# DRB Terms and Conditions

## Purchase and Sale of Hardware, Solutions, License of Software and the provision of Subscription Services Solutions.

This Terms and Condition Document (hereinafter referred to as the "**Agreement**") is entered into by and between DRB Systems, LLC, including its controlled subsidiaries with its principal place of business at 3245 Pickle Road, Akron, Ohio 44312 ("**DRB**") and the Customer named in the DRB proposal document or other DRB Order Form and including all entities controlled by or under common control therewith (the "**Customer**"). This Agreement specifies the terms and conditions upon which Customer purchases Hardware, licenses Software and receives the Subscription Services Solutions as specified on one or more Order Form(s) (each capitalized term shall be defined hereunder). DRB and Customer may be referred to herein individually as a ("**Party**") or collectively as (the "**Parties**").

The terms and conditions of this Agreement shall govern and control unless, and to the extent, an Order Form term conflicts with this Agreement term and in such event, the Order Form term shall prevail. Customer agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by DRB regarding future functionality or features.

Upon Customer's execution of an Order Form, DRB shall coordinate with the Customer (as applicable) regarding schedules for the delivery of Hardware, grant of Customer access to the Software, and the enablement of Subscription Services.

As used in this Agreement and in any applicable Order Form(s), the following capitalized terms shall have the meanings set forth below. Other terms are defined in the text of this Agreement.

**"Content"** means the reporting, alerts, documents, marketing tools, and other information contained in or made available to the Customer via the Software, Third Party Software, Hardware and/or Subscription Services Solutions; for clarity, Content does not include Customer Data.

**"Customer"** means the entity to which the Hardware is sold, the Software is licensed, and/or the Services are provided as set forth in the applicable Order Form.

**"Customer Data"** means any data, information or material that Customer or Customer's users, subscribers or partners may disclose or submit to DRB, enter into the Software or provide as a part of utilizing the Subscription Services Solutions. Customer Data may be subject to Privacy Laws.

**"Data"** Includes Customer Data, Sales and Performance Data and other information, records, or materials provided or disclosed to DRB as a part of DRB's performance of Subscription Services Solutions.

**"Deliverables"** means any copyrightable works, products, discoveries, developments, designs, work product, improvements, inventions, processes, techniques and know-how made, conceived, reduced to practice or learned by DRB (either alone or jointly with Customer or others); unless otherwise agreed to in a mutually agreed upon development agreement or Professional Services Statement of Work, all Deliverables are owned and controlled by DRB as DRB Technology.

**"DRB"** means DRB Systems, LLC, its affiliates, and its licensors whose products or services are distributed and/or provided through DRB.

**"DRB Solution(s)"** references DRB Subscription Services Solutions and/or Hardware Solutions.

**"DRB Technology"** means all DRB proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Customer by DRB in providing the Subscription Services Solutions.

**"End of Life"** means the point in time at which a DRB offering (Hardware, Third Party Hardware, Software, Third Party Software and/or Subscription Service Solution) is no longer marketed, sold, offered for sale, or supported by DRB. Although DRB makes commercially reasonable efforts to provide adequate lead time for Customer planning purposes, End of Life decisions may be out of DRB's control given availability of parts and or the unavailability of support for certain DRB Solutions.

**"Estimated Delivery Date"** means the date(s) appearing on the Order Form(s) for which DRB will make commercially reasonable efforts to ship or make available the specified DRB Solutions. However, delivery is subject to the then current manufacturing lead time, parts availability, and Customer's site preparation at its Location(s).

**"Fees"** means the charges as set forth on an Order Form.

**"Fixes"** means the patches, repairs, quality improvements, and error corrections, in any form or medium.

**"Hardware"** means DRB designed and/or DRB branded point of sale terminals, tunnel controllers, product sub-assemblies, semi-conductor chips, firmware, spare parts, and other such DRB developed product offerings.

**"Hardware Solution(s)"** includes one or more of the following DRB provided Hardware, Third Party Hardware, and firmware.

**"Hardware Solution Delivery Date"** means the date that the Hardware is shipped from DRB's shipping dock to the Customer's designated shipping address.

**"Industry Change"** means a change to implement an industry association rule or guideline, or any other act by a substantial number of industry participants such as new Americans with Disability Act standards impacting the car wash industry or PCI standards impacting DRB's Subscription Services Solutions.

**"Initial Term"** means the contracted period for Subscription Services on the applicable Order Form. Unless otherwise stated on the applicable Order Form, the default Initial Term shall be five (5) years.

**"Intellectual Property Rights"** means any and all now known or hereafter existing rights associated with intangible property, including but not limited to registered and unregistered, copyrights, trademarks, trade dress, trade names, corporate names, logos, inventions, patents, patent applications, software, know-how, and all other intellectual property and proprietary rights (of every kind and nature throughout the universe and however designated).

**"Knowledge Center"** means the location(s) where DRB provides Software Support, and technical remote support via the phone and electronic communications.

**"Location(s)"** means the Customer address identified on an Order Form, where the Hardware Solution resides and where the Subscription Services Solutions are authorized, licensed and enabled. Each DRB Solution may be sold by Location and DRB does not authorize all or any portion of a Solution to be utilized at a different Location without advanced written authorization by DRB.

"**Non-Public Personal Information**" means non-public personal identifiable information which is subject to Privacy Laws and higher standards of care regarding the use, storage and maintenance thereof.

**"Order Form (s)"** means a DRB proposal document (or another mutually agreed upon ordering document) which summarizes the Customer's order for Hardware, Software, Subscription Services, DRB Solutions, Professional Services, or other such Customer requirement.

**"Privacy Laws"** means all U.S. laws, treaties and regulations in connection with obtaining, storing, providing and maintaining Non-Public Personal Information.

**"Professional Services"** means DRB custom offerings such as integration with Customer's systems and non-DRB provided systems and software, graphics, screen designs, marketing programs, Customer specific training, and engineering and software initiatives. Professional Services are subject to DRB resource availability and mutually agreed upon statements of work and pricing which shall be attached to and made a part of an Order Form.

**"Renewal Term"** means following the Initial Term, this Agreement shall review for successive one (1) year periods (each, a "Renewal Term") unless otherwise stated on the applicable Order Form.
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"**Sales and Performance Data**" means any sales, performance and operational data that Customer has compiled and made available to DRB for its use in the provision of the services as well as data that DRB has been provided directly from Customer, its users, subscribers or partners through DRB's Solutions and/or its other consultative, marketing and services engagements.

**"Software"** means the DRB developed software products listed or described on the Order Form including but not limited to the scripts, programs, applications, features, and functions together with any enhancements and updates provided by DRB, and not including any Third Party Software. Certain DRB Software resides on the Customer's premises either on a local server or the Hardware, and other DRB Software is cloud based and therefore accessible remotely through authorized passwords.

**"Software Upgrade"** means a major improvement, a material new product offering, or one or more features that Customer elects to enable for an additional fee. A Software Upgrade generally requires a one-time fee and/or an increased Subscription Services fee to cover the new versions and new features in the Software. A marketplace reference for example of a Software Upgrade would be Microsoft technology advancement from Windows® 7 to Windows® 10. As DRB makes similarly substantial changes, or it makes available features such as security end point protection features, DRB reserves the right to charge a one-time fee and/or an increased Subscription Services fee.

**"Software Update"** means as a part of Customer's Software Support Subscription Services, Customer shall receive Fixes as well as minor enhancements and features, quality improvements, and minor software enhancements and compatibility and is free for download. These small, incremental updates improve the operation of your software.

**"Subscription Services Solutions"** includes one or more of the following: Software, Third Party Software, Software Support, Support Services, Professional Services and other DRB provided services or technology support for which Customer shall be billed monthly over the Initial Term and any Renewal Terms. Subscription Services Solutions components may not be priced and billed separately, but instead bundled as a single monthly subscription Fee.

**"Support Services"** means Software maintenance or technical support which may be required a part of a Subscription Service or Software license grant.

**"T-1"** means the second most current release of Software, Third Party Software, or Subscription Services Solutions.

**"Third Party Hardware"** means hardware items provided to Customer directly by DRB or through DRB's authorized distributors that are designed and manufactured by third parties.

**"Third Party Software"** means software items provided to Customer directly through DRB or through its authorized distributors that are developed and licensed by third parties. Third Party Software may come with separate end user license terms for which Customer shall be bound.

**1. Purchase and Sale of Hardware Solutions**. Subject to the terms and conditions set forth herein, DRB agrees to sell and Customer agrees to purchase the Hardware Solution(s) as described on the applicable Order Form. Customer's acceptance and transfer of title and risk of loss to Customer shall take place at DRB's shipping point (FOB DRB's dock) and freight and insurance shall be paid by Customer in addition to the purchase price for the Hardware Solution to be paid pursuant to the terms of the applicable Order Form. All risk of loss or destruction to the Hardware Solution(s) by any cause or for any reason whatsoever, including without limitation by reason of theft, fire, water, and Acts of God, shall pass to Customer upon the passing of title and risk of loss. Any such loss, destruction or damage to all or a portion of the Hardware Solution(s) shall not relieve the Customer from its obligations to make full payment of all amounts hereunder when due. DRB will use commercially reasonable efforts to

deliver Hardware Solutions on or near the Estimated Delivery Date, but shall not be liable hereunder for any damages, losses, costs or expenses if such Hardware Solutions are not delivered or available to Customer on the Estimated Delivery Date, for any reason. Except as otherwise set forth herein, all sales are non-cancellable, and all shipping charges are non-refundable regardless of any reason. Customer shall inspect all components of the Hardware Solution(s) within forty-eight (48) hours of its receipt of the same.

