



**PURCHASE AGREEMENT FOR EQUIPMENT AND SOFTWARE SERVICES**

This Purchase Agreement is made as of the date on the signature page below ("Effective Date") by and between Kit Check, Inc., a District of Columbia corporation with a principal office at 803 7<sup>th</sup> St NW, Suite 350, Washington, DC 20001 ("Kit Check" or "Vendor") and the Purchaser defined below. The parties agree as follows:

**Purchaser (if applicable, include details of hospital system):**

County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center (NMC), an acute care hospital. All Notices to be sent care of:

NMC Contracts Manager and NMC Pharmacy Manager

**Purchaser Address:**

Natividad Medical Center  
1441 Constitution Blvd,  
Salinas, CA 93906

**Background:** Kit Check provides hospitals with scanning equipment and web-based software to enable hospitals to automate their pharmacy kit processing. Kit Check will supply the Equipment, Consumables and Services described below for the Fees during the Term (all as defined below).

**Equipment:** Kit Check will provide Purchaser with the equipment specified below, as well as any other equipment that is subsequently specified in an mutually agreed amendment or order (collectively, the "Equipment"):

1 scanning station; 1 RFID printer suitable for printing the Kit Check RFID labels; and 1 desktop barcode scanner

**Standard Services:** Kit Check will provide Purchaser with the following "Standard Services":

- "Kit Check Standard Software Service" which consists of providing Purchaser's Authorized Personnel with access and use of Kit Check's standard web-based kit processing software that Kit Check makes generally available to its customers throughout the Term. The Kit Check Kit Standard Software Service is used by Purchaser's Authorized Personnel in conjunction with the Equipment for pharmacy kit processing.
- "Kit Check Installation Services" which consists of assisting with Purchaser's Installation of the Equipment.
- "Kit Check Training" which consists of training Purchaser's Authorized Personnel in the use of the Equipment and the Kit Check Standard Software Services, at the times and for the periods mutually agreed.

**Customizations and/or Additional Services:** Certain customizations and/or additional services may be provided by Kit Check if specified below or in a mutually agreed amendment or order: Not Applicable

**Consumables:** Kit Check will supply Purchaser with the RFID labels/tags suitable for use with the RFID printer. Tags come in two forms, a regular tag that can be used on various surfaces, and a metal-mount tag that can be used specifically to affix to metal surfaces.

**Fees and Payment Terms:** The Fees for the Equipment, Consumables and Services are as specified below. Shipping and travel expenses are paid pursuant to the County of Monterey Travel Policy and have not been included in the stated fees. Kit Check will invoice Purchaser for pre-approved shipping expenses as incurred. Kit Check reserves the right to update the pricing of the Equipment, Consumables and Services on an annual basis. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of \$95,000.

<b>Equipment Fee:</b>	Waived
<b>Installation Fee:</b>	Waived
<b>Annual Subscription Fee for Kit Check Standard Software Service:</b>	Included
<b>Customization and/or Additional Services Fees (if applicable):</b>	Not Applicable
<b>Annual Hardware and Software Support Fee:</b>	Included
<b>Training Services Fee:</b>	4 hours of training provided as part of initial installation; further services at \$200 per hour.
<b>Consumables:</b>	\$0.95 per tag for tags 1-50,000
Minimum Initial Consumables Buy: 10,000 Tags	\$0.80 per tag for tags 50,001-100,000
Minimum Annual Consumables Buy: 30,000 Tags	\$0.50 per tag for tags >100,000
	\$1.40 per metal-mount tag

