



## **MASTER SALES AGREEMENT**

This **MASTER SALES AGREEMENT** (this “Agreement”) sets forth the terms and conditions under which WolfePak Software, LLC (“WolfePak”) will provide the products and services set forth in an Order Form (“Order Form”) executed by WolfePak and the entity signing the Order Form as “Customer.” This Agreement, together with the Order Form, is effective as of the date the applicable Order Form is executed (the “Effective Date”) and constitutes a binding agreement between WolfePak and Customer. WolfePak and Customer may be collectively referred to below as the “Parties” or, individually, as a “Party.”

**1. GENERAL.** WolfePak will provide to Customer the software, hardware, design, development, hosting, and/or consulting services that are described in each Order Form approved by Customer and WolfePak, as well as other products and services as requested by Customer and agreed to by WolfePak from time to time (collectively, the “Solutions”), subject to the terms of this Agreement and the additional terms, conditions, and limitations set forth in the Order Form. In the event of a conflict between a fully executed Order Form and this Agreement, the terms of the Order Form will control. WolfePak is and shall remain an independent contractor of Customer for all purposes related to this Agreement, and this Agreement shall not be deemed to create a partnership, joint venture, or employment or agency relationship between the Parties.

### **2. SOLUTIONS.**

- A. WolfePak Proprietary Software.** If the Solution includes a perpetual or term license to WolfePak proprietary software (“WolfePak Software”), the Order Form shall specify (i) the WolfePak Software being licensed; (ii) the term of the license or subscription (“License Term”); (iii) the applicable fees; and (iv) any usage limits applicable to Customer’s use of the WolfePak Software. Subject to the terms of this Agreement, WolfePak grants to Customer, a non-exclusive, non-transferable, non-sublicensable right and license to use the WolfePak Software for internal business purposes during the License Term up to the usage limits set forth in the Order Form. The License Term begins on the date WolfePak delivers or makes available the WolfePak Software to Customer and lasts for the period specified in the applicable Order Form, unless earlier terminated. This Agreement supersedes any click-through or electronic agreements within the WolfePak Software.
- B. Equipment Lease.** As part of a Solution, Customer may lease certain hardware from WolfePak (“Equipment”) during the Lease Term. The “Lease Term” begins on the date WolfePak delivers the Equipment to Customer and lasts for the period specified in the applicable Order Form, unless earlier terminated. WolfePak shall retain ownership and title of all Equipment throughout the Lease Term and thereafter, and shall be responsible for maintaining the Equipment as specified below. Customer shall not grant, or authorize any other party to grant, any security interest in the Equipment or otherwise take any steps or fail to take any steps that may in any way encumber WolfePak’s ownership of the Equipment.
- C. Third-Party Products.** As part of a Solution, Customer may purchase third-party hardware and/or license third-party software through WolfePak (collectively, “Third-Party Products”). For the purchase or licensure of Third-Party Products, Customer may need to execute additional agreements specifying the terms and conditions of the use of the Third-Party Products. The purchase of the Third-Party Products will be subject to the terms of



this Agreement, the Order Form, and any such additional agreements.

- D. Maintenance and Support.** Subject to Customer's payment of the fees set forth in the applicable Order Form(s), WolfePak will provide the following maintenance and support services ("Maintenance & Support"): (i) telephone support Monday to Friday, 8:00am to 5:00pm Central for answering questions regarding operation of the Equipment or WolfePak Software and responding to maintenance requests; (ii) telephone emergency support for responding to maintenance requests outside the normal business hours consisting of an answering or message service, 24x7, 365 days a year at (844) 412-HELP (4357); and (iii) updates, patches, bug fixes, corrections, revisions upgrades, enhancements, modifications, improvements, releases, and new versions or models thereto, that are provided by WolfePak to other WolfePak customers. Support tickets may be submitted to WolfePak via [support@wolfepak.com](mailto:support@wolfepak.com), or calling Customer's WolfePak sales contact. Upon notification of any bug or error in the operation of the WolfePak Software, WolfePak shall take reasonable steps to modify the WolfePak Software to promptly remove reported bugs or errors that are material to operation or intended performance of the WolfePak Software. For term licenses and subscriptions, Maintenance & Support will be provided at no additional charge. For perpetual licenses, WolfePak will provide Maintenance & Support for the period set forth in the Order Form (the "Maintenance & Support Term"), subject to payment of the annual fee for Maintenance & Support ("Annual Maintenance & Support Fee"). Unless otherwise set forth in the Order Form, the Maintenance & Support Term will automatically renew for additional one-year terms unless either Party provides written notice of non-renewal at least 30 days prior to the end of the then-current Maintenance & Support Term.
- E. Service Availability.** If the Solution includes WolfePak providing access to the WolfePak Software, either by hosting the WolfePak Software for Customer or by providing the WolfePak Software as a SaaS subscription, subject to Customer's payment of the applicable annual fee, WolfePak will use commercially reasonable efforts to maintain access to the WolfePak Software 24 hours per day, 7 days a week. WolfePak represents that access to the WolfePak Software for Customer will be maintained at an availability standard of 99.95% as measured over the course of a calendar month, excluding standard exceptions ("Availability"). Standard exceptions to the Availability standard include scheduled maintenance (conducted after business hours, typically between 6:00 pm Friday and 6:00 am Monday), maintenance downtime to resolve extraordinary technical problems with the WolfePak Software or the host operating environment, force majeure (including state or federally declared natural disasters in WolfePak's physical locations), or technical difficulties attributable to any non-WolfePak computer hardware, or technical difficulties attributable to Customer's interface with the WolfePak Software unless such technical difficulties are the direct fault of WolfePak. WolfePak is not liable for any loss of data or interruption to work during scheduled or emergency maintenance periods. In the event that the service availability in a calendar month falls below the Availability standard, Customer shall be entitled to a credit against future fees equal to ten percent (10%) of that portion of the annual fee corresponding to the impacted product and the month in which such failure occurred. Customer must submit a request for credit to [support@wolfepak.com](mailto:support@wolfepak.com) within thirty (30) days from the end of the month in which such failure occurred. Should WolfePak fail to meet the Availability standard for 3 consecutive months, Customer may terminate this Agreement or the applicable Order Form by providing written notice of such termination and



