

# Terms of Use

*Last updated: April 4, 2024*

THIS IS A BINDING LEGAL CONTRACT BETWEEN PDQ.COM CORPORATION, A DELAWARE CORPORATION (TOGETHER WITH ITS AFFILIATES AND SUBSIDIARIES, COLLECTIVELY, THE “**COMPANY**”) AND YOU, INDIVIDUALLY, AND ON BEHALF OF YOUR EMPLOYER (COLLECTIVELY, THE “**USER**”). USERS SHOULD CAREFULLY READ THESE TERMS OF USE (“**TERMS OF USE**”) BEFORE ACCESSING AND/OR USING ANY OF THE COMPANY’S WEBSITES, AND THE COMPANY’S OTHER APPLICATIONS AND PLATFORMS, INCLUDING ANY MOBILE APPLICATIONS (COLLECTIVELY, THE “**SITES**”), OR (2) ANY PRODUCTS OR SERVICES PROVIDED BY OR THROUGH THE SITES (COLLECTIVELY, THE “**SERVICES**”). BY ACCESSING OR USING THE SITES OR SERVICES, THE USER AGREES TO BE BOUND BY THESE TERMS OF USE, AND BE LIABLE TO COMPANY FOR ANY NONCOMPLIANCE WITH THESE TERMS OF USE. IF THE USER DOES NOT AGREE TO THESE TERMS OF USE, AS THESE TERMS OF USE MAY BE MODIFIED FROM TIME TO TIME, THE USER MAY NOT USE THE SITES OR SERVICES.

These Terms of Use apply to and are incorporated by reference into that, as applicable, Software End User License Agreement and Software-as-a-Service Agreement made by and between the Company and the User (or User’s employer, or other organization or entity that User is an agent, consultant or contractor of, as applicable) (together with any exhibits and attachments thereto and any other related documentation between the parties, collectively, the “**User Agreement**”). To the extent of any conflict or inconsistency between these Terms of Use and the applicable User Agreement, the terms of these Terms of Use shall prevail.

## 1. Right to Use

Subject to all limitations and restrictions contained herein and the applicable User Agreement, User will have a limited, revocable, non-transferable, and non-exclusive right to use the Sites and Services solely for its internal business purposes and to perform the functions described in the applicable User Agreement. User shall not allow any person who is not an Authorized User (defined in Section 7) to frame, syndicate, distribute, replicate, or copy any portion of the Sites or Services. Unless otherwise expressly permitted in the

applicable User Agreement and not including Authorized Users, User shall not permit any subsidiaries, affiliated companies, or third parties to access or use the Sites or Services.

For the avoidance of doubt, all right, title, and interest in and to any and all software, data, documents, reports, information and Intellectual Property generated by or through the Sites or Services, including without limitation, any and all software, data, documents, reports, information and Intellectual Property generated or returned by or through the use of CODA (together with all Intellectual Property rights therein, collectively, the “**Output**”), shall remain with the Company. Each User expressly acknowledges and agrees that such User is granted a limited, revocable, non-transferable and non-exclusive right to use the Output solely for purposes of security vulnerability diagnoses.

## **2. Use Restrictions**

User shall not, and shall not permit any other person or entity to, access or use the Sites or Services except as expressly permitted by these Terms of Use or the applicable User Agreement. For purposes of clarity and without limiting the generality of the foregoing, User shall not, except as these Terms of Use expressly permit: (a) copy, modify, or create derivative works or improvements of the Sites, Services or Intellectual Property (as defined in Section 12(b)); (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Sites, Services or Intellectual Property to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Sites, Services or Intellectual Property, in whole or in part; (d) bypass or breach any security device or protection used by the Sites, Services or Intellectual Property or access or use the Sites, Services or Intellectual Property other than through the use of his or her own then valid access credentials; (e) input, upload, transmit, or otherwise provide to or through the Sites or Services, any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful or malicious code; (f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Sites, Services, Intellectual Property, or Company’s provision of services to any third party, in whole or in part; (g) remove, delete, alter, or obscure any trademarks, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Sites, Services or Intellectual Property, including any copy thereof; (h) access or use the Sites, Services or Intellectual Property in any manner or for any purpose that infringes, misappropriates, or otherwise violates any

right, title, or interest of the Company or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other customer of the Company), or that violates any applicable law; (j) access or use the Sites or Services for purposes of competitive analysis of the Sites or Services, the development, provision, or use of a competing software service or product or any other purpose that is to the Company's detriment or commercial disadvantage; (k) access or use the Sites or Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or (l) access or use the Sites or Services for filesharing purposes or otherwise access or use the Sites or Services beyond the scope of the authorization granted under these Terms of Use.

