GLOBAL SOFTWARE TERMS OF SERVICE AGREEMENT

IMPORTANT – CAREFULLY READ ALL THE TERMS AND CONDITIONS OF THIS GLOBAL SOFTWARE TERMS OF SERVICE AGREEMENT (THIS "AGREEMENT").

Except to the extent Customer (as defined below) is a party to an existing written agreement with Digital Check Corp. or one of its affiliates, subsidiaries, or divisions (collectively, "Digital Check") that expressly covers Customer's access to and use of the applicable Software (as defined below) as contemplated in this Agreement (an "Existing Agreement"), the terms and conditions in this Agreement govern Customer's access to and use of all Software provided to Customer by or on behalf of Digital Check. For clarity, if Customer is a party to an Existing Agreement with Digital Check that expressly covers Customer's access to and use of any Software, the Existing Agreement (and not this Agreement) will govern Customer's receipt of, access to, and use of the specific Software described in the Existing Agreement.

SUBJECT TO THE EXCEPTION IN THE PRECEDING PARAGRAPH, BY AGREEING TO AN ORDER FORM INCORPORATING THIS AGREEMENT, CLICKING ON THE "ACCEPT" BUTTON BELOW (IF APPLICABLE), OR PROCEEDING WITH THE INSTALLATION, DOWNLOAD AND/OR ACCESS AND USE, AS APPLICABLE, OF THE SOFTWARE (THE "EFFECTIVE DATE"), YOU: (1) ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT, (2) REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE ENTITY IN RESPECT OF WHOM THE LICENSE TO USE AND/OR ACCESS TO THE SOFTWARE WAS ORDERED (SUCH ENTITY, THE "CUSTOMER"), AND TO BIND CUSTOMER TO THE TERMS OF THIS AGREEMENT, AND (3) AFFIRM THAT YOU ARE OVER THE AGE OF EIGHTEEN (18) AND THAT CUSTOMER IS FULLY ABLE AND COMPETENT TO ENTER INTO THE TERMS, CONDITIONS, OBLIGATIONS, AFFIRMATIONS, REPRESENTATIONS, AND WARRANTIES SET FORTH IN THIS AGREEMENT, AND TO ABIDE BY AND COMPLY WITH THIS AGREEMENT.

IF YOU DO NOT AGREE WITH ALL OF THE TERMS OF THIS AGREEMENT, OR DO NOT HAVE AUTHORITY TO BIND CUSTOMER TO THIS AGREEMENT, OR YOU OR CUSTOMER DO NOT MEET THE ELIGIBILITY REQUIREMENTS SET FORTH ABOVE, YOU MUST NOT PROCEED WITH THE INSTALLATION OR DOWNLOAD AND YOU MUST CEASE ALL ACCESS AND USE OF THE SOFTWARE.

1   Definitions. Capitalized terms used in this Agreement will have the meanings assigned to such terms in this Section 1 or where first used in this Agreement.

(a)   "Confidential Information" means: (i) all information communicated by the Disclosing Party (as defined below) that should reasonably be considered confidential under the circumstances, notwithstanding whether it was identified as such at the time of disclosure; (ii) all information identified as confidential to which Receiving Party (as defined below) has access in connection with this Agreement, whether before or after the Effective Date; and (iii) this Agreement and all Order Forms, in each case ((i)-(iii)) including without limitation, any information about: (x) existing or contemplated products, services, designs, technology, processes, technical data, engineering, techniques, methodologies, and concepts, and (y) marketing philosophy and objectives, promotions, markets, materials, financial results, technological developments, and

other similar proprietary information and materials. Without limiting the foregoing, the Software and the services are Confidential Information of Digital Check.

(b)   "Effective Date" means the date upon which Customer is bound by this Agreement as described above.

(c)   "Intellectual Property Rights" means all copyrights, trade secrets, trademarks, patents, mask works, and other intellectual property rights and proprietary rights recognized in any jurisdiction worldwide.

