

Sonatype, Inc.
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**Carahsoft Rider to Manufacturer Agreements
(for U.S. Government End Users)**

1. **Scope.** This Carahsoft Rider and Sonatype, Inc.'s ("Manufacturer") the Manufacturer Agreement establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").
2. **Applicability.** The terms and conditions in the attached Manufacturer Agreement (<http://www.sonatype.com/usage/master-eula>) are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's Agreement's are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's contract #GS-35F-0119Y, including, but not limited to the following:
 - (a) **Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under Government contracts as set forth in Government Order 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
 - (b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.
 - (c) **Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - (d) **Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and

adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.

- (e) **Termination.** Clauses in the Manufacturer Agreement referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the Manufacturer Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court..

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer Agreement referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer Agreement referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer Agreement are hereby deemed to be deleted.
- (i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer Agreement are hereby deemed to be deleted.
- (j) **Customer Indemnities.** All Manufacturer Agreement clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All Manufacturer Agreement clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

(l) Renewals. All Manufacturer Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.

(m) Future Fees or Penalties. All Manufacturer Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

(n) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.

(o) Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.

(p) Installation and Use of the Software. Installation and use of the software shall be in accordance with the Rider and Manufacturer Agreement, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.

(q) Dispute Resolution and Venue. Any disputes relating to the Manufacturer Agreement and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

(r) Limitation of Liability: Subject to the following:

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

(s) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

(t) Public Access to Information. Manufacturer agrees that the Manufacturer Agreement and this Rider contain no confidential or proprietary information and acknowledges the Manufacturer Agreement and this Rider will be available to the public.

(u) Confidentiality. Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.

END USER LICENSE AGREEMENT

READ THIS AGREEMENT CAREFULLY

YOU MUST BE AUTHORIZED TO CONTRACTUALLY BIND THE ENTITY PURCHASING A SUBSCRIPTION TO ACCESS AND USE THE PRODUCTS ("COMPANY") IN ORDER TO ACCEPT THE TERMS OF THIS END USER LICENSE AGREEMENT (THE "AGREEMENT"), AND THE ACCESS AND USE RIGHTS GRANTED TO COMPANY UNDER THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON ACCEPTANCE OF THIS AGREEMENT BY SUCH AUTHORIZED PERSONNEL. BY CLICKING ON THE "I ACCEPT" (OR SIMILAR CONSENT) BUTTON, COMPANY HEREBY ACCEPTS ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND COMPANY AGREES THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF COMPANY. IF COMPANY DOES NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT CLICK TO ACCEPT OR OTHERWISE (A) DOWNLOAD, INSTALL OR USE ALL OR ANY PORTION OF THE PRODUCT, OR (B) ACCEPT OR USE ALL OR ANY PORTION OF THE SERVICES (INCLUDING PRODUCT MAINTENANCE). COMPANY HEREBY STRICTLY PROHIBITED FROM ACCESSING AND/OR USING ANY PRODUCT OR SERVICES UNLESS AND UNTIL COMPANY ACCEPTS THE TERMS OF THIS AGREEMENT. IF COMPANY HAS PAID A SUBSCRIPTION FEE FOR USE OF ANY PRODUCT AND DOES NOT AGREE TO THESE TERMS, COMPANY MAY RETURN SUCH PRODUCTS FOR A FULL REFUND PROVIDED THAT COMPANY: (A) DOES NOT ACCESS OR USE THE PRODUCT; AND (B) RETURNS THE PRODUCT WITHIN THIRTY (30) DAYS OF THE INITIAL PURCHASE. IF COMPANY HAS ENTERED INTO A SEPARATE WRITTEN AGREEMENT FOR USE OF THE PRODUCT THAT IS EXECUTED BY AUTHORIZED REPRESENTATIVES OF COMPANY AND SONATYPE INC. ("SONATYPE"), THE TERMS AND CONDITIONS OF SUCH OTHER AGREEMENT SHALL PREVAIL OVER ANY CONFLICTING TERMS OR CONDITIONS IN THIS AGREEMENT.

1. DEFINITIONS

"Affiliates" means any entity that is controlled by, under the control of, or under common control with Company where "control" means ownership of, or the right to control, greater than 50% of the voting securities of such entity.

"Application" means an individual computer program that is designed, built and/or maintained by Company or licensed by Company from a third party for its internal business purposes.