### **3. Certain Other Restrictions**

In no event will User disassemble, decompile, or reverse engineer the Sites, Services, or Intellectual Property (as defined in Section 12(b)) or permit others to do so. Disassembling, decompiling, and reverse engineering include, without limitation: (a) converting the Intellectual Property from a machine-readable form into a human-readable form; (b) disassembling or decompiling the Intellectual Property by using any means or methods to translate machine-dependent or machine-independent object code into the original human-readable source code or any approximation thereof; (c) examining the machine-readable object code that controls the Intellectual Property's operation and creating the original source code or any approximation thereof by, for example, studying the Intellectual Property's behavior in response to a variety of inputs; or (d) performing any other activity related to the Intellectual Property that could be construed to be reverse engineering, disassembling, or decompiling.

### **4. Feedback and User Data**

(a) User understands and agrees that that any suggestions, questions, reviews, messages that User sends, submits or otherwise provides to Company ("**Feedback**") shall become the sole and exclusive property of the Company, and the Company may, in its sole and absolute discretion, determine whether to disclose, respond to, incorporate or otherwise use the Feedback. User hereby assigns to Company all of User's rights, title and interests in and to the Feedback, including any intellectual property rights therein. For the avoidance of doubt Feedback does not include any User Data or Content.

(b) User hereby grants to Company a royalty-free, perpetual, worldwide, and non-exclusive license to use, upload, display, copy and store all User Data (defined below). “**User Data**” means information, data, and other content, in any form or medium that is collected, downloaded, or otherwise received, directly or indirectly from User or an Authorized User by or through the Sites or Services. For the avoidance of doubt, Customer Data does not include any Feedback or Content (defined below) submitted by User or an Authorized User to the Company, Sites or Services, including: (i) data and information related to User or Authorized User’s use of the Sites and/or Services used by Company, including to compile statistical and performance information related to the provision and operation of the Sites and Services; and (ii) any information reflecting the access or use of the Sites and/or Services by or on behalf of User or any Authorized User.

## **5. Submitted Content**

The Sites may contain message boards, chat rooms, personal web pages or profiles, forums, bulletin boards or other interactive features that may allow User to submit, post, display, publish or transmit comments, feedback, background information, messages, photographs, videos, suggestions, questions, reviews and any other related content through the Sites and/or the Services (the “**Content**”). By submitting the Content, User represents and warrants that: (x) User is the sole author and owner of the Content; (y) User is at least 18 years of age; and (z) the Content supplied by User or an Authorized User will not violate these Terms of Use, or any applicable law and will not cause any injury to any person or entity.

(a) User also represents and warrant that the Content is NOT, as determined by the Company in its sole discretion, any of the following: false, inaccurate, misleading, a violation of any local, state, federal, international or other applicable law, or otherwise obscene, derogatory, defamatory, threatening, harassing, abusive, slanderous, hateful or embarrassing to any other person or entity, including as such relates to the harassment, degradation, intimidation, or victimization of an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age or disability; an infringement on the rights of others, such as infringements on any patent, copyright, trademarks, trade secret, publicity or privacy rights; an advertisement, solicitation or spam link to other websites or individuals, except if such an advertisement or solicitation has been expressly consented to in writing by the Company; a chain letter or pyramid scheme, or part of a chain letter or pyramid scheme; an impersonation of, and does not purport to impersonate, another business, person, or entity, including the Company and its

employees and agents; or a virus or other harmful computer code, and does not contain a virus or other harmful code.

(b) User expressly agrees that all Content submitted to the Sites and Services will not be considered confidential or proprietary and User automatically grants and/or warrants the Company a royalty-free, perpetual, irrevocable, worldwide, fully-paid up, unlimited, and non-exclusive license to use, reproduce, create derivative works from, modify, publish, edit, translate distribute, perform and display the submission and/or the Content in any media or medium, or any form, format or forum whether now known or hereafter developed. User expressly acknowledges that any Content contributed by User (whether directly or indirectly) may be publicly accessible or viewable.