receive a refund of the unused portion of any prepaid hosting or SaaS fees. The foregoing shall be Customer's sole remedy and WolfePak's sole liability for breach of the performance standards set forth in this Section.

- F. **Services.** As part of a Solution, Customer may also request, and WolfePak will provide, training, enablement and/or other services described in an Order Form ("**Services**"). WolfePak will perform all Services in a lawful, professional manner, and in accordance with each applicable Order Form. Services will be provided within the time reasonably necessary for the completion thereof in the ordinary course of business, and in substantial conformity with any schedule incorporated in the Order Form or otherwise agreed in writing by the Parties. Unless otherwise set forth in the Order Form, all Services will be rendered on a time and materials basis. WolfePak will not exceed the total time purchased without prior written approval from Customer. In addition to any particular items listed in an applicable Order Form, Customer agrees to provide reasonable cooperation and information as necessary to permit WolfePak to perform the Services. Customer will reimburse WolfePak for pre-approved travel and expenses (at cost) incurred in connection with the Services.
- G. **Changes to Scope of Solutions.** Changes to the Solutions covered by an Order Form shall be memorialized in a writing signed by both Parties and WolfePak will not be obligated to commence or continue work in connection with or affected by any changes until the additional fees and/or impact on the schedule for the project is agreed to by the Parties in writing. If extra work is required of WolfePak because of conditions that could not have been reasonably anticipated by WolfePak, or because Customer's existing hardware or software are not sufficient without upgrades, additions, or modifications, WolfePak will give Customer written notice thereof prior to performing the extra work or implementing such upgrades, additions, or modifications, and will, upon request, provide an estimate for the work. Except as otherwise agreed, such work will be at WolfePak's standard hourly rates.

### 3. CUSTOMER OBLIGATIONS.

- A. **Customer Responsibilities.** Customer will perform those tasks and assume those responsibilities specified in this Agreement and each applicable Order Form. Customer acknowledges that the success of the Solution depends on Customer's timely and effective satisfaction of its responsibilities, as well as timely responses from Customer to requests for information, decisions, testing, and approvals. WolfePak will rely on the decisions and approvals of Customer in connection with WolfePak's performance under this Agreement. Customer is responsible for abiding to the project timeline as determined during the envisioning phase or project kick off. Should the Customer's delay alter this timeline, then WolfePak has the right to change the timeline to match WolfePak resource availability, bill Customer for services that would have been rendered during the original agreed timeline or bill Customer for unrealized hours associated with Customer delays. Customer is responsible for notifying WolfePak of any security or availability related issues with systems managed by WolfePak. Customer is responsible for notifying WolfePak in the event that suspicious activity or a breach is identified within any system that WolfePak has access to. WolfePak shall not be responsible for the failure of Customer to comply with environmental and site requirements, denial or hindrance of access to the installation, failure or unavailability of third party materials necessary for WolfePak to perform hereunder, unforeseen or concealed conditions, use by Customer of its existing hardware which fails to comply with the



published specifications of the applicable manufacturer, or fire or theft of materials, equipment or tools.

