

Kaseya End User License Agreement and Terms of Service (“EULATOS”)

IMPORTANT: PLEASE READ THIS EULATOS CAREFULLY AND PRINT IT OR GO TO [HTTP://WWW.KASEYA.COM/LEGAL.ASPX](http://www.kaseya.com/legal.aspx) TO OBTAIN A DOWNLOADABLE COPY OF THE CURRENT VERSION OF THIS EULATOS TO MAINTAIN A COPY FOR YOUR RECORDS.

THIS EULATOS, THE DOCUMENTATION (AS DEFINED BELOW), AND THE OTHER ITEMS INCORPORATED BY REFERENCE HEREIN AND THEREIN (COLLECTIVELY, 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, COPYING, INSTALLING, ORDERING, RECEIVING OR USING KASEYA OR KASEYA-SUPPLIED SOFTWARE OR SERVICES, OR THAT CLICKS THE "ACCEPT" BUTTON OR CHECK BOX DISPLAYED AS PART OF THE PROCUREMENT, COPY, INSTALLATION, UPGRADE OR UPDATE PROCESS (“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 “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY.

KASEYA IS WILLING TO LICENSE THE KASEYA OR KASEYA-SUPPLIED SOFTWARE AND/OR PROVIDE THE KASEYA OR KASEYA-SUPPLIED SERVICES TO YOU ONLY UPON THE CONDITION THAT YOU ACCEPT ALL THE TERMS CONTAINED IN THE AGREEMENT. BY DOWNLOADING, COPYING, INSTALLING, ORDERING, RECEIVING OR OTHERWISE USING KASEYA OR KASEYA-SUPPLIED SOFTWARE OR SERVICES, OR BY CLICKING THE "ACCEPT" BUTTON OR CHECK BOX DISPLAYED AS PART OF THE PROCUREMENT, INSTALLATION, UPGRADE OR UPDATE PROCESS, YOU ACCEPT AND AGREE TO BE BOUND BY THE AGREEMENT. YOU REPRESENT THAT YOU HAVE READ AND UNDERSTAND ALL OF THE PROVISIONS OF THE AGREEMENT.

KASEYA OFFERS SOFTWARE AND SERVICES ONLY SUBJECT TO THE AGREEMENT AND THEREFORE YOU MUST ACCEPT THE AGREEMENT BEFORE YOU CAN DOWNLOAD, COPY, INSTALL, UPGRADE, UPDATE, ORDER, RECEIVE OR OTHERWISE 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, SELL OR PROVIDE THE KASEYA OR KASEYA-SUPPLIED SOFTWARE OR SERVICES TO YOU AND YOU MAY NOT DOWNLOAD, COPY, INSTALL, ORDER, RECEIVE OR USE THEM.

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. "Airtime Service" means wide-area wireless network services and any other network services (including wireless local area network, satellite services and Internet services) required for your use of the Service.
- 1.2. "Airtime Service Provider" means the service provider of Airtime Services selected by you that supports the Service.
- 1.3. "Affiliate" means in relation to a party, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with that party from time to time. For the purpose of this definition, "Control" means that a party owns directly or indirectly more than 50% of the shares or equity instruments of the other party representing the right to vote on all or substantially all matters, including the election of directors.
- 1.4. "API" means the software application interfaces and workflow methods made generally available by Kaseya in certain Kaseya Traverse Software to enable integration, implementation and interoperability with third party hardware and software.
- 1.5. "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 you have paid the required fees.

