties choose the option to have professional services for the Software and/or Products as noted on an applicable duly executed Statement of Work or Order. "Statement of Work" means a document that Licensor and Licensee mutually execute detailing the Professional Services to be performed.

**14.1 Professional Services.** Licensor or its authorized agents will provide the following services ("Professional Services") related to the Software or Products as expressly set forth in a duly executed Statement of Work or accepted Order: (1) installation of the Software; (2) consulting, implementation and integration projects related to the Software and/or Products; (3) project management; (4) training; and (5) other professional services as agreed by the parties.

**14.2 Changes to Order.** Any requested change that the parties mutually accept will be set forth in a writing and signed by both parties specifically referencing the relevant Order or Statement of Work.

**14.3 Professional Services Warranty.** Licensor represents and warrants to Licensee for a period of thirty (30) days from performance that it will perform the Professional Services with care and skill and in a diligent manner in accordance with widely accepted industry standards for such work. If any Professional Services performed by Licensor fail to conform to this warranty, Licensee shall notify Licensor in writing within the thirty (30) day warranty period with sufficient detail of the defective work. Upon receipt of a valid warranty claim, Licensor shall at its option either (i) re-perform the defective Professional Services or (ii) refund or credit Licensee the amounts paid for the defective services. THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION WILL BE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES LICENSEE MAY HAVE AGAINST LICENSOR WITH RESPECT TO ANY DEFECTIVE PROFESSIONAL SERVICES.

**14.4 Fees and Expenses.** In consideration of the performance of the Professional Services in accordance with the terms of this Agreement and applicable Orders or Statement of Work, Licensee will pay Licensor the fees set forth in the applicable Order or Statement of Work. For Professional Services provided on a time and materials basis, Licensee will pay Licensor in accordance with the hourly rates set forth in the applicable Order or Statement of Work. Company will reimburse Supplier for its actual, reasonable out-of-pocket expenses.

**14.5 Disclaimer.** EXCEPT AS SPECIFICALLY SET FORTH ON AN APPLICABLE STATEMENT OF WORK, ALL DELIVERABLES FROM PROFESSIONAL SERVICES ARE PROVIDED AS IS, AND LICENSOR DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS, OR NON-INFRINGEMENT. LICENSOR SHALL HAVE NO LIABILITY FOR ANY LICENSEE LOSS OF DATA DUE TO FAILURE TO BACKUP, FAILURE TO IMPLEMENT REDUNDANT SYSTEMS, OR OTHERWISE.

## **PART 5 – GENERAL TERMS**

These General Terms apply to Software, Products and Professional Services provided through this Agreement (inclusive of Parts 1 through Parts 4 above) and to all matters arising from or in connection with this Agreement.

### **15. FEES**

**15.1** Licensee shall pay license, maintenance, or other applicable fees to Licensor in the amount and according to the terms set forth in the Order. Maintenance fees for the Software shall be due annually prior to the anniversary of the start date of the Maintenance Term. Payment of any fees hereunder shall be made in a form acceptable to Licensor in U.S. dollars or in such other currency as may be acceptable to Licensor. All costs of payment (such as wire transfer fees) shall be the obligation of Licensee. Licensee is solely responsible for any and all taxes, duties, fees, or other charges imposed on or associated with the transaction(s) contemplated in this Agreement.

**15.2** All license, maintenance, and other fees payable under this Agreement shall be due and payable on a net 30 days basis from date of invoice. The non-payment when due of any license fee set forth in the Order shall constitute a material breach of this Agreement. Any non-payment when due of any maintenance fee set forth in the Order shall constitute a material breach of the Maintenance and Support portion of this Agreement. Any sums not paid when due shall accrue interest at a rate of 1.5% per month or the maximum rate allowed by law, whichever is less, from the date first due. Licensee also shall be responsible for any and all costs of collection, including actual attorneys' fees, for any sums not paid when due.

### **16. TERM AND TERMINATION**

**16.1 Term.** The term of this Agreement shall commence as of the Effective Date and continue in perpetuity unless otherwise provided in the Order or until terminated earlier as provided hereunder. If an Order provides for a particular term, the Agreement shall automatically renew after the end of the term provided in the Order for successive one (1) year renewal terms, provided that, prior to the commencement of a renewal term, Licensee pays Licensor such fees as Licensor and Licensee may agree. If the parties cannot reach agreement on such fees, the term shall not renew.

**16.2 Termination by Licensee.** Licensee may terminate this Agreement at any time, with or without cause, upon written notice to Licensor, provided Licensee is in compliance with all of its obligations hereunder. Except as expressly provided herein, Licensee shall not be entitled to any refund of any fees paid hereunder upon termination of this Agreement.