- B. **Authorized Users.** If the Order Form contains a user limitation, Customer shall provide WolfePak with an initial list of all users authorized to use the Equipment or access the WolfePak Software (“Authorized Users”). WolfePak shall create a user account for each Authorized User and coordinate with Customer in establishing the rights and permissions for each Authorized User. Customer is responsible for notifying WolfePak in the event that an Authorized User’s access needs to be removed. Authorized User accounts shall be used solely by the individual associated with such account. If Customer requires additional or changes to Authorized Users, Customer shall notify WolfePak in writing with the information required for each new or changed Authorized User. The addition of new Authorized Users may be subject to additional fees and charges.
- C. **Restrictions on Use.** Except as otherwise expressly provided in this Agreement, Customer shall not (and shall not permit any third party to): (a) sublicense, sell, resell, transfer, assign, distribute, share, lease, make any external commercial use of, or outsource the WolfePak Software, or use the WolfePak Software on a timeshare or service bureau basis, in an application service provider, or in a managed service provider environment; (b) copy the WolfePak Software onto any public or distributed network, except for secure cloud computing environments; (c) cause the decompiling, disassembly, or reverse engineering of any portion of the WolfePak Software, or attempt to discover any source code or other operational mechanisms of the WolfePak Software; (d) modify, adapt, translate or create derivative works based on any part of the WolfePak Software; (e) modify any proprietary rights notices that appear in the WolfePak Software or components thereof; or (f) use the WolfePak Software in violation of any applicable laws or regulations.
- D. **Acceptance.** Upon receipt of notice from WolfePak that a Solution is ready for testing, Customer will perform acceptance testing to confirm conformity with its applicable Order Form. Customer will notify WolfePak of non-conformities within 30 days of receipt of notice or other time period specified in the applicable Order Form (“Acceptance Testing Period”). Such notice will be in writing, and will provide information regarding such non-conformity, including documentation reasonably requested by WolfePak to evaluate and correct such non-conformity. WolfePak will correct such non-conformities within 7 days of Customer’s notice or other time period specified in the applicable Order Form. Customer will re-test for non-conformities within 20 days of receipt from WolfePak (“Re-Test Period”). Acceptance will occur when Customer provides written notice to WolfePak of the conformance of the Solution to its Order Form (“Acceptance”). If Customer fails to provide its Acceptance or rejection within the Acceptance Testing Period or the Re-Test Period, the Solution will be deemed accepted. Without limiting the foregoing, for Solutions that are intended to operate in conjunction with Solutions to be provided by WolfePak at a later time, Customer shall have the right to complete regression testing upon receipt of each subsequently delivered Solution to confirm that the previously accepted Solutions are operating properly in conjunction with subsequently delivered Solutions.

#### 4. WOLFEPAK OBLIGATIONS.

- A. **Installation and Setup.** For any Equipment leased by Customer, WolfePak shall install the Equipment, or provide the Equipment to Customer for installation, and configure, or assist



Customer with the configuration of, any WolfePak Software licensed by Customer according to the schedule specified in the Order Form. If no schedule is specified, WolfePak shall exercise commercially reasonable efforts to install the Equipment and configure the WolfePak Software in a timely manner. WolfePak shall reasonably cooperate with Customer in establishing locations for installation and configuration of the Equipment and shall exercise commercially reasonable efforts to configure and install the Equipment with minimal interruptions to Customer's ongoing business operations.

- B. **Authorized Applications.** WolfePak shall configure the Equipment to operate with any third-party applications set forth in the Order Form (the "Authorized Applications"). Customer may request that additional applications be included with the Authorized Applications by providing WolfePak with written notice of the additional applications to be included with the Authorized Applications. To the extent any fees or expenses are to be incurred based on use or installation of the Authorized Applications, Customer shall be responsible for any such fees or expenses, which shall be billed to Customer.
- C. **Equipment Maintenance.** WolfePak shall take commercially reasonable efforts to maintain the Equipment in working order during the initial Lease Term set forth in the Order Form. Customer shall notify WolfePak immediately if any Equipment fails, ceases to function or is otherwise defective. WolfePak shall either repair or replace such failed, non-functioning or defective Equipment at WolfePak's sole discretion. WolfePak shall not, however, be responsible for repairs or replacement of any Equipment that is lost, damaged or stolen, or that becomes inoperative due to negligent use or misuse of the Equipment. Customer shall be responsible for any repairs or replacements of the Equipment during any renewals following the initial Lease Term.

## 5. FEES.

- A. **Pricing.** Customer will be invoiced for the amounts set forth in an Order Form (the "Fees"). Customer shall pay all invoices within 30 days of receipt in US dollars and free of any withholding tax, currency control, or other restrictions. Any invoice not paid within 30 days after it is sent to Customer will accrue interest at 1.5% per month or, if lower, the highest rate allowed by law. For Solutions provided by WolfePak, unless otherwise set forth in an applicable Order Form, WolfePak shall invoice Customer under the following standard terms:
  - i. WolfePak Software. For perpetual licenses, unless otherwise set forth in the Order Form, WolfePak shall submit an invoice for the one-time License Fee and the Annual Maintenance & Support Fee for the first year of Maintenance & Support upon execution of the Order Form and shall submit invoices for the Annual Maintenance & Support Fee annually thereafter. For term licenses and SaaS subscriptions, upon execution of the Order Form, WolfePak shall submit an invoice for the Annual License Fee, the Annual Hosting Fee, and the SaaS Subscription Fee, as applicable, for the first year and shall submit invoices annually for each subsequent 12-month period thereafter. If Customer's usage of the WolfePak Software is in excess of the usage limits set forth in the Order Form, Customer may be billed for those overages. For on-premises deployments, Customer agrees to report any such overage to WolfePak and/or allow WolfePak to audit Customer's

usage to confirm compliance. For software hosted by WolfePak, WolfePak may monitor Customer's usage of the WolfePak Software for any overage.