- 1.6. "Authorized User(s)" means any of the following who you give permission to use the Software or access the Service: (a) any of your employees, consultants or independent contractors; (b) any friend or family member, or any person that resides in your premises; (c) any third party who hosts the Software on your behalf under an agreement with you for such hosting (e.g., IT outsourcer) and who has read and agreed to abide by the terms of the Agreement; and (d) any other person who Kaseya authorizes in writing.
- 1.7. "Confidential Information" means information that is disclosed by one party to the other and that the receiving party knows is confidential to the disclosing party or that is of such a nature that someone familiar with the type of business of the disclosing party would reasonably understand is confidential to it. Confidential Information includes the financial and business information and trade secrets of a party. Notwithstanding the foregoing, Confidential Information does not include information that the receiving party can demonstrate: (a) is in the public domain or is generally publicly known through no improper action or inaction by the receiving party; (b) was rightfully in the receiving party's possession or known by it prior to receipt from the disclosing party; (c) is rightfully disclosed without restriction to the receiving party by a third party without violation of obligation to the disclosing party; or (d) is independently developed by the receiving party without use of the Confidential Information of the disclosing party.
- 1.8. "Customer Data" means any and all of your data, information and materials that are uploaded by or for you or that are accessed by Kaseya in connection with your use or Kaseya's provision of the Software or Services, including Personal Information, photographs, caricatures, illustrations, designs, icons, articles, audio clips, trademarks, logos, and video clips, but excluding Submissions or Usage Data.
- 1.9. "Documentation" means the installation guide, user and technical manuals, training materials, maintenance and support policies, specifications, and trademark and copyright attributions pertaining to the Software or Services and made available to you by Kaseya or a Kaseya authorized distributor with respect to the Software or Services in any manner, including via Website or electronically, as may be updated or amended by Kaseya from time to time. Documentation also includes Kaseya's EULATOS and applicable Order Form(s) and SOW(s).
- 1.10. "Handheld Product" means any wireless mobile handheld communications device for which the Software has been designed, developed and made publicly available. A list of the Handheld Products for which the Software has been designed, developed and made publicly available can be found at <http://roverapps.com/retriever-mobile/>.
- 1.11. "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).
- 1.12. "Kaseya Entity" or "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.
- 1.13. "Kaseya Server" means the centralized Kaseya Software platform that is required to enable other Software components to function.
- 1.14. "Kaseya Traverse Software" means Software that is manufactured by Kaseya Traverse, Inc.
- 1.15. "Marks" means Kaseya or Kaseya-licensed trademarks, logos, symbols, and names.
- 1.16. "Named User" means only the individual designated and identified by name who is authorized to use the applicable Software or Services.
- 1.17. "Order Form(s)" means the Kaseya form evidencing your 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 your invoice or billing statement, or may be an SOW.

- 1.18. "Restricted Territory" means any country subject to embargo or sanctions by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC").
- 1.19. "Kaseya Desktop Software" means the proprietary personal computer software that is transmitted, distributed or otherwise made available by Kaseya for use on a personal computer or server, which can be used to provision and maintain synchronization between your Handheld Product and your personal computer and provides other information integration functionality.
- 1.20. "Kaseya Handheld Software" means the proprietary software designed for use on an applicable Handheld Product that is transmitted, distributed or otherwise made available by or on behalf of Kaseya from time-to-time for use on a Handheld Product.
- 1.21. "Personal Information" means any personally identifiable information or data (including a name, email address, telephone number, Handheld Product information and Airtime Service Provider information) concerning or relating to a party's or its Affiliate's employees, customers or prospective customers, or any information or data that a party collects or derives from interactions with the other party, such party's employees, customers or prospective customers, including, where applicable, any such information contained within Customer Data.
- 1.22. "Service(s)" means (a) the Kaseya services set forth in the applicable Documentation and also includes such Documentation or (b) the service provided by Kaseya or its subcontractors that enables communications between the Kaseya Handheld Software and the Kaseya Desktop Software.
- 1.23. "Software" means Kaseya or Kaseya-distributed software in object code format, 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 this EULATOS and is therefore subject to its own license.
- 1.24. "SOW(s)" means a statement of work, work order, or other similar document executed by Kaseya and you which sets forth Services to be performed by Kaseya.
- 1.25. "Term" has the meaning set forth in Section 6.1.
- 1.26. "Territory" means the geographic region where Software and Services may be deployed and used for which you have paid the applicable fees and unless otherwise agreed to by Kaseya in writing is the country where you are invoiced for the applicable Software or Service.
- 1.27. "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.
- 1.28. "Third Party Components" means software, interfaces, and firmware, licensed by Kaseya from third parties for incorporation into Software and distributed as a part of that Software.
- 1.29. "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.
- 1.30. "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.
- 1.31. "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.