(d)   "License Term" means the Subscription Term, if applicable. If no Subscription Term is specified in the Order Form, or if Customer has not entered into an Order Form for the applicable Software, the "License Term" commences on the date Customer enters into this Agreement and continues until this Agreement is terminated or expires pursuant to Section 8.

(e)   "Order Form" means an order form entered into between Customer and Digital Check for Customer's purchase of a license to Software and any related services.

(f)   "Party" means either Digital Check or Customer. Collectively, Digital Check and Customer may be referred to as "Parties."

(g)   "Software" means the computer programming code and accompanying documentation specified in the Order Form or otherwise provided by Digital Check subject to this Agreement. "Software" includes all Updates (as defined below).

(h)   "Source Code" means computer programming code in human readable form that is not suitable for machine execution without the intervening steps of interpretation or compilation.

(i)   "Subscription Term" means the term of the Software license purchased by Customer as specified in the Order Form (if any). The Subscription Term will commence on the start date specified in the applicable Order Form and continue for the initial Subscription Term specified in such Order Form, and will thereafter automatically renew for additional terms equal to the initial Subscription Term (subject to Customer's payment of the applicable fees), unless Customer terminates the applicable Subscription prior to the end of the then-current Subscription Term.

(j)   "Support Services" means Digital Check's support of the Software, if ordered by Customer under an Order Form, as further described in Section 5.

(k)   "Support Term" means the period of time Support Services are provided by Digital Check to Customer for the Software.

(l)   "Territory" has the meaning set forth in the Order Form (if any). If no territory is specified in the Order Form, or if Customer has not entered into an Order Form for the applicable Software, "Territory" means worldwide.

(m)   "Usage Parameters" means the quantity and types of machines, devices, applications, users, licenses, and/or seats for the Software ordered by Customer as specified in the applicable Order Form.

(n)   "Users" means employees and contractors of Customer who are authorized by Customer to use the Software in accordance with this Agreement.

2   License.

(a)   <u>License Grant</u>. Subject to Customer's compliance at all times with this Agreement and the Order Form (if any), Digital Check hereby grants to Customer, during the License Term, a non-exclusive, non-sublicensable, non-transferable, revocable, limited license to install, access, and use the Software in the Territory for Customer's internal business operations, solely: (i) with the designated model(s) of Digital Check or Smart Source branded devices purchased from Digital Check or its authorized resellers ("<u>Approved Devices</u>"), (ii) in a secure and controlled environment where Customer and its Users are fully responsible for maintaining the security of such environment and for maintaining the operation of all software and information technology systems and the security of all data accessible with or through the Software; (iii) on Customer's associated workstations (including computers, tablets, and other mobile devices) and/or networks, which are in either case within Customer's control, and (iv) for purposes of managing, monitoring, and using the Approved Devices and collecting and receiving data from the Approved Devices.

(b)   <u>Trial Version</u>. If Customer has obtained the Software (or any component thereof) on a trial basis (a "<u>Trial Version</u>"), Customer acknowledges and agrees that the license set forth in Section 2(a) is granted by Digital Check to Customer for the Trial Version solely for the trial period set forth in the applicable Order Form ("<u>Trial Period</u>") for Customer's own internal evaluation purposes, and subject to any and all technical limitations implemented by Digital Check in the Trial Version. Customer acknowledges and agrees that if Customer has not purchased a license for the period following the Trial Period prior to the expiration of the Trial Period, this Agreement will automatically terminate (without the requirement of providing any termination notice) and the Trial Version may cease functioning. In addition to the restrictions set forth in Section 2(g), Customer will not attempt to circumvent, dismantle or otherwise interfere with any time-control disabling functionality in the Trial Version that causes the Trial Version to cease functioning upon the expiration of the Trial Period. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE TRIAL VERSION IS PROVIDED "AS-IS' AND WITHOUT ANY WARRANTY WHATSOEVER OR ANY SUPPORT OR OTHER SERVICES (INCLUDING ANY UPDATES OR UPGRADES).