(c) User further understands and acknowledges that Company has the right, but not the obligation, to monitor all Content and any submission made to or on the Sites or the Services. Company has the right, in its sole discretion and for any reason, to edit, delete, move, or to refuse to post any Content or any other submission to the Sites or the Services. NOTWITHSTANDING THE FOREGOING, USER IS SOLELY RESPONSIBLE FOR ANY CONTENT AND/OR ANY OTHER SUBMISSION USER OR AN AUTHORIZED USER MAKES TO OR ON THE SITES OR THE SERVICES, AND USER AGREES TO INDEMNIFY THE COMPANY FOR ALL CLAIMS RELATED TO OR ARISING FROM SUCH CONTENT AND/OR SUBMISSIONS.

## **6. Eligibility**

The Services are solely for access and use by Users and Authorized Users (as defined in Section 7). By accessing or using the Services or Sites, User represents and warrants that User (a) has the right, authority, and capacity to enter into Terms of Use, (b) will abide by all of the terms and conditions of these Terms of Use, and (c) is at least 18 years of age. User hereby expressly acknowledges and agrees that User's eligibility to access and use the Sites and Services shall be contingent on User's continued compliance with the terms of the applicable User Agreement and these Terms of Use.

## **7. Accounts & Passwords**

With respect to Users who are parties to a User Agreement (or such agreement for the piloting of the Sites and/or Services), Company will authorize individual employees, consultants, contractors and agents of such Users as designated by such Users from time to time pursuant to the applicable User Agreement (each an "**Authorized User**"). Each

Authorized User will have access to the Sites and Services subject to these Terms of Use. Users and Authorized Users may need setup an account with the Company in order to use part or all of the Sites or Services. Users and Authorized Users must provide accurate and up-to-date information for their account, and Users and Authorized Users further represent and warrant that Users and Authorized Users have not and will not (a) intentionally impersonate another person or entity by using their name or email address, (b) use an offensive name or email address as determined by the Company in its sole and absolute discretion, or (c) use a name or email address for which such User or Authorized User does not have proper authorization. The Company reserves the right to (x) require that a User or Authorized User change their username or use another email address or (y) change any username and password for any User or Authorized User at any time, with notice to the User following any such change. Users and Authorized Users (i) are prohibited from using another person's account or registration information for the Sites or Services, (ii) must use their own username and password, and (iii) shall not disclose them to anyone else. User shall immediately notify Company of any unauthorized disclosure. User is responsible for (1) each Authorized User's compliance with these Terms of Use and (2) any employee of User, any person to whom User has given access to the Sites or Services, and any person who gains access to the Sites or Services as a result of User's failure to use reasonable security precautions, even if such use was not authorized by User.

## **8. Third Party Software**

The Sites and Services may contain third party software that requires notices and/or additional terms and conditions. Such required third party software notices and/or additional terms and conditions may be requested from Company and are made a part of and incorporated by reference into these Terms of Use. By accepting these Terms of Use, User is also accepting the additional terms and conditions, if any, set forth therein.

## **9. Links to Other Websites & Third Party Content**

The Sites and Services may contain links to or be linked from other websites and resources located on servers maintained by third parties over which Company has no control ("**Linked Websites**"). The Linked Websites are provided for User's convenience and information only and, as such, User accesses them at its own risk. User agrees and acknowledges that the Company is not responsible for, and does not endorse or warrant, the content of or anything that may be delivered to User or User's computer as a result of

accessing any Linked Websites, whether or not the Company is affiliated with the owners of such Linked Websites. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, USER SHALL WAIVE ANY CLAIMS RELATED TO, AND THE COMPANY IS NOT RESPONSIBLE AND SHALL HAVE NO LIABILITY FOR, USER'S ACCESS OF ANY INFORMATION ON OR USE OF THE LINKED WEBSITES, INCLUDING BUT NOT LIMITED TO, ANY VIRUSES OR OTHER ILLICIT CODE THAT MAY BE DOWNLOADED THROUGH A LINKED WEBSITE, OR BY ACCESSING A LINKED WEBSITE.