1.32. "Website" means <http://www.kaseya.com> and related Kaseya micro-site(s), or regional or in country websites applicable to you 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 your acceptance of the Agreement, you have 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 you a nonexclusive and nontransferable license to download, install and use the Software for which you have 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), including the following:

3.1. **Perpetual.** Under the "Perpetual" license model, subject to the terms and conditions of the Agreement, you have a perpetual license to the applicable Software.

3.2. **Subscription.** Under the "Subscription" model, you have the right to access the applicable Software or Service subject to the terms and conditions of the Agreement, only for the Term.

3.3. **On Premise.** Under the "On Premise" model, the Software or Services are for deployment on your premises and are not hosted by Kaseya.

3.4. **Cloud.** Under the "Cloud" model, all or part of the Software or Services are hosted by Kaseya in an accessible network location (it being understood that portions may also be On Premise).

4. **RESTRICTIONS.** You agree 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, observe, test the functioning of or attempt to learn the source code of the Software or Services (or any part thereof), except and only to the extent that such restriction is prohibited under applicable law. Unless expressly set forth in the Agreement, you may not use, copy, modify, combine, merge, 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 (i) build a competitive product or service, (ii) build a product using similar ideas, features, functions or graphics of the Software or Service, or (iii) copy any ideas, features, functions or graphics of the Software or Service.

- 4.3. **Territory.** You will be billed in the currency and under pricing schemes applicable to the Territory for the Software or Service. You acknowledge and agree that you 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 your agreement to use the Software and Services only in the Territory. Therefore, if you deploy or use the Software or Services outside the Territory, you shall be deemed to have purchased the rights to use the Software or Services corresponding to your deployment or use and you agree 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 you.
- 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 or if you are working in conjunction with or on behalf of a competitor. 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. **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. Where you are permitted in accordance with the Agreement to allow a third party or Affiliate to benefit from the Services and/or Software, you agree to ensure that all such use: (a) does not exceed your permitted use; (b) is controlled by you; and (c) is otherwise subject to and in accordance with the terms of the Agreement.
- 4.9. **Named Users.** For items under the Named User model, the Named User(s) are the only individual(s) 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; provided that you may assign a Named User license to a new employee if the former Named User licensee employee is terminated from employment or permanently assigned to a new job function not involving the Software or Services. You are responsible for monitoring and maintaining your use within the foregoing parameters and agree to pay additional license fees at list price for any usage in violation of this section.
- 4.10. **Microsoft® Windows® Preinstallation Environment License (Windows PE).** Kaseya is a licensee under a license granted by Microsoft with respect to Microsoft Windows Preinstallation Environment software. Under the Microsoft license: (a) Windows PE is limited to use as a boot, diagnostic, disaster recovery, set up, restoration, emergency services, installation, test/or configuration utilities program, and is not for use as a general purpose operating system or as a substitute for a fully functional version of any operating system products; (b) the Software includes Windows PE, which contains a security feature that will cause the computer system to reboot without prior notification to the user after 24 hours of continuous use and THIS TIME-OUT FEATURE WILL RESET EACH TIME THE COMPONENT CONTAINING THE WINDOWS PREINSTALLATION ENVIRONMENT IS RELAUNCHED; (c) any and all Kaseya and Microsoft and Microsoft affiliate liability related to the Software is disclaimed in full and without condition; (d) Microsoft

has no support obligations to you; (e) you are specifically prohibited from reverse engineering, decompiling, or disassembling Windows PE, except to the extent expressly permitted by applicable law; and (f) you are specifically informed that Windows PE is subject to U.S. export jurisdiction.