(c)   <u>Updates</u>. Digital Check may, from time to time and at its sole option, make available patches, bug fixes, corrections, updates, upgrades, support and maintenance releases or other modifications (collectively, "<u>Updates</u>") to the Software. Updates, if any, may not necessarily include all existing software features or new features that Digital Check releases for newer or other models of its devices. The terms of this Agreement will govern any Updates unless such Update is accompanied by a separate license, in which case Customer agrees that, upon Customer's acceptance of that license, the terms of that license will govern. Digital Check reserves the right to condition Customer's access to and use of Software on Customer's installation of Updates.

(d)   <u>Embedded Digital Check Software</u>. Any Digital Check software embedded in an Approved Device is governed by a separate [End User License Agreement](#) provided with the device or otherwise made available to Customer.

(e)   <u>Third Party Software</u>. Certain software included in, distributed with, or downloaded in connection with the Software may comprise third-party proprietary software products that are subject to separate license terms ("<u>Third Party Software</u>"). Such Third Party Software may include software or software components that are derived, in whole or in part, from software that is

distributed as free software, open source software or under similar licensing or distribution models ("Open Source Software," together with Third Party Software, "External Software").

Customer's use of External Software is subject in all cases to the applicable licenses from the External Software provider, which will take precedence over the rights and restrictions granted in this Agreement solely with respect to such External Software. Customer will comply with the terms of all applicable Third Party Software and Open Source Software licenses, if any. Copyrights to Open Source Software are held by their respective copyright holders indicated in the copyright notices in the corresponding source files.

FOR THE AVOIDANCE OF DOUBT, DIGITAL CHECK PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO SUCH EXTERNAL SOFTWARE, INCLUDING WITH RESPECT TO FUNCTIONALITY OF SUCH EXTERNAL SOFTWARE WITH ANY APPROVED DEVICE OR THE SOFTWARE. Digital Check does not provide any warranty, maintenance, technical or other support for any External Software or its use on any Digital Check product, technology, service or specification or other documentation.

(f)   License Limitations; Reservation of Rights. This Agreement does not grant Customer any rights to use the Software or other Digital Check proprietary interfaces or Intellectual Property Rights in the design, development, manufacture, licensing, or distribution of other devices, accessories, or software applications for use with Approved Devices or other devices and accessories. Some of those rights may be available under separate licenses from Digital Check. All rights not expressly granted to Customer in this Agreement are reserved for Digital Check and its licensors.

(g)   Restrictions. Except as expressly set forth in this Agreement or in a separate agreement signed by Digital Check, Customer will not (and will not allow any third party, including, without limitation, any User, to): (i) decompile, disassemble, reverse engineer, or otherwise attempt to derive the structure of or the Source Code from the Software or the underlying technology of the Software, except to the extent such a restriction is not permitted by applicable law and further, in such event, Customer has requested such code from Digital Check in writing in advance and Digital Check has failed to comply with such legal requirement within thirty (30) days following such request; (ii) distribute, license, sublicense, assign, transfer, provide, lease, lend, rent, disclose, use for timesharing or service bureau purposes, or otherwise use or allow others to use for the benefit of any third party, the Software; (iii) use or access the Software in order to build a similar or competitive product or service or disclose to any third party any benchmarking or comparative study involving the Software; (iv) copy, reproduce, modify, adapt, translate, or create derivative works of the Software (or any part thereof); (v) remove, alter, or obscure in any way any proprietary rights notices (including copyright notices) of Digital Check or its suppliers on or within the Software; (vi) attempt to disable or circumvent any security mechanisms used by the Software (including, without limitation, any time-control disabling functionality or other mechanisms in the Trial Version); (vii) use the Software to store or transmit any malicious or unsolicited code or software, or store, transmit or upload any material and/or content that is false, inaccurate, illegal, abusive, harassing, harmful to reputation, pornographic, indecent, profane, obscene, hateful, racist, infringing, libelous, tortious, or otherwise objectionable in Digital Check's reasonable opinion, or to store, transmit or upload any material or content in violation of third-party privacy rights; (viii) use the Software (or any part thereof) to hack, spam, or phish Digital Check or any third party (including, without limitation Digital Check's other customers); or (ix) use the Software in any manner that violates any law, rule, regulation or any other legal or regulatory requirement imposed by any regulatory or government agency. Customer

