

PUSHMX

SOFTWARE LICENSE AND SERVICES AGREEMENT

1. THE PARTIES

This Software License and Services Agreement is made by and between Simplifying Excellence dba PushMX Software (“**PushMX**”), a California LLC with offices at Suite 200, 871 Coleman Ave, San Jose, California 95110, and the “**Customer**” identified on the Order Confirmation.

2. PURPOSE OF THE AGREEMENT

(A) PushMX has developed or acquired rights to certain software used to manage data and workflow.

(B) Customer desires to acquire an internal-use license to certain PushMX software in binary code form, together with certain associated services, on the terms and conditions set forth in this Agreement, and PushMX agrees to grant such license and provide such services on the terms stated.

3. SCOPE OF THE AGREEMENT

This Agreement defines the entire understanding and agreement of the parties with respect to PushMX, as an application service provider, supplying automated support for loan origination processes utilizing PushMX’s proprietary software to Customer, as well as to supply that software identified on the Order Confirmation (as may be amended and updated from time to time by PushMX). In exchange, Customer agrees to pay PushMX the fees and charges specified in Article 9 below.

AGREEMENT

In consideration of the mutual agreements, undertakings, and covenants contained in this Agreement, the parties, intending to be legally bound hereby, agree as follows:

4. DEFINITIONS

4.1 “Affiliate” means any corporation, firm, partnership or other entity, whether de jure or de facto, that directly or indirectly owns, or is owned by, or is under common ownership with PushMX or Customer (as applicable) to the extent of at least fifty percent of the equity having the power to vote on or direct the affairs of the entity; and any person, firm, partnership, corporation or other entity actually controlled by, controlling, or under common control with PushMX or Customer, as applicable.

4.2 “Agreement” means this Software License and Services Agreement, together with all exhibits, schedules, addenda, and Order Confirmations issued by PushMX.

4.3 “Borrower” means an individual who makes an application for or receives funds in the form of a loan using the services of Customer or its Affiliates.

4.4 “Confidential Information” means (i) the Software, (ii) all Information, and (iii) other materials that PushMX furnishes to Customer, and derivatives thereof. Confidential Information does not include information that (a) was rightfully in possession of or known to the other party and its Affiliates, subsidiaries, employees, officers, directors, partners, agents, independent contractors, attorneys, accountants, auditors and financial advisors, without any obligation of confidentiality prior to receiving it under the terms of this Agreement, as evidenced by contemporaneous written records, (b) now is or hereafter becomes publicly known without breach of an obligation of confidentiality, (c) is provided to Customer on a non-confidential basis by a third party which is not itself under any confidentiality obligation with respect to the information, or (d) is independently developed by Customer without use of or reference to any Confidential Information.

4.5 “Data” means all data entered by Customer into the System.

4.6 “Information” means any and all information and materials regarding, relating to, and in connection with the Software and development, marketing, and production activities with respect thereto. Information includes, without limitation, trade secrets and know-how, and copyrighted, patented, trademarked, or otherwise protected proprietary information. Information includes, without limitation, any one or more of the following and the information contained therein:

- (A) computer program manuals and instruction (of every form and contained on any storage or communication media);
- (B) computer software (of every form and contained on any storage or communication media);
- (C) operation sequence information;
- (D) product design and technology including mathematical equations, physical explanations, software related drawings and flow diagrams, and computer program set up procedures;
- (E) specifications, including but not limited to those relating to software and processes, materials, and performance;
- (F) system design documents and drawings;
- (G) test data;
- (H) written or otherwise recorded technical assistance;
- (I) any other data generally known as engineering, operations, and technical information;
- (J) sales and promotion information;
- (K) customer engineering;
- (L) operations engineering design, planning, and controlling;
- (M) Internet or other interface with service provider or its services;

- (N) installation, initialization, and start-up running procedures;
- (O) maintenance and trouble shooting information;
- (P) business plans and practices;
- (Q) financial data;
- (R) lending criteria, loan terms, and loan production data;
- (S) know how;
- (T) lists relating to customers, contacts, and vendors and service providers;
- (U) underwriting guidelines.

4.7 "Borrower Information" means all information related to a Borrower that is provided or developed by Borrower or Customer, regardless of whether Customer's relationship with the Borrower ceases, including any nonpublic personal information as defined by federal, state, or other applicable law (including but not limited to the Gramm-Leach-Bliley Act, as it may be amended, and any regulations promulgated thereunder), and any other Borrower information that is protected by applicable law.

4.8 "Order Confirmation" means the documentation generated by PushMX identifying the Customer and setting forth the applicable business terms and additional legal terms, including but not limited to the following: Effective Date, licensed Software and Add-Ons, Services, fees, payment terms, and other terms as specified by PushMX.

4.9 "Software" means object code versions of the specific computer software products identified on Appendix A and specified on the applicable Order Confirmations, including both "master" software and "end user" or "client" software, together with any enhancements, modifications, and upgrades thereto, and other associated software and components provided by PushMX to Customer during the Term (whether included or for additional fees), and including any custom interfaces, processing enhancements, additional matrices, and modifications.

4.10 "System" means the Software together with the hardware that hosts, runs, or uses the Software (including but not limited to Customer's computer systems, the PushMX e-commerce server, and any hosting service as applicable).

4.11 "Third-Party Software" means any software used directly or indirectly by Customer in connection with its use of the PushMX Software, whether supplied by Customer or by any other party (including PushMX).

5. LICENSES

5.1 Scope. The licenses under this Agreement relate to (a) PushMX's server-based "master" software, which may be hosted by Customer or by PushMX as set forth on the Order Confirmation on the terms set forth in Appendix A-1 for use by Customer as an end-user business entity, (b) PushMX's workstation-based "client" software for use by Customer's employees and individual contractors, (c) PushMX's services related thereto, and (d) Borrower Information and other data and Information, including Confidential Information.

5.2 Master License Grant From PushMX To Customer. PushMX hereby grants to Customer a fee-based, non-exclusive, nontransferable license to use the Software and System solely for internal use on its premises, for the term of this Agreement and in accordance with the terms and conditions of this Agreement (together with all exhibits, schedules, and addenda hereto).

5.3 End-User/Client License Grant From PushMX To Customer. PushMX hereby grants to Customer a fee-based, non-exclusive, nontransferable license to use the PushMX End User Software solely for internal use on its premises, for the term of this Agreement and in accordance with the terms and conditions of this Agreement. Use of the PushMX End User Software is (a) subject to the terms and conditions of the End User License Agreement attached hereto and incorporated by reference as if fully set forth here, and (b) limited to the number of individual client licenses paid for by Customer.

5.4 Specific License Limitations.

(A) Customer agrees to use the Software and System only for the lawful purposes described above. Customer may not: (i) host or transmit on any website or over the internet any libelous, obscene, or otherwise unlawful information of any kind; (ii) engage in any conduct involving a website or the Software that would constitute a criminal offense or give rise to civil liability under any federal, state, or local law; or (iii) upload, post, reproduce or distribute to or through the Software any material protected by copyright, privacy right, or other proprietary right, without first obtaining a written license from the owner thereof.

(B) No sublicense rights are granted under this Agreement.

(C) Except as otherwise provided by law, you may not decompile, reverse engineer, disassemble, modify, or create derivative works (as defined by the U.S. Copyright Act) or improvements (as defined by U.S. patent law) from the Software or any portion thereof, or seek to obtain intellectual property protection on the Software or any portion thereof, nor attempt to do so.

5.5 License Grant From Customer To PushMX. Customer grants to PushMX the right to access all Data, including but not limited to Borrower Information, and to compile, modify, aggregate, and use the Data for any purpose; provided, however, that PushMX agrees that it will not disclose without permission any individually identifiable confidential financial information of Customer's clients. Borrower Information will be used only in a manner consistent with PushMX's Privacy Policy, and with the Financial Modernization Act of 1999, also known as the "Gramm-Leach-Bliley Act" or GLB Act.

5.6 Third-Party Licenses.

(A) Customer agrees that it is solely responsible for obtaining, and represents and warrants that it has obtained as of the Effective Date, and will continue to secure and maintain during the Term, (1) valid, fully-paid-up licenses for Third-Party Software necessary to implement the Software, and (2) services adequate to maintain such software.

(B) PushMX may audit Customer's Third-Party Software licenses upon notice to Customer.

(C) Customer's failure to maintain sufficient Third-Party Software licenses as set forth herein at any time during the Term is grounds for PushMX's

termination of this Agreement pursuant to Section 23.1.

1. **Feedback.** During the term of this License, you will provide error reports, suggestions, analyses, comments, requests for features, and other input to PushMX regarding the Software ("Feedback"). You acknowledge that Feedback is PushMX's Confidential Information, and hereby assign all interests in Feedback to PushMX. PushMX may freely use all suggestions, feedback, and input, including all ideas, concepts, know-how, and other information contained therein.
2. **SERVICES.** As set forth on Appendix C.

