

Kaseya Software and Services Terms and Conditions (“Terms and Conditions”)

IMPORTANT: PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY AND PRINT THEM OR GO TO [HTTP://WWW.KASEYA.COM/DOWNLOAD/EN-US/FILES/KASEYA.TERMS.AND.CONDITIONS.PDF](http://www.kaseya.com/download/en-us/files/kaseya.terms.and.conditions.pdf) TO OBTAIN A DOWNLOADABLE COPY OF THE CURRENT VERSION OF THE TERMS AND CONDITIONS TO MAINTAIN A COPY FOR YOUR RECORDS.

BY DOWNLOADING, INSTALLING, ORDERING, RECEIVING OR USING KASEYA OR KASEYA-SUPPLIED SOFTWARE OR SERVICES, OR BY CLICKING THE "ACCEPT" BUTTON DISPLAYED AS PART OF THE PROCUREMENT, INSTALLATION, UPGRADE OR UPDATE PROCESS, YOU ACCEPT AND AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS, THE DOCUMENTATION, AND THE OTHER ITEMS REFERENCED HEREIN AND THEREIN (COLLECTIVELY, THE "AGREEMENT"), ALL OF WHICH ARE INCORPORATED INTO AND FORM PART OF THE AGREEMENT. YOU REPRESENT THAT YOU HAVE READ AND UNDERSTAND ALL OF THE PROVISIONS OF THE AGREEMENT.

YOU MUST ACCEPT THE AGREEMENT BEFORE YOU CAN DOWNLOAD, INSTALL, UPGRADE, UPDATE, ORDER, RECEIVE OR USE KASEYA OR KASEYA-SUPPLIED SOFTWARE OR SERVICES. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN KASEYA IS UNWILLING TO OFFER, LICENSE OR SELL THE KASEYA OR KASEYA-SUPPLIED SOFTWARE OR SERVICES TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL, ORDER, RECEIVE OR USE THEM, AND (B) WITH RESPECT TO SOFTWARE YOU MAY RETURN THE SOFTWARE FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND; IT BEING AGREED THAT YOUR RIGHT TO RETURN AND REFUND WITH RESPECT TO ANY SOFTWARE EXPIRES 30 DAYS AFTER ORIGINAL PURCHASE, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

THE AGREEMENT IS BETWEEN THE KASEYA ENTITY THAT ACCEPTS THE ORDER FORM FOR THE APPLICABLE SOFTWARE OR SERVICE (“KASEYA,” “WE,” OR “US”) AND THE INDIVIDUAL OR LEGAL ENTITY DOWNLOADING, INSTALLING, ORDERING, RECEIVING OR USING KASEYA OR KASEYA-SUPPLIED SOFTWARE OR SERVICES, OR THAT CLICKS THE "ACCEPT" BUTTON DISPLAYED AS PART OF THE PROCUREMENT, INSTALLATION, UPGRADE OR UPDATE PROCESS (“CUSTOMER,” “YOU,” OR “YOUR”). YOU MAY ENTER THE AGREEMENT WITH MULTIPLE KASEYA ENTITIES WITH RESPECT TO DIFFERENT SOFTWARE AND SERVICE ORDERS AND NO KASEYA ENTITY HAS THE RIGHT TO ENTER ANY CONTRACT ON BEHALF OF OR AS AGENT FOR ANY OTHER KASEYA ENTITY. IF YOU ARE ENTERING INTO THE AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY, IN WHICH CASE THE TERMS “CUSTOMER,” “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY.

1. **DEFINITIONS:** All capitalized terms defined in the Agreement have the meanings as defined herein. In addition, as used in the Agreement the following terms shall be defined as set forth below:

- 1.1. “Affiliates” means any legal entity that a party owns, which owns the party, or which is under common ownership with the party. “Ownership” means, for the purposes of this definition, more than 50% ownership.
- 1.2. “Authorized Machine” means a machine in the Territory meeting the license restrictions herein and the minimum requirements set forth in the Documentation and for which Customer has paid the required fees.
- 1.3. “Confidential Information” means the proprietary and non-public: technical, financial, marketing, staffing and business information; business strategies, marketing plans, industry and competitive information; technology and pricing information; employee and personal information; and the trade secrets of the Kaseya Entities on the one hand or the Customer and its Third Party Clients on the other hand. Confidential Information does not include information that: (a) was or becomes publicly available or in a party’s possession without breach of the Agreement; (b) is developed by a party independently of and without reference to the other’s Confidential Information; or (c) is rightfully obtained by a party from third parties authorized to make such disclosure.
- 1.4. “Customer Data” means all Customer data, information and materials that are uploaded by or for you or that is accessed by Kaseya in connection with your use or Kaseya’s provision of the Software or Services

including without limitation personal information, photographs, caricatures, illustrations, designs, icons, articles, audio clips, trademarks, logos, and video clips but does not include Submissions or Usage Data.

- 1.5. "Documentation" means written information (whether contained in catalogs, maintenance policies, user or technical manuals, training materials, support policies, specifications, copyright attributions or otherwise) pertaining to the Software or Services and made available by Kaseya with the Software or Services in any manner (including on CD-Rom, via email, on the Website or other on-line format) as updated or amended by Kaseya from time to time and includes any Order Form(s) or SOW(s).
- 1.6. "Hosted System" means a computer system on which Kaseya Server Software is installed and made available for remote use by third parties (whether such use is internal only or involves the provision of services by the third party to others).
- 1.7. "Kaseya Entities" means Kaseya and any licensors and suppliers providing any part of the Software or Services; and all subsidiaries, Affiliates, officers, employees, consultants, and agents of any of the foregoing.
- 1.8. "Kaseya Server" means the core Kaseya Software platform that is required to enable other Software components to function.
- 1.9. "Marks" means Kaseya or Kaseya licensed trademarks, logos, symbols, and names.
- 1.10. "Named User" means only those individuals designated and identified by Customer who are authorized to use the applicable Software or Services.
- 1.11. "Order Form(s)" means the Kaseya form evidencing the Customer order, and which may specify, among other things, the number of Software or Service licenses and other services purchased, the applicable fees, the billing period, the Installment Schedule, Term and other items, each such Order Form to be incorporated into and to become a part of the Agreement; and depending on the Software or Services ordered, the Order Form may be completed online, may be Customer's invoice or billing statement, or may be an SOW.
- 1.12. "Service(s)" means the Kaseya services set forth in the applicable Documentation and also includes such Documentation.
- 1.13. "Software" means Kaseya or Kaseya-distributed software including any software provided by Kaseya to access and use Services and the associated Documentation but does not include any open source software which cannot be licensed under these Terms and Conditions and is subject to its own license.
- 1.14. "SOW" means a statement of work, work order, or other similar document executed by Kaseya and Customer which sets forth Services to be performed by Kaseya.
- 1.15. "Territory" means the geographic region where Software and Services may be deployed and used for which Customer has paid the applicable fees and unless otherwise agreed to by Kaseya in writing is the country where Customer is invoiced for the applicable Software or Service.
- 1.16. "Third-Party Client" means a person or entity to whom you provide information technology services through use of Software or Services where such services provided by you have sufficient added value so that in each case: (i) the Third-Party Client would not reasonably purchase or otherwise acquire such services for the purpose of obtaining the Kaseya Software or Services; and (ii) your services provided in direct conjunction with the Software or Services cost the Third-Party Client a material amount above what such Software or Service would cost if purchased directly from Kaseya.
- 1.17. "Updates" mean bug fixes, hot-fixes or other minor modifications to the Software which are not deemed by Kaseya in its sole discretion to be an Upgrade.
- 1.18. "Upgrades" mean any modifications to the Software or Services which are not Updates as determined in Kaseya's sole discretion such as those providing enhanced functionality or performance, or that otherwise improve or add to, delete or otherwise modify any aspect of the Software.
- 1.19. "Usage Data" means any non-personally identifying information relating to or arising from the capabilities, problems, successes, statistics, diagnostics, inventory, composition, configuration, performance (or lack