agrees that it will not permit any person other than authorized Users to access and use the Software, and will ensure that all Users are over eighteen (18) years old and use the Software solely in accordance with this Agreement and the applicable Usage Parameters. Customer acknowledges and agrees that Customer is solely responsible for the use of the Software by Users, and any breach of this Agreement by any User will be deemed a breach by Customer. CUSTOMER ACKNOWLEDGES THAT THE SOFTWARE MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE SUBSCRIPTION TERM AND/OR CUSTOMER'S USE INCONSISTENT WITH THIS AGREEMENT.

(h)   Copies. Customer may make a reasonable number of copies of the Software for archival purposes or for use as a back-up. Customer must copy all copyright legends, trademarks, trade names, and other legends on any copies of the Software.

(i)   Ownership. The Software and its contents, features and functionality (including, without limitation, all information, software, text, graphics, images, and audio, and the design, selection and arrangement thereof) (collectively, the "Content") are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws. The Software, the Content, and all Intellectual Property Rights in and to the Software and the Content are the sole property of Digital Check and its licensors.

(j)   Feedback. If Customer provides to Digital Check any feedback, suggestions, recommendations, or other input, or makes any improvements, enhancements, or modifications, relating to the Software (collectively, "Feedback"), then Customer grants to Digital Check a worldwide, royalty-free, fully paid-up, non-exclusive, perpetual, irrevocable, sublicensable license to reproduce, perform, display, distribute, modify, create derivative works of, make, have made, use, sell, offer to sell, import, and otherwise dispose of such Feedback, and any modifications, derivative works or implementations thereof and any product, software, or service that incorporates, is combined with or uses, or is marketed for use in combination with, any of the foregoing.

3   Delivery and Acceptance.

On or before the start date of the License Term, Digital Check will use commercially reasonable efforts to enable Customer to download the Software or will otherwise make the Software available to Customer. Digital Check will notify Customer of any anticipated or actual delay in delivery. The Software will be deemed accepted upon delivery to Customer.

4   Pricing and Payment.

(a)   Invoicing and Payment. Digital Check will invoice Customer based upon the pricing (if any) set forth in the Order Form. Customer will pay all amounts in any such invoice no later than thirty (30) calendar days from the date of the invoice. Payments made under this Agreement after their due date will incur interest at a rate equal to one and one-half percent (1.5%) per month or the highest rate permitted by applicable law, whichever is lower. In addition, Digital Check reserves the right to immediately suspend or terminate Customer's access to the Software and/or any services provided hereunder in the event the fees due and payable by Customer are more than thirty (30) days late. All payments will be made in USD. Customer will be responsible for reasonable costs associated with collection of overdue amounts, including without limitation, reasonable attorneys' fees and court costs. Except as expressly set forth in the applicable Order Form, all fees are non-refundable.

(b)   Taxes. All fees for the Software and any services are exclusive of taxes and fees. Except for taxes based on Digital Check's income generally, Customer will be responsible for all taxes and fees that arise in any jurisdiction, however designated, imposed on, incident to, or based upon the provision, sale, or use of the Software and/or any related services.

5   Support Services. The terms of this Section 5 will apply if Customer purchases Support Services under an Order Form.

(a)   Term. The Support Term will commence on the date of the Order Form and will continue for an initial term equal to (i) the period specified in the Order Form or, (ii) if no period is specified in the Order Form, one (1) year. Thereafter, Support Services will automatically renew for subsequent one-year periods unless Customer provides Digital Check with written notice of intention not to renew same at least sixty (60) days prior to the expiration of the then-current Support Term.