7. OWNERSHIP.

As between the parties, PushMX retains all interests (including all Intellectual Property Rights) in the PushMX Software, documentation, and any other PushMX technology provided to Customer pursuant to this Agreement, together with all error corrections, derivative works, improvements and modifications thereto, whether made by PushMX, Customer, jointly by the parties, or otherwise. If Customer is ever held or deemed to be the owner of any such Intellectual Property Rights, Customer agrees to assign and hereby irrevocably assigns to PushMX all such interests as of the Effective Date, and agrees to execute all documents to implement and confirm the letter and intent of this Article 7.

8. CONFIDENTIALITY

8.1 Protection of Confidential Information. Each party agrees not to disclose any Information or Confidential Information of the other party to (a) any of its employees, agents, subcontractors, or Affiliates unless that employee, agent, subcontractor, or Affiliate has "a need to know" the Information or Confidential Information in the course of performing services under this Agreement and the party has complied with the disclosure terms below, or (b) to any third party (other than a party's agent or Affiliate). Without limitation, each party agrees to protect the Information and Confidential Information disclosed to it under this Agreement by exercising reasonable precautions and taking reasonable measures, including, without limitation, the following:

- (A) Each party must reproduce all copyright and other proprietary legends on all copies of the other party's Confidential Information that the party makes;
- (B) Each party must limit access to the other party's Confidential Information to those persons within the party's organization (or its Affiliates) who (1) need to access the Confidential Information for the party to accomplish the purposes of this Agreement, (2) are under written obligations of confidentiality consistent with the receiving party's confidentiality obligations under this Agreement, and (3) have been informed by the receiving party of the confidential nature of the information and the receiving party's obligations under this Agreement;
- (C) Each party must handle and store all Confidential Information including any copies under security procedures designed in accordance with reasonable business standards to prevent unauthorized persons from inadvertently having access to or viewing the Confidential Information, but never less than a reasonable degree of care; and
- (D) No copies of screens, manuals, software, password, or any PushMX proprietary or Confidential Information may be made available by Customer to any prospective Affiliate correspondents or other third parties even under a signed confidential disclosure agreement for any reason without the express written permission of PushMX relative to that particular prospective correspondent. The System may be demonstrated but no Confidential Information may be distributed or copied or made available for unsupervised evaluation by prospective correspondent or other third parties.

8.2 Exceptions. The preceding restrictions do not apply to information if:

- (A) the disclosing party authorizes the receiving party in writing to disclose it;
- (B) the disclosing party releases it to the public, or it otherwise becomes publicly known through no wrongful act of the receiving party or any third party;
- (C) the disclosing party discloses it to a third party without similar restrictions on disclosure (except that PushMX's Software and associated materials and information are nonetheless deemed to be Confidential Information);
- (D) the receiving party receives it on a non-confidential basis from a third party that, to the knowledge of the receiving party, is not prohibited from disclosing it to the receiving party by a legal, contractual, or fiduciary obligation;
- (E) the receiving party already and rightfully knows the Information or Confidential Information without any obligation of confidentiality prior to receiving it from the disclosing party or had independently developed and is legally entitled to it; or
- (F) a court, government, or regulatory agency requests the receiving party to disclose it, if the receiving party, to the extent practicable or permitted under applicable law, rule, or regulation, has given the disclosing party prior notice of the order in time for the disclosing party to contest it.

8.3 Special Rules For Borrower Information. Customer expressly acknowledges that it is subject to certain legal requirements with respect to privacy and confidentiality of the Borrower Information and records provided to it by loan applicants in accordance with applicable privacy and confidentiality laws and regulations. Customer represents to PushMX that, to the extent Customer directly or indirectly discloses Borrower Information, it is authorized to disclose such information and records to PushMX under the terms of this Agreement, and that such disclosure will not violate any such state, federal, or other privacy or confidentiality law or regulation. Customer is solely responsible to PushMX for any use and disclosure of such Borrower Information that is not in compliance with privacy and confidentiality laws and regulations, and Customer hereby agrees (to the extent the Customer has not complied with such privacy and confidentiality laws and regulations) to protect, defend, indemnify, and hold harmless PushMX, its officers, directors, agents, and employees

from and against any and all loss, claim, damage, liability, cost, and expense, including reasonable attorneys' fees, incurred by PushMX in connection with any such unauthorized disclosure of information and records by Customer to PushMX.

9. BILLING AND PAYMENT

Customer agrees to pay the applicable fees, including but not limited to the initial license fee, implementation and training fees, maintenance fees associated with the Software, renewal fees, recurring license fees, and any applicable periodic access fee, all as set forth in the Order Confirmation. Fees – which may be modified from time to time upon 30 days' notice to Customer, and such fees and payment terms are incorporated herein and made a part hereof (including any updates and modifications). Customer will be invoiced in accordance with the terms set forth in the Order Confirmation. Any late payment incurs interest at the rate of 1.5% per month or the maximum interest permitted by law, whichever is less.

10. SUSPENSION OF SERVICE

If Customer's account is more than 30 days overdue, except with respect to charges then under reasonable and good faith dispute, in addition to any of its other rights PushMX reserves the right to suspend the grant of license to Customer until all unpaid amounts are paid in full, and Customer agrees that such suspension does not create any liability of PushMX.

11. CUSTOMER'S INPUT DATA; RESPONSIBILITY

Customer is solely responsible for inputting all data into the System, verifying the accuracy of all Data entered, and for verifying correct entry of Data entered by or on behalf of Customer, its Affiliates, Borrowers, and Lenders.

The Software provides information and data based upon data received from Customer, Borrowers, Lenders, and others; it is not a substitute for diligent account maintenance or professional lending decisions. Customer is solely responsible for all decisions regarding lenders, borrowers, loans, funding, account management, and all other matters relating to Customer's business, including but not limited to decisions made based upon output from the Software. PushMX is not responsible for errors in data, data entry or other services, programs, hardware, data files, or output provided to, or maintained for, Customer, and PushMX's liability is limited by this Agreement as set forth below.

Customer agrees to provide, at a reasonable time and in such format as may be reasonably requested by PushMX, all other data or information required by PushMX to perform its services hereunder, including credit bureau subscriber member codes to set up direct credit report billing (excluding such data as are subject to any state, federal, or other privacy laws).

12. EQUIPMENT

Customer is solely responsible for the purchase or lease, installation, maintenance, and performance of all remote terminal equipment. Customer also assumes full responsibility for establishing and maintaining the telephone communication lines and equipment necessary to transmit data between Customer's terminal equipment and PushMX.

13. PASSWORDS

PushMX will furnish Customer with logon identities and passwords under procedures specified by PushMX and its hosting service from time to time. Customer is responsible for maintaining the security of the passwords that are assigned to it and PushMX has no responsibility for unauthorized access to Customer's data.

14. SYSTEM ACCESS AND INFORMATION SECURITY

PushMX will make (or cause to make) reasonable and prudent efforts to keep the Data secure, and Customer and its Affiliates will verify all Data provided to PushMX.

Customer is solely responsible for assuring the security and confidentiality relating to the use of its terminals and the terminals of its Affiliates and thereby assures the confidentiality of third party information.

PushMX is responsible for taking reasonable and prudent means to assure physical security of its system and confidentiality of the data processed and processing results for Customer and its Affiliates while that information is under the control of PushMX.

Access to the System from the Customer's remote terminals shall be available only through the use of identification numbers and passwords assigned and validated by PushMX prior to commencement of Customer's use of the System. Once such identification numbers and passwords have been assigned and validated by PushMX, the use and confidentiality of such Numbers and Passwords is the sole responsibility of Customer, including those identification numbers and passwords subsequently provided by Customer to its affiliated correspondents.

15. BACK-UP DATA

Customer is solely responsible for backing up the System, including but not limited to all Software and Customer Data (provided, however, that certain limited backup services are provided to Global Access customers, solely to the extent set forth in the Appendix relating to licensees of the Global Access or other hosted solution).

16. MAINTENANCE AND SOFTWARE UPGRADES

From time to time it will be necessary for PushMX and its hosting vendors to undertake maintenance of their computer hardware used in connection with the Software and System where the Software and System are supplied by PushMX and its hosting vendor. PushMX will use reasonable commercial efforts to conduct these activities to minimize disruption of Customer's activities; however, unscheduled maintenance necessitated by causes beyond the reasonable control of PushMX may be necessary from time to time. Customer is solely responsible for any maintenance of Customer-supplied and Customer-purchased software and hardware.