1. **Services.** Kit Check will provide Purchaser with the Standard Services and any Customization and/or Additional Services that have been mutually agreed in this Agreement or in a subsequent amendment or mutually agreed order (collectively, the "Services").
  - a. **EXHIBITS;** the following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:  
Exhibit A: SaaS License Agreement  
Exhibit B: Service Level Agreement
2. **Purchaser Order Form.** This Purchase Agreement includes and incorporates only the following terms from Purchaser's standard purchase order (the "Purchaser PO") form if this has been provided to Kit Check in writing prior to the Effective Date: (i) any term stipulating the manner in which equipment must be shipped and that allocates risk of loss during any period of transit; (ii) any term stipulating the manner and timing of delivery and associated requirements for returning Software or Equipment; (iii) California as the governing law and any term stipulating the manner in which disputes between the parties should be resolved; and (iv) any provisions that address the independent contractor status of Kit Check and counterparts (i) to (iv) collectively, the "Relevant Purchaser PO Terms"). Notwithstanding any other term or condition in the Purchaser PO, the parties agree that the terms of this Purchase Agreement, override and supersede any conflicting language that appears in the Purchaser PO or any other document provided by Purchaser.
3. **Entire Agreement.** This Purchase Agreement constitutes the entire agreement between Kit Check and Purchaser. Access and use of the Kit Check Standard Software Service is subject to the license terms that appear in the Kit Check Software Service License attached to this Agreement as Exhibit A This Purchase Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties relating to the Equipment, Consumables or Services. Kit Check may update the SaaS agreement from time to time. If Kit Check updates the SaaS Agreement, it shall be emailed to Purchaser and Purchaser shall have 60 days to contest any changes. If no comments are made, the changes shall be deemed accepted.
4. **Hospital Systems.** If Purchaser is part of a hospital system and desires to use the Equipment, Consumables and Services for other hospitals within the system, then this is permitted subject to the requirements of this provision. Purchaser agrees that: (i) this Agreement shall also govern the supply of Equipment, Consumables and Services to any hospital in the system in which Purchaser participates; (ii) Purchaser is responsible for ensuring that all other hospitals within the system that use the Equipment, Consumables and Services agree to and comply with the terms of this Agreement; and (iii) Purchaser will be fully liable and responsible for any breach of this Agreement by any hospital within the system and will indemnify Kit Check against any claims that may be made by such hospital against Kit Check.
5. **Third Party Consumables.** Kit Check is not able to assess and test the third party consumables, and because part of the costs of the Kit Check Equipment are recouped via charges for Kit Check Consumables, the use of third party supplied consumables will have the following impacts on Purchaser: (i) the representations, warranties and indemnifications from Kit Check to Purchaser in this Agreement will no longer be effective and (ii) Kit Check will be entitled to charge Purchaser the then standard Kit Check surcharge for each third party consumable used (currently \$0.9 per tag).

*Kit Check*

6. **Term.** This Agreement shall remain in effect for an Initial term of three (3) years commencing on August 15, 2014 through August 14, 2017, unless terminated earlier by Purchaser or Kit Check in accordance with the terms of this Agreement (the "Term"). Kit Check will retain title to the Equipment during the first two years of the Term. If the Agreement is terminated in accordance with its terms within the first two years of the Term by either Purchaser or Kit Check, then Kit Check will have the right and option to collect the Equipment from Purchaser's premises. Thereafter, it shall transfer to Purchaser who shall wholly own the Equipment. Purchaser reserves the right to cancel this Agreement, or any extension of this Agreement, with cause, with a thirty day (60) written notice.

Notwithstanding anything contained in this agreement to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for Purchaser for any reason whatsoever in any fiscal year, for payments due under this agreement, Purchaser will immediately notify Kit Check of such occurrence, and this agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for Purchaser or are otherwise available for payments. To the extent permitted by law, this provision will not be construed so as to permit Purchaser to terminate this agreement in order to acquire or lease any other equipment or to allocate funds directly or indirectly to perform the same application and in the same manner for which the equipment is intended.