"Application Component Identifiers" means hash values associated with application binaries and files related to and Application that serve to identify what software components are included within the Application.

"Contractor" means any third party employed by Company or a Company Affiliate to perform services for the benefit of Company.

"Deliverable" means developments, work product and deliverables resulting from any Services (as defined in Section 2(e)) performed by Sonatype pursuant to this Agreement and the applicable Ordering Document.

"Documentation" means the user guide and technical specifications for the Products delivered by Sonatype along with the Products as may be updated by Sonatype from time to time.

"Effective Date" means the date on which Customer accepts the terms and conditions of this Agreement.

"Open Source Software" means any third-party open source software or other similar community or free software of any type (including software code licensed under any version of the GNU GPL, Mozilla or Apache licenses).

"Order Form" means a document governing purchases of Product Subscriptions made by Company hereunder that is either completed online by Company at Sonatype's website, executed by an authorized representative of each Party, or otherwise agreed to by the Parties (including Company referencing a Sonatype quote or order number on Company's purchase order) in a manner acceptable to Sonatype.

"Ordering Document" means any and all Order Forms and/or Statements of Work, collectively and/or individually.

"Product" means Sonatype's software application(s) and/or hosted data service each as identified in one or more Order Form(s) to which Company purchases a Subscription pursuant to the terms of this Agreement and an Ordering Document.

"Product Maintenance" means the support and maintenance services to be performed by Sonatype as further set forth in this Agreement.

"Reports" means any reports or data generated by the Products by, for and/or on behalf of Company.

"Statement of Work" means a document governing the provision of Services by Sonatype for the benefit of Company hereunder that is executed by an authorized representative of each Party.

"Subscription" means the right and license granted to Company by Sonatype to access and use the Products in accordance with the terms of this Agreement during the specified Subscription Term.

"Subscription Term" has the meaning set forth in Section 11(b) of this Agreement.

"User" means an individual who is authorized by Company to use a Product for the benefit of Company's internal business purposes and for whom a Subscription to the Product has been purchased. Users must include, without limitation, all of Company's employees (including managers, Contributing Developers and administrators), consultants, contractors and agents. For purposes of this definition, **"Contributing Developer"** means a User who produces or consumes software artifacts managed and/or scanned by the Product.

Sonatype and Company may be referred to individually in this agreement as a **"Party"** or collectively as the **"Parties."**

2. FREE TRIAL

With regard to any permitted access to and use of the Products by Company related to a free trial, evaluation, license key extension or other non-production use authorized by Sonatype (the "Free Use"), Sonatype agrees to make such Products available to Company for a term to expire on the earlier of: (a) the end of the free trial period for which you registered to use the Product; or (b) the start date of any Subscriptions for such Product purchased by Company from Sonatype (the "Free Use Period"). Additional terms and conditions governing such Free Use may be imposed by Sonatype, and any such additional

terms and conditions are incorporated into this Agreement by reference and are legally binding. ANY DATA THAT COMPANY ENTERS INTO THE PRODUCTS, AND ANY PERMITTED CUSTOMIZATIONS MADE TO THE PRODUCTS BY OR FOR COMPANY, DURING THE FREE USE PERIOD WILL BE PERMANENTLY LOST UNLESS (a) COMPANY PURCHASES A SUBSCRIPTION TO THE SAME PRODUCTS AS THOSE COVERED BY THE FREE USE OR (b) EXPORTS SUCH DATA BEFORE THE END OF THE FREE USE PERIOD. COMPANY CANNOT TRANSFER DATA ENTERED OR CUSTOMIZATIONS MADE DURING THE FREE USE PERIOD TO A PRODUCT THAT WOULD BE A DOWNGRADE FROM THAT USED DURING THE FREE USE PERIOD AND, THEREFORE, IF COMPANY PURCHASES A PRODUCT THAT WOULD BE A DOWNGRADE COMPANY MUST EXPORT ITS DATA BEFORE THE END OF THE FREE USE PERIOD OR IT WILL BE PERMANENTLY LOST. NOTWITHSTANDING SECTION 8 (WARRANTIES AND DISCLAIMERS), DURING THE FREE USE PERIOD THE PRODUCTS ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