17. LIMITED WARRANTY AND REMEDIES

PUSHMX MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE SYSTEM, SOFTWARE, HARDWARE, DOCUMENTATION, DATA FILES, BACK-UP DATA, OUTPUT, STORAGE MEDIA, SERVICES, AND OTHER MATTERS PRODUCED OR PROVIDED UNDER THIS AGREEMENT OR ANY SUPPLEMENT OR

AMENDMENT TO IT. ABSENT WILLFUL MISCONDUCT: (I) THE SOLE REMEDY OF CUSTOMER FOR ANY LOSS OR DESTRUCTION OF CUSTOMER'S PROGRAMS, DATA, DATA FILES, BACK-UP DATA, OR STORAGE MEDIA, OR IN THE EVENT OF ERRORS OR DEFECTS IN DATA ENTRY OR OTHER SERVICES, PROGRAMS, HARDWARE, DATA FILES, OR OUTPUT PROVIDED TO, OR MAINTAINED FOR CUSTOMER BY PUSHMX ARE AS SET FORTH IN THE FOREGOING PARAGRAPH 16, (II) PUSHMX IS NOT OTHERWISE RESPONSIBLE (IN WHOLE OR IN PART) FOR LOST, DAMAGED, OR DESTROYED PROGRAMS, DATA, DATA FILES, BACK-UP DATA, STORAGE MEDIA, OR OUTPUT, OR FOR ANY COSTS, EXPENSES, OR DAMAGES INCURRED OR SUSTAINED IN THAT REGARD INCLUDING WITHOUT LIMITATION BUSINESS INTERRUPTION DAMAGES, (III) PUSHMX IS NOT LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, ADDITIONAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER SUSTAINED BY CUSTOMER, OR FOR ANY CLAIM MADE AGAINST CUSTOMER BY ANY OTHER PARTY, EVEN IF PUSHMX HAS BEEN ADVISED OF THE CLAIM OR POTENTIAL CLAIM; OR FOR ANY LOSSES, COSTS, EXPENSES, OR DAMAGES TO CUSTOMER IN AN AGGREGATE AMOUNT EXCEEDING THE INITIAL LICENSE FEE PAID BY CUSTOMER TO PUSHMX OR THE AMOUNT OF THE MINIMUM MONTHLY ACCESS FEE, WHICHEVER IS LESS (THE "LIQUIDATED SUM"). These limitations and exclusions apply regardless of the form of action, whether in court or arbitration, contract, including misrepresentation, and negligence. The parties agree that the actual damages that might be sustained by Customer by reason of the breach by PushMX under this Article 17 are uncertain and would be difficult to ascertain, and that the liquidated sum stated above would be reasonable compensation for such breach. ABSENT WILLFUL MISCONDUCT, PushMX hereby promises to pay, and Customer hereby agrees to accept, the Liquidated Sum as liquidated damages, and not as a penalty, in the event of such breach.

Notwithstanding the foregoing, if Customer becomes aware of a claim that the PushMX Software infringes any Third-Party Software, it must so notify PushMX immediately. In the event of any claim of infringement, PushMX may, at its sole option, (a) defend any legal proceeding brought by a third party against Customer to the extent that the proceeding includes a claim that any PushMX Software, furnished by PushMX to Customer under this Agreement directly infringes the claimant's U.S. patent, copyright, trademark, or trade secret, and Customer agrees not to compromise any such claim without the prior written approval of PushMX, and agrees to assist PushMX in the defense thereof. This provision does not give Customer any right of indemnity with respect to PushMX or the Software. If the PushMX Software is, or in PushMX's sole opinion is likely to become, the subject of such a claim of infringement, PushMX may, without obligation and at its sole option, (a) procure for Customer the right to continue to use the PushMX Software in accordance with this Agreement; (b) replace or modify the PushMX Software in such a way so as to make the modified PushMX Software non-infringing; or (c) terminate this Agreement upon written notice to Customer. PushMX reserves the right to deliver a modified version of any PushMX Software and to require that Customer take reasonable steps to use the modified version.

18. INDEMNITY

Customer agrees to indemnify, defend, and hold PushMX and its officers, directors, employees, and agents harmless from and against any liabilities, damages, judgments, losses, costs, and expenses (including reasonable attorneys' fees) arising out of Customer's use of the PushMX Software in any manner inconsistent with the terms and conditions of this Agreement.

19. PROPRIETARY RIGHTS

Provided Customer is not in default of any material provision, condition, or covenant of this Agreement, (a) PushMX will allow Customer reasonable access to all data, back-up data, information, and storage media prepared by PushMX for Customer pursuant to this Agreement that is in the possession of PushMX, subject to reasonable charges payable by Customer for copying or reformatting data or otherwise providing services that are not specified in the Term Sheet, and (b) upon Customer's written request, PushMX will, subject to the reasonable charges specified in the preceding subsection, provide to Customer a copy all Customer data in PushMX's possession.

Customer acknowledges that it obtains no proprietary rights in the hardware, Software, System, specifications, storage media, or documentation used or supplied by PushMX, or made available to Customer under the Agreement. Customer acknowledges that, as between the parties, those programs, specifications, and documentation are the exclusive property of PushMX, and Customer agrees to keep them confidential and not to disclose or divulge them to any third party. Customer agrees to keep all property of PushMX free and clear of all claims, liens, and encumbrances. The provisions of this Paragraph 18 survive the termination of this Agreement.

Confidential Information and all copies of the Confidential Information at all times remain the property of the disclosing party.

20. COMPLIANCE WITH LAWS

Customer must use the Software only in compliance with all applicable laws, including but not limited to the Financial Modernization Act of 1999, also known as the "Gramm-Leach-Bliley Act" or GLB Act. As between PushMX and Customer, Customer is solely responsible for any privacy notices required to be delivered to any Borrower.

21. INJUNCTIVE RELIEF

In the event that Customer or PushMX breaches or attempts to breach any of the provisions relating to confidentiality or ownership, the parties agree that this will cause irreparable damage to Customer or PushMX (as applicable), and accordingly, Customer and PushMX agree that the other is entitled as a matter of right to an injunction out of any court of competent jurisdiction restraining any breach or attempted breach of the confidentiality and proprietary rights provisions of this Agreement, and that legal remedies alone are inadequate. No remedy provided under this Article 21 precludes either party's right to invoke any other remedy authorized by law or equity or this Agreement, all such remedies being cumulative, nor does pursuit of any remedy provided for in this Agreement constitute a waiver of any amount due from the defaulting party under this Agreement or of any damages accruing by reason of the violation of any of its terms, provisions, and covenants.

22. FORCE MAJEURE

The obligations of a party under this Agreement are suspended to the extent that such party is prevented from complying with them because of labor disturbances (including strikes or lockouts), riots, acts of war, acts of God, fires, theft, failure or delays in transportation, power or communication, governmental regulations, or any other cause whatsoever beyond such party's reasonable control; provided, however, that following any such suspension, the party must exercise its commercially reasonable efforts to perform all of its obligations hereunder within a commercially reasonable time.

23. TERM AND TERMINATION

23.1 Term. This Agreement is effective as of the "Effective Date" set forth on the Order Confirmation, and continues for the "Minimum Term" set forth on

the Order Confirmation; at the conclusion of the Minimum Term, this Agreement continues automatically thereafter until terminated as provided below.

23.2 Termination Without Cause. After completion of the Minimum Term, either party may terminate this Agreement upon no less than 90 days' written notice to the other party; such notice must comply with Section 25.7 of this Agreement.

23.3 Termination Upon Default. Either party may terminate this Agreement in the event of a default by the other party of any of its material obligations hereunder, provided, however, that the party seeking to terminate this Agreement must give the party alleged to be in default written notice of the default and 21 days' opportunity to cure (except in the event of nonpayment by Customer or terminations pursuant to Section 5.6(C), for which termination may be made at any time, including during the Minimum Term, and is effective immediately). Termination of this Agreement pursuant to this provision is in addition to any other remedies available at law or in equity, and the prevailing party is entitled to an award of all reasonable attorneys' fees and expenses.

23.4 Effects Of Termination.

(A) Upon termination of this Agreement for any reason:

- (1) Cessation Of License. Customer's license to use the Software ceases upon termination of this Agreement, after which time Customer has no rights whatsoever in or to the Software or the use of it.
- (2) Cessation Of Services. PushMX's data services and other services cease upon termination of this Agreement.
- (3) Survival Of Licenses. Customer's licenses granted to PushMX in connection with Data continue, provided, however, that Customer has no further obligation to provide additional Data.
- (4) Return of Confidential Information. Upon termination of this Agreement for any reason, each party agrees to promptly return to the other party, and certify the return (or at such other party's request destroy and certify the destruction) of all Confidential Information furnished to the receiving party and copies made by the receiving party, except to the extent an archival copy is required to be kept by the receiving party pursuant to applicable law or to comply with audit requirements; provided, however, that PushMX may retain Borrower Information, Customer data, and all other Data that have been aggregated by PushMX with other data.