**2.      License Grant/Limitations/Restrictions.**
**2.1**      Subject to the terms and conditions of this Agreement, DRB hereby grants Customer a non-exclusive, non-transferable license to access or use the Software and/or Subscription Services Solutions which have been licensed under this Agreement. This license is non-assignable (except as specified herein) and Customer's rights hereunder are limited to use of the Software and/or Subscription Services Solutions solely for Customer's own internal business purposes, at the mutually agreed upon Location(s) set forth on the applicable Order Form, and only for and during the Initial Term or any Renewal Terms  as set forth in the applicable Order Form. Any proposed new customer must sign a new Subscription Services Solutions agreement prior to use. **The use of the Software and/or any DRB Solution at any site other than the Location set forth on the applicable Order Form, or the use thereof by any other persons, organizations or entities other than the Customer is strictly and expressly prohibited without the prior express written consent of DRB.**

2.2      No other rights are granted to Customer and as between DRB and Customer all other rights in the Software and Subscription Services Solutions are reserved by DRB.

2.3      DRB reserves the right to make changes, modifications and enhancements to all or any portion of the Software and/or the Subscription Services Solutions offerings from time-to-time.

2.4      DRB will provide Customer with access to and Customer shall accept the Software and/or the Subscription Services Solutions through: (i) physical software delivery, in which case it will be delivered by FOB Origin in the same manner as the Hardware above, (ii) remote software delivery by electronic means for remote and/or cloud based software, in which case DRB's delivery obligation is fulfilled at such time as DRB makes the Software and/or the Subscription Services Solutions available for Customer to access through a secured electronic link, password or other electronic credentials or (iii) first use with respect to Subscription Services, Professional Services, installation and other services.

2.5      In order to maintain its license rights to Software and Subscription Services Solutions, Customer agrees to (i) maintain its software currency to either the current release level or not less than T-1 level below the current release; (ii) maintain the Support Services as determined by DRB, in its sole reasonable discretion, at a level of support that is required to effectively operate the DRB Solution(s), (iii) remain current with all Fees, (iv) remain in compliance with applicable laws; and (v) the terms of this Agreement.

**3.      Limitations on Use of DRB Solutions.**
3.1      Customer shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party all or any portion of a DRB Solution; (ii) modify or make derivative works of a DRB Solution; (iii) reverse engineer all or any portion of the DRB Solution(s); (iv) access any portion of a DRB Solution in order to build a product,

develop software or offer services that are competitive to a DRB Solution; or (v) permit any party to view any portion of the DRB Solutions including but not limited allowing any third party to view any DRB provided Software and/or process flows for any purposes other than performing a required business transaction. Further, Customer shall not operate DRB Hardware without DRB Software.

3.2      Customer shall not use the DRB Solution(s) to: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the DRB Solution(s) or the data contained therein; (v) attempt to gain unauthorized access to the DRB Solutions or its related systems or networks; or (vi) develop applications for internal use with the DRB Solutions.

**4.      Order Process and Order Form.** Customer shall order DRB Solutions by signing an Order Form. Pre-printed terms, provisions or conditions on any non-mutually approved purchase order, acknowledgement, or other business form or writing that Customer may provide to DRB or use in connection with the procurement of DRB Solutions will have no effect on the rights, duties or obligations of the Parties hereunder. Each Order Form shall specify the DRB Solutions being acquired by the Customer, the quantities and prices therefore, the Initial Term related to each of such DRB Solution and shall incorporate by reference the Terms and Conditions set forth in this Agreement.

**5.      Customer's and DRB's Responsibilities.**
5.1      Customer is responsible for all activity occurring through Customer's and its users' use of the DRB Solution(s) and shall comply with all applicable Privacy Laws and all other applicable local, state and federal laws and regulations in connection with Customer's use of the DRB Solutions.

5.2      Customer shall: (i) notify DRB immediately of any unauthorized use of any password or account or any other known or suspected breach of security with respect to the DRB Solutions; and (ii) report to DRB immediately and stop immediately any copying or distribution or misuse of DRB Technology or unauthorized use of DRB Solutions.

5.3      Except as otherwise specifically provided herein, the Customer shall be exclusively responsible for the supervision, management and control of its use of the DRB Solution and/or other materials furnished by DRB hereunder, including, but not limited to: (a) assuring proper machine configuration, audit controls and operating methods, (b) establishing adequate backup plans for the operation of the Hardware, the Software and/or the DRB Solution, (c) implementing sufficient procedures and checkpoints to satisfy its requirements for security and accuracy of input and output as well as restart and recovery in the event of a malfunction, (d) establishing alternate procedures for the operation of its business in a manual fashion without the operation of the DRB Solution, (e) assuring proper set up and configuration of the sales tax charged to Customer's end customer, wash pricing and wash package plan configurations, Customer's configured reporting and its and its operating methods, (f) establishing adequate backup plans for the operation of the DRB Solution(s) in the event of an outage or downtime, (g) implementing sufficient procedures to satisfy its ongoing regulatory and compliance requirements for security, (h) maintaining its Location(s) in compliance with applicable law and,

(i) obtaining all necessary licenses and intellectual property rights to use Customer's specified logos, marketing content, custom graphics, and other materials furnished hereunder.

5.4     The Hardware Solutions ordered hereunder will be installed by Customer (or Customer's designated subcontractor) at the agreed upon Location(s) unless agreed otherwise, therefore, Customer is responsible for determining the suitability of the Location(s) for such Hardware Solutions. Customer acknowledges that its timely provision of access to the Location and its facilities and cooperation are essential to ensure timely installation and enablement of the DRB Solutions. Therefore, no later than the Estimated Delivery Date, the Customer, at its expense, shall prepare the applicable Location for receipt of the Hardware Solution(s) and the Subscription Services Solutions in accordance with DRB's requirements, and shall be prepared to accept delivery of the Equipment and the Software no later than such Hardware Solutions Estimated Delivery Date.

5.5     DRB and Customer will each abide by all Privacy Laws (to the extent applicable to its respective obligations) and each Party will maintain a data security program which shall meet or exceed industry standard for companies in the car wash and car care and payment terminal industries, which shall include commercially reasonable and appropriate technical, organizational and security measures against the destruction, loss, unavailability, unauthorized access or alteration of Customer Data in its possession.

5.6     DRB is not responsible for, and disclaims any and all liability related to, any and all interactions or transactions made or facilitated through the DRB Solutions. Any such interactions or transactions will be made at the Customer's own risk. DRB does not have control over the quality, timing, or legality of the services actually delivered and makes no representations regarding the suitability, reliability, timeliness, or accuracy of the Content generated by the DRB Solutions. Content provided through or used to generate the Customer Content are user or payment card industry generated, and DRB does not control or vet user generated content for accuracy of such payment transactions. DRB does not assume any responsibility for the accuracy or reliability of any information provided by Customer's users or other parties on or off the DRB Solutions.

5.7     Customer is responsible for maintaining, storing and backing up their Data. In the event DRB maintains Data, it shall do so according to applicable Privacy Laws. The Parties acknowledge that the DRB Solutions do not include DRB's obligations to maintain or back up Customer Data. Subject to the limitations for loss of Data in Section 15 hereunder, if the Parties agree that DRB will assume certain Data storage and reporting obligations, DRB reserves the rights to charge for the following services: (i) Fees associated with storage capacity thresholds; (ii) by length of storage term; (iii) any special non-standard reporting; (iv) and access to Data post termination.

5.8  Customer shall not, directly or indirectly, on behalf of itself or any third party, solicit, hire, recruit, induce or encourage (or assist any third party to do the same) any employee(s) employed by DRB within the six (6) month period immediately prior.  If Customer breaches this Section 5.8, Customer agrees to pay DRB a one-time liquidated damage fee equal to the former DRB employee's most recent six (6) months of compensation prorated based on the employee's last month of service (including benefits and bonus) to partially compensate DRB for its training and employee development fees.  In additional, all confidentiality and intellectual property obligations binding on the former employee(s) and/or Customer shall apply.  This section 5.8 shall not apply in instances where Customer serves as a reference at the request of an employee for a job unrelated to Customer.

**6.     Account Information and Customer Data.** Customer grants to DRB a nonexclusive, non-transferable license to access and use Customer Data to provide the DRB Solutions to Customer and as otherwise permitted herein. Customer hereby consents to DRB's use of Customer Data to provide the DRB Solutions and in accordance with this Agreement. DRB's use of Customer Data shall be limited to the purpose of providing the DRB Solutions to the Customer and for DRB to meet its obligations hereunder. Without limiting the generality of the foregoing, Customer acknowledges that DRB may aggregate

Customer Data with other information and data from other customers, subscribers and other third party sources for purposes of data analytics and in order to further enhance or improve the DRB Solutions; provided, that any such aggregation or analysis will be presented in an anonymous, non-personally identifiable basis, so as not to identify Customer or any other specific customer or organization.