(b)   Termination by Customer. Subject to any minimum Support Services period specified in the Order Form, Customer may terminate Support Services at any time upon ninety (90) days' prior written notice.

(c)   Suspension by Digital Check. If Customer fails to pay when due any applicable fee or otherwise breaches a material obligation under this Agreement and does not timely cure in accordance with the provisions herein, Digital Check may, at its option, suspend Support Services until the material breach is cured.

(d)   Reinstatement. After any lapse of Support Services, Support Services will be reinstated as mutually agreed by the Parties.

(e)   Fees. Charges for Support Services will be as stated in the Order Form. Except as expressly set forth in the Order Form, after the initial Support Services term, fees for Support Services may be increased by Digital Check once annually by no more than five (5) percent.

(f)   Support Services. Except as expressly set forth in the Order Form, Support Services will be provided in accordance with Digital Check's standard support terms as separately made available to Customer.

6   Confidential Information.

(a)   Obligations. Both Parties acknowledge that either Party may receive (the "Receiving Party") Confidential Information from the other Party (the "Disclosing Party") during the term of this Agreement. Such Confidential Information will be deemed to have been received in confidence and will be used by the Receiving Party only to perform its obligations or exercise its rights under this Agreement and will be disclosed by the Receiving Party only to the Receiving Party's personnel who (i) have a need to know the information for such purpose, and (ii) are subject to obligations of confidentiality consistent with this Agreement. The Receiving Party will treat the Confidential Information as it does its own valuable and sensitive information of a similar nature and, in any event, with not less than a reasonable degree of care.

(b)   Exceptions. The obligations of either Party under Section 6(a) will not apply to information that the Receiving Party can demonstrate: (i) was in its possession at the time of disclosure and without restriction as to confidentiality; (ii) at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of this Agreement or other wrongful act by the Receiving Party; (iii) has been received

from a third party without restriction on disclosure and without breach of agreement or other wrongful act by the Receiving Party; or (iv) is independently developed by the Receiving Party without regard to the Confidential Information of the other Party. If Confidential Information is required to be disclosed by law or order of a court of competent jurisdiction or regulatory authority, the Receiving Party will (x) give the Disclosing Party, to the extent possible, prompt and reasonable advance notice prior to disclosure so the Disclosing Party may contest the disclosure or seek a protective order, and (y) limit the disclosure to the minimum amount that the Receiving Party reasonably determines is legally required to be disclosed.

(c)   Access to Source Code. If Customer is given access to any Source Code for the Software under this Agreement, Customer will use its best efforts to protect the Source Code from unauthorized access, reproduction, disclosure or use. Only Customer personnel having a need to access the Software Source Code in connection with Customer's exercise of its rights or performance of its obligations under this Agreement may have access to the Software Source Code. Customer will maintain accurate written records of the names of all individuals who have had access to the Software Source Code. Customer will notify Digital Check immediately if Customer becomes aware of any unauthorized use or disclosure of the Software Source Code, and will give full cooperation, at its own expense, to minimize the effects of such unauthorized use or disclosure. NOTWITHSTANDING ANY OTHER TERMS OF THIS AGREEMENT, CUSTOMER'S LICENSE WILL AUTOMATICALLY TERMINATE UPON THE UNAUTHORIZED TRANSFER OF ANY COPY OF THE SOFTWARE SOURCE CODE TO ANOTHER PARTY.

(d)   No Customer Data. The Parties acknowledge and agree that any data stored within or through Customer's use of the Software will remain solely on Customer's servers/systems or otherwise under Customer's control. Authorized use of the Software does not provide Digital Check with any access or ability to control or protect any such data, and Customer will not provide any data to Digital Check or require Digital Check to connect to Licensee's network without Digital Check's prior written consent in each case.