(B) Termination Without Cause, By Customer. If Customer terminates this Agreement while PushMX is not in default, Customer must pay a data transfer fee before PushMX is obligated to provide copies of Customer's data, or to return any documentation, storage media, or equipment in PushMX's possession.

(C) Rights On Termination. Neither party incurs any liability or compensation obligation for any damage (including without limitation damage to or loss of goodwill or investment), loss of profits, business interruption, loss of goodwill, or any other loss or expense of any kind suffered or incurred by the other party due solely to the termination of this Agreement pursuant to the terms of this Article 23.

24. ARBITRATION

This Agreement is made under and is governed by and construed in accordance with the laws of the State of California. Any controversy or claim between PushMX and Customer arising out of or relating to this Agreement or the performance or breach of it, and any related claims of negligence, gross negligence, fraud, or misrepresentation, but excluding actions for equitable or injunctive relief, shall be resolved through binding arbitration in accordance with the Commercial Arbitration Rules of JAMS, and judgment on the award by the arbitrator may be entered in any court having jurisdiction. Any arbitration will be conducted in Santa Clara County, California, utilizing the laws of the State of California.

Without detracting from the generality of the above, the following specific provisions will also apply:

- (A) The arbitration will be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures (Streamlined Arbitration Rules and Procedures).
- (B) The proceedings will be held by a panel of one arbitrator.
- (C) The decision of the one arbitrator so appointed will be final and binding upon the parties hereto.
- (D) The costs of the arbitration will be at the discretion of the arbitrator.
- (E) The arbitrator is authorized to make arrangement for all or part of the arbitration proceedings to be held at any location as he or she considers appropriate in the circumstances.
- (F) The arbitrator shall provide facts and conclusions upon which his or her decision was based.

To the extent any claim is found to be exempt from arbitration, the parties hereby submit exclusively to the personal jurisdiction of the United States District court for the Northern District of California, and the State courts of the State of California for the County of Santa Clara, and waive any objection based on venue or convenience of forum, and agree that the Software and Documentation were delivered in California. Choice of law rules do not apply, regardless of jurisdiction, and the UN Convention On Contracts For The International Sale Of Goods does not govern.

25. GENERAL

25.1 Each party acknowledges that it has obtained all federal, state and local corporate approvals and licenses required to enter into and execute the provisions, duties and services of this Agreement, including but not limited to Customer's obligation to purchase and maintain licenses to Calyx Point software (or successor software as designated by PushMX) in numbers at least equal to the correlative licenses granted by PushMX to Customer under this Agreement.

25.2 This Agreement inures to the benefit of and is binding upon PushMX, Customer, and any permitted successors and assigns.

25.3 No assignment or sublicensing of this Agreement, either in whole or in part, or of any of the rights and obligations hereunder, may be made by Customer without the prior written consent of PushMX, except that mortgage company correspondents affiliated with Customer (such as, by way of example only, borrowers, lenders, title companies, and appraisers) who are providing services regarding the Borrower's lending decisions and related activities, may be authorized by Customer to use the services rendered by PushMX on behalf of Customer, such as by accessing Customer's PushMX database or Customer's data on a hosted server, provided they have accepted and adhere to the terms of the End User License Agreement. To the extent Customer's service providers are expressly permitted by the terms of this Agreement to access Customers' data, then if Customer allows such access, Customer must acquire by an express, written agreement that such persons' use of PushMX's information processing services agree to adhere to and be bound by the terms of the End User License Agreement.

25.4 You acknowledge and agree that the Software is subject to restrictions and controls imposed by the United States Export Administration Act (the "Act") and the regulations thereunder. You agree and certify that neither the Product nor any direct product thereof is being or will be acquired, shipped, transferred, or re-exported, directly or indirectly, into any country prohibited by the Act and the regulations thereunder, nor will be used for any purpose prohibited by the same.

25.5 The paragraph headings in this Agreement are for convenience only; they form no part of this Agreement and do not affect its interpretation.

25.6 If any provision of this Agreement is held illegal, void, or unenforceable, the remaining portions remain in full force and effect. Any part of this Agreement held to be ambiguous shall be interpreted without consideration of which party drafted it.

25.7 No delay or failure of PushMX or Customer in exercising any right under this Agreement and no partial or single exercise of a right by PushMX or Customer may be deemed to constitute a waiver of that right or any other right under this Agreement. Forbearance to enforce one or more of the remedies provided on an event of default may not be deemed or construed to constitute a waiver of such default or of any other remedy provided for in this Agreement. All notices permitted or required hereunder and all requests, consents and waivers (collectively, "Notices") must be in writing and must be delivered by a method providing proof of delivery. Any Notices are deemed to have been given on the date of delivery. Notices must be delivered to the addresses of the respective parties set forth in this Agreement unless and until otherwise designated by Notice of a party to the other.

25.8 No provision of this Agreement may be waived, changed, modified, or discharged, orally or otherwise, except by a writing signed by the party against whom the waiver, change, modification, or discharge is sought to be enforced.

25.9 The parties recognize and agree that each is operating as an independent contractor and not as an agent of the other. This Agreement does not constitute a partnership or joint venture, and neither party can be bound by the other to any contract, arrangement, or understanding except as specifically stated herein.

25.10 During the term of this Agreement and for a period of one year following the termination of this Agreement, the parties agree not to recruit or solicit any employee of the other party, except upon the prior written consent of the affected party.

25.11 This Agreement supersedes all prior understandings and writings relating to the subject matter of this Agreement. To the extent any provision set forth on an Order Confirmation conflicts directly and irreconcilably with any set forth in this document, the Order Confirmation controls.

ACKNOWLEDGMENT AND AGREEMENT

By executing a PushMX Order Confirmation referencing the PushMX Software License and Services Agreement, Customer acknowledges that it has read this agreement, understands it, and agrees to be legally bound by it.

APPENDIX A TO SOFTWARE LICENSE AND SERVICES AGREEMENT

This Appendix A is effective concurrently with the Software License And Services Agreement (the "Software Agreement") entered into between Simplifying Excellence dba PushMX Software ("PushMX") and "Customer". Capitalized terms not defined in this Appendix have the meaning specified in the Software Agreement.

1. CUSTOMER

The "Customer" is the entity identified on the Order Confirmation.

2. SOFTWARE

2.1 The "Software" licensed by PushMX to Customer under the terms and conditions of the Agreement is as specified on the relevant Order Confirmation. To be effective, the Order Confirmation must be produced by an authorized representative of PushMX, and Customer must be fully paid-up and otherwise in compliance with all the terms and conditions of this Agreement. Software is licensed under this agreement only if expressly identified on an Order Confirmation as produced by an authorized representative of PushMX.

The Software may include the following, as specified on the Order Confirmation:

- (A) **PushMX Production** (software, with separate license key, that provides automated loan origination and production tools.)
- (B) **PushMX Sales** (software, with separate license key, that provides automated prospecting, post-close, and sales tools; see "PushMX Sales" attachment for additional terms.)
- (C) One or more of the following **Add-Ons**:
 - (1) **PushMX Enterprise Reporting** (Add-on Software that is downloaded by Customer to both Customer Corporate and Branch servers for the purpose of providing enterprise management reports; see "Enterprise Reporting" attachment for additional terms.)
 - (2) **PushMX eWorkflow™** (Add-on Software that is downloaded by Customer to Branch server(s) for the purpose of providing a consistent best-practices workflow process for all users.)

- (3) **PushMX Lead Management** (Add-on Software that is downloaded by Customer to Branch server(s) and client machines for the purpose of tracking lead lists and conversion rates; see "PushMX Lead Management Add-On" attachment for additional terms.)

PushMX Production and/or PushMX Sales and any Add-Ons, as specified in the Order Confirmation, will be made available to Customer in one of the following formats. Pricing varies by format, and each format is subject to additional format-specific terms and conditions as set forth in the relevant Attachment to this Appendix. The available delivery formats include:

- (1) **PushMX Client Access** (Software is downloaded by Customer to Customer's server; see "PushMX - Client Access" attachment for additional terms);
- (2) **PushMX In a Box** (Software is delivered to Customer installed on server; includes server hardware; see "PushMX In a Box" attachment for additional terms); or
- (3) **PushMX Global Access** (Software is fully hosted by or for PushMX; includes Hosting Service fees; see "PushMX Global Access" attachment for additional terms).

3. SOFTWARE LICENSE FEES

The fees payable pursuant to Article 9 of the Agreement by Customer to PushMX for the license to use the Software are set forth in the Order Confirmation.