4.11. **Your Computer Systems and Airtime Services.** Except as the Parties expressly agree in writing, Kaseya has no responsibility for the selection, implementation, interoperability and performance of any and all third party hardware (including Handheld Product(s)), software and services (including Internet connectivity and Airtime Services) used in association with the Service or the Software. A subscription for Airtime Services may be required in order to use certain Software and Services, and if so, you must acquire this subscription through an Airtime Service Provider directly, which Airtime Services shall be subject to the terms and conditions of service between you and such Airtime Service Provider. You are responsible for ensuring that the hardware, software and services with which you choose to operate the Service and the Software meets Kaseya's minimum requirements, including the processing speed, memory, client software and the availability of dedicated Internet access required for the Service and the Software as set out on the Kaseya website located at <http://roverapps.com/requirements>.

4.12. **Kaseya Traverse Software Restrictions.**

4.12.1. *Third Party Materials.* Some third party materials included in the Software may be subject to other terms and conditions, which are typically found in a "Read Me" file or "About" file in the Software. You agree to read such other terms and conditions, and if you do not agree to accept such terms, you agree not to use the Software.

4.12.2. *Managed Service Provider.* You are not permitted to offer services to third parties in connection with your access, installation, download, copying, execution of or interaction with (collectively, "Use") the Kaseya Traverse Software unless you have purchased a "Managed Service Provider" or "MSP" license from Kaseya. You may only offer these services to third parties under an MSP license as long as the Kaseya Traverse Software is covered by an active maintenance and support contract. If you enter into a contract with a third party in which the third party manages Your information technology resources ("Managing Party"), you may transfer only your rights to Use the Kaseya Traverse Software to such Managing Party, provided that: (a) the Managing Party only Uses the Kaseya Traverse Software for your internal operations and not for the benefit of another third party; (b) the Managing Party agrees in writing provided to Kaseya to comply with the terms and conditions of the Agreement; and (c) you provide Kaseya with written notice that a Managing Party will be Using the Kaseya Traverse Software on your behalf. Except with Kaseya's prior written consent, you may not permit third parties to benefit from the Use of the Kaseya Traverse Software via a timesharing, service bureau or any other arrangement.

4.12.3. *Lab Copy Licenses.* Software may be provided to you under a laboratory license ("Lab License Software"). Such Lab License Software may only be deployed on one or more servers in a non-production, laboratory environment. Lab License Software may not be used in a production environment.

4.12.4. *Failover/Standby Licenses.* A "Warm Standby" license allows you to install the Software, but not keep the Software running on spare or backup servers while the primary production Software is running. A "Hot Standby" license allows you to install and keep the Software running on spare or backup servers at all times as a backup of the primary production Software.

4.12.5. *APIs.* Kaseya may make APIs generally available for the Software. You may not use the APIs or incorporate the runtime component in a product to develop a product or service that competes with products or services offered by Kaseya.

4.12.6. *Free Software.* The Software may include some software programs that are licensed (or sublicensed) under the GNU General Public License ("GPL") or other similar free software ("Free Software") licenses which, among other rights, permit a user to copy, modify and redistribute certain programs, or portions thereof, and have access to the source code. The GPL requires that for any software covered under the GPL, which is distributed to users in an executable binary format, that the source code also be made available to those users. For any such Software covered under the GPL, the source code will be provided to you upon your request. If any Free Software licenses require that Kaseya provide rights to use, copy or modify a software program that are broader than the rights granted in the Agreement, then such rights shall take precedence over the rights and restrictions in the Agreement.