thereof) of: (a) the Software or Services; (b) Authorized Machines or any network to which an Authorized Machine is connected; or (c) any software or hardware loaded on, comprising, or used in connection with or otherwise related to any of the foregoing.

- 1.20. "Website" means <http://www.kaseya.com> and related Kaseya micro-site(s), or regional or in country websites applicable to Customer or the applicable Software or Services.

2. **LICENSE AND RIGHT TO ACCESS.** The Software and Services are the property of Kaseya or its licensors, and are protected by law, including applicable copyright law. Although Kaseya or its licensors continue to own the Software and Services, after Customer's acceptance of the Agreement, Customer has license rights to the Software and access rights to the Services during the Term all as set forth in the Agreement. Conditioned upon compliance with the terms and conditions of the Agreement, Kaseya grants to Customer a nonexclusive and nontransferable license to download, install and use the Software for which Customer has paid the required fees consistent with the Documentation.

3. **ACQUISITION MODELS.** As set forth in the Documentation, Kaseya offers different acquisition models (sometimes in combination with each other) such as the following:

- 3.1. **Perpetual.** Under the perpetual license model ("Perpetual"), subject to the terms and conditions of the Agreement, Customer owns a perpetual license to the applicable Software.
- 3.2. **Subscription.** Under the subscription model ("Subscription"), the Customer has the right to access the applicable Software or Service subject to the terms and conditions of the Agreement, only for the Term.
- 3.3. **Standalone.** Under the standalone model ("Standalone"), the Software or Services are not hosted by Kaseya.
- 3.4. **Hosted.** Under the hosted model ("Hosted"), the Software or Services are hosted by Kaseya.
- 3.5. **Combination and Conversion.** If set forth in the Documentation, different models may be combined (e.g. Perpetual and Hosted) and in such case fees are additive to the fees otherwise due except as otherwise set forth in the Documentation. Purchases under one model or models may not be converted to another model unless specifically set forth in the Documentation and is subject to applicable conversion or additional fees.

4. **RESTRICTIONS.** Customer agrees to the following restrictions:

- 4.1. **Authorized Machines.** The maximum number of Authorized Machines on which the Software may be installed and used is set forth in the Documentation based upon the edition of the Software or Services for which you have paid the required fees. You understand that you are only able to interact with Authorized Machines if a copy of the applicable Kaseya Software has been loaded onto that machine. You may only install and use Kaseya Server Software on Authorized Machines owned by you or your Affiliates. You may install and use copies of other Kaseya Software on Authorized Machines owned by you or your Affiliates and on third-party Authorized Machines owned by your Third Party Clients. You agree that you will not make the Software or Services available or accessible for use by any third person or entity other than your Affiliates or Kaseya, either by means of a Hosted System or otherwise. Subject to the foregoing limitations and except as otherwise set forth in the Documentation, a copy of any Kaseya Software that you install on one Authorized Machine may be moved by you to a different Authorized Machine, it being understood that once you have installed and are using the maximum number of copies of the Kaseya Software, you will not be able to move Kaseya Software from an Authorized Machine without deleting the Software or any related account (i.e. on the Kaseya Server) attributable to that Authorized Machine thereby eliminating further use of any Kaseya Software on that machine.
- 4.2. **General Restrictions.** You acknowledge that the Software and Services contain trade secrets of Kaseya or its suppliers or licensors. You agree not to disclose, provide, or otherwise make available trade secrets contained within the Software and Services in any form to any third party and you further agree to implement reasonable security measures to protect such trade secrets. You agree not to reverse engineer, decompile, disassemble, translate, or attempt to learn the source code of the Software or Services. Unless expressly set forth in the Agreement, you may not use, copy, modify, create derivative works of, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare, deliver, or otherwise transfer, directly or indirectly, the Software (in whole or in part) or any rights in the Services. You may not remove from the Software or Services, or alter or add, any Marks or copyright notices or other proprietary rights markings. You shall not (A) create Internet "links" to the Software or Service or "frame" or "mirror" any Software or Service on any

other machine; or (B) reverse engineer or access the Service or Software in order to (1) build a competitive product or service, (2) build a product using similar ideas, features, functions or graphics of the Software or Service, or (3) copy any ideas, features, functions or graphics of the Software or Service. **IF YOU ARE NOT AN EMPLOYEE, INDEPENDENT CONTRACTOR, OR INVITEE OF A CUSTOMER, YOU ARE NOT AUTHORIZED TO INSTALL OR OTHERWISE USE THE SOFTWARE OR SERVICES.**