4. SUPPORT SERVICE TERMS, CONDITIONS, AND FEES

Customer must use the PushMX Basic Support Services with respect to the Software on the terms and conditions set forth in Appendix C, and agrees to pay the associated fees. The fees payable by Customer to PushMX for maintenance and support are set forth in the Order Confirmation. Additional Support Services are available to Customer, at Customer's option, on the terms set forth in Appendix C.

5. ERROR CORRECTIONS, UPDATES, UPGRADES, AND NEW RELEASES

Provided Customer is fully paid-up on its associated Support Services Agreement, error corrections and updates that do not add functionality are provided, subject PushMX's sole discretion, at no additional cost. Upgrades and new versions that provide additional functionality may require the payment of additional license fees, maintenance fees, and the like.

6. CUSTOMER OBLIGATIONS AND ADDITIONAL TERMS

The "Services" provided by PushMX to Customer, and Customer's obligations (in addition to those set forth above in the Agreement) are set forth below in Appendix C, and additional obligations corresponding to the Software licensed pursuant to Sections 2 and 3 above (in this Appendix A) are set forth below in the relevant "Attachments" to this Appendix A. EXCEPT AS SET FORTH IN THE ASSOCIATED SUPPORT SERVICES AGREEMENT, NO OTHER SERVICES ARE PROVIDED BY PUSHMX TO CUSTOMER UNDER THIS AGREEMENT.

APPENDIX A, ATTACHMENT 1: PUSHMX - CLIENT ACCESS

1. PushMX Obligations Regarding PushMX Client Access

1. PushMX will provide to Customer standard service and support on the terms and conditions set forth at <http://www.pushmx.com> (or such other Uniform Resource Locator as may be identified by PushMX) (login required), as updated from time to time by PushMX.
2. **Customer Obligations Regarding PushMX Client Access**

2.1 Customer must download the Software and is solely responsible for installing and configuring the Software on Customer's server and on each End User workstation.

2.2 Customer is solely responsible for hosting.

APPENDIX A, ATTACHMENT 2: PUSHMX IN A BOX

1. PushMX Obligations Regarding PushMX In a Box

1.1 PushMX will install and configure the Software on the server, and deliver the server to Customer.

1. PushMX will provide to Customer standard service and support on the terms and conditions set forth at <http://www.pushmx.com> (or such other Uniform Resource Locator as may be identified by PushMX) (login required), as updated from time to time by PushMX.
2. **Customer Obligations Regarding PushMX In a Box**

2.1 Upon delivery, Customer is solely responsible for maintaining the hardware provided by PushMX.

APPENDIX A, ATTACHMENT 3: PUSHMX - GLOBAL ACCESS

1. PushMX Obligations Regarding PushMX Global Access

1.1 PushMX will install and configure the Software on the System.

1.2 PushMX will, directly or through third-party services, host Customer's licensed access to Calyx Point and other software (the "Application Software") reasonably necessary to provide the hosting services (the "Hosting Services").

1.3 PushMX will provide to Customer standard service and support on the terms and conditions set forth at <http://www.pushmx.com> (or such other Uniform Resource Locator as may be identified by PushMX) (login required), as updated from time to time by PushMX.

1.4 **Uptime:** WITH THE EXCEPTION FOR LOSS OF ACCESS THAT IS BEYOND PUSHMX'S REASONABLE CONTROL, AND EXCLUDING PERIODS OF SCHEDULED MAINTENANCE, EMERGENCY MAINTENANCE AND SCHEDULED APPLICATION SOFTWARE UPGRADES AS SET FORTH IN SECTION 16 of the Agreement, PUSHMX WILL MAINTAIN A LEVEL OF ACCESS ("ACCESS AVAILABILITY"), OF 99.9% EACH MONTH, EXCLUDING MAINTENANCE DOWNTIME.

1. **Exclusive Remedy for Failure to Meet Hosting Service Access Goal.** If the level of Access Availability falls below 99.9% (excluding maintenance downtime) for any given calendar month for which Customer has paid (a) the license fees and (b) the service fees, provided Customer makes a request within 30 days after the end of such month, Customer will receive a credit on charges for service provided in succeeding months in an amount equal to 1/30 of the charges for each day of the month in which Access Availability fell below 99.9%. If Customer fails to make the request within such 30-day period, Customer will no longer be entitled to the credit. The foregoing are Customer's sole remedies for downtime, regardless of theory.

2. Customer Obligations Regarding PushMX Global Access

2.1 Customer must provide to PushMX written proof that Customer has valid current licenses to Calyx Software's "Point" software (or a successor thereto as designated by PushMX) in a number at least equal to the number of end-user licenses provided by PushMX to Customer under this Agreement, together with a current maintenance agreement regarding such Point licenses, and Customer must continuously ensure that it has the requisite Point license for each Global Access license at all times, whether by securing sufficient additional licenses to correspond with any additional Global Access end-user licenses or otherwise.

2.2 Customer must comply with all Third-Party Software licensing requirements for Application Software to which Customer is provided access, whether presented as shrink-wrap, click-wrap, or electronic pop-up licenses appearing upon installation or initial use of the software, or by notice of additional license requirements by posting of a notice on the hosting company's Website, and specifically to conform to the terms and conditions set forth in the Terms and Conditions Regarding Use of Microsoft Software and the Service Provider Use Rights for such software posted on the Hosting Service Website. Customer may use the Software and Application Software provided by PushMX and its Hosting Service to access, add to, delete, and manipulate Customer Data in connection with its business activities.

2.3 **Customer may not:** (i) post or transmit on or through the Hosting Service any libelous, obscene or otherwise unlawful information of any kind; (ii) interfere with, disable, modify, create derivative works of, decompile, disassemble or reverse engineer any of the Application Software; (iii) engage in any conduct involving the Website, the Hosting Service or the Application Software that would constitute a criminal offense or give rise to civil liability under any local, state, federal or other law or regulation; (iv) remove, modify or obscure any copyright, trademark or other proprietary notices that appear on any of the Application Software or that appear during its use; (v) copy, sublicense or distribute any of the Application Software or permit its use by any third party; or (vi) knowingly introduce or permit to be introduced into or through the Website or the Hosting Service any worm, virus, Trojan horse or other software routine permitting unauthorized access to the Hosting Service or intended to erase or alter data or otherwise damage the Hosting Service's network. Customer agrees to conform to and follow such other reasonable policies and instructions regarding access to and use of the Hosting Service which the Hosting Service or PushMX may post from time to time.

2.4 Customer acknowledges that all interests in the Application Software, including patent, copyright, trademark and other intellectual property rights, belong solely to PushMX or its suppliers, and Customer has no rights to the Application Software other than the limited right to use it as provided in this Agreement. Customer must comply with all restrictions, conditions and obligations with respect to use of the Hosting Service and Application Software set forth in this Agreement, including without limitation the restrictions on use of Application Software and the Hosting Service, the acknowledgement of intellectual property rights, and the agreement to comply with policies adopted by the Hosting Service. Customer has obtained and maintains in effect the licenses from third parties for Third-Party Software necessary to use the Hosting Service, including obtaining upgrades required for the Hosting Service to conduct maintenance activities.

2.5 Within 60 days after Notice from PushMX or its Hosting Service (either directly or via the Hosting Service's Customer Login Page) regarding necessary upgrades to the Application Software, Customer agrees to obtain and maintain in effect licenses for the upgraded versions of such Application Software.

2.6 PushMX or the Hosting Service will perform regular system backups, including a backup of all Customer Data that have been uploaded to the Hosting Service. Once a full system backup has been performed, PushMX and the Hosting Service may delete or destroy all copies of previously performed backups. Neither PushMX nor the Hosting Service is responsible for loss of data or data integrity so long as PushMX or the Hosting Service has performed the backup in a commercially reasonable manner. Neither PushMX nor the Hosting Service maintains copies of data manipulations by Customer between backups; the responsibility of PushMX and the Hosting Service for maintaining Customer Data is limited to the backups described above.

2.7 Neither PushMX nor the Hosting Service can guarantee the security of Customer Data against access by "hackers" and other unauthorized persons, and Customer agrees that as long as PushMX or the Hosting Service has taken reasonable steps to protect the Customer Data, neither PushMX nor the Hosting Service is responsible for unauthorized actions of third parties. Customer agrees that PushMX and the Hosting Service may intercept and disclose to governmental agencies or as provided by appropriate court orders any Customer Data to the extent reasonably necessary to protect the rights of PushMX

or the Hosting Service or to comply with any law or regulation, judicial process or governmental request.