7. **Acceptance.** Purchaser shall have ninety (90) days from the date of delivery to test and accept the Equipment and the Services. The Services and Equipment will be considered to be accepted when either of the following conditions are met: (1) when at least ten (10) kits total have been tagged and processed using the Kit Check Standard Software Services; or (2) upon Purchaser signing a notice of acceptance. If Purchaser rejects any Equipment or Services, Purchaser shall provide Kit Check a written list of items that must be corrected. On receipt of Purchaser's notice, Kit Check shall promptly commence, at no additional charge to Purchaser, all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs, and modifications to the Equipment or Services as will permit them to be ready for retesting and review. If Purchaser chooses not to accept the Equipment or Services at this time, then both parties may terminate this Agreement on notice to the other party and all Equipment and any upfront payments shall be returned. The Equipment shall be removed at a time and in a manner that is agreed upon by Purchaser and Kit Check and that is the least disruptive to Purchaser's operations. Once the Initial Equipment and Services have been accepted, no further testing, return or refund is permissible. Fees shall accrue for processing of kits and use of Services prior to acceptance, but only if the Equipment and Services are accepted.
8. **Notices.** Any notice required or permitted to be given pursuant to this Agreement shall be given in writing signed by or on behalf of the party giving such notice, and either delivered in person; deposited in the United States mail, postage pre-paid, registered or certified mail, properly addressed; or sent by nationally recognized overnight courier. Notices are considered delivered on the post-marked date or the date delivered by a courier for next business day delivery. The addresses for notices of each party are specified on the first page of this Purchase Agreement. Either party may change their respective notification addresses by providing written notice to the other party in accordance with this section.
9. **Publicity.** Kit Check may only use the name(s) of Purchaser for advertising or other promotional materials with Purchaser's prior consent. However, Kit Check may include Purchaser's name in its standard client list without Purchaser's prior consent.
10. **No Protected Health Information (PHI).** Kit Check warrants that use of the Equipment and the Services does not require any delivery or use of Protected Health Information ("PHI"), as defined under HIPAA. Purchaser warrants that it will not upload or otherwise deliver to Kit Check or input into the Kit Check Standard Software Services any PHI.
11. **Purchaser Data.** Purchaser shall be the owner of all data entered into Kit Check Standard Software Services by or on behalf of Purchaser (collectively, the "Purchaser Data"). Kit Check will return Purchaser Data to Purchaser if so requested by Purchaser in writing in accordance with the terms in the Kit Check SaaS License. Kit Check may use Purchaser Data for purposes of improving Kit Check's products and services. In addition, Kit Check can create and use Analytics Data for any purpose. "Analytics Data" means data derived from the operation or use of Kit Check Equipment and Services, including data elements derived from Purchaser Data, and any conclusions, reports or other data resulting from analysis of such data (e.g., service level data, customer item history, and customer usage patterns, etc.). Analytics Data is owned by Kit Check.
12. **Confidentiality.** Each party acknowledges that certain information of the other party that it may acquire or be exposed to in connection with the Equipment, Services and this Agreement will constitute information of a proprietary or confidential nature including, without limitation, information concerning the other party's business affairs, property and methods of operation and any other material, data or information disclosed by one party to the other party that is not generally known by or disclosed to the public or to third parties (collectively, "Confidential Information"). Kit Check's Confidential Information will be marked as confidential. Purchaser Confidential Information includes, without limitation, any Purchaser Data. Each party (the "Receiving Party") agrees to exercise the same degree of care and protection with respect to the herein identified Confidential Information of the other party (the "Disclosing Party") that it exercises with respect to its own Confidential Information, but in no event less than a reasonable degree of care; not to use the Disclosing Party's Confidential Information except as permitted or contemplated hereunder; and not to directly or indirectly disclose, distribute, republish or allow any third party to have access to any Confidential Information of the Disclosing Party without the Disclosing Party's prior written consent. However, a Receiving Party may disclose Confidential Information if so required by law (including court order or subpoena) provided that the Receiving Party provides the Disclosing Party with sufficient written notice of such disclosure. Confidential Information shall not include information that is: (i) publicly available or later becomes available other than through a breach of this Agreement; (ii) known to the Receiving Party or its employees, agents or representatives prior to disclosure by the Disclosing Party; or (iii) subsequently lawfully obtained by the Receiving Party or its employees, agents, or representatives from a third party without obligations of confidentiality.
13. **Service Levels.** Kit Check will use commercially reasonable efforts throughout the Term to provide the Services in a manner that meets or exceeds the applicable service level in the Kit Check Service Level Agreement, which is incorporated as Exhibit B. Kit Check may update service levels from time to time. If Kit Check updates the Service Level Agreement, it shall be emailed to Purchaser and Purchaser shall have 60 days to contest any changes. If no comments are made, the changes shall be deemed accepted.
14. **Manufacturers' Warranties.** To the extent legally permissible, Kit Check transfers and passes through to Purchaser any manufacturer's or other third party's warranty or agreement that is provided by the manufacturer of the Equipment or the Consumables ("Third Party Warranties") as of the date of delivery and for a year thereafter (the "Equipment and Consumables Warranty Period").