**7.     Intellectual Property Ownership and Intellectual Property Indemnification.**

7.1     DRB alone (and its licensors and partners, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the DRB Technology, the Content, the DRB Solutions and any Deliverables, including to any and all enhancements, enhancement requests, suggestions, modifications, extensions and/or derivative works thereof. Except for the limited rights and license expressly granted herein, no other license rights are granted and no other use is permitted. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the DRB Solutions, to any Deliverable, the DRB Technology or the Intellectual Property Rights owned by DRB. The DRB name, the DRB logo, and the product names associated with the DRB Solutions are trademarks of DRB or third parties, and no right or license is granted other than for the limited purpose of using the DRB Solutions, to use them.

7.2     In addition to the foregoing, the Parties hereby further agree that the Software and related materials furnished by DRB to Customer hereunder have been developed by DRB as a trade secret, at DRB's expense, and are, and shall remain, the sole property of DRB. DRB reserves to itself any and all Intellectual Property rights in and to all programs and systems developed by DRB. DRB owns all intellectual property rights related to improvements, derivative works, suggestions, recommendations or any other modifications to the same including but not limited to Customer's payment of Professional Services fees. If requested by DRB, Customer shall promptly assign to DRB and shall execute and deliver to DRB any agreements, instruments or other documents required or appropriate in order to assign to DRB all developments, improvements and inventions relating to the Hardware, the Software and/or any other DRB Solution, and all rights therein and thereto. No right to print, copy, remarket, sell, distribute or otherwise commercially exploit, in whole or in part, any such Hardware, Software, DRB Solution or related materials is granted hereunder, and such use or activity is expressly prohibited

7.3     Except as expressly permitted under this Agreement, Customer shall not use, disclose or divulge to others, directly or indirectly, any data or information relating to the Software and/or the DRB Technology and/or the ideas, concepts, know-how and techniques embodied therein.

7.4     Customer further agrees that:
a.     Except for a single copy for back-up and archival purposes only, it will not, and will not enable others to copy, reproduce or duplicate, or allow to be copied, reproduced or duplicated, in whole or in part, the Software or any related materials furnished by DRB to the Customer hereunder,

without the prior express written consent of DRB;

b.      It will not, and will not enable any third party to have access to the Hardware, Software, DRB Solutions or related materials unless so authorized in writing by DRB;

c.      It will not, and will not enable others to make alterations in the Software, including but not limited to modifications for use on non-compatible hardware;

d.      It will not, and will not enable others to disassemble, decompile, attempt to derive the source code, or attempt to disassemble, or reverse-engineer any part of the Software or any DRB Solution;

e.      It will not provide or otherwise make available any Hardware, Software, DRB Solutions or related materials in any form to any other person, without the prior written consent of DRB;

f.      It will not make translations of the user's manual or make telecommunications data transmissions of the Software;

g.      It will take appropriate action with regard to its officers, agents, shareholders, employees or representatives, by instruction, agreement or otherwise, to satisfy its obligations under this Agreement with respect to use, copying, modification, and protection and security of the Software and related materials;

h.      It will not remove the copyright notice appearing on any materials distributed by DRB to the Customer and shall retain, in its exact form, the copyright notice on all authorized copies and versions of such materials; and

i.      It will not use the Hardware without Software provided by DRB hereunder and will not use the Software provided by DRB hereunder without obtaining Support Services from DRB hereunder.

7.5.    **Scope of Professional Services.** Customer may elect to purchase Professional Services subject to a mutually agreed upon SOW that is referenced in the applicable Order Form. If Customer requests that DRB provide any Professional Services at Customer's Location(s), Customer agrees to pay all customary travel and living expenses in connection therewith. The following provisions shall apply to all Professional Services: (a) DRB shall retain all ownership rights to any and all Deliverables, excluding any pre-existing technology, materials or Customer Confidential Information supplied by Customer for incorporation into such Deliverables; and (b) DRB grants Customer a royalty-free, non-exclusive, nontransferable, non-assignable worldwide license to use any Deliverable to the extent necessary to permit Customer to use the Deliverable in connection with the DRB Solutions during the Initial Term or any Renewal Term. Customer acknowledges that nothing in this Agreement shall restrict or limit DRB from performing the same or similar services for any third party.

8.0    **Indemnification.**
8.1    Customer shall defend, indemnify and hold harmless DRB, its officers, and employees acting within the scope of their employment (each of the foregoing hereinafter being an "Indemnified Party") from and against any and all claims, damages, costs, expenses, judgments and reasonable out-of- pocket expenses incurred by such Indemnified Party (including, without limitation, reasonable attorneys' fees and liability to third parties for personal injury, death or property damage or other economic loss) arising out of, resulting from, or in connection with any violation or alleged violation of this Agreement (including, without limitation, any modification, design flaw, vulnerability, third party criminal act, cyber event, misuse, or failure of Customer's

to maintain any DRB Solutions, and any errors in the delivery of or availability of Software Support and Knowledge Center support) exclusive of liabilities that are solely caused by the negligence or willful misconduct of the Indemnified Party. Customer's obligations under this section will survive the termination of the Agreement.

8.2    DRB shall defend, indemnify and hold Customer harmless from and against any third party claims, and resultant damages, liabilities and expenses (including reasonable attorneys' fees) incurred by Customer in connection therewith, (collectively **"Claim(s)"**) to the extent arising out of or in connection with a Claim alleging that Customer's authorized use of the DRB Solution(s) in accordance with applicable product documentation and the terms of this Agreement infringes a U.S. patent, copyright or trademark right of a third party or misappropriates such third party's trade secrets. In such case and subject to DRB's rights to control the defense of such Claim as set forth in Section 8.4, if any aspect of the DRB Solution is found or, in DRB's reasonable opinion is likely to be found, to infringe upon the Intellectual Property Right of a third party as specified above, or the continued use of the DRB Solution is enjoined, then DRB will promptly, at its own cost and expense, and at DRB's option: (a) obtain for Customer the right to continue using the DRB Solution; (b) modify the item(s) in question so that it is no longer infringing; or (c) replace such item(s) with a non- infringing functional equivalent. If, after all commercially reasonable efforts, DRB determines in good faith that options (a)
- (c) are not feasible, DRB will remove the infringing items from the DRB Solution and refund to Customer on a pro-rata basis any prepaid unused Fees paid for such infringing element. THE FOREGOING IS THE INDEMNIFYING PARTY'S SOLE OBLIGATION AND THE INDEMNIFIED PARTY'S EXCLUSIVE REMEDY WITH RESPECT TO INDEMNIFICATION. In addition, and notwithstanding the foregoing however, DRB shall have no obligation or liability for any Claim pursuant to this Section to the extent arising from: (i) the combinations, operation, or use of the DRB Solution supplied under this Agreement with any product, device, or software not supplied by DRB to the extent the combination creates the alleged infringement; (ii) the unauthorized alteration or modification by Customer of the DRB Solution, or (iii) DRB's compliance with Customer's designs, specifications, requests, or instructions pursuant to an engagement with DRB's Professional Services organization relating to the DRB Solution to the extent the claim of infringement is based on the foregoing.

8.3    Customer shall defend, indemnify and hold DRB harmless from and against any Claim(s) to the extent arising out of or in connection with: (a) a Claim alleging that the Customer's use of DRB Solutions in violation of this Agreement infringes or otherwise violates such third party's property, privacy or other rights or violates any applicable law; or (b) the negligence, misconduct or breach of this Agreement by Customer or any of its users.

8.4    The indemnifying party's obligations under this Section 8 are contingent upon the indemnified party (a) promptly giving notice of the Claim to the indemnifying party once the claim is known; (b) giving the indemnifying party sole control of the defense and settlement of the Claim (provided that the

indemnifying party may not settle such Claim unless such settlement unconditionally releases the indemnified party of all liability and does not adversely affect the indemnified party's business or services); (c) providing to the indemnifying party all available information and reasonable assistance; and (d) not compromising or settling such Claim without the indemnifying party's approval (such approval not to be unreasonably withheld).

## 9. Fees, Payment Terms, Taxes, Billing Contact.

9.1    Customer shall pay all Fees or charges as specified on each executed Order Form. Except as otherwise expressly set forth in this Agreement, all payment obligations (including but not limited to any down payments, pre-payments, or Subscription Services Solutions payment obligations) are non-cancelable, and all amounts paid are nonrefundable. DRB charges and collects in advance for Fees. Unless otherwise set forth in the applicable Order Form, payment terms for Hardware Solutions shall be 10% deposit upon signing, 40% deposit due 90 days before the Hardware Solution Delivery Date, and the remaining balance in full due before shipment. DRB's preferred payment methods for Hardware Solutions and other one-time purchases are ACH and check(s) (credit cards are an acceptable form of payment; however credit card payments are limited to $20,000 per order). Subscription Services Solutions Fees shall be due monthly in advance and DRB's preferred payments methods for these monthly and other recurring Subscription Services Fees are ACH and credit cards (the above referenced credit card transaction limits shall apply). Customer hereby agrees and acknowledges that the Software and/or the DRB Solutions may include coding and other hardware and software features that permit the initialization and continuation of the Software to be disabled by DRB if all amounts to be paid by Customer to DRB hereunder are not paid in full when due. DRB hereby expressly reserves the right to disable the Software and/or the DRB Solution if all of such amounts are not paid in full when due, and Customer hereby waives any claims or objections relating to or arising out of the exercise of such right by DRB.