2.8 The Hosting Service, including use of the Application Software, is furnished "AS IS" without any warranty whatsoever. All other warranties, express or implied, including any warranties of merchantability, fitness for any particular purpose, or non-infringement are specifically excluded and disclaimed. Without limiting the foregoing, neither PushMX nor the Hosting Service warrants that the Application Software or any other part of the Hosting Service will meet Customer's requirements, or that the operation of the Hosting Service, including the Application Software, will be uninterrupted or error-free. The remedies stated in this Agreement with respect to any failure to provide Hosting Service are the exclusive remedies and, except as expressly provided herein, neither PushMX nor any of its suppliers are liable for any damages relating to the Hosting Service, and neither PushMX nor any of its suppliers is liable for any incidental, punitive, indirect or consequential damages arising out of or in connection with the Hosting Service, including without limitation damages for loss of data or lost profits, even if advised of the possibility of such damages. In any event, the maximum liability of PushMX and the Hosting Service provider is the amount actually collected from Customer for the Hosting Services during the most recent 30-day period of this Agreement or \$20, whichever is greater.

2.9 Without limiting the foregoing disclaimer, Customer specifically acknowledges that the ability of PushMX and the Hosting Service provider to furnish the Hosting Service is dependent on third parties, including telecommunications and electrical power providers, and actions or inactions of such third parties may impair or disrupt the Hosting Service. In addition, from time to time third parties may take action intended to interfere with the availability of the Hosting Service, such as denial of service attacks or the spread of computer viruses. So long as PushMX or any Hosting Service provider acts in a commercially reasonable manner, PushMX and the Hosting Service have no liability whatsoever with respect to or resulting from any circumstances or actions of third parties beyond the reasonable control of PushMX or the Hosting Service provider.

2.10 Customer must notify PushMX and the Hosting Service provider in writing of any claim Customer has regarding the Hosting Services within 90 days after Customer knows or should know of the claim or the claim is barred and Customer waives any right to proceed against PushMX and the Hosting Service provider on the claim.

APPENDIX A, ATTACHMENT 4: PUSHMX LEAD MANAGEMENT ADD-ON

1. PushMX and Customer Obligations Regarding Lead Management Add-On

1.1 Customer is solely responsible for generating, developing, importing, purchasing, de-duping, checking, correcting, and using lists generated or managed by the Lead Management Add-On, and agrees to defend, indemnify, and hold PushMX harmless from any claims relating thereto.

APPENDIX A, ATTACHMENT 5: PUSHMX ENTERPRISE REPORTING ADD-ON

1. PushMX and Customer Obligations Regarding Enterprise Reporting Add-On

1.1 Customer is solely responsible for generating, developing, importing, purchasing, de-duping, checking, correcting, and using lists generated or managed by the Enterprise Reporting Add-On, and agrees to defend, indemnify, and hold PushMX harmless from any claims relating thereto.

APPENDIX A, ATTACHMENT 6: PUSHMX SALES

1. PushMX and Customer Obligations Regarding PushMX Sales

1.1 Customer is solely responsible for generating, developing, importing, purchasing, de-duping, checking, correcting, and using lists generated or managed by PushMX Sales, and agrees to defend, indemnify, and hold PushMX harmless from any claims relating thereto.

APPENDIX B-1 PUSHMX END USER LICENSE AGREEMENT

This is a legal agreement ("License") between you (either an individual or single entity), the "End User", and Simplifying Excellence, dba PushMX Software ("PushMX").

PLEASE READ THIS LICENSE AGREEMENT. BY CLICKING ON THE "YES" BUTTON, SIGNING BELOW, OR SIMPLY BY INSTALLING THE SOFTWARE ACCOMPANYING THIS LICENSE, YOU INDICATE YOUR ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS. If you do not agree to the terms of this License, do NOT download the Software or, if you have received the Software in packaged form, return the Product to PushMX.

1. TERMS USED IN THIS LICENSE.

1.1 "Product" means the PushMX software ("Software") and related explanatory written or on-line materials ("Documentation"). The Product licensed to you under this Agreement is one or more of the following as specified on the Order Confirmation:

- (A) **PushMX Global Access** format (Fully hosted PushMX product) for **PushMX Production** and/or **PushMX Sales**
- (B) **PushMX In a Box** format (Self-hosted PushMX product, delivered to Customer installed on server; includes server hardware) for **PushMX Production** and/or **PushMX Sales**
- (C) **PushMX Client Access** format (Self-hosted PushMX product, downloaded by Customer) for **PushMX Production** and/or **PushMX Sales**
- (D) **PushMX Lead Management** (Add-on module; tracks lead lists and conversion rates.)
- (E) **PushMX Enterprise Reporting** (Add-on module; provides enterprise management reports.)
- (F) **PushMX eWorkflow™** (Add-on module; provides a consistent best-practices workflow process for all users.)

2. GRANT OF LICENSE. The enclosed or downloaded PushMX Product ("Product") is licensed by PushMX for use only on the terms of this License.

Subject to a valid Software License and Services Agreement between PushMX and the person or company giving you access to this Product, PushMX grants to you the following rights:

- (A) **Ownership:** PushMX and its suppliers have and retain all ownership interests in the Product, including all patent rights, copyrights, trade secrets, confidential information, trademarks, service marks, related goodwill, and confidential and proprietary information. You have no interests in the Product except as explicitly stated in this Agreement. The Product and Feedback are the proprietary products of PushMX, and are protected by copyright laws and international treaty provisions.
- (B) **Software and Use:** You may install and use the Software on a computer solely for the purposes expressly permitted in this Agreement. Software is licensed to you for a single workstation on a non-exclusive, non-sublicensable basis. Your use of the Software is limited to the seats and time period authorized by PushMX, as reflected in your account information, which is accessible by you or a designee of your company through www.pushmx.com or successor web site or may be delivered via email (the "Site").
- (C) **Backup:** You may make only one backup copy of the Software, and your backup copy may not be installed or used on any computer except as necessary to replace a lost or defective copy of the Software. You are otherwise prohibited from making copies of the Software or Documentation for any purpose, except as incidental to the productive use of the Software.

3. CONDITIONS AND RESTRICTIONS

- (A) The Software is designed to operate in conjunction with Calyx Software's "Point" software. You are solely responsible for properly licensing sufficient copies of that software and for maintaining that software.
- (B) You may only install and personally use the Software in object code form on servers and personal computers owned or controlled by you for your own use. You may not modify, copy the client portion of the Software, distribute, transmit, or otherwise reproduce the Software, except that you may make copies of the server portion of the Software for each server operated by you. You may not attempt to bypass or defeat any program provided with the Software which restricts its use.
- (C) Except for the limited license granted hereunder, this License does not grant you any interests, including intellectual property rights, in the Software, Product, or Feedback. You may not lease, rent, distribute, or sublicense the Software or use the Software in a time-sharing arrangement or in any other unauthorized manner. No license is granted to you for the human readable code of the Software (source code). Except as expressly provided in this Section 3(C), this Agreement does not grant you any license to patents, copyrights, trade secrets, trademarks, or any other rights in respect to the Software. PushMX reserves all rights not expressly granted to you.
- (D) **Limitations on Reverse Engineering, Decompilation, and Disassembly:** Except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation (and you have so notified PushMX), you may not directly or indirectly decompile, reverse engineer, disassemble, modify, adapt, translate, or create derivative works (as defined by the U.S. Copyright Act) or improvements (as defined by U.S. patent law) from the Software or any portion thereof, or seek to obtain intellectual property protection on the Software or any portion thereof, nor attempt to do so.
- (E) **Limitations On Use.** You may not, under any circumstances (i) use the Software in any unlawful manner, for any unlawful purpose or in any manner inconsistent with this Agreement.
- (F) **Limitations On Transfer.** You may not assign or sublicense this Agreement, either in whole or in part, or of any of the rights and obligations hereunder, without the prior written consent of PushMX.
- (G) **Feedback:** During the term of this License, you will provide feedback to PushMX regarding testing and use of the Software ("Feedback"). You acknowledge that Feedback is PushMX's confidential and proprietary information, and assign all interests in Feedback to PushMX.
- (H) **Termination:** This License terminates automatically, without prejudice to any other rights PushMX may have, if you fail to comply with the terms and conditions of this License, in which event you must uninstall and destroy or return all copies of the Software. You may also terminate this License at any time by uninstalling and destroying or returning the Product together with all copies.
- (I) **No Support:** Product support, including upgrades, error corrections, and other forms of support, are NOT provided under this License. If PushMX elects to provide any support to you, it does so at its sole option and in its sole discretion, is not obligated thereby to provide any further support, and provides such support under the conditions and limitations of this License. PushMX may from time to time provide you (whether electronically by email or otherwise) with fixes or upgrades to the Software. Your continued ability to use the Software may be subject to and conditioned on your prompt installation of such fixes or upgrades.