- ii. Equipment Lease and Third-Party Products. Execution of the Order Form constitutes authorization for WolfePak to purchase or otherwise obtain the Equipment or Third-Party Products set forth in the Order Form and WolfePak shall submit an invoice for a non-refundable deposit ("Deposit") that must be paid by Customer prior to delivery of such Equipment or Third-Party Products. For purchases made through WolfePak, WolfePak will invoice the purchase amount upon delivery of the Equipment or Third-Party Products, less the Deposit. For leases, WolfePak will invoice the initial lease payment upon delivery of the Equipment or Third-Party Products and monthly or annually thereafter as set forth in the Order Form. Upon return of the Equipment or Third-Party Products, WolfePak will refund the Deposit. If Customer cancels an Order Form prior to taking delivery of the Equipment or Third-Party Products, Customer will only be entitled to a refund of 70% of the Deposit. The Fee set forth in the Order Form is based in part on the current data charges assessed by data service providers. All data service charges are passed through directly to Customer with no mark-up or increase by WolfePak. Customer is solely responsible for any increase in the Fee due to an increase in the data service charges. Data fees are charged to Customer as pass-through charges.
- iii. Services. For Services performed on a time and materials basis, Customer will be invoiced monthly in arrears for actual hours incurred at the rates set forth in the applicable Order Form, or, if no rate is specified, at WolfePak's standard hourly rates. For Services performed on a fixed fee basis, unless a different schedule is set forth in the applicable Order Form, Customer shall be invoiced 100% upon execution of the Order Form.

- B. **Reimbursable Expenses.** Except as otherwise provided in an applicable Order Form, Customer shall be responsible for all the necessary and reasonable travel, lodging, and related out-of-pocket expenses that WolfePak's employees or independent contractors may incur in performing the Solutions for Customer ("Reimbursable Expenses"). Travel time will be billed at 50% of regular hourly rates. Customer will be charged for automobile mileage at the current allowable federal rate (*i.e.*, the rate allowed for tax purposes). WolfePak will, upon request, provide Customer with copies of receipts, invoices or other documentation evidencing Reimbursable Expenses.
- C. **Taxes.** Customer will pay any and all applicable taxes, however designated, incurred as a result of or otherwise in connection with this Agreement or the Solutions, excluding taxes based on the net income of WolfePak. In the event Customer is a tax-exempt entity, Customer shall provide appropriate documentation to WolfePak as evidence of its tax-exempt status, and upon which, Customer will not be charged the applicable taxes.

## 6. OWNERSHIP RIGHTS.

- A. **Ownership of Data.** The Parties expressly agree that the data pertaining to Customer's services generated and/or maintained under this Agreement or any Order Form shall be and remain the sole property of Customer (the "Customer Data"). WolfePak shall not take any right, title or interest in the Customer Data. Customer grants to WolfePak the limited right



to use or refer to the Customer Data to perform its obligations under this Agreement and for promotional and commercial purposes, including discussing efficiency increases based on use of the WolfePak Software; provided that, WolfePak does not disclose the identity of Customer in association with any such disclosures. Customer acknowledges and agrees that WolfePak may aggregate Customer Data with data from other customers and/or other sources and use such aggregate data in existing or future WolfePak offerings. Notwithstanding the foregoing, WolfePak shall process the Customer Data in a manner that renders the form and source of the Customer Data unidentifiable to any other customer or third party.

- B. Property Rights Retained by WolfePak.** Each Party shall retain ownership of all its previously existing intellectual property rights. Customer acknowledges that WolfePak may incorporate certain computer code, methods, inventions, trade secrets, concepts and know-how (“WolfePak IP”) into any source code, compiled code, custom software or other programming or design work provided by WolfePak to Customer (“Work Product”). The WolfePak IP was not and will not be created solely for use in or with such Work Product. Customer acknowledges that WolfePak IP will not become the property of Customer, and that the rights therein are part of WolfePak’s stock in trade and general know how that will remain the sole and unencumbered property of WolfePak, without any claim of Customer thereto, other than a perpetual, paid-up license to use the WolfePak IP as incorporated in, and only as incorporated in, the Work Product. Except for Customer Data, all materials including, but not limited to, the WolfePak Software or any other computer software in object code or source code, script, programming code, data, HTML script or other information or ideas developed under this Agreement and/or any Order Forms shall be WolfePak’s exclusive property, including, without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights and shall not be claimed to be a work-for-hire. Customer shall provide reasonable assistance to WolfePak in securing and protecting its interests associated with the WolfePak Software, Equipment or other proprietary rights, including executing documents as necessary to secure such rights.
- C. Third-Party Software.** Customer expressly acknowledges that existing proprietary software of WolfePak, and software of third parties, which is provided by WolfePak for use in conjunction with any Work Product (including subsequent versions of proprietary software of WolfePak or third-party software, and enhancements thereof provided by WolfePak), is and shall remain the sole and exclusive property of WolfePak or such third parties, subject only to Customer’s rights pursuant to its license agreement(s) for such software.
- D. Feedback.** During the Term of this Agreement, Customer or its Authorized Users may elect to provide WolfePak with feedback, comments, and suggestions with respect to the WolfePak Software (“Feedback”). Customer agrees, on behalf of itself and its Authorized Users, that WolfePak shall be free to use, reproduce, disclose, and otherwise exploit any and all such Feedback without compensation or attribution to Customer or such Authorized User.