15. **Acknowledgements and Disclaimer of Other Warranties.** Purchaser acknowledges and agrees that Purchaser is responsible for the processing of pharmacy kits as part of its daily operations and although Kit Check is providing Equipment, Consumables and Services to facilitate automation of this existing process, it is Purchaser that is responsible for ensuring the proper processing of pharmacy kits. The parties acknowledge and agree that the Purchaser's Authorized Personnel may include third party service providers who will operate the Equipment and use the Consumables and Services on Purchaser's behalf (the "Purchaser Processor"). The parties further acknowledge that Kit Check's services do not include the operation of the Equipment or use of the Consumables and Services, and that Kit Check has no responsibilities for processing by Purchaser or a Purchaser Processor, even if the Purchaser Processor has been referred to Purchaser by Kit Check. EXCEPT AS EXPRESSLY SET FORTH IN THE KIT CHECK SLA, THE THIRD PARTY WARRANTIES AND AS MAY BE SPECIFIED IN THE LICENSE TERMS THAT APPEAR IN THE KIT CHECK SaaS LICENSE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KIT CHECK DISCLAIMS ALL WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED WITH RESPECT TO THE EQUIPMENT, CONSUMABLES AND THE SERVICES.
16. **Purchaser Authorized Personnel.** Purchaser agrees that only its employees and contractors, including any Purchaser Processor, that have been designated with responsibilities for processing pharmacy kits and maintaining Purchaser's records and systems, will have access and use of the Equipment, Consumables and Services (collectively, the "Authorized Personnel"). Purchaser is fully responsible for any acts or omissions of Authorized Personnel and shall ensure that Authorized Personnel comply with all the terms and conditions of this Agreement.
17. **Indemnification.** Kit Check will indemnify, defend and hold Purchaser and its directors, officers and employees, (collectively, the "Indemnified Parties") harmless from and against any and all third party claims that the Kit Check Standard Software Services infringe any valid patent, copyright, or trademark rights that existed as of the Effective Date. The Indemnified Party shall: (a) provide Kit Check with prompt written notice upon becoming aware of any such claim; (b) reasonably cooperate with Kit Check in the defense of any such claim; and (c) provide Kit Check with sole and exclusive control of the defense and settlement of any such claim. This indemnification is the only responsibility of Kit Check and the sole and exclusive remedy of Purchaser for any claims or liabilities associated with infringement or violation of third party patents, copyrights or trademark rights.
18. **EXCLUSION OF CERTAIN DAMAGES.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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12. **Confidentiality.** Each party acknowledges that certain information of the other party that it may acquire or be exposed to in connection with the Equipment, Services and this Agreement will constitute information of a proprietary or confidential nature including, without limitation, information concerning the other party's business affairs, property and methods of operation and any other material, data or information disclosed by one party to the other party that is not generally known by or disclosed to the public or to third parties (collectively, "Confidential Information"). Kit Check's Confidential Information will be marked as confidential. Purchaser Confidential Information includes, without limitation, any Purchaser Data. Each party (the "Receiving Party") agrees to exercise the same degree of care and protection with respect to the herein identified Confidential Information of the other party (the "Disclosing Party") that it exercises with respect to its own Confidential Information, but in no event less than a reasonable degree of care; not to use the Disclosing Party's Confidential Information except as permitted or contemplated hereunder; and not to directly or indirectly disclose, distribute, republish or allow any third party to have access to any Confidential Information of the Disclosing Party without the Disclosing Party's prior written consent. However, a Receiving Party may disclose Confidential Information if so required by law (including court order or subpoena) provided that the Receiving Party provides the Disclosing Party with sufficient written notice of such disclosure. Confidential Information shall not include information that is: (i) publicly available or later becomes available other than through a breach of this Agreement; (ii) known to the Receiving Party or its employees, agents or representatives prior to disclosure by the Disclosing Party; or (iii) subsequently lawfully obtained by the Receiving Party or its employees, agents, or representatives from a third party without obligations of confidentiality.
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16. **Purchaser Authorized Personnel.** Purchaser agrees that only its employees and contractors, including any Purchaser Processor, that have been designated with responsibilities for processing pharmacy kits and maintaining Purchaser's records and systems, will have access and use of the Equipment, Consumables and Services (collectively, the "Authorized Personnel"). Purchaser is fully responsible for any acts or omissions of Authorized Personnel and shall ensure that Authorized Personnel comply with all the terms and conditions of this Agreement.
17. **Indemnification.** Kit Check will indemnify, defend and hold Purchaser and its directors, officers and employees, (collectively, the "Indemnified Parties") harmless from and against any and all third party claims that the Kit Check Standard Software Services infringe any valid patent, copyright, or trademark rights that existed as of the Effective Date. The Indemnified Party shall: (a) provide Kit Check with prompt written notice upon becoming aware of any such claim; (b) reasonably cooperate with Kit Check in the defense of any such claim; and (c) provide Kit Check with sole and exclusive control of the defense and settlement of any such claim. This indemnification is the only responsibility of Kit Check and the sole and exclusive remedy of Purchaser for any claims or liabilities associated with infringement or violation of third party patents, copyrights or trademark rights.
18. **EXCLUSION OF CERTAIN DAMAGES.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