9.2    DRB's Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties, excluding only taxes based solely on DRB's income. If DRB has the legal obligation to pay or collect taxes for which Customer is responsible, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides DRB with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer believes any DRB invoice is incorrect, Customer must contact DRB as promptly as possible to address the error. Customer shall timely pay the undisputed portion of any invoice. Customer agrees to provide DRB with accurate billing and contact information, including Customer's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and Administrator. Customer agrees to update this information within thirty (30) days of any change to it.

9.3    DRB reserves the right to modify its Fees and/or add any new support or service fees (in its price book) then applicable to its offerings for Customer at any time after one year from the Effective Date of this Agreement. Additionally, on an annual basis DRB is authorized to adjust pricing for inflation using the formula of two per cent (2%) plus the percentage increase in the Consumer Price Index, All Urban Workers, U.S. City Average ("CPI"). [The applicable CPI report will be the annual CPI metric published on the first day of the month immediately preceding the date of each Order Form.] The annual fee increase shall never be less than zero percent (0%).

9.4    DRB also reserves the rights to charge its then given

market fee to ensure the DRB Solutions comply with local, state or federal law and they are in alignment with Industry Change(s).

## 10. Agreement Term, Order Form Term.

10.1    Agreement Term. This Agreement shall continue in effect until all underlying Order Forms (and the Associated Subscription Services Solutions Initial Term or any Renewal Term) with Customer have expired in accordance with the terms of such Order Form(s), or if this Agreement is terminated earlier, as provided herein.

10.2    The Initial Term for the applicable Subscription Services Solution will begin on the Subscription Services Commencement Date and shall continue for the Initial Term set forth on the applicable Order Form and upon expiration of the Initial Term, the Subscription Services Solution will automatically renew for successive one(1) year Renewal Terms at DRB's then current Fees unless Customer notifies DRB in writing at least ninety (90) days prior to expiration of the Initial Term, or any successive Renewal Term, of Customer's election not to renew, or unless terminated as otherwise permitted hereunder. In the event that a subsequent Order Form contains DRB Solutions that are later added to an existing Location's Subscription Services Solution(s), the Fees shall be billed on a pro-rated basis and will be coterminous with the Initial Term or applicable Renewal Term of such Order Form, unless otherwise agreed by the parties. In the event of a DRB approved assignment, to a customer other than as originally licensed by Customer on an existing Order Form, at DRB's sole discretion the assignment may require a newly created Order Form and may require establishing a new Initial Term.

## 11. Non-Payment and Suspension.

If Customer's account becomes delinquent and is uncured for a period of thirty (30) days from date of delinquency notice, in addition to any other rights granted to DRB herein, DRB reserves the right to suspend or terminate this Agreement, any Subscription Services Solutions, Software or Third Party Software license, and to the extent applicable the firmware in any Hardware Solution as well as Customer's access to Software Support and Support Services. Delinquent invoices are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, from the date of the delinquency notice, plus all expenses of collection, including, without limitation, all reasonable legal fees incurred by DRB. Customer will continue to be charged for Fees during any period of any DRB Solutions suspension due to Customer's delinquency. If DRB initiates termination of this Agreement for cause, as further described herein, Customer will be obligated to pay all remaining Fees due computed in accordance with their terms for the remainder of the applicable Initial Term or Renewal Term thereof. Customer agrees that DRB may charge such unpaid Fees to Customer's credit card or via ACH payment, or otherwise bill Customer for such unpaid Fees.

## 12. Termination for Cause.

12.1    DRB shall have the right to terminate this Agreement and the License granted hereunder for cause, upon the occurrence of any one or more of the following:

(a)    Immediately if and to the extent that Customer's breach of the terms hereof relates to a violation of license restrictions contained herein or result from Customer's infringement upon DRB's Intellectual Property Rights;

(b)    Upon ten (10) days' notice in the event that the Customer or any of its officers or employees violates any provision of this Agreement including, but not limited to, the confidentiality provisions; or

(c)    If Customer (i) terminates or suspends its business, (ii) becomes subject to any bankruptcy or

insolvency proceeding under any Federal or state statute, or its interest under this Agreement is levied upon or seized by virtue of any writ or a court of record jurisdiction, (iii) becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority,
(iv) ceases the operation of its business at the Location

appearing on the applicable Order Form, (v) permits or causes there to be a change in the control of the ownership of the Customer, or (vi) sells or transfers substantially all of the assets of its business.

12.2    In addition to the foregoing rights to terminate for cause, DRB shall have the right to terminate this Agreement and any Software License rights and/or DRB Solutions if and as a result of the End of Life of any Software, DRB Solution, discontinuance of any Support Services or other event or condition that in DRB's reasonable judgement would have a material adverse impact thereon. In addition to the foregoing, except to the extent expressly agreed to by DRB hereunder or in a separate writing (for example pursuant to the express written terms of the relating to Support Services), DRB shall have no duty or obligation, express or implied, to provide Support Services hereunder with respect to the Hardware, the Software or any DRB Solution provided hereunder.

12.3    In the event of termination of this Agreement for any reason, and in addition to any other rights or remedies available to DRB:

(a)    DRB shall have the right to terminate the license and the customer's ability to use the Software and any other DRB Solution, other than with respect to Hardware that Customer has purchased, by such means that may be available, including, without limitation, by remotely disabling or deactivating the functionality and operability of the Software that results in the inoperability of the Software shall satisfy the requirement that written notice of breach be provided by DRB. Upon notice of termination of the Software license by DRB, Customer shall promptly return to DRB, and shall not retain, the Software and related documentation, and any and all copies of the foregoing;
(b)    DRB shall retain all deposits and other amounts theretofore paid by the Customer;
(c)    The Customer shall be liable for all charges due for the Software furnished and/or services performed by DRB hereunder prior to the date of termination;
(d)    The Customer shall promptly return to DRB the original and all copies, in whole or in part, in any form, including partial copies or modifications, of the Software and any related materials furnished by DRB hereunder; and

The provisions of Section 12 shall survive the termination of the License and of this Agreement.

## 13.    Representations & Warranties.
13.1    **Limited Warranty on Hardware Solutions.** With Respect to Hardware Solutions, DRB warrants that, for a period of one (1) year commencing on the Hardware Solution Delivery Date, the Hardware Solutions shall be free from defects in material, workmanship and failure to operate to its stated specifications. Upon receipt of notice of any of the foregoing occurring within the above warranty period, DRB will provide either new or fully refurbished replacement Hardware and or parts (at DRB's sole discretion) at no charge to Customer. This Hardware Solutions warranty shall be limited solely to DRB making, at its expense, adjustments, repairs and the parts replacements necessary to restore the Hardware to its stated specifications during said one (1) year period. For clarity, DRB

does not provide break fix services in the field (commonly referred to as "first or second line services)" so under this limited Hardware Solutions warranty DRB shall ship the replacement part(s) to the Customer's Location or as otherwise directed by the Customer.

13.2    The Hardware Solutions warranty is expressly conditioned upon Customer's compliance with the terms and conditions of this Agreement, the proper use, operation in a suitable environment, management and supervision of the Hardware Solutions at the Customer's Location(s) and the Customer's obligations to arrange for the oversight of the integration of the Hardware Solutions into the Customer's mechanical, electrical and other systems. This warranty does not include or apply to cases where DRB determines that the Hardware has been damaged as a result of improper installation, misuse, mishandling, vandalism, or damage resulting from lighting strikes, floods and other Acts of God.

13.3    DRB Solutions Warranty. DRB warrants that it has full legal right and authority to grant to the Customer the license granted hereby (including the Software licenses). Although no express warranty is provided hereunder for the DRB Solutions, other than Hardware Solutions, Customer is required to maintain Support Services and as such the applicable support will be provided thereunder.

13.4    Customer Representation to DRB. Customer represents and warrants that: (a) Customer owns or otherwise has sufficient rights in Customer Data to grant DRB the licenses that Customer grants in this Agreement; (b) Customer has not falsely identified itself nor provided any false information to gain access to the DRB Solutions; (c) Customer has obtained appropriate consents from all users and others whose personal information is included in Customer Data and transmitted, processed, and stored through the DRB Solutions; (d) all billing and contact information provided by Customer is true and correct; and (d) in accessing or using the DRB Solutions, Customer shall comply (and shall cause its users to comply) with all applicable Privacy Laws and all other applicable U.S. laws and regulations in connection with Customer's use of the DRB Solutions, including but not limited to Privacy Laws and regulations, as well as any and all applicable employment and other laws in connection with any employment or services relationship that Customer may establish through or in connection with the DRB Solutions (such as applicable payroll, tax and minimum wage laws).