- 4.13. **Cloud Services and Software.** This section applies to the license of Software and Services on the Cloud model.
- 4.13.1. *Microsoft Office 365 Access.* To the extent applicable, you agree to allow Kaseya to access your then current Microsoft Office 365 account for the sole purpose of performing Kaseya's obligations under the Agreement.
- 4.13.2. *Internal Use; Authorized Users.* Unless otherwise agreed with Kaseya, the Services and/or Software may only be used in connection with your own internal business purposes and that of your Affiliates. You agree: (a) to provide only Authorized Users with access to the Software and Services, such access to be only via the access method provided by Kaseya; (b) to ensure that your Authorized Users keep confidential and not share with any third party any "PIN", "ID" or similar password (if applicable) that it is used to facilitate your Authorized Users' access to the Services and/or Software; (c) to keep up-to-date records of the names of your Authorized Users and any passwords issued to or used by your Authorized Users; and (d) to contact Kaseya if updates to any list of Authorized Users provided to Kaseya are required, including when Authorized Users cease to be employed or engaged by you.
- 4.13.3. *Viruses.* You agree to use, and ensure that your Authorized Users use, due care and diligence to avoid introducing any software virus or other contaminant (including any bugs, worms, logic bombs, Trojan horses or any other self-propagating or other such program) that may infect or cause damage to the Software, the Services or Kaseya's systems, or otherwise disrupt the provision of the Services.

5. CHARGES AND PAYMENT.

- 5.1. **General Requirement.** You agree to pay Kaseya when due the applicable amounts in accordance with the Documentation. You agree to be responsible for the payment of 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 you 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. You are responsible for all incidental charges related to using the Software or Services including 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, you are paying "Upfront" for Software or Service, no refunds, opt outs or conversion are available and you agree to pay all applicable fees for the item in full or the Term in full once an Order Form is accepted by Kaseya.
- 5.4. **Installment and Subscription Pricing.** If, pursuant to the Documentation, you are 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, you agree to pay all applicable deposits, fees and Installments for the full Installment Schedule or all Subscription fees for the full Subscription Term in accordance with the Order Form.
- 5.5. **Opt Out, Flexible Cancellation and Conversion Pricing.** If, pursuant to the Documentation, you are 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, you agree to pay all applicable deposits in full and all Installment

payments until such time as you opt out or cancel in accordance with the Documentation by providing written notice to billing@kaseya.com. You must opt out or cancel with respect to all Software or Services for which opt out or cancellation is available and you 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 Documentation and confirmed on the Order Form.

- 5.6. **Subscription Pricing and Changes.** With respect to Software or Services on a Subscription basis, you agree 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 you must pay. Your sole remedy in such a case, if you do 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 nonrefundable and nontransferable even if prices for related Software or Services are changed. If you add Subscription Software or Services in the middle of a billing month, you may be charged in full for that billing month.
- 5.7. **Payment method; Credit Card Authorization.** If paying by credit card, you must provide Kaseya with an 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 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 NINETY (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 you, passage of risk of loss to you 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 therein in whole or in part with respect to all Software or Services purchased by you upon written notice in the event of your material breach of the Agreement or of any of your 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 your receipt of such written notice. You 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 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: (a) your rights to the Software or the Services shall immediately terminate; (b) under the Subscription model, your Software license key may automatically terminate and stop working; (c) you shall de-install and destroy all copies of Software (including any Documentation) in your possession or under your control; (d) you shall immediately pay Kaseya for all amounts due through the effective date of termination, cancellation or expiration; (e) all sections of the Agreement other than the license grant in Section 2 shall survive; and (f) except where you terminate for Kaseya's breach, you agree 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. Any payments due under the Agreement will be immediately due and payable and can be charged by Kaseya against any of your credit cards on file without further prior authorization from you, and you agree not to dispute any such charge therefor.