19. **LIMITATION OF LIABILITY.** Except for defense and indemnification obligations, as set forth within this Agreement, neither the County nor CONTRACTOR shall be liable to the other for any damages exceeding the aggregate insurance coverage limits set forth under this Agreement, including but not limited to, any and all legal and regulatory actions, alleged damages, claims, liabilities, costs, expenses or financial loss, in any way arising from or relating to the performance of this Agreement. The provisions of this Paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort or otherwise.
20. **Insurance.** During the Term Kit Check shall maintain the following types of insurance coverage: statutory workers' compensation in the amount of \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease; commercial general liability insurance with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence; business automobile liability insurance with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence; umbrella liability insurance; and professional liability insurance in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate. Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents and employees as Additional Insureds. Endorsements for General Liability and Auto Liability policies shall state that the insurance is "primary" and the County of Monterey is "non-contributory" or copies of the complete policy with state the equivalent may be submitted in their entirety.
21. **Termination.** Either party may terminate this Agreement based on the other party's breach of a material term of the Agreement by providing the breaching party with thirty (30) days' notice and the right to cure during such 30-day period. If the breaching party fails to cure during such 30-day period then this Agreement will terminate on the expiration of such 30-day notice period. Purchaser shall be responsible for payment for any Equipment, Consumables and Services used prior to termination.
22. **Assignment.** Either party may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of that party with the prior written consent of Purchaser. Notwithstanding any such subcontract, Kit Check shall continue to be liable for the performance of all requirements of this Agreement. The Agreement and rights, privileges, duties and obligations of Purchaser and Kit Check under this Agreement, to the extent assignable or delegable shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
23. **Choice of Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, regardless of applicable principles of conflicts of laws. The parties irrevocably submit to the exclusive jurisdiction of (a) the Courts of the State of California for the purposes of any suit, action, or other proceeding arising out of this Agreement.
24. **Force Majeure.** Neither party shall be responsible to the other or to any third party for any failure, in whole or in part, to perform any obligations under the Agreement to the extent that performance is prevented, hindered or delayed by fire, flood, earthquake, elements of nature or acts of God, acts of war, acts or attempted acts of terrorism, riots, civil disorders, rebellions or revolutions, strikes, lockouts or other labor disputes, power, network or Internet outages, or any other similar cause beyond the reasonable control of such party (each, a "Force Majeure Event"). In addition, Kit Check's failure to perform its responsibilities under this Agreement will be excused if the non-performance is caused by Purchaser, Purchaser Authorized Personnel (including the Purchaser Processor), or any other third party.

