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- n. “Support” means the support services provided to you pursuant to Section 6(a).
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If Customer utilizes the PGP KMS Client Access API, Customer agrees to indemnify and hold harmless PGP Corp from and against any and all losses, damages, liabilities, costs, and expenses (including attorneys' fees) suffered or incurred by PGP Corp in connection with claims, suits, or actions brought by third parties resulting from or relating to Customer's use of the PGP KMS Client Access API. At PGP Corp's request, Customer will defend, at its own expense and with counsel reasonably acceptable to PGP Corp, any third-party claim, suit, or action covered by this provision.

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- a. Bug Fixes.** Except with respect to evaluation, NFR, trial or freeware licenses (as set forth in Sections 3(b) and 3(c)), subject to the terms and conditions of this Agreement, and during the Term of your license, you may access the public support area of www.pgp.com (the “PGP Corp Public Support Site”) to (i) review the PGP Corp Public KnowledgeBase, FAQs, and other information about the Software and your Hardware Accessories, and (ii) download Bug Fixes for the version of the Software for which you have a valid license. Except as provided in Sections 5(b) and 5(c) below, you are not entitled to receive any Software Updates, Software Upgrades, or support.
- b. Maintenance for Perpetual Licenses.** If you purchased a perpetual license together with Maintenance, subject to the terms of this Agreement and during the time period covered by the Maintenance, you shall have the right to receive: (i) Software Updates and Software Upgrades via download for the version of the Software for which you have a valid license; and (ii) technical support, where the level of technical support will vary depending on the level of

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- d. Additional Services. You may purchase additional support services (including installation and other services not included herein) at additional cost and subject to availability and PGP Corp's then-current terms for such services (which you agree will govern the provision of such services).
- e. Evaluation, NFR, Trial and Freeware Support. If you have an evaluation, NFR, trial, or freeware license (as described in Sections 3(b) and 3(c)), PGP Corp may, in its discretion, provide you with access (in a public area of www.pgp.com) to a sub-set of the PGP Corp KnowledgeBase, certain FAQs, or other information about the Software. This Section 5(e) states PGP Corp's sole obligation for providing Maintenance for evaluation, NFR, trial or freeware licenses.

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- b. Software Limited Warranty.** Except with respect to evaluation, NFR, trial or freeware Software, PGP Corp warrants that, for the first sixty (60) days of the Term, the Software, when used as permitted under this Agreement and in accordance with the instructions in the Documentation, will operate substantially as described in the Documentation. PGP Corp will, at its own expense and as its sole obligation and your exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible error you report to PGP Corp during the warranty period, either by providing you with a modified version of the Software that eliminates the error, or by instructing you in methods of operating the Software that eliminate the practical adverse effect of the error. Any such error correction provided to you will not extend the original warranty period. If PGP Corp determines that it is unable to correct the error, PGP

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- 11. United States Government.** The Hardware Accessories are “commercial items” as that term is defined at 48 C.F.R. § 2.101. the Software and the accompanying Documentation are “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212 (or successor regulations), as applicable. Consistent with 48 C.F.R. § 12.212 and 48 C.F.R. §§ 227.7202-1 through 227.7202-4, PGP Corp provides the Software, the Hardware Accessories, and the Documentation to U.S. Government end users only pursuant to the terms and conditions herein. If you are acquiring the Software, the Hardware Accessories, and the Documentation on behalf of a government other than the U.S. Government, to the extent such government operates under laws similar to those U.S. laws addressed by C.F.R. § 12.212 and 48 C.F.R. §§ 227.7202-1 through 227.7202-4, those products are provided only pursuant to terms equivalent in effect to those terms in this Section.
- 12. Export Controls.** You are advised that the Software, the Hardware Accessories, and the Documentation are subject to the U.S. Export Administration Regulations. You shall not export, re-export, import, or transfer the Software (including the PGP Satellite, PGP Web Messenger, PGP PDF Messenger and/or PGP Portable components), a Hardware Accessory, or the Documentation contrary to U.S. or other applicable laws, whether directly or indirectly, and you shall not assist or facilitate others in doing any of the foregoing. You represent and warrant that (a) neither the United States Bureau of Export Administration nor any other federal agency has suspended, revoked, or denied your export privileges, and (b) you are not located in, a resident of, or a citizen of any country to which the United States has embargoed goods. You agree not to use or transfer the Software for end use relating to any nuclear, chemical, or biological weapons or missile technology unless authorized by the U.S. Government by regulation or specific license. You acknowledge it is your responsibility to comply with any and all export and import laws and that PGP Corp has no further responsibility after the initial distribution to you within the original country of distribution.
- 13. Audit.** PGP Corp reserves the right to periodically audit your use of the Software to ensure that you are using the Software in compliance with this Agreement. During your standard business hours and upon at least ten (10) days prior written notice, PGP Corp may visit your facility(ies) and you will make available to PGP Corp or its representatives any requested records pertaining to the Software, provided that PGP Corp shall be entitled to conduct no more than two (2) audits in any twelve (12) month period. The cost of any requested audit will be solely borne by PGP Corp, unless such audit discloses (a) an underpayment or amount due to PGP Corp in excess of five percent (5%) of the initial license fee for the Software, or (b) you are not substantially in compliance with this Agreement, in which case you shall pay all costs related to the audit. Any underpayment of fees disclosed by any such audit shall be paid to PGP Corp immediately, together with the applicable late

payment charges.