- 4.3. **Territory.** Customer will be billed in the currency and under pricing schemes applicable to the Territory for the Software or Service. Customer acknowledges and agrees that it will not deploy or use the Software or Services on any machines which are located outside of the Territory. Kaseya has agreed to special pricing which would not otherwise be applicable based on Customer's agreement to use the Software and Services only in the Territory. Therefore, if Customer deploys or uses the Software or Services outside the Territory, Customer shall be deemed to have purchased the rights to use the Software or Services corresponding to Customer's deployment or use and Customer agrees to pay Kaseya for the entire Term the list price applicable to the geographic region(s) where such Software or Services are deployed or used including any increased amounts above the amount(s) otherwise paid by Customer.
- 4.4. **License Keys.** You understand and agree that the Software and Service functionalities are enabled through the use of "license keys" issued by Kaseya. For so long as you are not in breach or default with respect to any of your obligations to Kaseya, Kaseya will provide you with all license keys necessary to enable you to make normal use of the Software or Services that you have acquired. You agree that Kaseya may disable or refuse to renew or replace license keys, rendering some or all aspects of the Software or Services unusable by you, at any time to enforce its rights under the Agreement.
- 4.5. **Automated Tracking.** You understand that the Software and Services are programmed to track the number of deployed copies of Software, Authorized Machines, users and other usage and user related data, and you consent to such operations. You at all times will enable, and will not hinder, impede, alter, prevent, or otherwise distort, the operation of such tracking and reporting functions.
- 4.6. **No Competitors.** You may not access or use the Software or Services if you are a competitor of Kaseya, except with Kaseya's prior written consent. In addition, you may not access or use the Software or Service for purposes of monitoring availability, performance or functionality, or for any other benchmarking or competitive purposes.
- 4.7. **Proprietary Rights.** You acknowledge that: (a) Kaseya is the exclusive owner of all trade names, trademarks, service marks, inventions, copyrights, trade secrets, patents, know-how and other proprietary rights relating to the Software and Services; and (b) Kaseya may collect the Usage Data, is the exclusive owner of the Usage Data and may sell, publish or otherwise use the Usage Data for any purpose at its sole discretion.
- 4.8. **Restricted Rights.** The Software is provided to non-Department of Defense agencies with RESTRICTED RIGHTS and its supporting Documentation is provided with LIMITED RIGHTS. Use, duplication, or disclosure by the government is subject to the restrictions as set forth in subparagraph "C" of the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19. In the event this transaction is with a Department of Defense agency, the government's rights in software, supporting documentation, and technical data are governed by the restrictions in the Technical Data Commercial Items clause at DFARS 252.227-7015 and DFARS 227.7202. Manufacturer of Software is Kaseya International Limited, Channel House, 4th Floor, Green Street, St. Helier, Jersey JE2 4UH, Channel Islands.
- 4.9. **License Subject To Compliance.** Your license to the Software and right to access and use the Services are and shall at all times remain subject to your compliance with all of the terms and conditions of the Agreement, and shall terminate without notice by Kaseya to you in the event of a breach by you of any of your obligations under this Section 4 or in the event of any infringement by you of any patents, copyrights, trade secrets or trademarks of Kaseya.
- 4.10. **Named Users.** The Named Users are the only individuals licensed to use the applicable Software or Services. The maximum number of Named Users is set forth in the Documentation. There may be only one user/employee assigned to a Named User license. Named User licenses cannot be shared among multiple individuals and separate Named User licenses must be purchased for each individual. Customer is responsible for monitoring and maintaining its use within the foregoing parameters.

5. CHARGES AND PAYMENT.

- 5.1. **General Requirement.** Customer agrees to pay Kaseya when due the applicable amounts in accordance with the Documentation. Customer agrees to be responsible for paying for all fees for the entire Term, regardless of whether such Software or Services are actively used. You agree to cause those who access or use the Software and Services by or through you or your accounts to comply with the terms and conditions of the Agreement and, except where caused by Kaseya's gross negligence, to be responsible for payment for all such activity regardless of whether authorized by Customer or not. Except as otherwise set forth in the Agreement, all payment obligations are non-cancelable and all amounts paid are nonrefundable. This section 5 and all of its subsections apply in all situations in which you directly pay Kaseya. If you pay a company other than Kaseya, then the charges and billing terms may be stated by the other company to the extent different than set forth herein. Customer is responsible for all incidental charges related to using the Software or Services including, for example, charges for Internet access, third party software licenses mobile text messaging, or other data transmission. All pricing terms are Confidential Information of Kaseya.
- 5.2. **Late Payments.** Except to the extent prohibited by law, we may assess a late charge if you do not pay on time. You must pay these late charges when we bill you for them. The late charge will be the lesser of 1.5% of the unpaid amount each month or the maximum rate that is permitted by law. We may use a third party to collect any amounts. You must pay for all reasonable costs we incur to collect any past due amounts which costs may include reasonable attorneys' fees and other legal fees and costs. Any Kaseya Entity may suspend, cancel or otherwise terminate your rights in whole or in part with respect to all Software or Services if you fail to pay in full on time for any Software or Service purchased from any Kaseya Entity, including any failure to make an Installment or Subscription payment.
- 5.3. **Upfront Pricing.** If, pursuant to the Documentation, Customer is paying upfront for all fees due for the Software or Service for the Term, except as required by law or as otherwise set forth in the Agreement, no refunds, opt outs or conversion are available and once an Order Form is accepted by Kaseya, Customer agrees to pay all applicable fees for the Term in full up front.
- 5.4. **Installment and Subscription Pricing.** If, pursuant to the Documentation, Customer is paying installments ("Installments") under an installment schedule ("Installment Schedule") or on a Subscription basis, except as required by law or as otherwise set forth in the Agreement, no refunds, opt outs or conversion are available and once an Order Form is accepted by Kaseya, Customer agrees to pay the initial deposit and all applicable Installments for the full Installment Schedule or all Subscription fees for the full Subscription Term.
- 5.5. **Opt Out, Flexible Cancellation and Conversion Pricing.** If, pursuant to the Documentation, Customer is paying under an Installment Schedule, Kaseya may offer opt-out or flexible cancellation and conversion rights, and except as required by law or as otherwise set forth in the Agreement, no refunds are available and once an Order Form is accepted by Kaseya, Customer agrees to pay the initial deposit in full and all Installment payments until such time as Customer opts out or cancels in accordance with the Documentation by providing written notice to billing@kaseya.com. The Customer must opt out or cancel with respect to all Software or Services for which opt out or cancellation is available and must pay any applicable conversion fees. Opt out and flexible cancellation with conversion pricing is only available for certain Software where specifically authorized in the applicable Software catalog and confirmed on the Order Form.
- 5.6. **Subscription Pricing and Changes.** With respect to Software or Services on a Subscription basis, Customer agrees that Kaseya may from time to time either increase or decrease the fee(s) for all or any portion thereof, and that any such adjustment, when made by Kaseya, shall apply effective at the expiration of the current Term to the applicable fees that Customer must pay. Customer's sole remedy in such a case, if it does not wish to pay the adjusted fees, is to elect to terminate the Software or Service at the expiration of the current Term. Any one time, ongoing, or related account or other fees are non refundable and nontransferable even if prices for related Software or Services are changed. If Customer adds Subscription Software or Services in the middle of a billing month, Customer may be charged in full for that billing month.
- 5.7. **Payment method; Credit Card Authorization.** You must provide Kaseya with approved valid credit card or other electronic or standard purchase order and payment processing information. Until all amounts due have been paid in full, you hereby authorize Kaseya to charge any credit card provided by you to Kaseya, all amounts due under the Agreement from time to time, including without limitation, ongoing Subscription and Installment and other payments, taxes, and additional fees. You agree to update your payment information to

keep it current at all times and agree that Kaseya may submit charges for processing even if the payment information appears to have expired. All prices are given and must be paid in the currency listed.