10. DISCLAIMER OF WARRANTY FOR SOFTWARE. THE SOFTWARE IS LICENSED ON AN "AS IS" BASIS AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES THAT THE SOFTWARE IS FREE OF DEFECTS, MERCHANTABILITY, FIT FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PUSHMX DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. PUSHMX MAKES NO REPRESENTATIONS CONCERNING THE QUALITY OF THE SOFTWARE AND DOES NOT PROMISE THAT THE SOFTWARE WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION. NEITHER PUSHMX NOR ANY OTHER PERSON WARRANTS AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SOFTWARE, THAT FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR REQUIREMENTS, OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ANY DEFECTS WILL BE CORRECTED. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SOFTWARE, OR ANY PORTION THEREOF, IS AT YOUR SOLE AND ENTIRE RISK. SHOULD ANY SOFTWARE PROVE DEFECTIVE IN ANY RESPECT, YOU (NOT PUSHMX NOR ANY OTHER PERSON) ASSUME THE COST OF ANY NECESSARY SERVICING, REPAIR OR CORRECTION. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS LICENSE. NO USE OF ANY SOFTWARE IS AUTHORIZED HEREUNDER EXCEPT UNDER THIS DISCLAIMER.

11. LIMITATION OF LIABILITY. IN NO EVENT IS PUSHMX RESPONSIBLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES,

CLAIMS, OR COSTS, SUCH AS BUT NOT LIMITED TO LOSS OF PROFITS, GOODWILL, OR DATA, EVEN IF PUSHMX HAS BEEN ADVISED OF THE POSSIBILITY THEREOF OR ANY REMEDY AVAILABLE TO YOU FAILS OF ITS ESSENTIAL PURPOSE. YOU AGREE THAT, REGARDLESS OF THE FORM OF ANY CLAIM YOU MAY HAVE, PUSHMX'S LIABILITY TO YOU OR ANY OTHER PARTY DOES NOT EXCEED THE GREATER OF THE LICENSE FEES PAID BY YOU FOR THE SOFTWARE FOR THE 12-MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE, IF ANY, OR US\$20.00. THESE LIMITATIONS APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO CLAIMS RESULTING FROM: (A) THE USE OR THE INABILITY TO USE THE SOFTWARE (OR ANY PART THEREOF); (B) TRANSACTIONS ENTERED INTO USING THE SOFTWARE (OR ANY PART THEREOF); (C) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; OR (D) ANY OTHER MATTER RELATING TO THE SOFTWARE OR YOUR USE THEREOF. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OR EXCLUSIONS OF LIABILITY IN SOME CIRCUMSTANCES. ACCORDINGLY, SOME OF THE FOREGOING LIMITATIONS MAY NOT APPLY TO YOU.

12. GOVERNING LAW. This Agreement is made under and is governed by and construed in accordance with the laws of the State of California. Any controversy or claim arising out of or relating to this Agreement or the performance or breach of it, and any related claims of negligence, gross negligence, fraud, or misrepresentation, but excluding actions for equitable or injunctive relief, shall be resolved through binding arbitration in accordance with the Commercial Arbitration Rules of JAMS, and judgment on the award by the arbitrator may be entered in any court having jurisdiction. Any arbitration will be conducted in Santa Clara County, California, utilizing the laws of the State of California. To the extent any claim is found to be exempt from arbitration, the parties hereby submit exclusively to the personal jurisdiction of the United States District court for the Northern District of California, and the State courts of the State of California for the County of Santa Clara, and waive any objection based on venue or convenience of forum, and agree that the Software and Documentation were delivered in California. Choice of law rules do not apply, regardless of jurisdiction, and the UN Convention On Contracts For The International Sale Of Goods does not govern.

13. EXPORT LAW ASSURANCES. You acknowledge and agree that the Product is subject to restrictions and controls imposed by the United States Export Administration Act (the "Act") and the regulations thereunder. You agree and certify that neither the Product nor any direct product thereof is being or will be acquired, shipped, transferred, or re-exported, directly or indirectly, into any country prohibited by the Act and the regulations thereunder, nor will be used for any purpose prohibited by the same.

1. **MISCELLANEOUS.** Failure by either party to enforce any provision of this Agreement may not be deemed a waiver of future enforcement of that or any other provision. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions nevertheless continue in full force and effect. This Agreement

2. constitutes the entire agreement between you and PushMX with respect to its subject matter and may only be modified by a writing executed by an officer of PushMX.

14. GOVERNMENT LICENSEES: The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause of DFARS 252.227-7013 or subparagraphs (c)(i) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19 as applicable. You agree to comply with all export and re-export restrictions and regulations of the Department of Commerce or other agency or authority of the United States or other applicable countries, and not to transfer, or authorize the transfer, of the Software other than as expressly permitted by such restrictions and regulations.

15. INDEMNIFICATION

You agree to indemnify and hold harmless PushMX from and against any and all losses, damages, costs, and expenses (including reasonable attorneys' fees) related to any claim or demand made by any third party in connection with or arising out of (a) any breach by you of any of the terms and conditions of this Agreement, (b) your use or misuse of the Software, (c) your violation of applicable laws, and (d) your violation of the rights of any other person or entity. PushMX reserves the right, at its own expense, to assume the exclusive defense and control of (but not liability for) any matter otherwise subject to indemnification by you. You will be liable to PushMX for reasonable attorney's fees in any such case.

11. TERM AND TERMINATION

Your license to the Software under this Agreement continues until it is terminated by you or by PushMX. You may terminate the license by so notifying PushMX and discontinuing use of all or any of the Software and returning or destroying all your copies of the Software. PushMX may terminate this Agreement for your violation of any term or condition of this Agreement, including but not limited to nonpayment, by sending a notice of termination to the e-mail address listed for you in your account information or by posting a notice of termination with your account information at the Site. Sections 10 and 12 of this Agreement survive termination of this Agreement. YOU ACKNOWLEDGE AND AGREE THAT, UPON TERMINATION OF THIS LICENSE, PUSHMX MAY DISABLE THE SOFTWARE, REMOTELY OR OTHERWISE, WITHOUT PRIOR NOTICE, AND EXPRESSLY AGREE THAT PUSHMX MAY ACCESS HARDWARE AND SOFTWARE OWNED OR CONTROLLED BY YOU FOR THIS PURPOSE.

12. MISCELLANEOUS

(A) This Agreement constitutes the entire understanding between the parties respecting use of the Software and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this Agreement is binding unless agreed to in writing by you and an authorized PushMX representative. No waiver by PushMX of any breach of this Agreement by you operates as a waiver of any other breach.

(B) The terms of this Agreement are construed and governed exclusively by the laws of the State of California, excluding the application of its conflict of law provisions and rules. Any dispute, controversy or claim between the parties arising out of or relating to this Agreement or a breach of this Agreement shall be settled pursuant to the terms of this Section 12(B) by arbitration before three neutral

arbitrators (selected from a panel of persons having experience with and knowledge of the computer business), provided at least one of which arbitrators is an attorney, and administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules in San Jose, California. Any provisional or equitable remedy which would be available from a court of law will be available from the arbitrators to the parties. Judgment upon the award of the arbitrators may be enforced in any court having jurisdiction thereof. The arbitrators shall have the power to award attorneys' fees to the prevailing party. The parties hereby consent to the non-exclusive jurisdiction of the courts of the State of California or to any Federal Court located within the State of California for any action (i) to compel arbitration, (ii) to enforce the award of the arbitrators or (iii) prior to the appointment and confirmation of the arbitrators, for temporary, interim or provisional equitable remedies, and to service of process in any such action by registered mail, return receipt requested, or by any other means provided by law. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

(C) The Software is "commercial software" as that term is used in 48 CFR 12.212, Section 2.212 of the U.S. Federal Acquisition Regulations ("FAR"), and Section 227.7202 of the Defense Federal Acquisition Regulations ("DFAR"). Accordingly, U.S. Government licensees have only those rights specified in this Agreement.

(D) If any provision of this Agreement is declared by a court or tribunal of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect.

APPENDIX C SUPPORT SERVICES AGREEMENT

1. MANDATORY TRAINING

1.1 Customer must participate in and complete the following training:

(A) All Customers must complete the PushMX Software Implementation and Configuration Training, consisting of at least two 90-minute remote training sessions, and must pay PushMX's then-current fees therefor as set forth on the Order Confirmation.

(B) Global Access Customers must also participate in remote pre-installation sessions that include preparing an environment capability and quality assurance checklist, and subsequent installation and software configuration process.

2. BASIC SUPPORT SERVICES

2.1 In consideration for Customer's payment of PushMX's then-current Basic Support Services fees set forth at www.pushmx.com, PushMX will provide to Customer the following included support services:

(A) Telephone Support: PushMX will provide telephone tech support for matters relating directly to Errors in the Software. During the Term of the Agreement, PushMX provides telephone support to paid-up Customers from 0600-1700, Monday through Friday, Pacific Time (excluding holidays).