13.5    **Limitation and Disclaimer of Certain Warranties.** THE WARRANTIES CONTAINED IN SECTION 13 ARE THE SOLE AND EXCLUSIVE WARRANTIES MADE OR GIVEN IN CONNECTION WITH THE DRB SOLUTIONS, DRB HARDWARE, SOFTWARE, SUBSCRIPTON SERVICES SOLUTIONS, AND DRB TECHNOLOGY, ALL OF WHICH ARE MADE AND GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN ADDITION, DRB. ITS PARTNERS AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY OR TIMELINESS OF THE SERVICE OR ANY INCLUDED CONTENT. DRB MAKES NO WARRANTIES WITH RESPECT TO THIRD PARTY HARDWARE OR THIRD PARTY SOFTWARE. FURTHER DRB DOES NOT REPRESENT OR WARRANT THAT (A) THE USE OF AND DRB SOLUTION WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE

SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA OR CONTENT WILL BE ACCURATE OR RELIABLE, (D) ALL ERRORS OR DEFECTS WILL BE CORRECTED, OR (E) THE HARDWARE,

SOFTWARE, THIRD PARTY HARDWARE, SERVERS, COMPUTERS, TABLETS OR OTHER DEVICES PROVIDED BY DRB OR OTHERWISE MAKE THE DRB SOLUTIONS AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. CUSTOMER ACKNOWLEDGES AND AGREES THAT (1) DRB IS NOT AN INSURER AND THE DRB FEES FOR THE DRB SOLUTIONS ARE BASED ON THE ALLOCATION OF RISK HEREIN AND ARE NOT INTENDED OR PRICED FOR DRB TO ASSUME GREATER RISK THAN PROVIDED FOR HEREIN; (2) THE DRB SOLUTIONS DO NOT ENSURE CUSTOMER'S COMPLIANCE WITH ALL APPLICABLE LAWS OR REGULATIONS; AND (3) CUSTOMER IS SOLELY RESPONSIBLE FOR CUSTOMER'S COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS INCLUDING BUT NOT LIMITED TO PCI. CUSTOMER ACKNOWLEDGES, UNDERSTANDS, AND AGREES THAT DRB DOES NOT PROVIDE FIRST OR SECOND LINE MAINTENANCE IN THE FIELD AND DOES NOT RUN, OPERATE OR MAINTAIN THE DRB SOLUTIONS AT THE CUSTOMER LOCATION AND THEREFORE CUSTOMER ASSUMES RESPONSIBILITY TO MAINTAIN THE DRB HARDWARE SOLUTIONS IN GOOD WORKING ORDER WITH GENUINE DRB PARTS, TO MAINTAIN THE HARDWARE AS RECOMMENDED BY DRB, AND TO PROVIDE SECURITY AS ARE COMMERCIALLY REASONABLE TO ENSURE SECURITY FOR UNATTENDED TERMINALS SUCH AS PROPER LIGHTING, ELECTRONIC SECURITY, AND PERIODIC SWEEPS OF THE HARDWARE TO ENSURE CRIMINAL DEVICES ARE NOT ADDED.

**14.    Sufficient Bandwidth and Internet Delays.**
DRB'S SERVICES REQUIRE ADEQUATE INTERNET BANDWIDTH (WHICH MAY VARY BY THE COMBINATION OF HARDWARE, SOFTWARE, SERVICES AND SITE SPECIFIC DYNAMICS AND THEREFORE SHOULD BE TESTED FOR ADEQUACY) AND MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. DRB IS NOT RESPONSIBLE FOR DELAYS, DELIVERY FAILURES, RELEASES OF CUSTOMER DATA, SALES AND PERFORMANCE DATA OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS NOT CAUSED BY DRB. CUSTOMER SHALL NOT DISABLE OR PREVENT DRB'S INTERNET ACCESS TO THE ON SITE SOLUTIONS.

**15. Limitation of Liability.**
NOTWITHSTANDING ANY OTHER PROVISION HEREIN DRB SHALL NOT BE LIABLE FOR ANY LOSS OF CASH, REVENUES OR OTHER MONEY, FUNDS, OR VALUABLES RESULTING FROM ANY MISDISPENSING OF FUNDS, OR CRIMINAL OR MISCHIEVOUS ACTS OCCURRING ON OR AT ANY EQUIPMENT OR AT AN EQUIPMENT LOCATION. IN ADDITION, DRB SHALL NOT BE LIABLE FOR ANY LOSS OF OR MODIFICATION TO DATA OR FOR THE LOSS OF ACCESS THERETO.

TO THE FULLEST EXTENT PERMITTED OR ALLOWED BY LAW, DRB SHALL NOT BE LIABLE FOR, AND CLIENT HEREBY WAIVES ANY CLAIM AGAINST DRB FOR LOST PROFITS, INCREASED EXPENSE OF OPERATION, LOST SAVINGS OR OTHER ECONOMIC DAMAGES OF ANY KIND, AND/OR FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES, THAT ARE ASSOCIATED DIRECTLY OR INDIRECTLY WITH THIS AGREEMENT, THE DRB SOLUTIONS, ANY HARDWARE,

SOFTWARE, EQUIPMENT OR SERVICES PROVIDED THEREBY, AND WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, STRICT LIABILITY, FUNDAMENTAL BREACH, FAILURE OF ESSENTIAL PURPOSE OR OTHER FORM OF ACTION.

AS A MATERIAL CONSIDERATION FOR DRB ENTERING INTO THIS AGREEMENT THE PARTIES AGREE THAT IF, DRB HAS ANY LIABILITY TO CLIENT, SUCH LIABILITY SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, REGARDLESS OF THE NUMBER OF CLAIMS THAT MAY ARISE DURING THE TERM HEREOF, A SUM EQUAL TO THE MONTHLY PAYMENTS PAID BY CLIENT TO DRB FOR THE SERVICES DURING THE FIRST 6 MONTHS OF THIS AGREEMENT, OR THE SUM OF TEN THOUSAND DOLLARS ($10,000.00) WHICHEVER IS GREATER. THE FOREGOING MONETARY CAP ON LIABILITY SHALL APPLY TO ALL CLAIMS OR CAUSES OF ACTION OTHER THAN DRB'S RESPONSIBILITY AND LIABILITY TO THIRD PARTIES UNDER ITS INDEMNITY OBLIGATIONS HEREUNDER.

**16.    Insurance.** The Parties shall each maintain sufficient insurance coverage to adequately cover such Party's respective obligations under this Agreement. Upon request, and no later than thirty (30) days after written request therefore, a Party shall provide to the other Party a copy of its current certificate of insurance evidencing its current coverage.

**17.    Notice.** For notices that are directed to Customer as part of DRB's general customer base, DRB may give notice by means of any of the following: (a) a general notice on the Service; (b) by electronic mail to Customer's e-mail address on record in DRB's account information; (c) by nationally recognized overnight delivery service; or (d) by written communication sent by first class mail or pre-paid post to Customer's address listed in DRB's account information. All notices sent to Customer specifically under this Agreement (and not sent to the general customer base) shall be in writing, and may be given by electronic mail to Customer's e-mail address on record in DRB's account information; or by written communication sent by first class mail or pre-paid post to Customer's address listed in DRB's account information. All notices must be delivered by Customer to DRB by first class mail or pre-paid post to the following address: DRB Systems, LLC, 3245 Pickle Road, Akron, Ohio 44312, Attention: VP, General Counsel. For clarity, email, texts or other electronic communication including phone calls will not be considered acceptable communications. Party hereto may update its contact information for receiving notices by providing written notice of such update to the other party in the manner provided in this Section 17. A notice delivered electronically hereunder will be deemed to have been delivered on the date and time of the signed receipt or confirmation of delivery or transmission thereof, unless that receipt or confirmation date and time is not a business day or is after 5:00 p.m. local time on a business day, in which case such notice will be deemed to have been received on the next succeeding business day. A notice delivered by first class mail or pre-paid post will be deemed to have been given three (3) business days after mailing or posting.

**18.    Assignment.** Customer may not assign any of Customer's rights or obligations under this Agreement to any third party without obtaining DRB's prior written consent, which consent will not to be unreasonably withheld.