- 5.8. **Taxes.** Kaseya's fees are exclusive of all taxes, fees, levies, duties or similar charges arising out of or relating to the Agreement, and you shall be responsible for payment of all such taxes, fees, levies, duties or similar fees, excluding only taxes based solely on Kaseya's income.
- 5.9. **Conversion of Trial Period Offers.** Unless we notify you otherwise, if you are participating in any trial period offer, you must cancel the service by the end of the trial period or you hereby authorize us to charge your payment method for the Software or Service at standard rates.
- 5.10. **Invoices; Errors.** We may only provide you with a single invoice and we may provide it via electronic means including via an online billing statement. This may be the only billing statement that we provide. If you request a paper copy, we may charge you a retrieval fee. If we make an error on your invoice, we will correct it promptly after you tell us and we investigate the charge. **YOU MUST TELL US WITHIN NINETY (90) DAYS AFTER AN ERROR FIRST APPEARS ON YOUR INVOICE (WHETHER IN YOUR ONLINE BILLING STATEMENT OR IF SENT TO YOU). YOU RELEASE US FROM ALL LIABILITY AND CLAIMS OF LOSS RESULTING FROM ANY ERROR THAT YOU DO NOT REPORT TO US WITHIN (90) DAYS AFTER THE ERROR FIRST APPEARS ON YOUR INVOICE (WHETHER IN YOUR ONLINE BILLING STATEMENT OR IF SENT TO YOU).** If you do not tell us within this time, we will not be required to correct the error. We can correct billing errors at any time.
- 5.11. **Sale and Risk of Loss.** With respect to all Software and Services, the parties acknowledge and agree that the sale, passage of beneficial ownership to Customer, passage of risk of loss to Customer and all negotiations, consummation of the Agreement, and payments occur where Kaseya is located.

6. TERM AND TERMINATION.

- 6.1. **Term and Auto-Renewal.** Under the Perpetual model, the Agreement and the rights granted herein shall remain effective in perpetuity unless terminated as set forth in the Agreement. Under the Subscription Model, the initial term shall be as set forth in the Documentation. Upon the expiration of the initial term, the Subscription will automatically renew for successive renewal terms equal in duration to the initial term at Kaseya's then current fees. For month to month Subscriptions, either party may terminate any such Subscription, effective only upon the expiration of the then current term, by notifying the other party in writing at least five (5) business days prior to the expiration date of the current term. For all other Subscriptions, either party may terminate any such Subscription, effective only upon the expiration of the then current term, by notifying the other party in writing at least thirty (30) days prior to the expiration date of the current term. With respect to each Software or Service item, the current term shall be referred to as the "Term" herein.
- 6.2. **Termination.** In addition to the rights otherwise set forth in the Agreement and not in limitation thereof, Kaseya may terminate the Agreement and the rights granted herein in whole or in part with respect to all Software or Services upon written notice to Customer in the event of a material breach by Customer of the Agreement or any of its obligations to any Kaseya entity, provided that if the breach is curable, the termination shall be effective only if the breach is not cured within ten (10) days following the Customer's receipt of such written notice. Customer may terminate the Agreement with respect to the affected Software or Service upon written notice to Kaseya in the event of a material breach by Kaseya of the Agreement with respect to such Software or Service, provided that if the breach is curable, the termination shall be effective only if the breach is not cured within ten (10) days following the Kaseya's receipt of such written notice. Any free, trial, or Pre-Release Software or Services may be terminated by either party at any time with or without notice to the other. Kaseya will have no responsibility to notify any third party, of any termination or suspension of the Agreement, nor will Kaseya have any liability for any consequences resulting from any termination, suspension or lack of notification.
- 6.3. **Effect of Termination.** In the event of termination, cancellation, or expiration: Customer's rights to the Software or the Services shall immediately terminate; Customer shall de-install and destroy all copies of Software (including any Documentation) in its possession or control; Customer shall pay Kaseya for all amounts due through the effective date of termination, cancellation, expiration; all sections of the Agreement other than the license grant in Section 2 shall survive; and except where Customer terminates for Kaseya's breach Customer agrees to pay any future Installment or Subscription payments due for the entire Installment

Schedule or Subscription Term, as applicable, as consideration for pricing accommodations and other consideration and as a fair approximation of damages and not as a penalty.

7. PRIVACY & SECURITY; CUSTOMER DATA; SERVICE SUSPENSION

- 7.1. **Privacy Statement.** The Kaseya Privacy Statement can be accessed at the Website via <http://www.kaseya.com/company/privacy-statement.aspx> (“Privacy Statement”). Notwithstanding the amendment process set forth in these Terms and Conditions, the Privacy Statement may be updated as set forth in the Privacy Statement. You hereby acknowledge that you have accessed and read the Privacy Statement and that it is a part of the Agreement. Customer Data, including any personal information or personal data may be stored, transferred and processed by any Kaseya Entity in any country in which any of the Kaseya Entities maintain facilities or personnel, and you consent to any such storage, transfer and processing of information outside of your country.
- 7.2. **Account Information and Customer Data.** Kaseya does not claim ownership of any Customer Data. You hereby grant to Kaseya a nonexclusive, worldwide, royalty-free, fully-paid, transferable license to host, cache, record, copy, and display Customer Data solely for the purpose of providing the Software or Services. Except as set forth in the Agreement, as between you and Kaseya, you retain all right, title, and interest in and to the Customer Data. You, not Kaseya, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and you agree that Kaseya shall not be responsible or liable for the unauthorized access to, alteration of, or deletion, correction, destruction, corruption, damage, loss or failure to secure or store any Customer Data. You acknowledge that you bear sole responsibility for adequate security, protection and backup of Customer Data. We strongly encourage you, where available and appropriate, to (a) use encryption technology and passwords to protect Customer Data from unauthorized access, and (b) routinely archive Customer Data. Kaseya reserves the right to refuse to post or to remove any information or materials, in whole or in part, that Kaseya believes in good faith to be unacceptable, undesirable, or in violation of the Agreement. Except for a termination for cause by Kaseya, for 30 days after termination of the applicable Term, Kaseya will continue to make available to you any Customer Data or other reports that are normally made available through the Software or Service. Other than as set forth in the preceding sentence, Kaseya has no obligation to provide any information (including Customer Data) to Customer in any specific format. Kaseya reserves the right to withhold, remove and/or discard Customer Data or other reports without notice for any breach, including, without limitation, your non-payment.
- 7.3. **Representations and Warranties About Customer Data.** You represent, warrant and covenant that you: (A) are the owner or authorized licensee of any and all Customer Data and have the right to grant the rights set forth herein; and (B) will not publish, post, upload, record, or otherwise distribute or transmit Customer Data that: (1) infringes or would infringe any copyright, patent, trademark, trade secret, or other proprietary right of any party, or any rights of publicity or privacy of any party; (2) violates any law, statute, ordinance, or regulation (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination, or false advertising); (3) is inappropriate, profane, defamatory, libelous, obscene, indecent, threatening, harassing, or otherwise unlawful; (4) is harmful to minors or otherwise pornographic; (5) contains any viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software, data, or programs that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, personal information, or property of another; (6) is materially false, misleading, or inaccurate; and/or (7) contains information for which you do not have the right to permit Kaseya to collect and process as set forth in the Privacy Statement.
- 7.4. **Third Party Clients and Responsibility for Accounts Generally.** You agree to furnish such information to Kaseya, and to adopt and utilize (and to cause Third-Party Clients to adopt and utilize) such other measures as Kaseya reasonably may prescribe, in order to assure that the Services are furnished by Kaseya pursuant to this Agreement only to Third-Party Clients, if any, to whom you have a contractual obligation to provide such Services. You agree that the security of your account and of any network or system utilized by you is solely your own responsibility. You are responsible for maintaining the secrecy and security of your passwords and acknowledge and agree that Customer Data will be lost and irretrievable without your passwords. You are fully responsible for all activities that occur on your accounts, regardless of whether such activities are undertaken by you or a third party. Therefore, you further agree that if you believe that the security of your account or of any such network or system has been compromised in any way, you will notify Kaseya immediately both by email and telephone. You agree not to interfere with the proper operation of any network or system utilized by Kaseya (including but not limited to defeating identification procedures, obtaining