**16.3 Termination by Licensor.** Licensor may terminate this Agreement upon written notice of termination for breach to Licensee if Licensee materially breaches any term of this Agreement and fails to cure such material breach to Licensor's reasonable satisfaction within thirty (30) days of receipt of notice of intent to terminate for breach from Licensor. Notwithstanding the generality of the foregoing, if, in Licensor's reasonable judgment, Licensee's breach materially infringes or impairs Licensor's intellectual property or other proprietary rights in the Software, Licensor may terminate this Agreement immediately.

**16.4 Actions on Termination, Cancellation, or Expiration.** Upon termination of this Agreement with or without cause pursuant to Sections 16.2 and 16.3 above, its cancellation pursuant to Section 3.1 above, or its expiration in the case of a limited term license, all licenses granted herein shall immediately terminate. Upon either termination of this Agreement or expiration of a limited term license governed by this Agreement, Licensee shall immediately (a) discontinue any and all use of the Software or Products, (b) uninstall and destroy any and all physical or electronic copies of the Software, and (c) deliver written certification, executed by an officer of Licensee, stating that Licensee has complied with this section, to Licensor within twenty (20) days of such termination, cancellation, or expiration. Except as expressly set forth in Section 3 above, under no circumstances shall Licensee be entitled to any refund or return of fees upon termination, cancellation, or expiration of this Agreement.

**16.5 Surviving Rights.** All provisions of this Agreement which by their nature are intended to survive the expiration or termination of this Agreement shall survive and remain in full force and effect, including but not limited to the restrictions and obligations set forth in Sections 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 3.1, 3.2, 3.3, 11.5, 14.5, 16.2, 16.3, 16.4, 17, 18, and 19.3 of this Agreement. In the event of the termination of Licensee's maintenance and support of a perpetual license for the Software and provided Licensee is not in breach of the Agreement, the terms of this Agreement shall remain in full force and effect except for Part 2 of this Agreement and any related maintenance and support terms.

### **17. CONFIDENTIALITY**

"Confidential Information" means the Software, Appliance Software, and/or any information relating to or disclosed in the course of the Agreement, which is or should be reasonably understood to be confidential or proprietary to Licensor. Confidential Information shall not include information (a) already lawfully known to the Licensee, (b) disclosed in published materials without fault of Licensee, (c) generally known to the public without fault of the Licensee, (d) lawfully obtained from a third party not under any obligation to maintain the confidentiality of Licensor, (e) required by applicable law or regulations to be released, or (f) independently developed by Licensee, provided the person or persons developing the same have not had access to relevant proprietary information of Licensor. Licensee agrees that the Confidential Information of Licensor shall be held in strict confidence and shall not be used by or disclosed to third parties without the prior written consent of Licensor. Notwithstanding anything to the contrary herein, the confidentiality obligations set forth in this Agreement shall survive the termination, cancellation, or expiration of this Agreement.



## 18. LIMITATION OF LIABILITY

LICENSOR SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES, OR FOR ANY ECONOMIC OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR SAVINGS, INCREASED OPERATING COSTS OR DOWNTIME COSTS, DATA LOSS, OR LOSS OF USE OF EQUIPMENT OR SYSTEMS), EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW EXCLUSION OR LIMITATION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO LICENSEE. LICENSOR WILL NOT BE LIABLE FOR (A) LOSS OF, OR DAMAGE TO, THE RECORDS OR DATA OF LICENSEE OR ANY OTHER PARTY, OR (B) ANY DAMAGES CLAIMED BY LICENSEE BASED ON ANY THIRD PARTY CLAIM. UNDER NO CIRCUMSTANCES SHALL LICENSOR'S TOTAL LIABILITY TO LICENSEE OR ANY OTHER PARTY WITH RESPECT TO THE SOFTWARE, PRODUCTS, SERVICES OR OTHERWISE RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF FOR DIRECT DAMAGES EXCEED THE GREATER OF U.S. \$1,000 OR THE TOTAL FEES PAID BY LICENSEE UNDER THE AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING ANY CLAIM. The limitations, exclusions, and disclaimers set forth in this Section 18 shall apply to the maximum extent permitted by applicable law, even if any remedy fails of its essential purpose. Except to the degree such service is covered by maintenance, no obligation or liability shall arise from Licensor's rendering of technical or other advice or service in connection with this Agreement, including, without limitation, advice or service related to the installation or configuration of the Software or Products.

## 19. MISCELLANEOUS PROVISIONS

**19.1 Severability.** The provisions of this Agreement and the attached schedules are severable. If any provision of this Agreement or any schedule attached hereto is held to be invalid, illegal, or unenforceable, such provision is to that extent deemed omitted and not part of this Agreement. The validity, legality, or enforceability of the remaining provisions shall in no way be affected or impaired thereby and shall be valid and enforceable to the maximum extent permitted by law.

