END USER LICENSE AGREEMENT

Revised: February 16, 2024

THIS END USER LICENSE AGREEMENT (this "**Agreement**") is a binding agreement between PKI Solutions LLC, a Delaware limited liability company with offices located at 5331 S Macadam Ave, Suite 330, Portland, Oregon 97239 ("**PKI**") and the individual or business entity that will use the Software ("**Licensee**").

THIS AGREEMENT GOVERNS LICENSEE'S USE OF THE SOFTWARE AND DOCUMENTATION UNLESS YOU SIGNED A SEPARATE SOFTWARE LICENSE AGREEMENT WITH PKI THAT INCLUDES LICENSING TERMS THAT EXPRESSLY SUPERSEDES THIS AGREEMENT ("**SEPARATE AGREEMENT**"). THIS AGREEMENT GRANTS A LICENSE TO USE THE SOFTWARE AND DOCUMENTATION, WITHOUT THE PAYMENT OF ANY FEES, FOR THE LENGTH OF THE EVALUATION PERIOD (AS DEFINED HEREIN) IF APPLICABLE, AND SUBJECT TO APPLICABLE SUBSCRIPTION FEES THEREAFTER.

PKI PROVIDES THE SOFTWARE SOLELY ON THE CONDITION THAT LICENSEE ACCEPTS AND COMPLIES WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT OR, IF APPLICABLE, THE TERMS AND CONDITIONS OF THE SEPARATE AGREEMENT. UNLESS LICENSEE SIGNED A SEPARATE AGREEMENT, BY CLICKING OR CHECKING THE "ACCEPT" BUTTON OR BOX IN CONNECTION WITH THIS AGREEMENT YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT LICENSEE IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF LICENSEE IS A CORPORATION OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF LICENSEE AND BIND LICENSEE TO ITS TERMS. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT OR THE SEPARATE AGREEMENT, IF APPLICABLE, PKI WILL NOT AND DOES NOT LICENSE THE SOFTWARE OR DOCUMENTATION TO LICENSEE AND YOU MUST NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE OR DOCUMENTATION.

1. **Definitions.**

    1.1.   "**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

    1.2.   "**Authorized User**" means Licensee's employees who (a) have a bona fide need to access and use the Software and Documentation for the Permitted Use; and (b) are expressly authorized by Licensee to access and use the Software and Documentation for the Permitted Use.

1.3.   "**Documentation**" means PKI's user manuals, handbooks, and installation guides relating to the Software provided by PKI to Licensee either electronically or in hard copy form.

1.4.   "**Evaluation Period**" has the meaning set forth in Section 6.1.

1.5.   "**Initial Term**" has the meaning set forth in Section 6.2.

1.6.   "**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights Laws, and all similar or equivalent rights or forms of protection, in any part of the world.

1.7.   "**Law**" means any statute, Law, ordinance, regulation, rule, code, order, constitution, treaty, common Law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

1.8.   "**Losses**" means all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees.

1.9.   "**Maintenance Release**" means any update, upgrade, release, or other adaptation or modification of the Software, including any updated Documentation, that PKI may provide to Licensee from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software.

1.10.   "**Permitted Use**" means to install, execute, and run the Software in object code format on Licensee's network solely for Licensee's internal (a) evaluation of the Software for purposes of monitoring Licensee's networks during the Evaluation Period, and (b) use of the Software for purposes of monitoring Licensee's networks during any Initial Term and Renewal Terms.

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

1.12.   "**Privacy Policy**" means PKI's privacy policy, as amended from time to time, which can currently be viewed at www.pkisolutions.com/privacy-policy/.

1.13.   "**Renewal Term**" has the meaning set forth in Section 6.2.

1.14.   "**Separate Agreement**" has the meaning set forth in the introduction of this Agreement.

1.15.   "**Software**" means PKI's network monitoring software in object code format, including any Maintenance Releases provided to Licensee pursuant to this Agreement.

1.16. **"Subscription Period"** means any Initial Term and any Renewal Terms.

1.17. **"Term"** means the Evaluation Period, any Initial Term, and any Renewal Terms.