## **7. LIMITED WARRANTY.**

- A. Mutual Warranty.** Each party warrants that it has the full right and legal authority to enter into, execute, and perform its obligations under this Agreement and that no pending or



threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.

- B. WolfePak Software Warranty.** WolfePak warrants that the WolfePak Software will perform substantially in accordance with the technical manuals, training materials, specifications, or other documentation applicable to the WolfePak Software and made available to you by WolfePak for the 90-day period following receipt of the WolfePak Software when used on the recommended hardware configuration. Customer's exclusive remedy and WolfePak's entire liability under this warranty shall be limited, at WolfePak's option, to either the repair or replacement of the WolfePak Software or to refund the License Fee paid by Customer for the WolfePak Software. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, THE WOLFEPAK SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER.
- C. WolfePak Services Warranty.** WolfePak warrants that the Services and Maintenance & Support will be performed in a professional and workmanlike manner, in accordance with all applicable laws, and that any Work Product provided by WolfePak will substantially conform to generally accepted industry standards for similar work. If WolfePak breaches the foregoing warranty, Customer's exclusive remedy will be for WolfePak to re-perform the particular Solution, at no cost to Customer, to bring them into compliance with such warranty. Any claim for breach of the foregoing warranty must be made by written notice to WolfePak within 90 days after discovery of the breach, and in no event more than 12 months after Acceptance of the Solution with respect to which the claim is made. IF WOLFEPAK IS NOT ABLE TO REMEDY ANY BREACH OF WARRANTY AFTER A REASONABLE NUMBER OF ATTEMPTS, THEN WOLFEPAK'S LIABILITY TO CUSTOMER SHALL NOT, IN ANY EVENT, EXCEED THE AMOUNT ACTUALLY PAID TO WOLFEPAK BY CUSTOMER FOR THE PARTICULAR SOLUTION AND/OR WORK PRODUCT INVOLVED.
- D. Security Warranty.** WolfePak warrants that it shall not install or knowingly permit to be installed into any of the materials provided as part of a Solution or into Customer's operating environment, any virus, time bomb, back door or other disabling or harmful device and WolfePak covenants that it shall use all commercially reasonable efforts to prevent any such device from being incorporated into Customer's operating environment. WolfePak or its hosting providers have implemented commercially reasonable measures to ensure that Customer Data will be maintained accurately and safeguarded as well as technical and physical controls to protect Customer Data against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors employed by WolfePak, whether by accident or otherwise.
- E. Limitations.** Notwithstanding anything to the contrary, WolfePak will not be liable or responsible for: (i) any modification of any Solution by any party other than WolfePak; (ii) non-compliance with any law as a result of a modification or change by any other party other than WolfePak; (iii) any use of a Solution other than in accordance with the applicable Order Form and manuals, instructions and other materials provided to Customer by WolfePak; or (iv) failures or defects in any software or other tools provided to WolfePak by Customer or third parties. Customer understands that WolfePak is providing the Solution in relation to hardware, software, systems and data that have been selected by Customer, and supplied to

Customer by third parties, and for which WolfePak has no responsibility; WolfePak will have no obligation or liability to test for, identify, or remediate any deficiency in, any such hardware, software, systems or data, or for any loss of data resulting therefrom. For the purposes of on-premises WolfePak Software installations, Customer expressly represents and warrants to WolfePak that it does, and will continue to, regularly perform back-ups of the Customer Data, and that in no event will WolfePak be liable for recovery or restoration of data.

F. **DISCLAIMER.** THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN, AND ARE IN LIEU OF, AND WOLFEPAK HEREBY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE (INCLUDING TIME OF PERFORMANCE), RESPECTING SOLUTIONS RENDERED OR WORK PRODUCT PROVIDED PURSUANT TO THIS AGREEMENT OR ANY ORDER FORM. IN ADDITION, WOLFEPAK MAKES NO WARRANTIES REGARDING ANY EQUIPMENT OR THIRD-PARTY PRODUCTS PROVIDED TO OR USED BY CUSTOMER; IF PROVIDED BY WOLFEPAK, SUCH EQUIPMENT OR THIRD-PARTY PRODUCTS ARE PROVIDED ON AN “AS IS” BASIS, AND ARE SUBJECT TO THE TERMS AND CONDITIONS PROVIDED BY THE THIRD-PARTY VENDORS AND THE ONLY WARRANTIES WITH RESPECT THERETO, IF ANY, ARE SOLELY THOSE OF SUCH THIRD PARTY.