The information presented on or through the Sites and Services is made available solely for general information purposes and the Company does not warrant the accuracy, completeness, or usefulness of this information. Any reliance User places on such information is strictly at User's own risk. Company disclaims all liability and responsibility arising from any reliance placed on such materials by the User or any other party who may be informed of any the information contained on the Sites. The Sites include information and content provided by third parties, including the Content, Feedback and other materials provided by other users, bloggers and third-party licensors, syndicators, aggregators, and/or reporting services ("**Third Party Content**"). ALL STATEMENTS AND/OR OPINIONS EXPRESSED IN THE THIRD PARTY CONTENT, AND ALL ARTICLES AND RESPONSES TO QUESTIONS AND OTHER CONTENT, OTHER THAN THE CONTENT AND MATERIALS PROVIDED BY THE COMPANY, ARE SOLELY THE OPINIONS AND THE RESPONSIBILITY OF THE PERSON OR ENTITY PROVIDING SUCH THIRD PARTY CONTENT. THE THIRD PARTY CONTENT DOES NOT NECESSARILY REFLECT THE OPINION OF THE COMPANY, AND THE COMPANY IS NOT RESPONSIBLE OR LIABLE TO ANY USER OR ANY THIRD PARTY FOR THE ACCURACY OF ANY OF THE THIRD PARTY CONTENT.

## **10. Reservation of Rights**

USER EXPRESSLY ACKNOWLEDGES AND AGREES THAT NOTHING IN THESE TERMS OF USE GRANTS ANY RIGHT, TITLE, OR INTEREST IN OR TO (INCLUDING ANY LICENSE UNDER) ANY INTELLECTUAL PROPERTY IN OR RELATING TO, THE SITES, SERVICES, OR ANY MATERIALS PROVIDED BY COMPANY TO USER, WHETHER EXPRESSLY, BY IMPLICATION, ESTOPPEL, OR OTHERWISE. All right, title, and interest in and to the Sites, Services, Intellectual Property and any materials provided by Company to User will remain with the Company (subject to any limitations associated with intellectual property rights of third parties with respect to materials provided by such third parties), even if enhancements or other changes are suggested or requested by User

or any Authorized User and become incorporated into the Sites, Services or Intellectual Property.

## 11. Marks and Publicity

Company and User trademarks, trade names, service marks, and logos, whether or not registered (“**Marks**”), are the sole and exclusive property of the respective owning party, which owns all right, title and interest therein. Company may: (a) use the User’s name and/or logo within product literature, press release(s), social media, and other marketing materials; (b) quote the User’s statements in one or more press releases; and/or (c) make such other use of the User’s name and/or logo as may be agreed between the parties. Additionally, Company may include User’s name and/or logo within its list of customers for general promotional purposes. Company shall comply with User’s trademark use guidelines to the extent such guidelines are communicated to the Company in writing and Company shall use the User’s Marks in a manner which is consistent with industry practice. Neither party grants to the other any title, interest or other right in any Marks except as provided in this Section.

## 12. Confidential Information

User agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information (defined below). Without limiting the foregoing, User shall take at least those measures that it takes to protect its own confidential information of a similar nature, but in no case less than reasonable care (including, without limitation, all precautions the User employs with respect to its confidential materials). User shall limit access to Company’s Confidential Information to those of its employees and agents who need such access for purposes consistent with the applicable User Agreement and these Terms of Use; provided, however, that User shall ensure that its employees and agents who have access to Company’s Confidential Information have signed a non-use and non-disclosure agreement in content similar to the provisions of these Terms of Use or are otherwise legally obligated not to disclose such Confidential Information, prior to any disclosure of Confidential Information to such employees and agents. User shall not make any copies of the Confidential Information except upon the Company’s prior written approval. User shall promptly notify Company if User becomes aware of any use or disclosure of the Confidential Information in violation of these Terms of Use. If User is required by law to make any disclosure that is prohibited or otherwise constrained by these Terms of Use, User will provide Company with prompt