2. Use of the Software.

2.1. <u>License Grant</u>. Subject to the terms and conditions of this Agreement, PKI hereby grants Licensee a limited, non-exclusive, non-sublicensable, non-transferable (except as expressly permitted by Section 13.9) license to (a) use the Software for the Permitted Use; and (b) prepare and use a reasonable number of copies of the Documentation in connection with the Permitted Use.

2.2. <u>Authorized Users</u>. Licensee is responsible and liable for all uses of the Software and Documentation resulting from access provided by Licensee, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, and subject to Section 2.3, Licensee will only allow access and use of the Software and Documentation by Authorized Users. Licensee will procure the compliance of all Authorized Users with all terms and conditions of this Agreement. Licensee is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Licensee will be deemed a breach of this Agreement by Licensee. Licensee will take reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Software and Documentation, and will cause Authorized Users to comply with such provisions.

2.3. <u>Use Restrictions</u>. Licensee will not use the Software or Documentation for any purposes beyond the scope of the license for the Permitted Uses granted in Section 2.1 of this Agreement. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, Licensee will not, and will not permit any other Person to, directly or indirectly: (a) copy the Software or the Documentation, in whole or in part; (b) modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of the Software; (c) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software or the Documentation to any third party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (d) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part; (e) bypass or breach any security device or protection used for or contained in the Software or Documentation; (f) remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, proprietary notices, or other symbols on or relating to the Software or the Documentation; (g) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable Law; or (h) use the Software for purposes of (1) benchmarking or competitive analysis of the Software; (2) developing, using, or providing a competing product or service; or (3) any other purpose that is to PKI's detriment or commercial disadvantage; (i) represent itself as an agent of PKI, commit PKI to any contracts, or incur any obligation or liability whatsoever on behalf of PKI for any purpose; or (j) make any

representations, warranties, guarantees, indemnities, claims, or other commitments: (1) actually, apparently, or impliedly on PKI's behalf, or (2) concerning or relating to the Software or Documentation that are in addition to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, disclaimers, or other terms of this Agreement, the Documentation, or any written documents provided or made available by PKI to Licensee..

3.   Delivery. Subject to Licensee's acceptance and compliance with the terms and conditions of this Agreement, Licensee may download the Software and store it on computers or servers owned or controlled by Licensee during the Term.

4.   Maintenance and Support.

4.1.   Maintenance Releases. PKI will provide Licensee with all Maintenance Releases (including updated Documentation) that PKI may, in its sole discretion, make generally available to its licensees at no additional charge. All Maintenance Releases provided by PKI to Licensee are deemed Software. Licensee will install all Maintenance Releases as soon as practicable after receipt.

4.2.   Support. PKI will use commercially reasonable efforts to provide telephone and email support Monday-Friday from 8 am to 5 pm PST, excluding federal and certain other holidays, in connection with Licensee's use of the Software.

4.3.   Data. PKI may collect, maintain, process, and use diagnostic, technical, usage, and related information, including information about Licensee's computers, systems, and software, that PKI may gather periodically to improve the performance of the Software or develop Maintenance Releases. This information will be treated in accordance with PKI's Privacy Policy. Licensee hereby grants PKI a nonexclusive, perpetual, irrevocable, worldwide, sublicensable, and transferable license to use, reproduce, distribute, publish, display, and create derivative works of such information, in an anonymous manner, in any way permitted by Law.

5.   Fees and Payment.

5.1.   No Fee for Evaluation Period. The parties agree that no license fees or other fees will be payable under this Agreement in exchange for the licenses granted under this Agreement for the Evaluation Period. Licensee acknowledges and agrees that this fee arrangement is made in consideration of the mutual covenants set forth in this Agreement, including, without limitation, the disclaimers, exclusions, and limitations of liability set forth herein.

5.2.   Fees During the Subscription Period. Licensee will pay the then-current standard license fees that PKI charges for the Software during the Term, as published by PKI.

5.3.   Payment. Licensee will pay all license fees due and owing under this Agreement within thirty (30) days after the date of PKI's invoice therefor. Licensee will make all payments hereunder in US dollars and in accordance with PKI's instructions.

5.4.   Late Payment. If Licensee fails to make any payment when due then, in addition to all other remedies that may be available to PKI (a) PKI may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the

highest rate permitted under applicable Law; and (b) Licensee will reimburse PKI for all reasonable costs incurred by PKI in collecting any late payment of amounts due or related interest, including attorneys' fees, court costs, and collection agency fees.