**19.2 Assignment.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding the foregoing, Licensee shall not assign, sublicense, subcontract, or otherwise transfer this Agreement, the license granted hereunder, or any of its other rights or obligations under this Agreement or delegate any of its duties under this Agreement without the prior written consent of Licensor, which consent shall not be unreasonably withheld.

**19.3 Governing Law and Forum Choice.** This Agreement shall be construed as having been made in, and shall be governed in accordance with, the laws of the State of Wisconsin, USA, without regard to that state's choice of law rules or conflict of law provisions. Any legal action brought concerning this Agreement or any dispute arising from any act or omission arising from this Agreement shall be brought only in the courts of the State of Wisconsin in the County of Milwaukee or in the federal courts located in such state and county. Both parties submit to the exclusive jurisdiction of these courts and this exclusive venue, such that both parties waive any objections or defenses to the exclusive jurisdiction and venue, including, without limit, defenses of forum non-conveniens.

Notwithstanding the foregoing, if Licensee acquires the Software outside of the United States, the laws of the country in which Licensee acquires the Software govern this Agreement, except (a) in Australia, the laws of the State or Territory in which the transaction is performed govern this Agreement; (b) in Albania, Armenia, Belarus, Bosnia/Herzegovina, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Kazakhstan, Kirghizia, Former Yugoslav Republic of Macedonia (FYROM), Moldova, Poland, Romania, Russia, Slovak Republic, Slovenia, Ukraine, and Federal Republic of Yugoslavia, the laws of Austria govern this Agreement; (c) in the United Kingdom, all disputes relating to this Agreement will be governed by English Law and will be submitted to the exclusive jurisdiction of the English courts; (d) in Canada, the laws in the Province of Ontario govern this Agreement; and (e) in Puerto Rico, and the People's Republic of China, the laws of the State of New York govern this Agreement.

**19.4 Export Restrictions and Trade Compliance.** Licensee agrees to comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control and export laws and regulations, including but not limited to Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. Licensee represents and warrants that it is not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce), the European Union or its Member States, or other applicable government authority..

**19.5 US Government Restricted Rights.** The Software is provided with RESTRICTED AND LIMITED RIGHTS. Use, duplication, or disclosure by the US Government or any of its agencies is subject to restrictions as set forth in FAR 52.227-14, Alternate III(g)(3), FAR 52.227-19(c), or DFARS 252.227-7013(c)(1)(ii), as applicable.

**19.6 Entire Agreement.** This Agreement, inclusive of the Schedules and Addenda, if any, attached hereto, constitutes the exclusive and entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, negotiations, representations, and proposals, written or oral, relating to the subject matter hereof between Licensor and Licensee.

**19.7 Modification and Waiver.** No modification of this Agreement or any Schedule or Addendum and no waiver of any breach of this Agreement shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of this Agreement and no course of dealing between the parties shall be construed as a waiver of any subsequent breach of this Agreement. The failure of either party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce such provision.

**19.8 Force Majeure.** Neither party shall be responsible for failure to fulfill any obligations due to causes beyond its control including, but not limited to, strikes, riots, wars, fire, acts of God, and acts in compliance with any applicable law, regulation, or order (whether valid or invalid) of any governmental body, except that such causes shall not extend the due date for, or excuse the timely payment of, any amounts payable by a party hereunder.

**19.9 Notice.** Any notice, request, instruction or other document or communications to be given hereunder by either party to the other shall be in writing, and delivered via email, personally, overnight courier, express mail, or certified mail – return receipt requested, postage prepaid (such notice to be effective on the date receipt is signed by the receiving party). Notices to Licensee shall be sent to either the address set forth in the applicable Order or to such other address as Licensee shall designate by written notice to Licensor. Notices to Licensor shall be sent to either the following address or to such other address as Licensor shall designate by written notice to Licensee: PKWARE, Inc., Attn: Legal Administrator, 201 E. Pittsburgh Ave., Suite 400, Milwaukee, WI 53204, [legal@pkware.com](mailto:legal@pkware.com).

**19.10 Collections.** Licensee may not offset, defer, or deduct any invoiced amounts that Licensee determines are due and owing. Licensor, without waiving any other rights or remedies and without liability to Licensee, may suspend or terminate any or all services and refuse additional orders for Software or Products until all overdue amounts are paid in full. Licensor shall be entitled to all reasonable legal and attorney fees and associated costs of collecting overdue amounts.

**19.11 United Nations Convention.** The parties hereby waive application of the United Nations Convention on Contracts for the International Sale of Goods.