written notice of such requirement so that Company may seek a protective order or other appropriate relief. Subject to the foregoing sentence, User may furnish that portion (and only that portion) of the Confidential Information that User is legally compelled or is otherwise legally required to disclose; provided, however, that User provides such assistance as Company may reasonably request in obtaining such order or other relief. FOR THE AVOIDANCE OF DOUBT, NOTHING IN THESE TERMS OF USE WILL BE CONSTRUED TO CONVEY ANY RIGHT, TITLE OR INTEREST IN AND TO ANY INTELLECTUAL PROPERTY OR CONFIDENTIAL INFORMATION OF THE COMPANY. USER SHALL NOT, IN WHOLE OR IN PART, SELL, LEASE, LICENSE, ASSIGN, TRANSFER, OR DISCLOSE THE CONFIDENTIAL INFORMATION TO ANY THIRD PARTY AND SHALL NOT COPY, REPRODUCE OR DISTRIBUTE THE CONFIDENTIAL INFORMATION EXCEPT AS EXPRESSLY PERMITTED IN THESE TERMS OF USE. USER HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT COMPANY SHALL OWN ALL SUGGESTIONS, SOLUTIONS, IMPROVEMENTS, CORRECTIONS, AND OTHER CONTRIBUTIONS PROVIDED BY USER REGARDING THE SITES, SERVICES, CONFIDENTIAL INFORMATION, INTELLECTUAL PROPERTY OR OTHER MATERIALS PROVIDED BY COMPANY TO USER WILL BE OWNED BY COMPANY, AND, IN THE EVENT THAT USER IS DEEMED TO HAVE ANY SUCH RIGHT, TITLE OR INTEREST, USER HEREBY AGREES TO ASSIGN ANY SUCH RIGHTS, TITLE AND INTEREST TO THE COMPANY. NO PROVISION IN THESE TERMS OF USE SHALL PRECLUDE THE COMPANY FROM USING IN ANY MANNER OR FOR ANY PURPOSE IT DEEMS NECESSARY, THE KNOW-HOW, TECHNIQUES, OR PROCEDURES ACQUIRED OR USED BY COMPANY IN THE PERFORMANCE OF THE SERVICES HEREUNDER.

(a) "**Confidential Information**" means (a) any information disclosed by Company to the User or Authorized Users, either directly or indirectly, in writing, orally or by inspection of tangible objects, including, without limitation, algorithms, business plans, customer data, customer lists, customer names, deposit lists, depositor names, lenders, borrowers, designs documents, drawings, engineering information, financial analysis, forecasts, formulas, hardware configuration information, know-how, ideas, inventions, market information, marketing plans, processes, products, product plans, research, specifications, Intellectual Property or any information which is designated as "confidential," "proprietary" or some similar designation (collectively, the "**Disclosed Materials**") and (b) any information otherwise obtained, directly or indirectly, by User or Authorized Users through inspection, review or analysis of the Disclosed Materials. Confidential Information may also include information of a third party that is in Company's possession and is disclosed to

User or Authorized Users pursuant to these Terms of Use. Confidential Information shall not, however, include any information that (1) was publicly known and made generally available in the public domain prior to the time of disclosure by Company or any third party to the User or Authorized Users; (2) becomes publicly known and made generally available after disclosure by Company to User or Authorized Users through no action or inaction of the User or Authorized Users; (3) is already in the possession of the User at the time of disclosure by Company as shown by the User's files and records immediately prior to the time of disclosure; (4) is obtained by the User from a third party lawfully in possession of such information and without a breach of such third party's obligations of confidentiality; or (5) is independently developed by the User without use of or reference to Company's or any third party's Confidential Information, as shown by documents and other competent evidence in the User's possession.

(b) "**Intellectual Property**" means any intellectual property of the Company in any jurisdiction throughout the world, including, but not limited to: (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto and all patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions and reexaminations thereof, (ii) all trademarks, service marks, trade dress, logos, slogans, trade names, corporate names, Internet domain names, uniform resource locators and e-mail addresses, and rights in telephone numbers, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith and all applications, registrations and renewals in connection therewith, (iii) all copyrightable works, all copyrights, and all applications, registrations and renewals in connection therewith, (iv) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information and business and marketing plans and proposals), (v) all software, including computer programs, machine-readable instruction sets or data in computerized form, whether in source code, object code or other form, and all data, databases and related documentation, (vi) all software, documents, reports, Output and information generated or returned by or through the Sites or Services, (vi) all other proprietary rights and (vii) all copies and tangible embodiments thereof (in whatever form or medium).

## **13. Disclaimer of Warranties**

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE APPLICABLE USER AGREEMENT, ALL SITES, SERVICES, INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION, AND ANY OTHER TECHNOLOGY OR MATERIALS ARE PROVIDED “AS IS.” COMPANY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, COMPANY MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR ANY MATERIALS OR TECHNOLOGY FURNISHED BY COMPANY, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET USER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN USER AND THE THIRD PARTY OWNER OR DISTRIBUTOR OF THE THIRD PARTY MATERIALS.