7. PRIVACY & SECURITY; YOUR DATA; SERVICE SUSPENSION

- 7.1. **Personal Information; Privacy Statement.** By submitting Personal Information about you and/or your Authorized Users, to Kaseya and/or its affiliated companies, you consent to the collection, use, processing, transmission, and/or disclosure of such information by Kaseya and/or its affiliated companies, and you warrant that you have obtained all consents necessary under applicable law from your Authorized Users to disclose their Personal Information to Kaseya and/or its affiliate companies, and for Kaseya and/or its affiliated companies to collect, use, process, transmit, and/or disclose such Personal Information, for: (a) the internal use of Kaseya and its affiliated companies, including developing new services and enhancing existing services and product offerings; (b) any purpose related to the billing, activation, provision, maintenance, deactivation and/or your and/or your Authorized Users' use of the Service or the Software and/or related products and/or services; (c) providing you and/or your Authorized Users with upgrades or updates to the Service and the Software, notice of upgrades or updates, and/or related products and/or services; (d) any purposes permitted or required by any applicable law; and/or (e) any of the other purposes which are set out in Kaseya's then current Privacy Statement, which can be accessed at the Website via <http://www.kaseya.com/company/privacy-statement.aspx> ("Privacy Statement"). In addition, you understand, acknowledge and agree that Customer Data, including any Personal Information, 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. The collection, use, processing, transmission and/or disclosure of your or your Authorized Users' Personal Information for the purposes noted above shall be in accordance with the Privacy Statement and applicable privacy laws. You hereby acknowledge that you have accessed and read the Privacy Statement and that it is a part of the Agreement. Kaseya reserves the right to modify the Privacy Statement from time-to-time in its sole discretion and you agree to regularly review the Privacy Statement for any updated information. Notwithstanding the amendment process set forth in this EULATOS, the Privacy Statement may be updated as set forth in the Privacy Statement. The parties hereto acknowledge and agree that the Privacy Statement, as may be modified from time to time by Kaseya, is incorporated into the Agreement by this reference.
- 7.2. **Account Information and Customer Data.** Kaseya does not claim ownership of any of 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 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 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 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 (thirty) days after termination of the applicable Term, Kaseya will continue to make available to you 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 you 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, your non-payment.

- 7.3. **Representations and Warranties About Customer Data.** You represent, warrant and covenant that: (a) you are the owner or authorized licensee of Customer Data and have the right to grant the rights set forth herein; and (b) you will not publish, post, upload, record, or otherwise distribute or transmit any data or other material that: (i) 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; (ii) violates any law, statute, ordinance, or regulation (including the laws and regulations governing export control, unfair competition, anti-discrimination, or false advertising); (iii) is inappropriate, profane, defamatory, libelous, obscene, indecent, threatening, harassing, or otherwise unlawful; (iv) is harmful to minors or otherwise pornographic; (v) 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; (vi) is materially false, misleading, or inaccurate; and/or (vii) 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 are responsible for the compliance with the Agreement of Third Party Clients and if you are a Third Party Client, you agree to comply with the Agreement. You agree: (a) 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 the Agreement only to Third-Party Clients, if any, to whom you have a contractual obligation to provide such Services; (b) that you shall only permit Authorized Users to access the Software or Services via the access method provided by Kaseya and shall not permit access to anyone other than an Authorized User; (c) that the security of your account and of any network or system utilized by you is solely your own responsibility, and that you are responsible for maintaining the secrecy and security of your passwords and acknowledge; (d) that Customer Data will be lost and irretrievable without your passwords; (e) that 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; (f) 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; (g) not to interfere with the proper operation of any network or system utilized by Kaseya (including 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; (h) not to use the Software or Services or knowingly to permit any Third-Party Client to use the Software or Services for or in connection with any illegal or improper purpose or activities or in violation of the Agreement.
- 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: (a) we shall be entitled, to suspend access to any portion or all of the Services at any time (i) for scheduled downtime to permit us to conduct maintenance or make modifications to any Service, (ii) 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, (iii) 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, (iv) if you engage in any conduct or activities that is in excess of average customer usage

parameters including 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 (v) 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; or (vi) in the event of any unauthorized use of the Services and/or Software by you or an Authorized User, and (b) 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; it being further understood that Kaseya may take any mitigating action without liability or notice to you in response to the situations described in (a)(iii)-(vi) above.