5.5.   Taxes. All Fees and other amounts payable by Licensee under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Licensee is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Licensee hereunder, other than any taxes imposed on PKI's income.

6.   **Term and Termination.**

6.1.   Evaluation Period. Unless terminated earlier pursuant to this Section 6.1 or Section 6.3, the unpaid term of this Agreement begins on the Effective Date and will continue in effect for the period of time set forth in the license file provided to Licensee by PKI solely for Licensee to test whether the Software conforms to the Documentation (the "**Evaluation Period**"). This Agreement and Licensee's ability to use the Software will automatically terminate upon expiration of the Evaluation Period unless Licensee purchases a paid subscription to the Software from PKI. Licensee may terminate this Agreement at any time during the Evaluation Period, with or without cause, by providing PKI with written notice of termination during the Evaluation Period. Termination of this Agreement is Licensee's sole and exclusive remedy, and PKI's sole and exclusive liability, during the Evaluation Period, including, without limitation, for any failure of the Software to conform with the Documentation.

6.2.   Subscription Period. The initial paid subscription term of this Agreement commences upon Licensee's purchase of a subscription to the Software from PKI and continues in effect for the period of time set forth in the license file provided to Licensee by PKI unless terminated earlier pursuant to any of the Agreement's express provisions (the "**Initial Term**"). This Agreement will automatically renew for successive twelve (12) month terms unless earlier terminated pursuant to any of the Agreement's express provisions or either party gives the other party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term (each a "**Renewal Term**").

6.3.   Termination for Cause. This Agreement may be terminated at any time (a) by PKI, effective on written notice to Licensee, if Licensee fails to pay any amount when due under this Agreement, where such failure continues more than ten (10) days after PKI's delivery of written notice thereof; (b) by PKI, effective on written notice to Licensee, if Licensee breaches Section 2.3 or 8, or any of its representations or warranties in this Agreement; (c) by either party, effective on written notice to the other party, if the other party materially breaches this Agreement and such breach remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; or (d) by PKI, effective immediately, if Licensee: (i) is dissolved or liquidated or takes any corporate action for such purpose; (ii) becomes insolvent or is generally unable to pay its debts as they become due; (iii) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency Law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

6.4.   Effect of Termination. Upon expiration or earlier termination of the this Agreement, all rights, licenses and authorizations granted to Licensee hereunder will immediately terminate and Licensee will (a) immediately cease all use of and other activities with respect to the Software and Documentation; (b) within thirty (30) days deliver to PKI, or at PKI's written request destroy, and permanently erase from all devices and systems Licensee directly or indirectly controls, the Software, the Documentation and the PKI's Confidential Information, including all documents, files, and tangible materials (and any partial and complete copies) containing, reflecting, incorporating, or based on any of the foregoing, whether or not modified or merged into other materials; (c) certify to PKI in a signed written instrument that it has complied with the requirements of (a) and (b) in this Section 6.4; and (d) immediately pay to PKI any amounts that are due or payable for the then-current Initial Term or Renewal Term unless Licensee terminated this Agreement pursuant to Section 6.3(c).

6.5.   Survival. This Section 6.5 and Sections 1, 2.2, 2.3, 4.3, 5, 6.4, and 7-13 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

7.   Records and Audit. Licensee will keep complete and accurate records with respect to its use of the Software and Documentation. PKI or its nominee may, upon request, inspect and audit Licensee's use of the Software and Documentation under this Agreement at any time during the Term and for a period of two (2) years thereafter. All audits will be conducted during regular business hours and no more frequently than once in any twelve (12) month period. Licensee will make available all such books, records, equipment, information, and personnel, and provide all such cooperation and assistance, as may be requested by or on behalf of PKI with respect to such audit.

8.   Confidential Information.

8.1.   Definition. Either party may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is (a) in the public domain; (b) known to the receiving party at the time of disclosure; and (c) rightfully obtained by the receiving party on a non-confidential basis from a third party.