3. PRODUCTS

a. Provision of Products; License. Sonatype shall make the Products available to Company pursuant to this Agreement and the relevant Order Forms during the applicable Subscription term. Each Order Form shall form a part of this Agreement and be subject to the terms and conditions set forth herein. All Products and Documentation shall be delivered by electronic means. Company agrees that Company's purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Sonatype regarding future functionality or features.

b. License; User Subscriptions. With regard to all Products to be installed at Company's facilities, Sonatype grants to Company a non-transferable, non-assignable (except as otherwise stated in Section 13(g)), non-sublicensable, non-exclusive, limited license to use such Products for Company's internal business purposes only, subject to the terms of this Agreement and the applicable Order Form. Unless otherwise specified in the applicable Order Form, (i) Subscriptions are purchased on a per-User basis and may not be accessed by more than the licensed number of Users, (ii) Company must pay for additional User Subscriptions during the Subscription Term prorated for the remainder of the Subscription Term in effect at the time the additional User Subscriptions are purchased, and (iii) the additional User Subscriptions shall terminate on the same date as the pre-existing Subscriptions. User Subscriptions are for designated Users and cannot be shared or used by more than one User; provided that Company may reassign a Subscription to new Users replacing former Users who no longer require ongoing use of or access to the Products. Company will: (i) be responsible for Users' compliance with this Agreement and use of the Products, (ii) be solely responsible for the accuracy, quality, integrity and legality of all Application Component Identifiers and for the means by which Company acquired the Application Component Identifiers, and (iii) use the Products only in accordance with the Documentation.

c. Restrictions. Company shall not (i) permit any third party to access the Products and/or Deliverables, (ii) modify, translate, reverse engineer, decompile, disassemble, create derivative works of or copy the Products and/or Deliverables or otherwise seek to obtain or use the source code or non-public APIs of the Product, except to the extent expressly permitted by applicable law (and then only upon advance written notice to Sonatype), (iii) remove, alter or obscure any proprietary notices, labels or marks on any component or portion of the Products and/or Deliverables, (iv) market, sell, resell, rent, distribute or lease the Products and/or Deliverables, (v) scrape, collect or in any manner compile Application Component Identifiers from any repository using the Products for the purpose of creating an internal repository for Company's use; (vi) interfere with or disrupt the integrity or performance of the Products, Deliverables and/or any and all data contained therein, (vii) use the Products and/or Deliverables for the benefit of any third party including use of the Products to operate as a service bureau, ASP, or hosting service, (viii) attempt to gain unauthorized access to the Products and/or Deliverables, or their related systems or networks, (ix) access the Products and/or Deliverables, or permit access to the Products and/or Deliverables, for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes, and/or (x) access the Products and/or Deliverables in order to (A) build a competitive product or service, or (B) copy any features, functions or graphics of, or data or information in, the Products and/or Deliverables.

d. Reports. The Products may allow Company to generate Reports, and Company may use and copy such Reports for its internal business purposes; provided that use of any such Reports is subject to the disclaimer set forth in Section 8(d).

e. Services. From time to time, Company may request that Sonatype perform certain training and/or professional services that are related to the Products but beyond the scope of this Agreement (collectively, the "Services"). Upon Company's request, Sonatype will prepare a Statement of Work that includes the terms and conditions relevant to the Services to be performed. Statements of Work will, to the extent applicable, contain: (i) a description of the Services to be performed; (ii) any applicable assumptions, milestones, Deliverables, and timelines for delivery; (iii) applicable fees; and (iv) any other terms applicable to such Services. Each fully executed Statement of Work shall form a part of this Agreement and be subject to the terms and conditions set forth herein.

f. Use by Affiliates and Contractors. Subject to the terms and conditions of this Agreement, Company's Affiliates and Contractors may use the Products licensed to Company hereunder, provided that (a) such use is strictly limited to use for the benefit of Company; and (b) Company remains liable for the acts and omissions of, and responsible for compliance with the

terms and conditions of this Agreement by, each Affiliate and Contractor. Company agrees to provide a list of each Affiliate and Contractor that uses the Products for Company's benefit upon Sonatype's written request.

4. PRODUCT MAINTENANCE. Sonatype will provide Product Maintenance pursuant to the terms of the support policy set forth at <http://www.sonatype.com/Usage/Software-Support-Policy>.