8. **CONFIDENTIALITY.** Except as otherwise provided in this Agreement, the Parties shall not disclose to employees without a need to know or to any third parties, information received from the other Party which has been identified as proprietary or confidential, or which by the nature of the circumstances surrounding disclosure, should in good faith be understood to be proprietary or confidential, including, without limitation, information regarding the other Party’s business, pricing, know-how, documentation, manuals, or other printed material (“Confidential Information”). Confidential Information shall not include any information which the receiving Party can establish (i) was in the public domain prior to disclosure to the receiving Party, (ii) comes into the public domain through no act or omission of the receiving Party, (iii) is disclosed to the receiving Party without restriction by a third party who has a legal right to make such disclosure, (iv) was rightfully known to or already in the possession of the receiving Party prior to disclosure to the receiving Party, or (v) was derived by the receiving Party without the aid of or reference to the disclosing Party’s Confidential Information. The obligations of the Parties under this Section shall survive termination of this Agreement for a period of 2 years.

## 9. TERM; TERMINATION.

A. **Term.** Unless a longer term is set forth in an applicable Order Form, the term of this Agreement shall be for 1 year from the Effective Date (“Initial Term”) and, thereafter, automatically renewing for successive 1 year periods (“Renewal Term”). The Initial Term and any Renewal Term may be referred to as the “Term.” Either Party may decide not to renew this Agreement by notifying the other Party of its intent not to renew at least 60 days prior to the end of the Initial Term or the then current Renewal Term.

B. **Termination.** Either Party may terminate this Agreement or any applicable Order Form upon breach by the other Party of any material provision of an applicable Order Form or

this Agreement, which has not been cured within 30 days after receipt of written notice of such default. Further, WolfePak shall have the ability to terminate this Agreement for cause if Customer: (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is dismissed or vacated within 45 days after filing; or (iii) is dissolved or liquidated or takes any corporate action for such purpose, makes a general assignment for the benefit of creditors, or has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction. If Customer has executed multiple Order Forms, termination of an Order Form shall not automatically terminate this Agreement nor any other Order Form.

- C. **Duties Upon Termination.** Upon any termination of the provision of Solutions pursuant to this Agreement: (i) for any leased Equipment, Customer shall immediately return all such Equipment to WolfePak and pay for any damaged or missing Equipment, the value of which shall be charged to Customer on a prorated basis; (ii) for any licenses software, Customer shall immediately cease using such software and uninstall and/or return any copies thereof to WolfePak; and (iii) for any Services being performed by WolfePak, Customer will pay WolfePak for that portion of the Services rendered through the effective date of termination. Termination of the provision of Solutions pursuant to this Agreement shall not affect or impair the other rights and obligations of the Parties pursuant to this Agreement. In the event of termination for cause by WolfePak, Customer will not be entitled to the return of any portion of the fees paid by Customer. Following termination of this Agreement, Customer will have 30 days to request a copy any Customer Data in WolfePak's possession, and, if requested, WolfePak shall provide such Customer Data to Customer in the form and format such data is available via the WolfePak Software at the time of termination. After the 30-day period, WolfePak has no obligation to maintain the Customer Data and will destroy all Customer Data in its possession or under its control in accordance with its data retention policies. To the extent any additional services are required to migrate Customer Data to Customer, WolfePak shall provide data migration services at the standard hourly service rates of WolfePak.

**10. SOLICITATION OF PERSONNEL.** During the Term of this Agreement and for a period of 1 year thereafter, neither Party will directly or indirectly, without prior written consent of the other, (i) induce any employee of the other to terminate his or her employment, (ii) offer employment or independent contractor engagement to any employee of the other, or (iii) offer any former employee of the other employment for a period of 6 months immediately following such employee's termination. To compensate a Party whose employee has been solicited, hired, or induced to terminate his or her employment by the other Party, and not in the way of liquidated damages but to compensate the non-breaching Party for the costs of hiring and training a replacement employee, the breaching Party shall pay to the non-breaching Party an amount equal to 12 months of the salary of the employee who was solicited, hired, or induced to terminate.

**11. ASSIGNMENT.** Neither Party may assign any interest in this Agreement or any of its duties or rights under this Agreement without the prior written consent of the other except that: (i) each Party may assign its rights and obligations to an Affiliate of such Party upon advance written notice to the other; (ii) either Party may assign its rights and obligations upon written advance notice to the other in connection with any merger, acquisition, or sale of all or substantially all

of its assets; or (iii) WolfePak may retain subcontractors to perform its obligations hereunder in whole or in part, in its sole discretion. Each Party that so assigns this Agreement (or any rights or obligations hereunder) will remain liable for its assignee's failure to perform its obligations in accordance with this Agreement. Any assignment in violation of the terms of this Section will be void. For purposes hereof, "Affiliate" means any entity controlling, controlled by or under common control with a party, where "control" means the right to exercise, directly or indirectly, 50% or more of the voting rights attributable to the ownership of the controlled entity.