8.2.   Confidentiality Obligations. As a condition to being provided with any disclosure of or access to Confidential Information, the receiving party will (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (b) except as may be permitted by and subject to its compliance with Section 8.3, not disclose or permit access to Confidential Information other than to its employees who: (i) need to know such Confidential Information for purposes of the receiving party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the receiving party's obligations under this Section 8.2; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential

Information as the terms set forth in this Section 8.2; (c) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; (d) promptly notify the Disclosing party of any unauthorized use or disclosure of Confidential Information and cooperate with Disclosing party to prevent further unauthorized use or disclosure; and (e) ensure its employees' compliance with, and be responsible and liable for any of its employees' non-compliance with, the terms of this Section 8.2.

8.3. <u>Judicial Order</u>. Notwithstanding Section 8.2, each party may disclose Confidential Information to the limited extent required (a) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable Law, provided that the party making the disclosure pursuant to the order will first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (b) to establish a party's rights under this Agreement, including to make required court filings.

9. <u>Intellectual Property Rights</u>.

9.1. <u>Intellectual Property Ownership</u>. Licensee acknowledges and agrees that (a) the Software and Documentation are licensed, not sold, to Licensee by PKI and Licensee does not have under or in connection with this Agreement any ownership interest in the Software or Documentation, or in any related Intellectual Property Rights; (b) PKI is the sole and exclusive owner of all right, title, and interest in and to the Software and Documentation, including all Intellectual Property Rights relating thereto, subject only to the limited license granted to Licensee under this Agreement; and (c) Licensee hereby unconditionally and irrevocably assigns to PKI its entire right, title, and interest in and to any Intellectual Property Rights that Licensee may now or hereafter have in or to the Software or Documentation (including any rights in derivative works or patent improvements relating to either of them), whether held or acquired by operation of Law, contract, assignment or otherwise.

9.2. <u>Licensee Cooperation and Notice of Infringement</u>. Licensee will (a) take all reasonable measures to safeguard the Software and Documentation (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access; (b) at PKI's expense, take all such steps as PKI may reasonably require to assist PKI in maintaining the validity, enforceability and PKI's ownership of the Intellectual Property Rights in the Software and Documentation; and (c) promptly notify PKI in writing if Licensee becomes aware of (i) any actual or suspected infringement, misappropriation or other violation of PKI's Intellectual Property Rights in or relating to the Software or Documentation; or (ii) any claim that the Software or Documentation, including any production, use, marketing, sale or other disposition of the Software or Documentation, in whole or in part, infringes, misappropriates or otherwise violates the Intellectual Property Rights or other rights of any Person.

9.3. <u>No Implied Rights</u>. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Licensee or any third party any Intellectual Property Rights or other right, title, or interest in or to any of the Software or Documentation.

10. <u>Representations and Warranties</u>.

10.1.   Mutual Representations and Warranties. Each party represents and warrants to the other party that (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

10.2.   Limited Warranty. Subject to the limitations and conditions set forth in Sections 10.3 and 10.4, PKI warrants to Licensee that for the first thirty (30) days of the Initial Term (the "**Warranty Period**"), the Software will substantially conform in all material respects to the Documentation, when installed, operated, and used as recommended in the Documentation and in accordance with this Agreement.

10.3.   Licensee Requirements. The limited warranty set forth in Section 10.2 applies only if Licensee (a) notifies PKI in writing of the warranty breach before the expiration of the Warranty Period; (b) has promptly installed all Maintenance Releases to the Software that PKI previously made available to Licensee; and (c) as of the date of notification, is in compliance with all terms and conditions of this Agreement (including the payment of all license fees then due and owing).

10.4.   Exceptions. Notwithstanding any provisions to the contrary in this Agreement, the limited warranty set forth in Section 10.2 does not apply to problems arising out of or relating to (a) Software that is modified or damaged by someone other than PKI; (b) any operation or use of, or other activity relating to, the Software other than as specified in the Documentation, including any incorporation in the Software of, or combination, operation or use of the Software in or with, any technology (including any software, hardware, firmware, system, or network) or service not specified for Licensee's use in the Documentation; (c) Licensee's or any third party's negligence, abuse, misapplication, or misuse of the Software, including any use of the Software other than as specified in the Documentation; (d) Licensee's failure to promptly install all Maintenance Releases that PKI has previously made available to Licensee; (e) the operation of, or access to, Licensee's or a third party's system or network; (f) Licensee's material breach of any provision of this Agreement; or (g) any other circumstances or causes outside of the reasonable control of PKI (including abnormal physical or electrical stress).