7   Disclaimers; Limitation of Liability; Indemnification.

(a)   WARRANTY DISCLAIMER. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, USE OF THE SOFTWARE IS AT CUSTOMER'S SOLE RISK AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH CUSTOMER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE IS PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND DIGITAL CHECK AND ITS LICENSORS, SUPPLIERS, AND DISTRIBUTORS (COLLECTIVELY REFERRED TO AS "DIGITAL CHECK" FOR THE PURPOSES OF THIS SECTION 7) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE SOFTWARE, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DIGITAL CHECK DOES NOT WARRANT AGAINST INTERFERENCE WITH CUSTOMER'S ENJOYMENT OF THE SOFTWARE, THAT THE FUNCTIONS CONTAINED IN, OR SERVICES PERFORMED OR PROVIDED BY, THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS IN THE SOFTWARE OR SERVICES WILL BE CORRECTED, OR THAT THE SOFTWARE WILL BE COMPATIBLE OR WORK WITH ANY THIRD-PARTY SOFTWARE OR APPLICATIONS OR

THIRD-PARTY SERVICES. INSTALLATION OF THE SOFTWARE MAY AFFECT THE AVAILABILITY AND USABILITY OF THIRD-PARTY SOFTWARE OR APPLICATIONS OR THIRD-PARTY SERVICES. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DIGITAL CHECK OR A DIGITAL CHECK AUTHORIZED RESELLER OR REPRESENTATIVE WILL CREATE A WARRANTY.

(b)   HIGH-RISK USE DISCLAIMER. CUSTOMER FURTHER ACKNOWLEDGES THAT THE SOFTWARE IS NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN, THE CONTENT, DATA OR INFORMATION PROVIDED BY THE SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

(c)   LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL DIGITAL CHECK BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, CORRUPTION OR LOSS OF DATA, FAILURE TO TRANSMIT OR RECEIVE ANY DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO CUSTOMER'S USE OR INABILITY TO USE THE SOFTWARE OR ANY THIRD PARTY SOFTWARE OR APPLICATIONS IN CONJUNCTION WITH THE SOFTWARE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF DIGITAL CHECK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL DIGITAL CHECK'S TOTAL LIABILITY TO CUSTOMER FOR ALL DAMAGES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) EXCEED THE AMOUNT OF FIVE DOLLARS ($5 USD). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

(d)   Indemnification. Customer will defend, indemnify, and hold harmless Digital Check and its licensors, suppliers, and distributors, and their respective directors, officers, employees, and agents (collectively, "Digital Check Indemnitees") against all liabilities, damages, losses, costs, fees (including reasonable attorneys' fees), and expenses arising out of any allegation or third-party legal proceeding to the extent arising from: (i) Customer's use of the Software other than in accordance with this Agreement; (ii) any content or data, including personally identifiable information, routed into or used with the Software by Customer or any Customer User; (iii) Customer's or any Customer's User's alleged or actual violation of any applicable laws or third-party rights; or (iv) Customer's or any Customer's User's negligence, fraud, dishonesty, or willful misconduct.

8   Term; Termination; Effect of Termination.

(a)   Term. Unless earlier terminated in accordance with the terms of this Agreement, the term of this Agreement will commence on the Effective Date and will continue until the date of expiration or termination of the last Subscription Term to expire or be terminated (or if no Subscription Term is specified in the Order Form, until expiration or termination of all licenses granted to Customer hereunder).

(b)   Termination for Convenience. Subject to any minimum commitment periods specified in the Order Form, Customer may terminate this Agreement for convenience any time upon sixty (60) days' advance written notice to Digital Check.

(c)   Termination for Cause. Either Party may terminate this Agreement immediately upon notice if the other Party (i) materially breaches any term of this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice from the non-breaching Party specifying the breach in reasonable detail, or (ii) experiences a Bankruptcy Event. For purposes of this Agreement, "Bankruptcy Event" means: (1) voluntary or involuntary proceedings by or against a Party are instituted in bankruptcy or under any insolvency law; (2) a receiver or custodian is appointed for a Party; (3) proceedings are instituted by or against a Party for corporate reorganization or the dissolution of such Party, which proceedings, if involuntary, have not been dismissed within sixty (60) days after the date of filing; (4) a Party makes an assignment for the benefit of creditors; or (5) substantially all of the assets of a Party are seized or attached and not released within sixty (60) days thereafter.