access beyond that which you and Third-Party Clients are authorized for, and impairing the availability, reliability, or quality of service for other customers of Kaseya) or with the proper operation of other systems reachable through the Internet, including any attempt at unauthorized access. You further agree not to use the Software or Services or knowingly to permit any Third-Party Client to use the Services for or in connection with any illegal or improper purpose or activities.

- 7.5. **Downtime and Service Suspensions.** In addition to our rights to terminate or suspend Services to you as otherwise set forth in the Agreement, you acknowledge that: (i) we shall be entitled, to suspend access to any portion or all of the Services at any time: (a) for scheduled downtime to permit us to conduct maintenance or make modifications to any Service; (b) in the event of a denial of service attack or other attack on the Service or other event that we determine, in our sole discretion, may create a risk to the applicable Service, to you or to any of our other customers if the Service were not suspended; (c) in the event that we determine that any Service is prohibited by law or we otherwise determine that it is necessary or prudent to do so for legal or regulatory reasons; (d) if you engage in any conduct or activities that is in excess of average customer usage parameters including but not limited to your bandwidth, CPU or disk space usage and such usage by you is or may adversely affect the performance or availability of the Services, Kaseya's infrastructure or resources, or Kaseya's other customers; or (e) if you engage in any conduct or activities that Kaseya in good faith believes to be in violation of any of the terms and conditions in the Agreement; and (ii) your access to and use of the Services may be suspended for the duration of any unanticipated or unscheduled downtime or unavailability of any portion or all of the Services for any reason, including as a result of power outages, system failures or other interruptions (all of the foregoing collectively referred to as "Service Suspensions"). Except as may be set forth in an applicable service level agreement, the Kaseya Entities shall have no liability whatsoever for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that you may incur as a result of any Service Suspension. To the extent we are able; we will endeavor to provide you notice of any Service Suspension, but shall have no liability for the manner in which we may do so or if we fail to do so.
- 7.6. **Submissions.** You may submit questions or comments to Kaseya from time to time. Kaseya reserves the right to edit and post such questions or comments along with answers, if any. All such communications and any comments, feedback, suggestions, scripts, software, ideas, and other submissions related to the Software and/or Services submitted to Kaseya (collectively, "Submissions") will be and remain Kaseya's property, and all worldwide right, title, and interest in all copyrights and other intellectual property in all Submissions are hereby assigned (and in the future deemed to be assigned) by you to Kaseya.

8. MAINTENANCE.

- 8.1. **General.** Maintenance is provided pursuant to Kaseya's Maintenance Policy which is part of the Documentation ("Maintenance"). Customers who purchase or are otherwise eligible for Maintenance will receive Update and Upgrade Maintenance releases as released by Kaseya solely for the Software product covered by a valid Maintenance Subscription. Maintenance does not entitle the Customer to any new or enhanced products even if similar to the Software product purchased by Customer. Customer agrees to test any Update or Upgrade in Customer's test environment and will only deploy an Update or Upgrade in Customer's production environment at Customer's sole risk once Customer is satisfied that the Update or Upgrade will not adversely affect Customer or its Third Party Clients.
- 8.2. **Pricing and Purchase.** If set forth in the Documentation, Maintenance may be included with the purchase of the Software or Service or may be included for a limited time. Otherwise, Maintenance is only sold on a Subscription basis and may only be acquired through the: (A) Upfront; or (B) Installment pricing options. The installment with opt out and conversion rights pricing option is not available. Unless Customer notifies Kaseya (X) that it is electing to not purchase maintenance at the time of purchase of Software or Services; or (Y) 30 days prior to the expiration of any included Maintenance period, then upon the earlier of: (1) the purchase of the Software or Services that do not have maintenance included, or (2) the expiration of any included Maintenance period, Customer agrees to purchase an annual (or such shorter period if set forth in the Documentation) Maintenance Subscription for the applicable Software or Service.
- 8.3. **All or Nothing.** Customer is not required to purchase Maintenance. However, if Customer purchases Maintenance for any Software or Service, Customer must purchase Maintenance for all Software or Service for which Maintenance is not otherwise included.

- 8.4. **Reinstatement.** A Customer who has elected to discontinue receiving and paying for Maintenance may elect to reinstate Maintenance; however, a reinstatement requires payment by the Customer of all of the Maintenance fees that the Customer would have been obligated to pay if the Customer had not discontinued Maintenance plus a reinstatement fee in accordance with the Maintenance Policy.
- 8.5. **Limited Maintenance Release Timing.** Although we strive to improve Kaseya's Software and Services, we do not guarantee new Updates or Upgrade releases during any specific period of time. We will make commercially reasonable attempts to notify registered Customers of enhancements to products; however, the best way to learn of new Updates and Upgrades is to periodically visit the Website.