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. **TRIAL AND PRE-RELEASE SOFTWARE AND SERVICES.** You acknowledge and agree 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. During the term of the Agreement, if requested by Kaseya, you will provide feedback to Kaseya regarding testing and use of the Pre-Release Software or Services, including error or bug reports. If you have been provided the Pre-Release Software or Services pursuant to a separate written agreement, your use of the Pre-Release Software or Services is also governed by such agreement. Upon receipt of a later unreleased version of the Pre-Release Software or Services or release by Kaseya of a publicly released commercial version of the Pre-Release Software or Services, whether as a stand-alone product or as part of a larger product, you agree to return or destroy all copies of earlier Pre-Release Software or Services received from Kaseya and to abide by the terms of the applicable user agreement for any such later versions of the Pre-Release Software or Services. You hereby agree that the features and functions of Pre-Release Software or Services are confidential, and you will not disclose any such features and functions until such time as the Pre-Release Software or Services are publicly available. 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 you. 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 your sole and exclusive remedy will be to terminate use of the Pre-Release or trial Software or Service.

9. **MARKS.** The Marks are available to you only if you meet the criteria to use them. The criteria are explained on the Website at <http://www.kaseya.com/Legal/Trademark-Guidelines.aspx>. 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 are the sole owners of the Marks and the sole beneficiaries 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; and (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 you or with any other third party, cause such network traffic to be so directed or so re-directed on behalf of you or with any other third party; or list or cause to be listed any Internet website associated with you 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.

10. CONFIDENTIALITY.

- 10.1. 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.
- 10.2. Confidential Information may only be disclosed to those Affiliates, employees, contractors and advisors of you or of the Kaseya Entities, as applicable, on a need-to-know basis and who agree to be bound by confidentiality restrictions at least as restrictive as those contained in the Agreement; provided, that nothing shall prevent or prohibit a party from using or disclosing Confidential Information as may be required by law, rule, regulation or legal process.
- 10.3. 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.

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

- 11.1. **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 you. Your 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) is Software or equipment for which Kaseya does not receive a license fee.
- 11.2. **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.
- 11.3. **Internet and Fault Tolerance.** 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. THE SOFTWARE AND SERVICES CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN

HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING WITHOUT LIMITATION, IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, DIRECT LIFE-SUPPORT MACHINES, OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE OR SERVICES COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE (COLLECTIVELY, "HIGH RISK ACTIVITIES"). KASEYA EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

- 11.4. **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.
- 11.5. **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 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).
- 11.6. **Allocation of Risk.** You agree that the limitations of liability and disclaimers set forth herein will apply regardless of whether you have accepted the Software or Services. You acknowledge and agree 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. You understand, acknowledge and agree that if Kaseya takes any corrective action because of an action or omission by you or by any Third-Party Clients, that corrective action may adversely affect other Third-Party Clients, and you agree 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 apply to risks both known and unknown that may exist in connection with the Agreement.

12. **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 (x) procure for you the right to continue using the Software, or (y) modify the Software so that it becomes non-infringing while giving acceptable performance, or (z) in the event that neither of the foregoing options (x) and (y) 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 you have 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 (i) any use by you of the Software in violation of the Agreement, (ii) any damage to, or misapplication or misuse of the Software by you; (iii) your combination of all or any portion of the Software with software not supplied by Kaseya; (iv) 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 (v) 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 your sole and exclusive remedy.

13. **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 fees, costs and other expenses of attorneys and expert witnesses) arising out of or related to: (a) 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); (b) 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 (c) any claims by Third Party Clients or arising out of or relating to your relationship with any Third Party Client.

14. **MISCELLANEOUS.**

14.1. **Independent Contractor.** The relationship between Kaseya and you is that of independent contractors, 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, employer and employee, franchisor and franchisee or otherwise; or (c) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. You are not an employee of Kaseya and are not entitled to any Kaseya benefits. All financial and other obligations associated with each party's business are the sole responsibility of such party. You represent and warrant that you: (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.

14.2. **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. You and Kaseya agree that you 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 you 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.