(B) Scope: PushMX will assist Customer with resolving Errors in order to bring the PushMX Software or its documentation into conformance with its Specifications. An Error Correction may take the form of corrective software (temporary patch or Maintenance Update), documentation, or a workaround.

2.2 Error Corrections. PushMX will correct Errors in the PushMX Software if (i) Customer provides sufficient information for PushMX to reproduce the Error on the Reference Environment; and (ii) PushMX is able to reproduce the Error. PushMX will then use reasonable effort to furnish solutions.

3. LIMITATIONS.

(A) Support Services are provided for the PushMX Software running on the authorized Reference Environment only. The Reference Environment - currently Windows 2000 or higher, excluding emulators and other non-native OS applications
- may be updated by PushMX from time to time in its sole discretion. PushMX is not responsible for support for software or hardware other than the PushMX Software, nor for compatibility between the PushMX Software and any program or platform other than a PushMX-certified Reference Environment. No services are provided in support of any Third-Party Software or hardware, whether supplied by Customer or by any other party (including PushMX).

(B) Support Services are provided only for the then-current release of the PushMX Software (X.Y.Z), plus the previous Y-level release.

(C) If, in connection with Support Services, PushMX support personnel are required to travel from the PushMX offices in San Jose, California, whether at the request of Customer or due to the nature of the issue, Customer will pay the support personnel's reasonable travel and associated living expenses.

(D) PushMX's sole obligation to Customer is to use commercially reasonable efforts to bring the PushMX Software into material compliance with the Specifications where an Error in the PushMX Software causes a material, reproducible deviation from Specifications in the PushMX Software.

(E) Suspected Errors that involve software or hardware other than the Reference Environment, or are otherwise not included in the scope of this Support Agreement, are the responsibility of Customer. If a suspected Error cannot be replicated on the Reference Environment at PushMX's offices, PushMX will so advise Customer so that Customer can attempt to replicate the Error, determine the source, and resubmit a Product Discrepancy Report if appropriate. PushMX's acknowledgment that an Error report has been received does not constitute confirmation that an Error exists; PushMX will advise the Customer Technical Liaison when an Error is reproduced.

(F) Unrelated Problems. If Customer's Error report or request for general tech support proves to be unrelated to the PushMX Software,

PushMX may invoice Customer for the engineering time expended at PushMX's then-standard engineering rate.

(G) For technical questions, training, advice, and assistance not relating directly to Errors in the PushMX Software, Customer may request Additional Support Services at the then-current PushMX standard rate.

4. ADDITIONAL SUPPORT SERVICES

4.1 For additional fees and subject to availability of PushMX engineering resources, Customer may request Additional Support Services for matters not covered under the Basic Support Services, at PushMX's then-current rates. "Additional Support" includes, but is not limited to:

- (A) Additional installations;
- (B) Setup of the PushMX Software at multiple locations;
- (C) On-site training in use of the Software;
- (D) Management consulting services;
- (E) Remote training in addition to the initial training set forth in this [Appendix C](#);
- (F) Tech support by telephone for support issues not covered by Article 2 of this [Appendix C](#);
- (G) Functional Upgrades and New Releases to the PushMX Software that provide changed or enhanced functionality; and
- (H) Other non-recurring engineering ("NRE").

4.2 Place of Service. Additional Support Services are generally provided by telephone or by other remote means. PushMX may, in its sole discretion, provide on-site support, in which case Customer must pay additional travel and other fees.

4.3 Cancellations. If Additional Support Services are requested and subsequently cancelled, Customer agrees that Customer will (a) reimburse PushMX for all costs incurred by PushMX (such as, by way of example only, travel and other expenses incurred directly in connection with PushMX's preparation for the delivery of the Additional Support Services) plus (b) if the cancellation is received by PushMX less than three business days before the services were scheduled to commence, Customer will pay to PushMX one unit of the time allotted (e.g., for services to be provided in three-hour blocks, Customer would pay for the initial three-hour block of time; for services to be provided by the hour, Customer would pay the initial one-hour block of time; for services to be provided by the day, Customer would pay for the initial day).

4.4 Changes To Reference Environment. If Customer changes the computer environment on which the PushMX Software resides, Customer will pay additional fees to PushMX for compatibility re-engineering and to ensure quality control of the PushMX Software.

4.5 Pricing. Additional Support Services are charged to Customer at PushMX's then-current rate, which may change from time to time.

5. SUPPORT SERVICE FEES.

5.1 Customer pays fees to PushMX for Basic Support Services commencing on the Effective Date of the License Agreement. The initial fees are due as set forth on the Order Confirmation. Subsequent payments are due as set forth on the applicable Order Confirmation.

5.2 Customer pays PushMX's then-current rates plus associated travel, lodging, and meals expenses for Additional Support Services. Fees for Additional Support Services are due 30 days after the date of invoice unless otherwise set forth on the applicable Order Confirmation.

6. ACCEPTANCE

6.1 Customer Acceptance. Customer will notify PushMX within 15 days after delivery of the PushMX Software of any deviation of the PushMX Software from specifications. If Customer asserts that the PushMX Software deviates substantially from its Specifications and is not accepted, Customer must specify the substantive deviations from Specifications, identify the suspected causes, and cooperate with PushMX to review and correct the specified deviations. So long as PushMX makes commercially reasonable efforts to correct specified deviations, occurrences of deviations in the PushMX Software do not constitute a material breach of PushMX's obligations under this Agreement. The PushMX Software is deemed accepted if Customer does not provide a written rejection within the 15-day acceptance period.

7. PAYMENTS

7.1 In addition to any other remedies, PushMX may, at its sole option, suspend or terminate the Basic Support Services and the License Agreement for non-payment. PushMX has no liability for damages sustained by Customer resulting from such termination or suspension of Support Services or the License Agreement pursuant to this Article 6.

7.2 The amounts payable under this Support Agreement are exclusive of all taxes (including without limitation value added taxes and withholding taxes), tariffs, duties, and the like. If PushMX is required to pay any sales, use, value-added, withholding or other tax, tariff, duty, etc., (other than taxes on PushMX's net income) on the licenses or services provided pursuant to this Agreement or pertaining to Customer's or End User's use of the PushMX Software, then such taxes shall be billed to and paid by Customer.

8. CONTACTS

8.1 Customer must identify, in writing, a Customer Technical Liaison to coordinate the delivery of all Basic Support Services. Product Discrepancy Reports may be submitted only by the Customer Technical Liaison, who is responsible for preparation, delivery, and receipt of all Product Discrepancy Reports and other support requests to the PushMX Support Center. PushMX's support is provided to the Customer Technical Liaison.

8.2 The PushMX Support Center contact information is available at www.pushmx.com. Telephone contact may be made at 1.408.287.7136 or 1.877.978.7469, and email contact may be made at support@pushmx.com (all subject to change, as posted on www.pushmx.com).

9. RESPONSIBILITIES OF CUSTOMER

Customer must: maintain all software and hardware, except to the extent PushMX is expressly obligated to provide support under this Support Agreement; verify and report any Errors identified by Customer or its End Users to the PushMX Support Center, with supporting documentation; assist PushMX in resolving technical problems; deploy Error Corrections on the Reference Environment; interface with End Users regarding Error Corrections; correct any errors or problems reported by PushMX on a timely basis; and maintain the Reference Environment and keep it operational.

10. MISCELLANEOUS

10.1 The services described in this Support Agreement are provided by PushMX on a reasonable commercial efforts basis. Support is provided by PushMX to Customer only, and not to Customer's customers.

10.2 PushMX reserves the right to determine the timing for the release of the next Maintenance Update; that a reported Error is not due to the PushMX Software or otherwise under PushMX's control; or that an Error cannot or should not be corrected for technical or resource reasons such as unreasonable cost in terms of time, resources, or money as compared to the relative seriousness of the Error.

10.3 Support services are provided by PushMX to Customer via the PushMX Support Center located at PushMX's offices in California, and when necessary (at PushMX's sole option) at other locations at Customer's expense.

10.4 Subcontractors. PushMX may fulfill its obligations under this Agreement through third party subcontractors, but PushMX remains responsible to the Customer for the subcontracted services.

10.5 Entire Agreement. This Support Agreement is the entire Agreement between the parties regarding its subject matter and supersedes all statements, representations, undertakings, and agreements previously made between the parties with respect to its subject matter as well as the conflicting provisions of any purchase orders, invoices, or other instruments unless otherwise expressly agreed by the parties in writing. In the event of any direct conflict between this Support Agreement and the License Agreement, the License Agreement controls. This Agreement may be modified only by a written document duly signed by officers of both parties and referencing this Agreement.