**19.    Confidentiality.** Each party (as a **"Receiving Party"** hereunder) shall not disclose to any third party, any Confidential Information of the other party (as a "Disclosing Party" hereunder) provided to such Receiving Party in anticipation of, or in connection with the performance of this Agreement. For the

avoidance of doubt, this includes Confidential Information provided to the Receiving Party prior to the Effective Date of this

Agreement. As used herein, the term **"Confidential Information"** refers to any and all financial, technical, commercial, or other information concerning the business and affairs of the Disclosing Party, including, without limitation, any cost or pricing information, contractual terms and conditions, marketing or distribution data, business methods or plans. If Confidential Information is (a) provided as information fixed in tangible form or in writing (e.g., paper, disk or electronic mail), such shall be conspicuously designated as "Confidential" (or with some other similar legend) or (b) provided orally, such shall be identified as confidential at the time of disclosure and confirmed in writing within thirty (30) days of disclosure, unless a reasonable person would understand such information to be confidential based on its content. Confidential Information does not include information which (i) becomes generally available to the public other than as a result of a disclosure by the Receiving party, (ii) was available to a party on a non-confidential basis prior to its disclosure by the other party or in connection with the performance by such party of its obligations under this Agreement, (iii) becomes lawfully available to a party on a non- confidential basis from an independent third party, or (iv) is independently developed by the Receiving Party without use or reference to Disclosing Party's Confidential Information. The Receiving Party will not use Confidential Information for any purpose other than carrying out its obligations as set forth in this Agreement and shall not disclose Confidential Information to any third party, without the prior written consent of the Disclosing Party and an agreement in writing from the third party that it will adhere to the confidentiality obligations imposed herein. Third parties shall not include agents of the Receiving Party, employees or affiliates of the Receiving Party, attorneys, accountants, and other professional advisors of the Receiving Party, or potential acquirers of Receiving Party, in each case such person or entity must have a legitimate reason to have access to such Confidential Information and must be under a duty to protect such Confidential information which duty is substantially equivalent to the obligations contained herein. Each Receiving Party's confidentiality obligations with respect to such Disclosing Party's Confidential Information shall remain in effect for the Term of this Agreement and for a period of three (3) years after the termination or expiration of this Agreement. For the avoidance of doubt, Confidential Information with respect to Customer includes Customer Data, and with respect to DRB includes all pricing terms offered to Customer under any Order Form, the DRB Technology and the results of any evaluation of the DRB Solutions performed by or on behalf of Customer for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes. The Parties agree that any Non-Disclosure Agreement entered into prior to the Effective Date shall not limit or reduce each respective Party's obligations with respect to Confidential Information disclosed under this Agreement.

## 20. General.

Governing Law and Jurisdiction and Prevailing Party. This Agreement shall be governed and interpreted in accordance with the laws of the State of Ohio and controlling United States federal law, without regard to any conflicts of laws provisions thereof. The Parties hereby consent and agree that this Agreement and applicable Order Form shall be subject to the exclusive jurisdiction of the state and federal courts located in the Northern District of Ohio or the State courts of Common Pleas sitting in Stark or Summit County, Ohio. The Parties mutually agree that they will not raise, in connection with any suit, action or proceeding brought in any of the above referenced Courts, any defense or objection based upon lack of jurisdiction, improper venue, inconvenience of

forum or the like. If any legal action or other proceeding is brought in connection with or arises out of this Agreement, the prevailing Party will be entitled to recover reasonable attorneys' fees and other costs incurred in such action or proceedings. The prevailing Party will also, to the extent permissible by Law, be entitled to receive pre and post- judgment default interest.

20.1    No Ancillary Terms. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form or a mutually executed amendment/ addendum) shall add to or vary the terms and conditions of this Agreement.

20.2    Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

20.3    Independent Contractors. No joint venture, partnership, employment, or agency relationship exists between Customer and DRB as a result of this Agreement or use of the DRB Solutions, and the Parties hereto are independent contractors.

20.4    Non-Waiver. The failure of either Party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such Party in writing.

20.5    Entire Agreement. This Agreement, together with any applicable Order Form(s) (including any other documents referenced therein), comprises the entire agreement between Customer and DRB regarding the subject matter contained herein and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding such subject matter.

# NOPILEUPS SERVICE AGREEMENT

THIS SERVICE AGREEMENT (this "**Agreement**") is entered into by and between NoPileups a division of ORB Systems, LLC, an Ohio limited liability company and the **CUSTOMER**. NoPileups and CUSTOMER are sometimes referred to collectively herein as the "**Parties**" and individual as a "**Party**".

A.      NoPileups has developed and is offering Software and Hardware to be installed and integrated with an automated car wash to monitor movement of automobiles through the car wash and provide for its automatic shut down if a likely collision is detected (the "**Platform**").

B.      Customer operates an automated car wash and wishes to use the Platform on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms hereinafter set forth, the Parties are entering into this Agreement.

**1.      Definitions.**

"**Authorized User**" means an employee of Customer authorized by Customer to use the Platform on the terms and conditions in this Agreement.

"**Confidential Information**" means all non-public, confidential, or proprietary information of NoPileups, whether written or oral, expressed in electronic media, or otherwise disclosed, including, without limitation, information regarding NoPileups' business plan, Proprietary Rights, processes, algorithms, product features, Software, Documentation, and other information relating to the Platform. The term "Confidential Information" does not include any information that is or becomes publicly available through no fault of Customer or its affiliates or employees.

"**Customer Supplied Items**" means any software, hardware (other than Hardware provided by NoPileups pursuant to this Agreement), network connections, connectivity and bandwidth, cameras, lighting, cabling, and other items to be provided by Customer required for successful installation, integration, or use of the Platform with Customer's car wash operations.

"**Documentation**" means user manuals, technical manuals, specifications, training videos, websites, and other documentation, in printed and electronic form, supplied by NoPileups to Customer describing the installation, operation, use and technical specifications of the Platform.

"**Hardware**" means any hardware or equipment supplied as part of the Platform, as specifically identified in this Agreement.

"**Proprietary Rights**" means all rights in (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs and software), mask works, and rights in data and databases; (d) trade secrets, know-how, and other Confidential Information; and (e) all other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable law, regulations, or rules.

"**Services**" means any services to be provided by NoPileups pursuant to this Agreement and as specifically identified in this Agreement.

"**Software**" means the software programs included in the Platform and licensed to Customer pursuant to this Agreement.

"**Updates**" means a modification, error correction, bug fix, new release, or other update to or for any Software.

**2.      License to Platform**

(a)      *License Grant.* Subject to the terms and conditions of this Agreement, during the Term hereof and subject to the continued payment by Customer of the monthly reoccurring fees hereunder, NoPileups grants Customer a limited non-exclusive, royalty fee (except for payment of any fees provided herein), revocable, nontransferable, non-sublicensable license to: (i) use the Platform in accordance with this Agreement and the Documentation; and (ii) to make one (1) copy of the Software for archival or backup purposes (collectively, "**Authorized Uses**"). Customer shall safeguard and maintain the confidentiality of any copy of the Software, maintain accurate and up-to-date records of the location of any copy of the Software, and inform NoPileups in writing of such location.

(b)      *Software Updates.*  During the Term hereof, for no additional charge, NoPileups will provide Updates to the Software by installing such Updates remotely after first notifying Customer. Customer shall provide the secure connectivity required for NoPileups to remotely install Updates. The Platform may need to be restarted after installation of Updates. At any time, NoPileups may require or implement the installation of Updates to ensure that Customer is using a current version of the Software.

(c)      *Hardware.* The Hardware is provided as part of the Platform. Customer shall not disassemble any Hardware, in whole or in part, or use any mechanical, electrical or other method to decompile, disassemble, reverse engineer, or decrypt any Hardware or encourage others to do so. Provided Customer does not damage or impair the Hardware, NoPileups warrants that the Hardware will continue to function during the first twelve (12) months from the date the subscription is activated. NoPileups shall, as its sole obligation to Customer and as Customer's exclusive remedy for any breach of the foregoing warranty in this Sub-Section (c), at its cost repair or replace any defective Hardware reported to NoPileups by Customer in writing, provided that the failure of such Hardware is not attributable to Customer. Other than the Hardware identified in this Agreement, NoPileups is not obligated to provide or replace any other equipment or hardware. If NoPileups determines that it is unable to remedy the defective Hardware, NoPileups may terminate this Agreement and shall refund to Customer any fees paid to NoPileups for unused portions of time beginning on the date that NoPileups received notice of non-compliance.

(d)      *Additional Hardware and Software.* Any item sold or otherwise provided by NoPileUps to Customer after the date of this Agreement in connection with and related to but in addition to the Hardware and Software shall be deemed subject to all terms and conditions of this Agreement and thereby included within the definition of Hardware and Software.

(e)      *Network Access.* The Platform must be securely accessible remotely by NoPileups through the Internet or other network connection, which connectivity must be provided by Customer. This remote access will allow NoPileups to access the Platform, which will provide remote access to Customer's cameras. NoPileups will have password access in order to monitor and obtain information from the Platform, as described in the Documentation. Customer is responsible to segregate its other computers and hardware on its computer network so that its other information is not accessible through the Platform. NoPileups will have no liability or obligation with respect to any data or information unless NoPileups shall be determined by a court of competent jurisdiction to have acted with gross negligence or reckless disregard in accessing such information.

(f)      *Site Preparation and Configuration*. Prior to installation of the Platform, Customer is solely responsible for purchasing and properly configuring any Customer Supplied Items in accordance with the Documentation. The Documentation will specify the minimum requirements for any such items. At or prior to the time of installation, Customer

will have its own personnel or contractors available to install any Customer Supplied Items. Customer is responsible to provide all electrical connections and wiring and to have its own electrician install Customer's equipment. Based on NoPileups' Documentation and recommendation, Customer will configure the Platform for use with Customer's operations. Alternatively, for additional consideration, that will be specified in this Agreement, NoPileups will provide the configuration services. NoPileups will maintain a backup of any configuration settings so that they may be remotely restored to the Platform if this is required.