## 12. LIMITATION OF LIABILITY.

- A. **DISCLAIMER OF SPECIAL DAMAGES.** IN NO EVENT WILL THE PARTIES OR THEIR OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS OR SERVICE INTERRUPTION, COST OF COVER, OR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT OR ANY SUBSEQUENT DOCUMENT ISSUED UNDER THIS AGREEMENT (INCLUDING WITHOUT LIMITATION ORDER FORMS), EVEN IF THE PARTY OR ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- B. **LIMITATION OF LIABILITY.** THE MAXIMUM LIABILITY OF EITHER PARTY FOR ANY REASON AND UPON ANY CAUSE OF ACTION OR CLAIM IN CONTRACT, TORT, OR OTHERWISE, WILL BE LIMITED TO THE AGGREGATE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO WOLFEPAK UNDER THE APPLICABLE ORDER FORMS TO WHICH SUCH CAUSE OF ACTION OR CLAIM RELATES IN THE ONE-YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THIS LIMITATION ON DIRECT LIABILITY UNDER THIS SECTION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY DUTY, MISREPRESENTATION, CLAIMS FOR FAILURE TO EXERCISE DUE CARE IN THE PROVISION OF SOFTWARE OR THE PERFORMANCE OF THE SOLUTIONS, AND OTHER TORTS. ANY FEES PAID OR PAYABLE TO WOLFEPAK FOR THE SOLUTIONS SHALL NOT COUNT AGAINST CUSTOMER'S CAP.
- C. Notwithstanding anything in this Agreement to the contrary, the disclaimers and limitations in this Section shall not apply with respect to (i) the Party's indemnification obligations under Section 13, (ii) a Party's breach of Section 8 (Confidentiality), or (iii) a Party's gross negligence, fraud or willful misconduct.

## 13. INDEMNITY.

- A. **Mutual Indemnification.** Each Party will, at its sole expense, defend the other Party and such other Party's officers, directors, agents and employees from and against any third party claim, action or lawsuit ("**Claim**"), and indemnify and hold harmless the other Party and such other Party's officers, directors, agents and employees from any loss, cost or damages payable to such third parties, and from any expense (including reasonable attorneys' and other professional fees) incurred in defending such Claim, relating to or

arising out of bodily injury or death of a person or damage to tangible property to the extent proximately caused by the negligence or willful misconduct of such Party.

- B. WolfePak Indemnification.** WolfePak will, at its sole expense, defend Customer and Customer's officers, directors, agents and employees from and against any Claim, and indemnify and hold harmless Customer and Customer's officers, directors, agents and employees from any loss, cost or damages payable to such third parties, and from any expense (including reasonable attorneys' and other professional fees) incurred in defending such Claim, to the extent such Claim alleges that any portion of the Solutions infringes or misappropriates any presently existing United States patent, copyrights, trade secret or other intellectual property right.
- C. Customer Indemnification.** Customer will, at its sole expense, defend WolfePak and WolfePak's officers, directors, agents and employees from and against any Claim, and indemnify and hold harmless WolfePak and WolfePak's officers, directors, agents and employees from any loss, cost or damages payable to such third parties, and from any expense (including reasonable attorneys' and other professional fees) incurred in defending such Claim, relating to or arising out of (i) Customer's breach of this Agreement, (ii) Customer's violation of applicable law, (iii) Customer's gross negligence, fraud or willful misconduct, (iv) damage to real or tangible personal property, or for bodily injury, or both, to the extent such damage or injury is attributable to the negligence or misconduct of Customer or any breach by Customer of its obligations under this Agreement, or (v) an allegation that any Customer application, materials, data, content or other information infringes, misappropriates or otherwise violates any intellectual property, proprietary or other rights of any third party.
- D. Exclusions.** Neither Party will be obligated to so indemnify if the claimed infringement or misappropriation is caused by the other Party's (i) misuse or modification of such materials, (ii) failure to use corrections or enhancements made available by the Party from which indemnity is claimed, (iii) use of the materials in combination with any Product or information not provided or developed by the Party from which indemnity is claimed, (iv) distribution, marketing or use of the materials for the benefit of any third party or (v) following instructions, specifications or directions provided by the Party from which indemnity is claimed.
- E. Procedure.** In the event of any such liability, the indemnifying Party will select counsel reasonably acceptable to the indemnified Party (such consent not to be unreasonably conditioned, withheld or delayed), and all costs of such counsel will be borne by the indemnifying Party. The indemnified Party may at its sole option and at its own expense engage its own separate counsel to act as co-counsel on its behalf. The exercise by the indemnified Party of its option to select co-counsel will in no way limit or modify the indemnifying Party's obligations set forth in this Section. Each Party reserves the right to provide a defense of any action subject to a reservation of rights, including the right to obtain contribution or indemnity from the other Party (including for attorney's fees and costs) to the extent it is determined that such other Party is wholly or partially responsible for the loss or damage giving rise to the claims asserted in such action. Upon notice of an alleged infringement or if in the indemnifying Party's opinion such a claim is likely, or alternatively, if the indemnified Party's rights hereunder are restricted by the indemnifying