9. **TRIAL AND PRE-RELEASE SOFTWARE AND SERVICES.** Customer acknowledges and agrees that any Pre-Release Software and Services (defined as any Software or Services that are not generally released to the public for purchase) may not be at the level of performance or compatibility of a final, generally available Software or Service offering. Furthermore, you understand that, for promotional purposes, from time to time, Kaseya may enable new functionality for a trial period to show you what is available or new in the Software and Services, and you agree to accept these new functionalities on a trial basis as they are provided to you. Pre-Release Software or Services may not operate correctly and may be substantially modified prior to commercial shipment, or withdrawn in whole or in part. All Pre-Release and Software and Services offered on a trial basis are provided "AS IS" without warranty of any kind. The entire risk arising out of the use or performance of Pre-Release or trial Software or Services remains with Customer. In no event shall any of the Kaseya Entities be liable for any damage whatsoever arising out of or related to any Pre-Release or trial Software, Services even if Kaseya has been advised of the possibility of such damages and Customer's sole and exclusive remedy will be to terminate use of the Pre-Release or trial Software or Service.

10. **MARKS.** The Marks are available to you only if you meet the criteria to use them. The criteria are explained on the Website. If you meet the criteria and Kaseya has not informed you otherwise, during the Term, we grant to you a revocable at any time non-exclusive, non-transferable, limited, royalty-free license to use the applicable Marks. You acknowledge and agree that: (A) Kaseya or its licensors is the sole owner of the Marks and the sole beneficiary of the goodwill associated with your use of the Marks; (B) You will not acquire any right, title or interest in the Marks because of your use of the Marks; or (C) You will not register, adopt or use any name, trademark, domain name or other designation that includes all or part of any Mark, or any term that is confusingly similar to a Mark, or a translation or transliteration of a Mark and specifically agree not to direct or re-direct communications network traffic to any network address associated with Customer or with any other third party; cause such network traffic to be so directed or so re-directed on behalf of Customer or with any other third party; or list or cause to be listed any Internet website associated with Customer or with any third party in response to a keyword search that receives as input, whether in whole or in part based on the foregoing.

11. **CONFIDENTIALITY.**

- 11.1. Each party agrees to hold the other party's Confidential Information in confidence and not to use it for any purpose other than to provide or receive the Software and Services under the Agreement as applicable. Each party agrees to use the same standard of care to protect Confidential Information as it uses to protect its own similar confidential and proprietary information, but not less than a reasonable standard of care.
- 11.2. Confidential Information may only be disclosed to those Affiliates, employees, contractors and advisors of the Kaseya Entities or the Customer, as applicable, on a need-to-know basis and who agree to be bound by confidentiality restrictions; provided that nothing herein shall prevent or prohibit a party from using or disclosing Confidential Information as may be required by law, rule, regulation or legal process.
- 11.3. Confidential Information remains at all times the property of the disclosing party. Unless otherwise explicitly set forth herein, no licenses or rights under any patent, copyright, trademark, or trade secret are granted or are to be implied with respect to Confidential Information.

12. **LIMITED WARRANTY; DISCLAIMER OF WARRANTIES; INTERNET DELAYS; EXCLUSION OF DAMAGES; LIMITATION ON LIABILITY.**

- 12.1. **Limited Warranty.** Kaseya warrants that the Software when shipped or transmitted to you will operate substantially in accordance with the Documentation for a period of ninety (90) days from delivery to Customer. Customer's sole and exclusive remedy and the entire liability of Kaseya under this limited warranty will be at Kaseya's option, repair, replacement, or refund of the purchase price of the Software (or if the Software provides the functionality intended by Kaseya and the error is in the Documentation Kaseya will correct the Documentation), in each case subject to the condition that any error or defect constituting a breach

of this limited warranty is reported to Kaseya within the limited ninety (90) day warranty period. This warranty does not apply if the Software, or any other equipment upon which the Software is authorized to be used: (a) has been altered, except by Kaseya or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Kaseya, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; (d) is licensed for beta, evaluation, testing or demonstration purposes; or (e) any Software for which Kaseya does not receive a license fee.

- 12.2. **Disclaimer Of Warranties.** EXCEPT AS SET FORTH IN THE PRECEDING SECTION, ALL SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND WITHOUT ANY WARRANTY. EACH OF THE KASEYA ENTITIES HEREBY DISCLAIMS ALL WARRANTIES, CONDITIONS, AND DUTIES OF ANY KIND (IF ANY), EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE, OF ACCURACY, OF SYSTEM INTEGRATION OR COMPATIBILITY, OF WORKMANLIKE EFFORT, OR OF NON-NEGLIGENT PERFORMANCE. THE FOREGOING DISCLAIMERS INCLUDE, WITHOUT LIMITATION, ANY WARRANTY, DUTY, OR CONDITION THAT: THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED, RELIABLE, AVAILABLE AT ANY PARTICULAR TIME, SECURE, ERROR-FREE, VIRUS-FREE, OR CORRESPOND TO ANY CONDITION; THAT MESSAGES OR REQUESTS WILL BE DELIVERED; THAT DEFECTS WILL BE CORRECTED; OR THAT THE SOFTWARE OR SERVICES, ANY CONTENT, SYSTEMS, SERVERS, AND INFORMATION THAT IS IN OR UTILIZED BY THE SOFTWARE AND/OR SERVICES WILL BE FREE OF HARMFUL ASPECTS. ALSO, THERE IS NO WARRANTY OF TITLE OR AGAINST INTERFERENCE WITH ANYONE'S ENJOYMENT OF THE SOFTWARE OR SERVICES OR AGAINST INFRINGEMENT.
- 12.3. **Internet.** SERVICES MAY BE SUBJECT TO LIMITATIONS, SECURITY RISKS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. KASEYA ENTITIES ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, SECURITY BREACHES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.
- 12.4. **Exclusion Of Certain Damages.** YOU AGREE THAT THE FOLLOWING DAMAGES ARE EXCLUDED AND THAT YOU WILL NOT BE ENTITLED TO ANY OF THEM: ALL SPECIAL, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES; DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, OR FOR NEGLIGENCE OR NEGLIGENT MISREPRESENTATION; AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER OTHER THAN "DIRECT DAMAGES" AS DESCRIBED BELOW. THE FOREGOING DAMAGES WILL BE EXCLUDED EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT OR PRODUCT LIABILITY, AND/OR BREACH OF CONTRACT OF KASEYA OR ANY OF THE OTHER KASEYA ENTITIES, AND EVEN IF KASEYA OR ANY OF THE KASEYA ENTITIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU AGREE THAT THESE EXCLUSIONS AND THE BELOW LIMITATION ON LIABILITY WILL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 12.5. **Limitation On Liability.** EXCEPT FOR DAMAGES THAT ARE REQUIRED BY LAW TO BE PAID AND CANNOT BE LIMITED BY CONTRACT, YOU AGREE THAT ALL DAMAGES ARE EXCLUDED EXCEPT FOR THE DIRECT DAMAGES THAT ARE ACTUALLY INCURRED BY YOU IN REASONABLE RELIANCE: (A) FOR SOFTWARE UP TO THE GREATER OF THE AMOUNT OF A REFUND OF THE PRICE THAT YOU ACTUALLY PAID FOR THE APPLICABLE SOFTWARE IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM REGARDLESS OF THE FORM OF ACTION OR CLAIM (E.G., CONTRACT, WARRANTY, TORT, STRICT LIABILITY, NEGLIGENCE, FRAUD, OR OTHER LEGAL THEORY) AND ONE DOLLAR (US\$1.00); AND (B) FOR SERVICES UP TO THE GREATER OF THE AMOUNT OF A REFUND OF THE PRICE THAT YOU ACTUALLY PAID FOR THE APPLICABLE SERVICES DURING FOR THE SERVICES TERM IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM REGARDLESS OF THE FORM OF ACTION OR CLAIM