(g)     *Delivery by NoPileups*. NoPileups shall deliver the Hardware (or cause the same to be delivered) to Customer at the Shipping Address appearing on the sales contract as promptly as is reasonable possible in conjunction with the production schedule of the original manufacturer of the Hardware. NoPileups shall not be responsible for the failure to deliver or delays in delivery of the Hardware occasioned by causes beyond the control of NoPileups, including but not limited to strikes, lockouts or other labor difficulties, fires, embargoes, war or other outbreaks of hostilities, acts of God, machinery breakdowns, delays of carriers or suppliers and governmental acts and regulations.

(h)     *Risk of Loss*. All risk of loss or destruction of or damage to the Hardware and the application software by any cause or for any reason whatsoever, including without limitation by reason of theft, fire, or water, shall pass to Customer simultaneously with the acceptance of the Hardware and the application software by Customer from the shipper or carrier, and the occurrence of any such loss, destruction or damage shall not relieve Customer from its obligations hereunder to make full payment of all amounts hereunder when due.

(i)     *Delivery of Hardware*. No later than the estimated delivery date appearing on the sales contract, Customer, at its expense, shall prepare the site for the receipt of the Hardware and the application software in accordance with NoPileups requirements and shall be required to accept delivery of the Hardware and the application software no later than such estimated delivery date. NoPileups shall use its reasonable efforts to deliver the Hardware and the application software by such estimated delivery date, provided, however, that Customer agrees and acknowledges that NoPileups, at its option, may extend such estimated delivery date by thirty (30) days providing Customer with notice of such extension on or prior to the initially estimated delivery date. It shall be the sole responsibility of Customer, at its expense, and shall not be the responsibility of NoPileups, to integrate the Hardware and the application software into Customer's mechanical, electrical and or other systems in compliance with all applicable building and construction standards and in a manner that will ensure the safe and effective operation of the Hardware and the application software in connection with Customer's mechanical, electrical and other systems. For purposes of this Agreement, the date that the Hardware is delivered to the shipping address shall be referred to as the "Hardware Delivery Date." The fees set forth on the sales contract for delivery of the Hardware are estimates only, the actual fees for delivery may exceed such fees as set forth thereon, and NoPileups shall have no liability to Customer for any such excess.

(j)     *Services*. NoPileups will provide the Services described on the Statement of Work with respect to the Platform. During the Term hereof, NoPileups will provide support of the Platform through phone, email, or other method as NoPileups determines.

(k)     *Performance Data.* NoPileups may remotely monitor the Platform through the network connection and collect performance data and test results from the operation of the Platform, including operating statistics and information ("**Performance Data**"). Customer agrees to provide to NoPileups Performance Data as reasonably requested by NoPileups. All Performance Data will be the sole property and Confidential Information of NoPileups. Customer will not publish or disclose to any third party any Performance Data. Customer may elect to share additional data and video with NoPileups to have system performance monitored in real-time through NoPileups' cloud service offering, on such terms and conditions related to such service as adopted by NoPileups from time to time.

(l)     *Compliance by Users.* Customer will only allow Authorized Users to access the Platform and is responsible for the use of the Platform by its Authorized Users and any other persons. Customer agrees, and will required each Authorized User to agree, to use the Platform in connection only with the Authorized Uses and not misuse the Platform by attempting to: (i) probe or test the vulnerability of the Software; (ii) circumvent or work around any of NoPileups'

security or authentication services built into the Platform; (iii) disassemble or reverse engineer any portion of the Platform; (iv) deliberately interfere with NoPileups' network and services in any way, including, without limitation, by sending viruses, denial-of-service attacks, flooding, spamming or mail-bombing any part of NoPileups' system, (v) accessing any part of the Platform through a mechanism not approved by NoPileups; or (vi) violate the law in any way including storing, saving or capturing data that's the property of another party, defamatory, misleading or violates the privacy or infringes the rights of others. Violation of these acceptable use provisions can result in the immediate suspension or access to the Platform in order to protect the integrity of the Platform for other customers until issues are resolved.

3.     **Feedback.** Customer may provide feedback to NoPileups concerning the functionality and performance of the Platform in Customer's operations and identify potential errors, improvements, modifications, bug fixes, or enhancements (collectively, "**Feedback**"). Customer will not provide or disclose any of Customer's confidential information in any Feedback or other communications to NoPileups. All Feedback shall be the sole property of NoPileups and Customer does hereby assign and transfer all Feedback to NoPileups. Customer will not publish or disclose to any third party any Feedback.

4.     **Use Restrictions; Proprietary Rights.**

(a)     *Scope of Use and Rights.* Customer agrees and acknowledges that: (a) the Platform and all embodiments thereof, including Updates and any enhancements or modifications to the Platform, whether or not suggested or proposed by Customer, are the sole and exclusive property of NoPileups; (b) except for the rights and licenses expressly granted to Customer pursuant to Section 2 hereof to use the Platform for the Authorized Uses, Customer does not acquire any rights, express or implied, in the Platform and NoPileups owns and retains all right, title, and interest in and to the Platform, including all Proprietary Rights therein; (c) all Feedback, Performance Data, test data, reports, and other information pertaining to the Platform is and shall be the sole and exclusive property of NoPileups; (d) Customer shall take all action requested by NoPileups to confirm NoPileups' ownership of the foregoing (including the execution and delivery of assignments); and (e) Customer shall use the Platform only in accordance with the terms and conditions of this Agreement. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO NOPILEUPS.

(b) *Use Restrictions.* Except as provided in this Agreement, Customer shall not, and shall not permit any of its employees or agents or any third parties to, in any manner (a) modify, alter, amend, fix, translate, enhance or otherwise create derivative works of the Software; (b) reverse engineer, disassemble, decompile, decode or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part, except as and only to the extent this restriction is prohibited by law; (c) remove, delete or alter any trademarks, copyright notices or other notices respecting the Proprietary Rights of NoPileups or its licensors, if any, from the Software or any part of the Platform; (d) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Software or Platform available to any third party, other than an Authorized User, for any reason; or (e) use the Platform in violation of any federal, state or local law, regulation or rule. If applicable law requires access to such source code for some purpose, such as interoperability with other software, and Customer desires access for that required purpose, Customer shall notify NoPileups, and NoPileups shall have the option, in its discretion, to: (i) perform the work to derive any required information or (ii) allow Customer access to the source code solely for the legally required purpose.

5.     **Fees.**

(a)     *Setup and Monthly Reoccurring Fees*. On execution of this Agreement, Customer will pay the setup and installation fees described in this Agreement. Thereafter, Customer shall be billed the monthly reoccurring fees and such shall be due and payable on or prior to the first calendar day of each month. The monthly reoccurring payments shall commence on the commencement of the Initial Term. Payments for monthly reoccurring fees are required to be paid via ACH or via credit card.

(b)    *Fee Increases.* Upon the first anniversary of the Effective Date and on an annual basis thereafter, the monthly reoccurring fees to be paid by Customer hereunder may be increased by two per cent (2%) plus the percentage increase in the Consumer Price Index, All Urban Workers, U.S. City Average ("CPI"). The applicable CPI report will be the annual CPI metric published on the first day of the month immediately preceding the date of each Agreement anniversary. The annual fee increase shall never be less than zero percent (0%).

(c)    *Nonpayment.* In addition to all other remedies available under this Agreement or at law, Customer hereby acknowledges that the Software may include coding and other features that permit the initialization and discontinuation of the Software if all amounts to be paid by Customer to NoPileUps hereunder are not paid in full when due. NoPileups may suspend Customer's use of the Platform if Customer fails to pay any amount when due hereunder and such failure continues for ten (10) days following Notice. Any late payments shall bear interest at the rate of one and a half (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

(d)    *Taxes.* All sales, use and other taxes, however designated, levied or based, relating to the purchase, sale, licensing, shipping, installation or use of the Hardware and Software, except to the extent specifically indicated in this Agreement, are not included in the total price, and are the responsibility and liability of and shall be paid by Customer.

## 6.    Confidentiality.

(a)    *Confidentiality Obligations.* Customer shall not use any Confidential Information for any purpose other than for Authorized Uses and as expressly provided in this Agreement and shall not disclose any Confidential Information to any third party without the consent of NoPileups. Without limiting the foregoing, Customer shall use at least the same degree of care that it uses to prevent the disclosure of its own Confidential Information of like importance, but in no event less than reasonable care, to prevent the disclosure of such Confidential Information. Customer shall keep confidential any and all information about the Platform, including without limitation any Feedback or Performance Data.

(b)    *Compelled or Permitted Disclosure.* Notwithstanding any other provision herein, Customer may disclose Confidential Information which is, on the reasonable advice of its counsel, required to be disclosed by any applicable law, subpoena, legal process, or regulation provided that Customer will notify NoPileups immediately after becoming aware of the existence, terms and circumstances surrounding any such requirement and will cooperate with NoPileups' efforts to take legally available steps to challenge, resist or narrow such requirement.

## 7.    Term and Termination.

(a)    *Term.* The "Initial Term" of this Agreement shall be for a period of three (3) years commencing on the first day of the month immediately preceding the month in which the Platform is installed and active. Upon completion of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each a "Renewal Term") unless either party provides notice of cancellation in writing to the other at least sixty (60) days prior to the end of the then current Term. Hereinafter the Initial Term and each Renewal Term shall collectively be referred to as the "Term". Access to the Platform will terminate upon the expiration or termination of this Agreement.