Signature Page to Follow

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**NATIVIDAD MEDICAL CENTER**

By: [Signature]  
NMC Contracts/Purchasing Agent

Date: 9/12/14

By: [Signature]  
Department Head (if applicable)  
KELLY O'LEEFE, M.D., PhD, FCMO  
INTERIM CEO

Date: 9/11/14

**Approved as to Legal Provisions**

By: [Signature]  
Anne Brereton, Deputy County Counsel

Date: Sept. 3, 2014

**Approved as to Fiscal Provisions**

By: [Signature]  
Gary Giboney  
Auditor/Controller's Office

Date: 9-3-14

**CONTRACTOR**

**KIT CHECK**

Contractor's Business Name\*\*\*

[Signature]

Signature of Chair, President, or Vice-President

Kevin MacDonald CEO  
Name and Title

Date: 7/23/14

By: [Signature]  
(Signature of Secretary, Asst. Secretary, CFO,  
Treasurer or Asst. Treasurer)

Ted Ridgway CFO  
Name and Title

Date: 7-23-14

**\*\*\*INSTRUCTIONS:**

If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers.

If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership.

If CONTRACTOR is contracting in and individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement.

[Handwritten Signature]

## **Exhibit A – SaaS License**

The following terms are terms of a legal agreement between you (“Purchaser”) and Kit Check, Inc. (“Vendor” or “Kit Check”). PLEASE CAREFULLY READ THESE TERMS AS THEY AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS. You agree that the terms of this license (“License Terms” or “License”) apply to Yourself, Your organization and its affiliates and any authorized personnel or authorized third parties acting on your organization’s behalf.

Kit Check hosts and maintains the Kit Check software and all Purchaser Data uploaded to or entered into this service in accordance with this License and reserves the right to make changes to this License from time to time, and more generally, to its hosting and technical infrastructure, provided that such changes do not materially degrade the overall level of Service Commitment provided to Purchaser.

Any capitalized terms used but not defined herein shall have the meanings ascribed to them in the specific agreement between Kit Check and Purchaser (the “Purchase Agreement”).

### **SOFTWARE USAGE RIGHTS AND RESTRICTIONS**

For the Term, Kit Check grants to Purchaser a non-transferable, non-exclusive right to access and use the Kit Check software services and any related user manual(s) or technical requirements document(s) that may be provided in connection with the Kit Check software services (the “Documentation”) for which Purchaser is a current subscriber for Purchaser’s internal business purposes. Kit Check hosts and retains physical control over the Kit Check software service and it is only made available to Purchaser as a hosted service which Purchaser can use and access over the internet through a web-browser (e.g., Internet Explorer). Nothing in this License obligates Kit Check to deliver or make available any copies of computer programs or code from the Kit Check software service to Purchaser. Purchaser may not rent, lease, distribute, or resell the Kit Check software service, or use the Kit Check software service as the basis for developing a competitive solution (or contract with a third party to do so), or remove or alter any of the logos, trademark, patent or copyright notices, confidentiality or proprietary legends or other notices or markings that are on or in the Kit Check Software Service. Purchaser shall not, and shall not permit any third party to: decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms of any of the Kit Check software or services by any means whatsoever; modify or alter any of the software or services or Documentation in any manner whatsoever. Unauthorized use of any program or automated script that ‘crawls’ through a program, service or website and collects data from such program, service or website (a “Robot”) with or within the Kit Check software service for any purpose is a material breach of this License. Purchaser, including any employee or third party working on Purchaser’s behalf, may not, without Kit Check’s prior written consent, perform any technical security integrity review, penetration test, load test, denial-of-service simulation or vulnerability scan (“Ethical Hack”), or attempt to access the data of any other Kit Check customer.

### **KIT CHECK AND PURCHASER RIGHTS UPON TERMINATION OR EXPIRATION.**

Upon the expiration or termination of the Purchase Agreement: Purchaser may retrieve a copy of Purchaser Data hosted by Kit Check in a database-importable format such as excel or csv (the “Data Retrieval”); Purchaser must cease all use of the Kit Check software and services with the exception of Data Retrieval; and Kit Check may disable all other portions of the Kit Check software services for which Purchaser’s usage rights have been terminated or which have expired. Kit Check may also delete, in its sole discretion, any Purchaser Data in Kit Check’s possession that is not retrieved by Purchaser within thirty (30) days of expiration or termination of the Purchase Agreement.

### **KIT CHECK OBLIGATIONS**

Kit Check will provide its standard support services in accordance with its Service Level Agreement. The Kit Check software service for which Purchaser is a current subscriber will include all updates made generally available to the customers of such service as such updates and upgrades are released. New products, however, will not be provided to

Purchaser free of charge. Kit Check may charge additional fees for new products and Purchaser may choose whether or not to purchase subscriptions to new products at Purchaser's sole discretion.