5. FEES AND PAYMENT

a. Fees. Company will pay all fees specified in all Ordering Documents, and shall reimburse Sonatype, at Sonatype's actual cost and without mark-up, for Sonatype's reasonable travel expenses that are incurred as a result of Sonatype's performance hereunder. For the avoidance of doubt, (i) fees are based on Product Subscriptions purchased and not actual usage, (ii) fees are non-cancelable and non-refundable, and (iii) the number of Subscriptions purchased cannot be decreased during the relevant Subscription Term. Subscription fees are based on annual periods that begin on the Subscription start date and are renewed on each anniversary thereof. As between the Parties, Company shall bear all expenses incurred in performance of its obligations or exercise of its rights under this Agreement.

b. Payment. Sonatype will submit an invoice for all Product Subscriptions and Services purchased by Company, and all Sonatype invoices must be paid by Company no later than thirty (30) days from the date of the invoice. All fees payable under this Agreement shall be made without recoument or set-off.

c. Overdue Charges; Suspension of Service. If any fees are not received from Company by the due date, then at Sonatype's discretion, such charges may accrue interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. If any amount owing by Company pursuant to this Agreement is thirty (30) or more days overdue, Sonatype may, without limiting Sonatype's other rights and remedies, suspend Company's access to the Products and/or provision of the Services until such amounts are paid in full; provided that Sonatype will not exercise its to suspend access if Company disputes charges in good-faith and cooperates with Sonatype to resolve the dispute.

d. Taxes. Sonatype's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Except for taxes assessable against Sonatype based on Sonatype's income, Company is responsible for paying all Taxes associated with Company's purchases hereunder. If Sonatype has the legal obligation to pay or collect Taxes for which Company is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Company in accordance with Section 5(b) above, unless Company provides Sonatype with a valid tax exemption certificate authorized by the appropriate taxing authority.

e. Audit. Company agrees to maintain complete and accurate records in accordance with generally accepted accounting principles with respect to matters necessary to ensure Company's compliance with this Agreement. Sonatype will have the right, at its own expense and upon reasonable prior notice, periodically to inspect and audit the records of Company with respect to matters covered by this Agreement. If such inspection or audit reveals that Company has underpaid Sonatype with respect to any amounts due and payable during the period to which such inspection and audit relate, Company shall promptly pay such amounts as are necessary to rectify such underpayment, together with interest in accordance with Section 5(c). Such inspection and audit rights shall extend throughout the term of this Agreement and for a period of 3 years thereafter.

6. PROPRIETARY RIGHTS

a. Reservation of Rights. Subject to the limited rights expressly granted hereunder, Sonatype, for itself and on behalf of its licensors, reserves all rights in the Products and Deliverables that are not expressly granted to Company in this Agreement, and Company acknowledges and agrees that, except as otherwise expressly set forth in this Agreement, Sonatype owns all rights, title and interest in and to the Products and Deliverables. All rights, title and interest in and to any and all improvements, modifications, derivative works and innovations of, to and/or involving the Products and Deliverables will be retained in full and owned by Sonatype, even if such improvements, modifications, derivative works or innovations result from suggestions, enhancement requests, recommendations or other feedback provided to Sonatype by or on behalf of Company. Company agrees not to challenge, directly or indirectly, the right, title, and interest of Sonatype in and to the Products or Deliverables, and further agrees that it will not directly or indirectly, register, apply for registration, or attempt to acquire any legal protection for any of the Products and Deliverables.

b. Open Source Software. The Products may incorporate certain Open Source Software code. Ownership, use, warranty and modification rights with respect to any such Open Source Software code shall be as expressly set forth in the applicable license pursuant to which such Open Source Software code is governed and licensed to the public.

c. Company Usage Information. Anything to the contrary in this Agreement or any Order Form notwithstanding, Sonatype reserves the right to compile, maintain and use statistical, metric and performance information regarding Company's use of the Products (the "**Company Usage Information**"), and Company understands and acknowledges that the Products may contain a feature that sends Company Usage Information along with other technical information regarding the operation of the Products on Company's computer systems to Sonatype.