(E.G., CONTRACT, WARRANTY, TORT, STRICT LIABILITY, NEGLIGENCE, FRAUD, OR OTHER LEGAL THEORY) AND ONE DOLLAR (US\$1.00).

- 12.6. Customer agrees that the limitations of liability and disclaimers set forth herein will apply regardless of whether Customer has accepted the Software or Services. Customer acknowledges and agrees that Kaseya has set its prices and entered into the Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties. Customer understands, acknowledges and agrees that if Kaseya takes any corrective action because of an action of Customer or any Third-Party Clients, that corrective action may adversely affect other Third-Party Clients, and Customer agrees that Kaseya shall have no liability to you, or to any Third-Party Clients, or any other third party due to such corrective action by Kaseya. The limitations and exclusions provided for by this section reflect an informed and voluntary allocation of risks between the parties and applies to risks both known and unknown that may exist in connection with the Agreement.

13. **KASEYA'S OBLIGATIONS RE THIRD-PARTY INFRINGEMENT CLAIMS.** Kaseya will defend, at Kaseya's expense, any lawsuit brought against you in any court located within the United States, insofar (but only insofar) as the suit is based on a claim that the Software, as provided by Kaseya to you, directly infringes any third party patent or copyright, provided that: (A) Kaseya is notified in writing of the lawsuit within thirty (30) days after you obtain actual knowledge of it, (B) Kaseya is given full control over the defense of such claims, and (C) you give Kaseya reasonable assistance and cooperation in its defense of the claim. If your use of the Software is determined in a final, enforceable judgment to infringe a third-party patent or copyright, Kaseya, at its own expense, shall either (1) procure for you the right to continue using the Software, or (2) modify the Software so that it becomes non-infringing while giving acceptable performance, or (3) in the event that neither of the foregoing options (1) and (2) are reasonably available to Kaseya, terminate the Agreement with respect to the infringing Software (and/or any related Services) and, in the case of Perpetual Software, provide a refund to you an amount equal to all sums received by Kaseya from you on account of the Software furnished by Kaseya to you, multiplied by a factor the numerator of which is 1095 minus the number of days during which your license to use the Software was effective and the denominator of which is 1095. In the case of all Subscriptions and Software for which Customer has Installment payments remaining on the Installment Schedule, Kaseya may terminate the Agreement without compensation or other liability. Notwithstanding anything to the contrary in the Agreement, Kaseya will have no obligation to you on account of any third-party claim of infringement that results from (V) any use by you of the Software in violation of the Agreement, (W) any damage to, or misapplication or misuse of the Software by you; (X) your combination of all or any portion of the Software with software not supplied by Kaseya; or (Y) your use of any superseded, altered, or allegedly infringing version or release of all or any portion of the Software if such alleged infringement could be avoided by the use of a different version or Upgrade made available to you by Kaseya; or (Z) any information, design, specification, instruction, software, data, or material not furnished by Kaseya. You agree to defend, indemnify and hold harmless the Kaseya Entities against any claims of infringement by third parties resulting from any of the circumstances listed in the immediately preceding sentence. The foregoing states Kaseya's entire responsibility with respect to intellectual property claims and Customers sole and exclusive remedy.

14. **INDEMNITY.** You agree to defend, indemnify, and hold harmless each of the Kaseya Entities from and against any and all claims, liabilities, damages, and/or costs (including, but not limited to, fees, costs and other expenses of attorneys and expert witnesses) arising out of or related to: any actual or alleged violation of the Agreement or applicable law, rule or regulation by you or any person accessing or using the Software or Services by or through you (including Third Party Clients); any actual or alleged infringement or violation by you or any person accessing or using the Software or Services by or through you of any intellectual property or privacy or other right of any person or entity (including Third Party Clients); or any claims by Third Party Clients or arising out of or relating to Customer's relationship with any Third Party Client.

15. **MISCELLANEOUS.**

- 15.1. **Independent Contractor.** Customer is an independent contractor, and nothing contained in the Agreement shall be construed to (A) give either party the power to direct and control the day-to-day activities of the other, (B) constitute the parties as partners, joint venturers, co-owners agents, franchisee or franchisor or otherwise, or (C) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. Customer is not an employee of Kaseya and is not entitled to any Kaseya benefits. All financial and other obligations associated with each party's business and are the sole responsibility of such

party. Customer represents and warrants that it: (X) will not make any representation, warranties, or guarantees on behalf of Kaseya, and (Y) will not disparage Kaseya in any manner or otherwise harm Kaseya's business or reputation.