#### **KIT CHECK SOFTWARE WARRANTIES**

Kit Check represents, warrants, and covenants as follows: Kit Check possesses all rights necessary to grant to Purchaser the rights set forth in this License; Kit Check incorporates commercially reasonable measures to screen for time-bombs, viruses, technically limiting devices, and/or technically limiting code (software enabling Kit Check's remote access for purposes of conducting support services will not be considered disruptive code for purposes of this section); Kit Check will not use disabling mechanisms or lock-up measures during the Term that may cause Purchaser Data or software to become unusable and inaccessible; and the Kit Check software service will perform substantially in accordance with the Documentation and the Service Level Agreement. EXCEPT AS EXPRESSLY SET FORTH HEREIN, KIT CHECK DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE KIT CHECK SOFTWARE SERVICE. KIT CHECK DOES NOT WARRANT THAT OPERATION OF THE KIT CHECK SOFTWARE SERVICE IS ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED.

#### **OTHER TERMS**

The use and license of the Kit Check software service is subject to all the other terms and conditions of the Purchase Agreement.

End Exhibit A

## Exhibit B – Service Level Agreement

### KIT CHECK UPTIME COMMITMENT

Kit Check will use commercially reasonable efforts to make the Kit Check Standard Software Service available and functional with an Uptime Percentage of at least 98% during the Term (however, this Commitment shall not apply during any period of time prior to Acceptance).

### KIT CHECK SUPPORT RESPONSE TIME COMMITMENT

Once an issue is logged with Kit Check, Kit Check will provide a remote response within four hours, and if the issue requires on-site support, Kit Check will provide on-site coverage within two business days of escalation (“Support Response Time Commitment”).

Kit Check will provide phone support during standard business hours, 9AM-5PM Monday to Friday Eastern Time except on federal holidays.

### SERVICE LEVEL CREDITS

In the event that Kit Check does not meet the Uptime Percentage for any month, then the Purchaser will be eligible to receive the following credits days, which will be added to the end of the Term at no charge to Purchaser.

Monthly Uptime Percentage	
Days Added to Kit Check Standard	
Software Service at no charge	
97.9% to 95%	3 days
94.9% to 93%	7 days
92.9% and lower	14 days

In the event that Kit Check fails to meet the Support Response Time Commitment on more than one occasion during a calendar month, then for each occasion following the first instance Kit Check will add an additional day to the Kit Check Standard Software Service at no charge to Purchaser.

### DEFINITIONS

Any capitalized terms used but not defined in this Service Level Agreement shall have the meanings ascribed to them in the specific agreement between Kit Check and Purchaser.

“Uptime Percentage” shall mean the amount of time in a given calendar month minus the amount of Downtime suffered during that month, divided by the total time in that calendar month.

“Downtime” shall mean the time between Purchaser notifying Kit Check that the Kit Check Standard Software Service is inoperable for use and the time when the Kit Check Standard Software Service is restored and available for use.

Downtime does not include: (1) times when a service request is made by Purchaser but the Kit Check Standard Software Service is still in use; or (2) times when Kit Check conducts maintenance; for non-emergency maintenance, Kit Check will provide at least three (3) business days’ notice to Purchaser, and will schedule maintenance at a time designed to be least disruptive to its customers; and for emergency maintenance, Kit Check will provide as much notice as practicable under the circumstances.

## **CLAIM PROCESS AND LIMITATIONS**

In order to receive the above Service Level credits, Purchaser must notify Kit Check in writing of the failure to meet the Service Level within thirty days of the end of the month in which the failure occurred. Kit Check will then review the claim and if it is valid, issue a response to Purchaser confirming the credit that will be added to the end of the term.

The Service Level Commitments do not, however, apply to any performance or availability issues that are due to: factors beyond Kit Check's reasonable control; that resulted from Purchaser's or third party hardware or software; that resulted from inactions or errors of Purchaser, Authorized Purchaser Personnel or the Purchaser Processor; or that were caused by Purchaser's use of the Kit Check Standard Software Service after Kit Check advised Purchaser to modify its use of the Kit Check Software Service.

End Exhibit B