7. CONFIDENTIALITY

a. Definition of Confidential Information. As used herein, "**Confidential Information**" means all confidential information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each Party shall include the terms and conditions of this Agreement and all Ordering Documents, as well as business and marketing plans, research, development, services, customers, customer lists, designs, drawings, technology and technical information, products, product plans, software, developments, inventions, processes, formulas, finances, and business processes of such Party; and Sonatype's Confidential Information shall include the Products, the Deliverables and the Documentation. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use of or access to the Disclosing Party's Confidential Information. Furthermore, the Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior written notice of any such disclosure (to the extent not legally prohibited) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

b. Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect its own confidential information of like kind (but in no event less than reasonable care) not to disclose any Confidential Information of the Disclosing Party or use it for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, Contractors and agents who need such access for purposes consistent with this Agreement, who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein, and for whom the Receiving Party remains fully liable.

c. Injunctive Relief. Each Party acknowledges that the extent of damages in the event of any threatened or actual breach of this Section 7 would be difficult or impossible to ascertain and that there would be available no adequate remedy at law in the event of any such breach. Each Party therefore agrees that, in the event it breaches this Section 7, the other Party will be entitled to specific performance and injunctive or other equitable relief, in addition to any other relief to which it may be entitled at law or in equity. Any such relief shall be in addition to and not in lieu of any relief in the form of monetary damages.

8. WARRANTIES AND DISCLAIMERS

a. Sonatype's Warranties. Sonatype warrants that: (i) all Services will be performed by Sonatype in a professional and workmanlike manner; provided that, in the event of a breach of this warranty by Sonatype, Company's exclusive remedy will be re-performance of the Services by Sonatype; and (ii) the Products shall perform materially in accordance with the Documentation; provided that Sonatype's sole liability and Company's sole and exclusive remedy for any breach of this warranty shall be, in Sonatype's sole discretion and at no charge to Company, to use commercially reasonable efforts to provide Company with an error correction or work-around that corrects the reported non-conformity, or if Sonatype determines such remedy to be impracticable, to terminate the Subscription Term and refund to Company a pro-rata portion of the Subscription fees paid by Company to Sonatype for the applicable Products equal to the unused portion of the Subscription Term; provided further that the limited warranty set forth in this Section 8(a)(ii) will not apply: (A) unless Company makes a claim within thirty (30) days of the date on which the condition giving rise to the claim first appeared, (B) if the Product is used with hardware or software not specified in the Documentation, or (C) if the error was caused by misuse, unauthorized modifications or third-party hardware, software or services.

b. Company Warranties. Company represents, warrants and covenants that it owns or otherwise has sufficient rights to grant Sonatype access to and use of all Company Usage Information per the terms of this Agreement.

c. Mutual Warranties. Each Party represents and warrants that (i) it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder; (ii) its execution, delivery and performance of this Agreement will not conflict with or result in a breach or other violation of any agreement or other third party obligation by which it is bound; (iii) when executed and delivered, this Agreement will constitute its legal, valid and binding obligation enforceable against it in accordance with its terms; and (iv) it will comply with all applicable laws in its performance of this Agreement.

d. Disclaimers. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, SONATYPE MAKES NO, AND COMPANY HEREBY WAIVES AND DISCLAIMS ANY AND ALL, REPRESENTATIONS OR WARRANTIES REGARDING THIS AGREEMENT OR THE PRODUCTS, SERVICES AND DELIVERABLES CONTEMPLATED HEREBY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ERROR-FREE OR UNINTERRUPTED SERVICE, AS WELL AS ALL IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. FURTHERMORE, THE PRODUCTS, SERVICES AND DELIVERABLES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND SONATYPE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. MOREOVER, ALL REPORTS GENERATED BY THE PRODUCTS INCLUDE PUBLICLY AVAILABLE LICENSE AND SECURITY INFORMATION RELEVANT TO CERTAIN APPLICATION COMPONENT IDENTIFIERS. THOUGH SONATYPE WILL MAKE COMMERCIALY REASONABLE EFFORTS TO ENSURE THAT THE REPORTS ARE CURRENT AND ACCURATE, THERE ARE NATURAL LATENCIES ASSOCIATED WITH OBTAINING AND MAKING AVAILABLE INFORMATION AND DATA ASSOCIATED WITH APPLICATION COMPONENT IDENTIFIERS. AS SUCH, COMPANY ACKNOWLEDGES AND AGREES THAT THE INFORMATION AND DATA INCLUDED IN ANY REPORTS IS BASED ON PUBLICLY AVAILABLE INFORMATION, AND THEREFORE MAY NOT BE ACCURATE OR COMPLETE. FURTHERMORE, REFERENCES TO OPEN SOURCE SOFTWARE LICENSE AGREEMENTS (OR TERMS THEREOF) INCLUDED IN A REPORT DO NOT CONSTITUTE LEGAL ADVICE OR GUIDANCE, AND COMPANY ACKNOWLEDGES AND AGREES THAT IT IS RESPONSIBLE FOR SEEKING APPROPRIATE LEGAL ADVICE REGARDING COMPANY'S RIGHTS AND OBLIGATIONS SET FORTH IN ANY SUCH LICENSE AGREEMENT.