## 14. Indemnification

User shall indemnify, defend, and hold harmless Company (including its affiliates and subsidiaries) and its subcontractors, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, an “**Indemnitee**”) from and against any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind (including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers), incurred by any Indemnitee arising out of or resulting from, or are alleged to arise out of or result from (collectively, a “**Claim Against Indemnitee**”): (a) Content, Feedback and User Data, including any processing of Content, Feedback and/or User Data by or on behalf of Company in accordance with these Terms of Use; (ii) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of User or any Authorized User, including Company’s compliance with any specifications or directions provided by or on behalf of User or any Authorized User; (iii) allegation of facts that, if true, would constitute User’s breach of any of its representations, warranties, covenants, or obligations under these Terms of Use or the applicable User Agreement; (iv)

gross negligence or more culpable act or omission (including recklessness or willful misconduct) by User, any Authorized User, or any third party on behalf of User or any Authorized User, in connection with these Terms of Use or the applicable User Agreement; or (v) any violation of any right of any third party or the breach of any obligation to any third party under any agreement or other arrangement between User and/or Authorized User and such third party, including, but not limited to, the infringement, violation or misappropriation of any copyright, patent, trademark, trade dress, trade secret or other proprietary or intellectual property right of any third party or the breach of any contract.

## **15. Limitation of Liability**

IN NO EVENT WILL COMPANY OR ANY OF ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THESE TERMS OF USE OR THE USER AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SITES OR SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGINIATION); (e) COST OF REPLACEMENT GOODS OR SERVICES; (f) LOSS OF GOODWILL OR REPUTATION; OR (g) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

## **16. Cap on Liability**

IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF COMPANY AND ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS ARISING OUT OF OR RELATED TO THESE TERMS OF USE OR THE USER AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID UNDER THE USER AGREEMENT IN THE

THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

THE FOREGOING LIMITATIONS APPLY EVEN IF COMPANY IS NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

## **17. Term and Termination**

The term of these Terms of Use will continue until the termination or expiration of the applicable User Agreement. Notwithstanding the foregoing, any trial Services shall terminate within 14 days, unless otherwise agreed by the Company in writing. All rights, licenses and obligations provided in Sections 3-5, 9-18, 20, 22-23, 25, and 29-31 shall survive any termination or expiration of this Agreement, together with any remedies for breach, or other rights or obligations of the parties that, by their nature, should survive the termination or expiration of this Agreement.

## **18. Modifications and Amendments**

These Terms of Use may be updated or amended by Company at any time, with or without notice to User and User's continued use of the Sites and Services shall constitute User's acceptance of the updated or amended Terms of Use.

## **19. Assignment**

User may not assign all or any part of its rights or obligations hereunder, whether by operation of law, change of control, or in any other manner, without the prior written consent of Company. Any such assignment in violation of this Section will be deemed void. The Company may assign, in whole or in part, its rights, interests, and obligations hereunder without limitation and without providing notice to User.

## **20. Electronic Communications**

The communications between User and Company use electronic means, whether User visits the Sites or sends Company emails, or whether Company posts notices on the Sites or Services or communicates with User via email. For contractual purposes, User (a) consents to receive communications from Company in an electronic form; and (b) agrees that all terms and conditions, agreements, notices, disclosures, and other communications

that Company provides to User electronically satisfies any legal requirement that such communications would satisfy if it were in writing. The foregoing does not affect User's non-waivable rights.

## **21. Third Parties**

Company will have the right to use third parties, including, but not limited to, employees of Company's affiliates and subsidiaries ("**subcontractors**"), in performance of its obligations and services hereunder, and for purposes of these Terms of Use, all references to Company or its employees will be deemed to include such subcontractors.

## **22. Technical Data**

User shall not provide to Company any technical data as that term is defined in the International Traffic in Arms Regulations ("**ITAR**") at 22 CFR 120.10. User shall certify that all information provided to Company has been reviewed and scrubbed so that all technical data and other sensitive information relevant to User's ITAR regulated project has been removed and the information provided is only relevant to bug reports on Company products.