(b)    *Termination.* This Agreement may be terminated prior to the expiration of the Term on Notice: (i) by NoPileups, if Customer fails to pay any amount when due and such failure continues for ten (10) days after Customer's receipt of  Notice of nonpayment; (ii) by NoPileups, if Customer commits a breach of any provision of this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by Customer within thirty (30) days after Customer's receipt of Notice of such breach; or (iii) by either Party, effective immediately, if the other Party files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property. In addition, NoPileups may terminate this Agreement on ten (10) days' Notice and, promptly following such termination, NoPileups will return to Customer any subscription amounts for unused portions of time.

(c)    *Effect of Termination.* The expiration or termination of this Agreement, for any reason, shall not release either Party from any liability to the other Party, including any payment obligation that has already accrued hereunder. On the expiration or termination of this Agreement, for any reason, Customer shall immediately discontinue use of the Platform (unless the license grant is perpetual, and the termination was not the result of Customer's breach), return all NoPileups provided Hardware, and return to NoPileups or destroy all copies of the Software, Documentation, and all materials containing Confidential Information of NoPileups. Termination of this Agreement shall not terminate obligations herein that by their terms should survive such termination.

## 8.    Representations and Warranties.

(a)    *Mutual Representations.* Each Party represents to the other Party that it (i) is an entity duly organized and validly existing under the laws of its jurisdiction of organization and (ii) has all necessary power and authority to negotiate, execute, deliver and perform its obligations under this Agreement.

(b) *Limited Warranty.* NoPileups warrants to Customer that during the Subscription Period, (a) the Platform shall substantially conform in all material respects to the specifications set forth in the Documentation, when installed, operated and used as recommended in the Documentation and in accordance with this Agreement; (b) no Update will have a material adverse effect on the functionality of the Platform; and (c) the Documentation shall include the specifications necessary to install, operate and use the Platform as intended. NoPileups shall, as its sole obligation and Customer's exclusive remedy for any breach of the foregoing warranty in this Sub-Section (b), correct any non-compliance with such warranty reported to NoPileups by Customer in writing. If NoPileups determines that it is unable to correct the non-conformity, NoPileups may terminate the applicable Statement of Work and shall refund to Customer any fees paid to NoPileups for unused portions of time beginning on the date that
NoPileups received notice of non-compliance.

(c) *Warranty on Hardware.* NoPileups warrants that, for a period of one (1) year commencing on the hardware delivery date, the Hardware shall be free from defects in material, workmanship and operating failure from ordinary use. NoPileups obligations under the warranty set forth in this section shall be limited solely to NoPileups making, at its expense, adjustments, repairs and parts replacements necessary to restore the Hardware to its original working order during the said one (1) year period. The warranty set forth in this section shall in no way extend any other warranty period for any goods or software otherwise sold or provided by NoPileups to Customer.

The warranty set forth in this section and the NoPileups liability hereunder is expressly conditioned upon Customer's compliance with the terms and conditions of this Agreement, the proper use, management and supervision of the Hardware and the application software and Customer's obligation hereunder to arrange for the oversight of the integration of the Hardware into the mechanical, electrical and other systems of Customer. No warranty shall extend to, and the warranty set forth in this Section shall be immediately, automatically, permanently and irrevocably cancelled and rendered null and void with respect to, any of the Hardware which (a) has not been properly used, managed or supervised by Customer, (b) has been repaired, altered or otherwise tampered with by any person other than a service representative authorized by NoPileups or the original manufacturer of the Hardware, (c) has been affected by events unrelated to the material and workmanship of the Hardware, including without limitation events such as power surges and acts of God, (d) has been improperly integrated in the mechanical, electrical or other systems of Customer, or (e) otherwise requires repair as a result of Customer's failure to maintain a suitable environment for the operation of the Hardware.

(d)    *Exceptions.* The limited warranty set forth in this Section shall not apply to problems arising out of or relating to (i) use of the Platform by Customer other than for Authorized Uses; (ii) Customer's or any third party's negligence, abuse, misapplication or misuse of the Platform; (iii) the operation of Customer's systems or network; or (iv) Customer's breach of any provision of this Agreement.

(e)     *Equitable Remedies*. Customer acknowledges that a breach or threatened breach of this Agreement by Customer or its employees or agents may cause irreparable harm to NoPileups for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Customer or its employees or agents, NoPileups shall, in addition to any and all other rights and remedies that may be available at law, be entitled to seek a temporary restraining order, injunction, specific performance and any other equitable relief that may be available from a court of competent jurisdiction, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

9.     **Exclusions of Warranties**.     NOPILEUPS HAS NOT     REPRESENTED AND WARRANTED THAT THE PLATFORM WILL PREVENT ANY OR ALL ACCIDENTS AND THAT THE PERFORMANCE OF THE PLATFORM WILL BE AFFECTED BY CUSTOMER'S MAINTENANCE, INCLUDING CLEANING CAMERAS, ENSURING EQUIPMENT IS WORKING AND OTHER ACTIONS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE PLATFORM IS PROVIDED TO CUSTOMER "AS IS" WITHOUT WARRANTY OF ANY KIND. NOPILEUPS MAKES NO WARRANTIES RELATING TO THE PLATFORM AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. THE FOREGOING RESTRICTIONS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

10. **Limitation of Liability.** THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES MADE OR GIVEN IN CONNECTION WITH THE HARDWARE AND APPLICATION SOFTWARE AND ARE MADE AND GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTIES CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING OUT OF OR IN CONNECTION WITH THE HARDWARE OR APPLICATION SOFTWARE, OR THE DELIVERY, INSTALLATION, OR USER OF PERFORMANCE THEREOF. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ARE HEREBY DISCLAIMED BY NOPILEUPS AND WAIVED BY CUSTOMER.

NOPILEUPS SHALL NOT BE LIABLE TO ANY PERSON, INCLUDING WITHOUT LIMITATION THE CUSTOMER, UNDER THIS AGREEMENT OR OTHERWISE, FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE OR FOR LOSS OF PROFITS OR ANY OTHER ACCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES REGARDLESS OF THEIR NATURE. IN NO EVENT SHALL NOPILEUPS, ITS OFFICER, DIRECTORS, AGENTS AND EMPLOYEES, BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER THEORY OF TORT, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE THEORY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. WITHOUT THE GENERALITY OF THE FOREGOING, NOPILEUPS SHALL HAVE NO LIABILITY WHATSOEVER RELATING TO ANY FAILURE, MALFUNCTIONING OR NONPERFORMANCE OF ANY OF THE HARDWARE OR THE APPLICATION SOFTWARE. THE CUSTOMER FURTHER ACKNOWLEDGES THAT NONE OF THE HARDWARE AND THE APPLICATION SOFTWARE IS A CONSUMER GOOD FOR PURPOSES OF FEDERAL OR STATE WARRANTY LAWS.

11.     **Possible Infringement.**  If NoPileups believes any part of the Platform infringes or may be alleged to infringe a third party's Proprietary Rights, then NoPileups may: (a) obtain the right for Customer, at NoPileups' expense, to continue using the Platform; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Platform so it no longer infringes. If NoPileups does not believe the options described in this section are commercially reasonable then NoPileups may suspend or terminate Customer's use of the affected portion of the Platform or, if the functionality of the Platform is materially affected, this Agreement and the Platform. NoPileups shall refund any applicable portion of fees received in connection with the terminated aspect of the Service.

**12.     Miscellaneous.**

(a)     *Entire Agreement; Modification; Severability*.  This Agreement and all related exhibits and schedules constitute the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior

and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect.

(b)     *Assignment.* Neither Party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Party. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating Party of any of its obligations hereunder.

(c)     *Notices.* All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the Parties at the addresses set forth on the signature page (or to such other address that may be designated by the receiving Party from time to time in accordance with this section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or e-mail of a PDF document (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

(d)     *Governing Law and Jurisdiction and Prevailing Party.* This Agreement shall be governed and interpreted in accordance with the laws of the State of Ohio and controlling United States federal law, without regard to any conflicts of laws provisions thereof. The Parties hereby consent and agree that this Agreement and applicable Order Form shall be subject to the exclusive jurisdiction of the state and federal courts located in the Northern District of Ohio or the State courts of Common Pleas sitting in Stark or Summit County, Ohio. The Parties mutually agree that they will not raise, in connection with any suit, action or proceeding brought in any of the above referenced Courts, any defense or objection based upon lack of jurisdiction, improper venue, inconvenience of forum or the like. If any legal action or other proceeding is brought in connection with or arises out of this Agreement, the prevailing Party will be entitled to recover reasonable attorneys' fees and other costs incurred in such action or proceedings. The prevailing Party will also, to the extent permissible by Law, be entitled to receive pre and post-judgment default interest.

(e)     *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(f)     *Relationship of the Parties.* Nothing herein shall be construed to create a joint venture or partnership between the Parties. Neither Party shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.

(g)     *Force Majeure*. Except for payment defaults, neither Party shall be in default by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to any cause beyond its reasonable control, including strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, or any other circumstances or causes beyond such Party's reasonable control.

(h)     *Further Assurances.* Each of the Parties shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof.

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