14. Governing Law/Arbitration. This Agreement is governed by the laws of the State of California, excluding any conflicts of law principles that would provide for the application of the law of another jurisdiction. The application of the United Nations Convention of Contracts for the International Sale of Goods and the American Law Institute's Principles of the Law of Software Contracts ("Principles") are expressly excluded. The parties agree that (i) the Principles shall have no application whatsoever to the interpretation or enforcement of this Agreement, and (ii) neither party shall invoke the Principles in whole or in part in any judicial or arbitral proceeding relating to this Agreement. Any dispute between the parties arising out of or related to this Agreement shall be settled by final, binding arbitration utilizing the dispute resolution procedures of the American Arbitration Association (AAA) in San Francisco, CA. Notwithstanding the foregoing, PGP Corp may bring suit in any appropriate forum for any breach of Sections 3 or 8 or for infringement or misappropriation of its intellectual property rights. BY AGREEING TO ARBITRATION, THE PARTIES UNDERSTAND THAT THEY ARE WAIVING CERTAIN RIGHTS AND PROTECTIONS WHICH MAY OTHERWISE BE AVAILABLE IN COURT, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO A JURY TRIAL.

15. Confidentiality.

- a. Definition. "Confidential Information" means any trade secrets or other information of a party, whether of a technical, business, or other nature (including, without limitation, information relating to a party's technology, software, products, services, designs, methodologies, business plans, finances, marketing plans, customers, prospects, or other affairs), that is disclosed to a party during the term of this Agreement and that such party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing party. Confidential Information does not include any information that: (i) was known to the receiving party prior to receiving the same from the disclosing party in connection with this Agreement; (ii) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party; (iii) is acquired by the receiving party from another source without restriction as to use or disclosure; or (iv) is or becomes part of the public domain through no fault or action of the receiving party.
- b. Restricted Use and Nondisclosure. During and after the term of this Agreement, each party will: (i) use the other party's Confidential Information solely for the purpose for which it is provided; (ii) not disclose the other party's Confidential Information to a third party unless the third party must access the Confidential Information to perform in accordance with this Agreement, and the third party has executed a written agreement that contains terms that are substantially similar to the terms contained in this Section 15; and (iii) maintain the secrecy of, and protect from unauthorized use and disclosure, the other party's Confidential Information to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature.
- c. Required Disclosure. If either party is required by law to disclose the Confidential Information or the terms of this Agreement, the disclosing party must give prompt written notice of such requirement before such disclosure, to the extent permitted by law, and assist the non-disclosing party in obtaining an order protecting the Confidential Information from public disclosure. The disclosing party will make reasonable efforts to prohibit or limit such disclosure and to protect the confidentiality of any Confidential Information eventually disclosed.

- d. Return of Materials. Upon the termination or expiration of this Agreement, or upon earlier request, each party will deliver to the other all Confidential Information that it may have in its possession or control. Notwithstanding the foregoing, neither party will be required to return materials that it must retain in order to receive the benefits of this Agreement or properly perform in accordance with this Agreement.

- 16. **Miscellaneous.** This Agreement represents the entire agreement with respect to the Software and the Documentation between you and PGP Corp, and supersedes any prior agreement, communication, proposal, representation, or understanding between the parties, provided that, in the event of any conflict between this Agreement and a hardcopy software license agreement signed by both you and a duly authorized officer of PGP Corp with respect to the Software, the terms of that software license agreement will prevail. This Agreement may not be modified except by a written amendment (not including conflicting preprinted terms of a purchase order, confirmation, or the like, which will have no effect) expressly referencing this Agreement and signed by a duly authorized officer of PGP Corp. No right or remedy of PGP Corp under this Agreement shall be deemed to be waived by PGP Corp unless such waiver is in writing and signed by a duly authorized officer of PGP Corp. If any provision of this Agreement is held invalid as written, the remainder of this Agreement will continue in full force and effect and the invalid provision will be deemed modified so as to be enforceable to the maximum extent permitted by applicable law. Unless expressly stated otherwise, in this Agreement “including” means “including but not limited to” and “discretion” means “sole and absolute discretion.” This Agreement is personal to you and may not be assigned or transferred for any reason whatsoever without PGP Corp’s express written consent, and any attempted assignment or transfer in violation of the foregoing will be void and without effect. PGP Corp expressly reserves the right to assign this Agreement and to delegate any of its obligations hereunder.
- 17. **PGP Corp Customer Contact.** If you have any questions concerning these terms and conditions, or if you would like to contact PGP Corp for any other reason, please go to www.pgp.com.