Party or a valid court order, then the indemnifying Party shall at its option and sole expense: (i) procure the right for the indemnified Party to continue using the alleged infringing material; or (ii) replace the material with non-infringing material which is equivalent in features, functionality and quality; or (iii) modify the material to make it non-infringing while retaining all original features, functionality and quality; or (iv) refund the indemnified Party fees paid for the infringing material based on a depreciated value over 3 years. Notwithstanding the foregoing, WolfePak will not indemnify, defend, or hold harmless the Customer for Customer's use of the Solution or WolfePak Software that is in or purportedly in violation of any law, whether local, State/Provincial, or Federal, of the United States or any other country. As WolfePak cannot predict every possible circumstance of how the Customer will use the Solution or WolfePak Software, it is the Customer's responsibility to ensure its use is not in violation of law.

#### 14. MISCELLANEOUS.

- A. **Entire Agreement.** This Agreement, including any applicable addenda, amendments, exhibits, and Order Forms executed in accordance herewith, constitute the complete and exclusive statement of the terms and conditions of the agreement between WolfePak and Customer with respect to the Solutions, and supersedes all other agreements with respect to the subject matter hereof.
- B. **Amendments, Modifications and Waiver.** This Agreement may not be modified, altered or amended except by a written amendment duly executed by the authorized representatives of both Parties. The terms of any purchase order or other document issued by Customer shall not be binding on WolfePak and shall not modify or become part of this agreement, or otherwise become a part of any agreement or contract between the parties. Neither Party will, by the lapse of time, and without giving written notice, be deemed to have waived any of its rights under this Agreement. No waiver of a breach of this agreement will constitute a waiver of any prior or subsequent breach of this Agreement.
- C. **Notices.** Any notices under this Agreement shall be in writing and shall be deemed to have been delivered: (i) upon personal delivery; (ii) 5 business days after mailing; or (iii) 3 business days after sending by email. Notices shall be sent to the address set forth in the Order Form. A Party's address or designee for purposes of any notices may be changed by written notice to the other Party.
- D. **Electronic Signatures.** The Parties consent to electronic signatures for the purpose of executing Order Forms by e-mail or other electronic means, subject to compliance with any applicable laws, rules or regulations. Any such documents that are delivered electronically and accepted are deemed to be "in writing" to the same extent and with the same effect as if the Order Form had been signed manually.
- E. **Marketing.** Customer grants to WolfePak an irrevocable, perpetual, worldwide, royalty-free right to include Customer's name and logo in WolfePak's marketing, promotional materials, and customer lists. Either party may include the name and logo of the other party in lists of customers or vendors in accordance with the other party's standard guidelines.
- F. **Construction and Headings.** This Agreement, and any Order Form or other document issued under this Agreement, will not be construed more strongly against either Party

regardless of which is more responsible for its preparation. The Section headings of this Agreement are for convenience only and will not affect the construction of this Agreement.

- G. **Force Majeure.** In no event shall either Party be liable for any delay or failure to perform under an Order Form to the extent such failure or delay is due to causes beyond its reasonable control, including, but not limited to, acts of god, flood, fire, natural disaster, accident, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the Effective Date, complete or partial government shutdown, passage of a law or act of government, strikes or other labor disturbances, or national or regional shortage or disruption of adequate power, telecommunications, or transportation.
- H. **Governing Law.** This Agreement will be interpreted in accordance with the laws of the State of Texas, without regard to principles of conflicts of law. All disputes arising under this Agreement, and any document issued under this Agreement, shall be brought in the state or federal courts located in Taylor County, Texas, which shall be the sole and exclusive forum and venue for any litigation. The Parties hereby waive all rights to a jury trial for any disputes. The Parties stipulate that the United Nations Convention for the International Sale of Goods and Article 2 of the Uniform Commercial Code shall not apply to this Agreement.
- I. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions of this Agreement shall be interpreted so as best to reasonably effect the intent of the Parties. The Parties further agree to replace any such invalid or unenforceable provisions with valid and enforceable provisions designed to achieve, to the extent possible, the business purposes of such provisions.
- J. **Insurance.** During the term of this Agreement, the Parties shall, at their own expense, carry and maintain policies of insurance meeting or exceeding industry recommended policies which may include, but not limited to, general commercial liability, automobile liability, cyber liability, errors and omissions, worker's compensation, and umbrella liability. Upon reasonable written request, the Parties shall provide a certificate of insurance evidencing the insurance requirements herein.