(d)   Effect of Termination. Upon the termination or expiration of this Agreement for any reason: (i) the licenses granted under this Agreement will immediately terminate and Customer will immediately cease any and all use (including any use by its Users) of the Software; (ii) Digital Check's obligations to perform Support Services will immediately terminate; (iii) Customer will pay to Digital Check the full amount of any outstanding fees due hereunder; and (iv) within ten (10) calendar days of such termination, each Party will destroy or return all Confidential Information of the other Party in its possession or control, and will not make or retain any copies of such information in any form, except that the Receiving Party may retain one (1) archival copy of such information solely for purposes of ensuring compliance with this Agreement. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SOFTWARE MAY CONTAIN DISABLING CODE THAT (EITHER AUTOMATICALLY OR AT DIGITAL CHECK'S CONTROL) WILL RENDER THE SOFTWARE (AND RELATED DATA) UNUSABLE UPON TERMINATION OR CUSTOMER'S BREACH OF THIS AGREEMENT.

(e)   Survival. In the event of any termination or expiration of this Agreement for any reason, all provisions of this Agreement whose meaning requires them to survive, including but not limited to Sections 1, 2(i), 2(j), 6, 7, 8(d), 8(e), and 9, will survive the termination or expiration of this Agreement.

9   General Provisions.

(a)   Assignment. Customer may not assign any of Customer's rights or delegate any of Customer's duties under this Agreement without the prior written consent of Digital Check. Any attempt by Customer to assign or delegate without such prior written consent will be null and void.

(b)   Third-Party Beneficiaries. The Parties hereby designate the Digital Check Indemnitees as third-party beneficiaries of Section 7(d). Otherwise, there are no third-party beneficiaries to this Agreement.

(c)   Waiver. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the waiving Party. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. Digital Check will not be liable for failure or delay in performance to the extent caused by circumstances beyond Digital Check's reasonable control.

(d)   Government End Users. The Software and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial

Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (i) only as Commercial Items and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights reserved under the copyright laws of the United States.

(e)   Export Control. Customer will not use or otherwise export or re-export the Software except as authorized by United States law and the laws of the jurisdiction(s) in which Customer is a resident or otherwise uses the Software. In particular, but without limitation, the Software may not be exported or re-exported (i) into any U.S. embargoed countries or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List or any other restricted party lists. By using the Software, Customer represents and warrants that it is not located in any such country or on any such list.

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

(g)   Injunctive Relief. Customer acknowledges and agrees that actual or threatened breach of this Agreement by Customer may cause Digital Check irreparable damage for which recovery of money damages may be inadequate, and that, in addition to any other remedies available to Digital Check, Digital Check will be entitled to seek injunctive relief to protect Digital Check's rights under this Agreement.

(h)   Governing Law; Jurisdiction. This Agreement will be governed by the laws of the State of Illinois, without reference to rules governing choice of law. Customer and Digital Check hereby irrevocably consent to the exclusive jurisdiction and venue of the federal and state courts located in Cook County, Illinois with respect to any claims, suits, or proceedings arising out of or in connection with this Agreement, and agree not to commence or prosecute any such claim, suit, or proceeding other than in the aforementioned courts; provided, however, Digital Check will have the right to seek injunctive relief pursuant to Section 9(g) in any court of competent jurisdiction.

(i)   Entire Agreement. This Agreement, together with the Order Form(s), if any, constitute the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

For information about how to contact Digital Check, please visit Digital Check's contact page at https://www.digitalcheck.com/contact/.

LAST UPDATED: May 24, 2021