10.5.   Limited Remedy. If PKI breaches, or is alleged to have breached, the limited warranty in Section 10.2, PKI may, at its sole option and expense, take any of the following steps to remedy such breach: (a) repair the Software; (b) replace the Software with functionally equivalent software (which software will, on its replacement of the Software, constitute Software hereunder; or (c) refund any paid, but unused amounts, that Licensee paid PKI for the Software. The remedies set forth in this Section 10.5 are Licensee's sole remedies and PKI's sole liability under the limited warranty set forth in Section 10.2.

10.6.   Disclaimer of Warranties. THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND WITH ALL FAULTS. PKI DOES NOT MAKE, AND HEREBY

DISCLAIMS, ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND REGARDING THE SOFTWARE AND DOCUMENTATION, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PKI SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PKI MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE AND DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET LICENSEE'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. LICENSEE ACKNOWLEDGES AND AGREES THAT PKI WILL NOT BE LIABLE FOR, AND WILL HAVE NO OBLIGATION TO DEFEND OR INDEMNIFY LICENSEE AGAINST, ANY THIRD PARTY CLAIMS THAT RELATE TO OR ARE BASED ON THE SOFTWARE OR DOCUMENTATION INCLUDING, WITHOUT LIMITATION, ANY USE OF THE SOFTWARE THAT IS NOT AUTHORIZED, CONTEMPLATED, OR RECOMMENDED BY THIS AGREEMENT.

11. **Indemnification.**

11.1. <u>PKI Indemnification</u>. During the Subscription Period only, PKI will indemnify, defend, and hold harmless Licensee and its officers, directors, employees, agents, successors and permitted assigns (each, a "**Licensee Indemnitee**") from and against any and all Losses incurred by the Licensee Indemnitee resulting from any Action by a third party that the Software or Documentation, or any use of the Software or Documentation in accordance with this Agreement, infringes or misappropriates such third party's US Intellectual Property Rights. This Section 11.1 does not apply to the extent that the alleged infringement arises from (a) combination, operation, or use of the Software in or with, any technology (including any software, hardware, firmware, system, or network) or service not provided by PKI or specified for Licensee's use in the Documentation; (b) modification of the Software other than (i) by PKI in connection with this Agreement; or (ii) with PKI's express written authorization and in strict accordance with PKI's written directions and specifications; (c) use of any version of the Software other than the most current version or failure to timely implement any Maintenance Release, modification, update, or replacement of the Software made available to Licensee by PKI; (d) use of the Software after PKI's notice to Licensee of such activity's alleged or actual infringement, misappropriation, or other violation of a third party's rights; (e) negligence, abuse, misapplication, or misuse of the Software or Documentation by or on behalf of Licensee or a third party; (f) use of the Software or Documentation by or on behalf of Licensee that is outside the purpose, scope, or manner of use authorized by this Agreement or in any manner contrary to PKI's instructions; (g) events or circumstances outside of PKI's commercially reasonable control (including any third-party hardware, software, or system bugs, defects, or malfunctions); and (h) Losses for which Licensee is obligated to indemnify PKI pursuant to Section 11.2.

11.2. <u>Licensee Indemnification</u>. Licensee will indemnify, defend, and hold harmless PKI and its officers, directors, employees, agents, subcontractors, successors and permitted assigns (each, a "**PKI Indemnitee**") from and against any and all Losses incurred by the PKI Indemnitee resulting from any Action by a third party (a) that any Intellectual Property Rights or

other right of any Person, or any Law, is or will be infringed, misappropriated, or otherwise violated by any (i) use or combination of the Software by or on behalf of Licensee with any hardware, software, system, network, service, or other matter whatsoever that is neither provided by PKI nor authorized by PKI in this Agreement and the Documentation; and (ii) information, materials, or technology directly or indirectly provided by Licensee or directed by Licensee to be installed, combined, integrated, or used with, as part of, or in connection with the Software or Documentation; (b) relating to facts that, if true, would constitute a breach by Licensee of any representation, warranty, covenant, or obligation under this Agreement; (c) relating to negligence, abuse, misapplication, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Licensee with respect to the Software or Documentation or otherwise in connection with this Agreement; or (d) relating to use of the Software or Documentation by or on behalf of Licensee that is outside the purpose, scope or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to PKI's instructions, except to the extent that PKI is obligated to indemnify Licensee pursuant to Section 11.1.