- 15.2. **Choice of Law.** The Agreement shall be governed by Delaware law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with the Agreement or the Software or Services shall be subject to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to the Agreement. Customer and Kaseya agree that Customer and Kaseya **MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY**, and not as a plaintiff or class representative or class member in any purported class or representative proceeding as a private attorney general. Kaseya and Customer hereby agree that each is waiving all respective rights to a trial by jury regarding any disputes, actions, claims or causes of action arising out of or in connection with the Agreement or the Software or Services. This choice of jurisdiction and venue does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement of recognition of any award or order in any appropriate jurisdiction. If either party commences litigation in connection with the Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, costs and other expenses.
- 15.3. **Assignment.** No party may assign the Agreement, or any rights or obligations hereunder, whether by contract, operation of law, or otherwise without the express written consent of the other party to the Agreement, except: (A) in the case of Kaseya, Kaseya may assign the Agreement without your prior consent to: (1) one or more of the Kaseya Entities, (2) an acquirer of assets, or (3) a successor by merger; and (B) in the case of Customer, you may assign all of your rights in connection with a sale of all or substantially all of Customer's assets or in connection with a merger or other third-party acquisition of all or substantially all of the business conducted by Customer for which the Software is used by you, and then only if (1) you retain no further rights under this Agreement, (2) your assignee or transferee expressly agrees in writing to assume all of your obligations under this Agreement, (3) your assignee or transferee is no less capable of performing this Agreement than are you; and (4) the assignee is not a competitor of any Kaseya Entity as determined in Kaseya's sole discretion. Unless otherwise agreed in writing by Kaseya, you will remain jointly and severally liable with any such assignee or transferee for the full and timely performance of all obligations under this Agreement. Notwithstanding the foregoing, any actual or proposed assignment to a competitor of Kaseya or change in control of you that results or would result in a competitor of Kaseya directly or indirectly owning or controlling 50% or more of you shall entitle Kaseya to terminate the Agreement for cause in whole or in part immediately upon written notice. Any purported assignment in violation of this section shall be void.
- 15.4. **Force Majeure.** Kaseya's performance of the Agreement (including the Privacy Statement) is subject to existing laws and legal process, and you agree that Kaseya may comply with law enforcement or regulatory requests or requirements notwithstanding any contrary term of the Agreement. Each party's obligation to perform its obligations hereunder (other than your obligation to pay fees when due) shall be suspended during any period that the party is rendered incapable of performing by virtue of any criminal acts of third parties, war, viruses, acts of public enemies, severe weather conditions, utility failures, strikes or other labor disturbances, fires, floods, other natural disasters, other acts of God, unforeseeable acts of employees, telecommunication or interruption of Internet service, or any causes of like or different kind beyond any reasonable control of the party.
- 15.5. **Waiver.** The failure of either party to insist in any instance upon any payment or performance when due by the other party, shall not relieve such other party of its any of obligations with respect to such performance, or constitute a waiver of such party's right to insist upon the full and timely performance in the future of any of the other party's obligations under the Agreement.
- 15.6. **Severability.** If any of the provisions of the Agreement shall be held by a court of competent jurisdiction for any reason to be unenforceable by reason of being excessively broad, or excessively narrow or limited, in its scope or duration, the offending provision(s) automatically shall be deemed amended so as to be as broad as is permissible (if the unenforceability is due to excessive breadth) or as narrow or limited (if the unenforceability is due to excessive narrowness or limitation) as is permitted by applicable law. The

unenforceability or invalidity of any one provision shall not affect the remainder of the Agreement, which shall continue in full force and effect.

- 15.7. **Verifying Compliance And Customer Records.** Customer grants to Kaseya and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours to verify compliance with the Agreement. In the event such audit discloses non-compliance with the Agreement, Customer shall promptly pay to Kaseya the appropriate fees, plus the reasonable cost of conducting the audit.
- 15.8. **Agreement Priority.** The terms of the Agreement govern Customer's access and use of the Software and Services, provided that to the extent: (A) there is an applicable separate non-electronic agreement manually signed by authorized representatives of the parties, or (B) the Software or Service has a EULA set forth at <http://www.kaseya.com/Legal.aspx> and such separate EULA agreement explicitly states that it is superseding these Terms and Conditions, to the extent of a conflict between the provisions of the foregoing, the order of precedence shall be (X) the signed agreement, (Y) the EULA, and (Z) these Terms and Conditions. Except as set forth in the preceding sentence or otherwise indicated in these Terms and Conditions, these Terms and Conditions shall govern in case of a conflict between the Terms and Conditions and the Documentation.
- 15.9. **Notices and Electronic Communications.** Kaseya may give notice by means of a general notice on the Software or Service, electronic mail to your e-mail address on record in Kaseya's account information, or by written communication sent by first class mail or pre-paid post to your address on record in Kaseya's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Kaseya (such notice shall be deemed given when received by Kaseya) at any time by any of the following: letter sent by confirmed facsimile or third party confirmed mail delivery to Kaseya at the address set forth on the Website. The Services and Software are conducted and provided electronically and you agree that Kaseya may communicate electronically with you for matters relating to the Services and Software, including educational information and notifications regarding product updates, incentive and rewards programs, training opportunities and ways to more efficiently use the Software and Services. The parties agree that the Agreement is to be written in English only, unless Kaseya in its sole discretion releases any part of the Agreement in other language(s). If Kaseya chooses to release any part of the Agreement in any language other than English, Kaseya does so for informational purposes only and you hereby agree that the English language version shall govern and control in all cases.
- 15.10. **Compliance With Law and Export Control.** You shall abide by all applicable local, state, national and foreign laws, rules, treaties and regulations in connection with your use of the Software and Service, including those related to data privacy, international communications and the transmission of technical or personal data. You acknowledge that the Software, Services and related technology and technical data (collectively "Controlled Technology") may be subject to the import and export laws of any country where Controlled Technology is imported or re-exported, including U.S Export Administration Regulations. You agree not to export or import any Controlled Technology in contravention to law nor to any prohibited country (such as embargoed countries), entity, or person (such as designated nationals) for which a license or other governmental approval is required or is otherwise prohibited. All Controlled Technology is prohibited for export or re-export to Afghanistan, Burma, Cuba, Iraq, Iran, Libya, North Korea, Syria and Sudan and to any country subject to similar trade sanctions. You further agree that you will not use, export or sell any Controlled Technology for use in connection with chemical, biological, or nuclear weapons, or missiles, drones or space launch vehicles capable of delivering such weapons.
- 15.11. **Entire Agreement.** The Agreement (including these Terms and Conditions, the Documentation, and the other items referenced herein and therein) constitutes the entire agreement between Kaseya and you with respect to the Software and Services and supersedes all other (prior or contemporaneous) communications and proposals, whether electronic, oral, or non-electronic, between Kaseya and you regarding them. You agree that any terms or conditions contained in any document, including but not limited to a purchase order, acknowledgement, email, or other document that you may now or later provide to Kaseya, will have no effect and that the Agreement is the only contract between Kaseya and you regarding the Software and Services and may only be amended as set forth herein. A printed version of the Agreement and of any notice given to you in electronic form will be admissible in judicial or administrative proceedings based upon or relating to the Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

- 15.12. **Amendments.** Kaseya may, at any time, amend the provisions of the Agreement and/or the Privacy Statement, and you may accept the amended provisions in the manner indicated in the amendment notice as communicated by Kaseya. Any amendment proposed by you may only be accepted by Kaseya in a non-electronic writing manually signed by authorized representatives of the parties. Notwithstanding anything in this Section to the contrary, if Kaseya posts amended terms on the Website, such terms will automatically become effective ten (10) days after they are posted on the Website. By using the Software or the Services after such revised terms are posted, you agree to be bound by any such amended provisions. Therefore, you agree to periodically visit the Website to examine the then-current Agreement (including the Privacy Statement).

Questions or Additional Information:

If you have questions regarding the Agreement or wish to obtain additional information, please send an e-mail to legal@kaseya.com.

Last Updated: October 25, 2010