## **23. U.S. Export Controls**

NEITHER THE SITES, SERVICES, NOR ANY SOFTWARE PROVIDED BY THE COMPANY THROUGH THE SERVICES ("**SOFTWARE**") MAY BE EXPORTED OR RE-EXPORTED (I) INTO THE TERRITORY OF (OR TO A NATIONAL OR RESIDENT OF) CUBA, NORTH KOREA, IRAN, SYRIA, SUDAN, OR ANY OTHER COUNTRY TO WHICH THE UNITED STATES HAS EMBARGOED GOODS OR SERVICES; OR (II) TO ANYONE ON THE U.S. TREASURY DEPARTMENT'S LIST OF SPECIALLY DESIGNATED NATIONALS OR THE U.S. COMMERCE DEPARTMENT'S TABLE OF DENY ORDERS. BY ACCESSING THE SITES OR SERVICES OR DOWNLOADING OR USING ANY SOFTWARE PROVIDED THROUGH THE SITES OR SERVICES, USER REPRESENTS AND WARRANTS THAT USER IS NOT LOCATED IN, UNDER THE CONTROL OF, OR A NATIONAL OR RESIDENT OF ANY SUCH COUNTRY OR ON ANY SUCH LIST.

## **24. Compliance with Laws**

Both parties agree to comply with all applicable laws, regulations, and ordinances relating to such party's performance under these Terms of Use.

## **25. Force Majeure**

In no event will Company be liable or responsible to any User, or be deemed to have defaulted under or breached these Terms of Use or any User Agreement, for any failure or delay in fulfilling or performing any term of these Terms of Use or any User Agreement when and to the extent such failure or delay is caused by any circumstances beyond Company's reasonable control, including, but not limited to, acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, epidemics or pandemics as determined and/or defined by the U.S. Centers for Disease Control and Prevention or the World Health Organization, embargoes or blockades in effect on or after the date of these Terms of Use or any applicable User Agreement, whichever is dated earlier, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation, or any other emergency beyond the Company's reasonable control making it inadvisable, illegal or impractical to perform its obligations hereunder (each, a **"Force Majeure Event"**).

## **26. Restricted Rights**

Use of the Sites, Services or Software by or for the United States Government is conditioned upon the Government agreeing that the Sites, Services and Software is subject to Restricted Rights as provided under the provisions set forth in FAR 52.227-19. User shall be responsible for assuring that this provision is included in all agreements with the United States Government and that the Sites, Services or Software, when accessed by the Government, is correctly marked as required by applicable Government regulations governing such Restricted Rights as of such access.

## **27. Independent Contractor**

Company is an independent contractor and nothing in these Terms of Use will be deemed to make Company an agent, employee, partner, or joint venturer of User. Neither party will have authority to bind, commit, or otherwise obligate the other party in any manner whatsoever.

## **28. Privacy**

User understands and acknowledges that User's personal data will be collected, protected, and used by the Company in accordance with the Company's Privacy Policy, which is incorporated into these Terms of Use as if set forth verbatim herein.

## **29. Entire Agreement**

These Terms of Use together with the User Agreement and the documents and exhibits attached thereto constitute the entire agreement between the parties regarding the subject matter hereof and supersedes all proposals and prior discussions and writings between the parties with respect to the subject matter contained herein.

## **30. Governing Law**

These Terms of Use are governed by and construed in accordance with the laws of the State of Utah without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Utah. ANY LEGAL SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATED TO THESE TERMS OF USE OR THE RIGHTS OR LICENSES GRANTED HEREUNDER WILL BE INSTITUTED EXCLUSIVELY IN THE FEDERAL COURTS OF THE UNITED STATES OR THE COURTS OF THE STATE OF UTAH IN EACH CASE LOCATED IN THE CITY OF SALT LAKE AND COUNTY OF SALT LAKE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION, OR PROCEEDING. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

## **31. Waiver of Jury Trial**

EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THESE TERMS OF USE, THE USER AGREEMENT OR ANY TRANSACTION CONTEMPLATED BY THESE TERMS OF USE OR THE USER AGREEMENT.

## **32. California Civil Code Section 1542 Waiver**



User expressly acknowledges and agrees that all rights under Section 1542 of the California Civil Code are expressly waived. That section provides: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. In addition, User hereby knowingly and voluntarily waives any protection that may exist under any comparable or similar statutes and principles of common law or any other state laws as it pertains to the enforcement of the releases provided in this paragraph.