- 14.3. **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: (i) one or more of the Kaseya Entities, (ii) an acquirer of assets, or (iii) a successor by merger; and (b) in the case of you, you may assign all of your rights in connection with a sale of all or substantially all of your assets or in connection with a merger or other third-party acquisition of all or substantially all of your in which the Software or the Services are used, and then only if (i) you retain no further rights under the Agreement, (ii) your assignee or transferee expressly agrees in writing to assume all of your obligations under the Agreement, (iii) your assignee or transferee is no less capable of performing the Agreement than are you; and (iv) 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 the 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.
- 14.4. **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.
- 14.5. **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.
- 14.6. **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.
- 14.7. **Verifying Compliance.** You grant to Kaseya the right to monitor usage by all Authorized Users and to audit your books, records and accounts, at Kaseya's expense, during your normal business hours to verify compliance with the Agreement, and you agree to make available to Kaseya or its representatives any records pertaining to the Agreement. If any audit reveals that any additional fees are owed in excess of five percent (5%) of the total fees paid during the audited time period, then such fees owed be paid immediately and the cost of such audit shall be reimbursed by you. If any password has been provided to an individual that is not an Authorized User, you agree to disable any such passwords without delay and to notify Kaseya immediately.
- 14.8. **Interpretation.** In this EULATOS, unless the context otherwise requires: the singular includes the plural and vice versa; references to sections or subsections are to sections and sections of this EULATOS; references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality); references to including and include(s) shall be deemed to mean respectively including without limitation and include(s) without limitation; section headings are for convenience and do not affect the interpretation of this EULATOS; and a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 14.9. **Agreement Priority.** The terms of this EULATOS govern your access to and use of the Software and Services, provided that to the extent there is an applicable separate non-electronic agreement manually signed by authorized representatives of the parties, the order of precedence shall be the signed agreement and this EULATOS. Except as set forth in the preceding sentence or otherwise indicated in this EULATOS, this EULATOS shall govern in case of a conflict between the EULATOS and the Documentation. If the applicable Software has Upgrades or Updates from an earlier version of the Software or if you make follow-on purchases, it is done so on a license-exchange basis. You agree by your installation and use of such Upgrades, Updates or new Software or Services: (a) that the current EULATOS included therewith which will also be set forth at <http://www.kaseya.com/Legal.aspx> applies to all of your Software or Service purchases; (b) to voluntarily terminate your earlier EULATOS; and (c) that you will not continue to use the earlier version of the Software or transfer it to another person or entity.
- 14.10. **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.
- 14.11. **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 Kaseya may discontinue provision or performance of the Services following any changes in any relevant applicable law, which in the sole discretion of Kaseya makes performance impossible, economically impracticable, or illegal. You further 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, re-export, import or provide 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.
- 14.12. **U.S. Government Restricted Rights.** The Software and the Services have been developed at private expense and with no government funds. For procurements by or on behalf of a unit or agency of the U.S. Government, the U.S. Government agrees that the Software and or Service is commercial computer software as defined in FAR 12.212, and is provided to non-Department of Defense agencies with RESTRICTED RIGHTS and its supporting Documentation is provided with LIMITED RIGHTS, as defined in FAR Section 52.227-13 *et seq.* "Commercial Computer Software – Restricted Rights" and DFARS 227.7202, "Rights in Commercial Computer Software or Commercial Computer Software Documentation", as applicable, and any successor regulation(s). Any use, modification, reproduction release, performance, display or disclosure of the Software and/or Services by the U.S. Government shall be solely in accordance with the terms of the Agreement. For procurements by or on behalf of the U.S. Department of Defense or agencies regulated thereunder, the U.S. Government's rights in software, supporting documentation, and technical data are governed by the restrictions in the Technical Data Commercial Items clause at DFARS 252.227-7013 *et seq.*

and DFARS 227.7202 and any successor regulation(s). Manufacturer of Software (other than Kaseya Traverse Software) is Kaseya Limited, 2nd Floor, Commerzbank House, Guild Street, International Financial Services Centre, Dublin 1, Ireland; manufacturer of Kaseya Traverse Software is Kaseya Traverse Inc., 2077 Gateway Place, Suite 550, San Jose, CA 95110, U.S.A. The Software and Services comprise proprietary data, all rights of which are reserved under the copyright laws of the United States.

- 14.13. **Entire Agreement.** The Agreement (including 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 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.
- 14.14. **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. 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.

Revision Date: 10 January 2014