e. Accessing Open Source Software. Company may use the Products to access and use certain Open Source Software as artifacts that Company may retrieve from certain Open Source Software code repositories or any other public places or sites. Any such open source software is not licensed by or through Sonatype, and Company is solely responsible for determining its right to copy, modify or otherwise use such Open Source Software and for complying with the terms and conditions of the applicable license that governs such Open Source Software. SONATYPE MAKES NO WARRANTIES OR REPRESENTATIONS AND WILL HAVE NO LIABILITY OR RESPONSIBILITY REGARDING SUCH OPEN SOURCE SOFTWARE AND/OR COMPANY'S ACCESS TO AND/OR USE THEREOF.

9. INDEMNIFICATION. Sonatype shall defend Company against any claim, demand, suit, or proceeding ("**Claim**") made or brought against Company by a third party alleging that the use of the Products as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify Company for any damages finally awarded against, and for reasonable attorney's fees incurred by, Company in connection with any such Claim; provided that Company (a) promptly gives Sonatype written notice of the Claim; (b) gives Sonatype sole control of the defense and settlement of the Claim; and (c) provides to Sonatype all reasonable assistance, at Sonatype's expense. Sonatype shall have no liability under this Agreement with respect to any Claim based upon: (i) combination or use of the Products with equipment, products, systems, software, materials or processes not furnished by Sonatype if, absent such combination, no infringement would exist; (ii) use of the Products in a manner inconsistent with the Documentation; (iii) use of the Products which use breaches this Agreement. If Company's use of a Product is, or in Sonatype's opinion is likely to be, enjoined due to a Claim, then Sonatype may: (A) procure for Company the right to continue using such Product per the terms of this Agreement; (B) replace or modify the applicable Product so that it is non-infringing and substantially equivalent in function to the enjoined Product; or (C) terminate Company's Subscription to access and use the Product and refund any unused, prepaid fees covering the remainder of the Subscription Term after the effective date of such termination. This Section states Sonatype's sole liability to Company, and Company's exclusive remedy against Sonatype, for any type of Claim described in this Section.

10. LIMITATION OF LIABILITY. NEITHER PARTY WILL BE LIABLE (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHER THEORY), TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFIT, BUSINESS OR DATA) ARISING OUT OF THIS AGREEMENT. THE AGGREGATE LIABILITY OF SONATYPE ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL NOT EXCEED THE AGGREGATE AMOUNT PAID AND PAYABLE BY COMPANY TO SONATYPE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH A CLAIM ARISES.

11. TERM AND TERMINATION

a. Term of Agreement. This Agreement commences on the Effective Date and continues until all Subscriptions have expired or have been terminated.

b. Subscription Term. Subscriptions purchased by Company commence on the date on which Sonatype makes the Product available to Company. Except as terminated pursuant to this Agreement, all Subscriptions shall automatically renew for additional periods equal to twelve (12) months for the same number of Users as of the end of the prior Subscription (each a "Renewal Term" and, together with the "Initial Term," hereinafter collectively referred to as the "Subscription Term"), unless either Party gives the other written notice of non-renewal at least 60 days prior to the end of the Subscription Term. The fees charged by Sonatype to Company for any Renewal Term shall be Sonatype's then-current fees for the Products licensed as part of the Subscription.