11.3.   Indemnification Procedure. Each party will promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 11.1 or 11.2. The party seeking indemnification (the "**Indemnitee**") will cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor will promptly assume control of the defense and investigation of such Action and will employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor will not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnitee without the Indemnitee's prior written consent, which will not be unreasonably withheld or delayed. The Indemnitee's failure to perform any obligations under this Section 11.3 will not relieve the Indemnitor of its obligations under this Section 11, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

11.4.   Mitigation. If the Software, or any part of the Software, is, or in PKI's opinion is likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Licensee's use of the Software is enjoined or threatened to be enjoined, PKI may, at its option and sole cost and expense (a) obtain the right for Licensee to continue to use the Software materially as contemplated by this Agreement; (b) modify or replace the Software, in whole or in part, to seek to make the Software non-infringing, while providing materially equivalent features and functionality, and such modified or replacement software will constitute Software under this Agreement; (c) if none of the remedies set forth in the above Section 11.4(a) or 11.4(b) is reasonably available to PKI, terminate this Agreement, in its entirety or with respect to the affected part or feature of the Software, effective immediately on written notice to Licensee, in which event (i) Licensee will cease all use of the Software and Documentation immediately on receipt of Licensee's notice; and (ii) provided that Licensee fully complies with its post-termination obligations set forth in Section 6.4, PKI will promptly refund to Licensee, on a pro rata basis, the share of any license fees prepaid by Licensee for the future portion of the Term that would have remained but for such termination.

11.5.   Sole Remedy. THIS SECTION 11 SETS FORTH LICENSEE'S SOLE REMEDIES AND PKI'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE OR DOCUMENTATION OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

12.   Limitations of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL PKI, OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY (a) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS, (b) LOSS OF GOODWILL OR REPUTATION, (c) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY SOFTWARE, (d) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (e) COST OF REPLACEMENT GOODS OR SERVICES, OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL PKI OR ITS LICENSORS, SUPPLIERS OR SERVICE PROVIDERS HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. The above limitations or exclusions may not apply to Licensee because some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages.

13.   Miscellaneous.

13.1.   Further Assurances. On a party's reasonable request, the other party will, at the requesting party's sole cost and expense, execute, and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

13.2.   Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever.

13.3.   Public Announcements. Neither party will issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other party's trademarks,

service marks, trade names, logos, domain names, or other indicia of source, association or sponsorship, in each case, without the prior written consent of the other party, which will not be unreasonably delayed or withheld, provided, however, that PKI may, without Licensee's consent, include Licensee's name and other indicia in its lists of PKI's current or former customers of PKI in promotional and marketing materials.

13.4.   Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving party, and (ii) if the party giving the Notice has complied with the requirements of this Section.

13.5.   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 will confer on any third party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

13.6.   Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

13.7.   Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto will negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13.8.   Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal Laws of the State of Oregon without giving effect to any choice or conflict of Law provision or rule that would require or permit the application of the Laws of any jurisdiction other than those of the State of Oregon. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Oregon in each case located in the city of Portland and County of Multnomah, and each party

irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

13.9. <u>Assignment</u>. Licensee may not assign or transfer any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of Law or otherwise, without the prior written consent of PKI. Any purported assignment, transfer, or delegation in violation of this Section is null and void. No assignment, transfer, or delegation will relieve the assigning or delegating party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

13.10. <u>Export Regulation</u>. The Software may be subject to US export control Laws, including the Export Control Reform Act and its associated regulations. Licensee will not, directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by Law, rule, or regulation. Licensee will comply with all applicable federal 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 Software available outside the US.

13.11. <u>Equitable Relief</u>. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 8 or 9 or, in the case of Licensee, Section 2.1.3, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at Law, in equity, or otherwise.

13.12. <u>Force Majeure.</u> In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including (i) acts of God; (ii) flood, fire, earthquake, pandemic, epidemic, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, Law, or actions; (v) embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (viii) shortage of adequate power or transportation facilities. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of thirty (30) days or more. In the event of any failure or delay caused by a Force Majeure Event, the affected party will give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

13.13. <u>Entire Agreement</u>. Unless superseded by a Separate Agreement, this Agreement and the Privacy Policy, which is incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.