c. Termination. A Party may terminate this Agreement for cause: (i) upon 30 days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

d. Effect of Termination. Termination of this Agreement shall not release the Parties from any liability that, at the time of termination, has already accrued or that thereafter may accrue with respect to any act or omission before termination, or from any obligation that is expressly stated in this Agreement to survive termination. Upon any termination of this Agreement, each Party shall (i) immediately discontinue all access to and use of the other Party's Confidential Information; (ii) delete the other Party's Confidential Information from its computer storage or any other media, including online and off-line libraries; (iii) return to the other Party or, at the other Party's option, destroy, all copies of such other Party's Confidential Information then in its possession; and (iv) promptly pay all amounts due and remaining payable hereunder. Termination of this Agreement, regardless of cause or nature, shall be without prejudice to any other rights or remedies of the Parties and shall be without liability for any loss or damage occasioned thereby.

e. Surviving Provisions. Sections 5, 6, 7, 10, 11(d) and (e), 12, and 13(b), (c), (d), (f), (h) and (i) shall survive any termination or expiration of this Agreement.

12. NOTICES, GOVERNING LAW AND JURISDICTION

a. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; or (c) by certified or registered mail, return receipt requested, upon verification of receipt. Notices shall be sent as follows: (i) by Sonatype to Company's last known address on file with Sonatype; and (ii) by Company to: Sonatype, Inc., 8161 Maple Lawn Boulevard, Suite 250, Fulton, MD 20759, Attention: Legal Department. Either Party may designate a different address by providing written notice to the other Party.

b. Governing Law; Jurisdiction; Jury Trial. The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without regard to that jurisdiction's conflicts of laws or choice of law rules, and each Party agrees to submit to the exclusive jurisdiction of the State courts located in Howard County, Maryland and Federal courts located in the State of Maryland. The Parties expressly disclaim the applicability of, and waive any rights based upon, the Uniform Computer Information Transactions Act or the United Nations Convention on Contracts for the International Sale of Goods. Each Party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

13. GENERAL

a. Export Compliance. Each Party shall comply with the export laws and regulations of the United States and other applicable jurisdictions when providing and using the Products. Without limiting the foregoing, (i) each Party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Company shall not permit Users to access or use Products in violation of any U.S. export embargo, prohibition or restriction. Furthermore, Company will not, directly or indirectly, remove or export from the United States or allow the export or re-export of any part of the Product and/or Documentation: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority.

b. Relationship of the Parties. The Parties will perform hereunder as independent contractors. Nothing contained in this Agreement shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent between the Parties.

c. Government End Users. The Products are commercial computer software. If the User or licensee of the Products is or becomes an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Products, or any related Documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Products were developed fully at private expense. All other use is prohibited.

d. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and the Parties acknowledge that this Agreement is intended solely for the benefit of the Parties, their successors and permitted assigns, and nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their permitted successors and assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

e. Force Majeure. Sonatype shall be excused from performance of its obligations under this Agreement if such a failure to perform results from compliance with any requirement of applicable law, acts of God, fire, strike, embargo, terrorist attack, war, insurrection or riot or other causes beyond the reasonable control of Sonatype (each a "Force Majeure Event"). Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

f. Waiver and Cumulative Remedies; Severability. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

g. Assignment. Neither Party will have the right to assign this Agreement without the written consent of the other Party; provided, however, that Sonatype will have the right to assign this Agreement to an Affiliate of Sonatype or pursuant to a merger, consolidation, reorganization or sale of all or substantially all of the assets of the business to which this Agreement relates. Any assignment in violation of the foregoing provision shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

h. Headings; Contract Interpretation. The captions to the Sections of this Agreement are not a part of this Agreement but are merely guides or labels to assist in locating and reading the Sections hereof. The terms "this Agreement," "herein," "hereof," "hereunder" and similar expressions refer to this Agreement and not to any particular section or other portion hereof. Except as expressly provided otherwise, references herein to "days" are to calendar days. Any use of the term "including" in this Agreement shall be construed as if followed by the phrase "without limitation."

i. Entire Agreement; Counterparts. This Agreement, including all Ordering Documents, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by an authorized representative of each Party; provided that Sonatype reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Products at any time, effective upon posting of an updated version of this Agreement at this same url. Company is responsible for regularly reviewing this Agreement, and continued use of the Products after any such changes shall constitute Company's consent to such changes. Unless otherwise expressly agreed in an Ordering Document, if the terms of this Agreement conflict with the terms of any Ordering Document, the terms of this Agreement will prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Company's purchase order or other order documentation (excluding Ordering Documents) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.