

**Imation Enterprises Corporation**

**1 Imation Way**

**Oakdale, MN 55128**

<http://www.imation.com/en-US/>

**Carahsoft Rider to Manufacturer End User License Agreements  
(for U.S. Government End Users)**

- 1. Scope.** This Carahsoft Rider and the Imation Enterprises Corporation ('Manufacturer') End User License Agreement (EULA) 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 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 EULA 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 GSA contracts as set forth in GSA 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.

**(a) Error! Unknown document property name.**

**(e) Termination.** Clauses in the Manufacturer EULA 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 License 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 EULA 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 EULA 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 EULA 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 EULA are hereby deemed to be deleted.
- (j) Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) Contractor Indemnities.** All Manufacturer EULA 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 EULA 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 EULA 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 EULA, 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 EULA 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 EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA 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.

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**10. Governing Law.** This Agreement will be governed by and construed in accordance with the substantive laws in force in the State of Minnesota. You hereby consent to the exclusive jurisdiction and venue of the state courts sitting in Ramsey County, Minnesota, or the federal court in the District of Minnesota to resolve any disputes arising under this EULA. In each case, this EULA shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

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In the event that you are the Agent of the Customer on whose behalf you will use or set up the Imation Products, Software or Services, you hereby represent and warrant that you are the duly authorized agent of such Customer and that such Customer (i) has received a copy of these Terms of Use; (ii) has duly and properly approved the purchase and use of the Imation Products, Software and Services on such Customer's behalf and has authorized you to enter into these binding Terms of Use by and on behalf of such Customer; and (iii) has agreed to pay all costs, fees and expenses which result from purchasing and using the Imation Products and Services, Software on behalf of such Customer. Without limiting anything contained herein, you and Customer acknowledge, accept and agree to indemnify, defend and hold Imation and its officers, directors, shareholders, employees, consultants, agents, partners, service providers, affiliates and licensors (collectively, "Indemnified Parties") harmless from any liabilities, claims, damages, costs and expenses (including reasonable attorneys fees) which arise from a breach of this representation by you or as a result of any action or omission by you. For purposes of these Terms of Use, the word "you" or "your" shall mean End-User, Agent, Customer, Customer as acting through its duly authorized Agent and any other person or entity which has agreed to these Terms of Use.

When you click on the "I Agree" button, you agree that you are intending to create an electronic signature affirming your full understanding and agreement to be legally bound by all of these Terms of Use, and you are warranting that you have the power and authority to enter into these Terms of Use and are over the age of 18 years at the time you click on the "I Agree" button. Failure to agree to these Terms of Use will not diminish the rights you have under the Limited Device Warranty. These Terms of Use contain a procedure for dispute resolution - see Section 6.2. Imation advises that you print and retain a copy of these Terms of Use before you click on the "I Agree" button. The most current version of these Terms of Use will always be available for your review under the Terms of Use link found on Imation's website.

## **1. PRODUCT USAGE REQUIREMENTS**

1.1 Use of Imation Product, Software and Services. You agree not to use the Imation Products, Software or Services to conduct any malicious activity or solicit the performance of any activity which is prohibited by law or any contractual provision by which you are bound. You agree to comply with all applicable laws, rules and regulations in connection with your use of the Imation Products, Software and Services. You shall not, nor shall permit any party to: (i)

disassemble, decompile, reverse engineer or otherwise attempt to derive source code or other trade secrets from the Imation Products or Services or any Software incorporated therein; (ii) rent, lend, lease or distribute any Imation Product, Service or Software, or any portion thereof; or (iii) or copy, alter, modify or adapt any Imation Product, Service or Software, or any portion thereof, except as expressly provided in Section 1.2 below.

1.2 Grant of License. Subject to the terms and conditions set forth herein, Imation hereby grants you a nonexclusive, nontransferable right and license to use internally for data storage and security purposes: (i) the Software that is resident on a Product only on such Product and in accordance with the documentation accompanying such Product and (ii) the Software that comprises a portion of the Hosted Service and is accessed over the Internet only for the management of Imation Products through the Hosted Service and in accordance with the documentation accompanying the Hosted Service. To the extent that the Customer is an entity purchasing Imation Products, Software and Services for use by End-Users employed by such Customer, these Terms of Use grant to such Customer a non-exclusive, non-transferable right and license to reproduce for and deliver to each End-User within such Customer's employ who received an Imation Product, one copy of the Software to enable each such End-User to operate the Imation Product for its intended use. The foregoing licenses may not be transferred nor assigned. Except as expressly set forth herein with respect to Customers which are entities, no End-User nor any Customer may reproduce, distribute or modify, translate, adapt, arrange, or create derivative works based on the Software. Any rights not granted herein are specifically retained by Imation.

1.3 Equipment. You acknowledge that in addition to your purchase of the Imation, Software Products or Services, you are responsible for and must provide all computer hardware, Internet connection, telephone and other equipment, and operating system software necessary to access and use the Imation Products, Software and Services.

1.4 Protection of Security Data. Personal information, usernames, passwords and prompts (collectively "Security Data") exchanged through the Imation Products, Services or Software are protected by advanced encryption techniques. However, these security measures still require your responsible behavior in protecting your Security Data. YOU SHALL ASSUME THE ENTIRE RESPONSIBILITY AT ALL TIMES FOR THE SUPERVISION, MANAGEMENT, CONTROL AND CONFIDENTIALITY OF YOUR SECURITY DATA AND ASSUME THE ENTIRE RISK FOR THE FRAUDULENT OR UNAUTHORIZED USE OF YOUR SECURITY DATA. YOU UNDERSTAND THAT FAILURE TO PROTECT YOUR SECURITY DATA MAY ALLOW AN UNAUTHORIZED PERSON OR ENTITY TO ACCESS YOUR IMATION PRODUCT, SOFTWARE AND SERVICE.

1.5 Notification of Others Upon Security Breach. If you believe an unauthorized disclosure of your Security Data has occurred, it is your responsibility to immediately notify each and every person and entity that is affected by such unauthorized disclosure.

1.6 Privacy. Imation is committed to protecting your privacy. Any personal information gathered from you in connection with the Imation Products, Software and Services will be governed by the provisions of the Imation Privacy Policy.

## **2. TERM AND TERMINATION**

2.1 Termination of Terms of Use. You may terminate these Terms of Use at any time by uninstalling and destroying all copies of the Software and ceasing to use the Imation Products and Services. Imation may terminate these Terms of Use immediately: (i) if you have breached these Terms of Use, (ii) if you have failed to make payments for the Imation Products, Software or Services or (iii) if Imation in its sole discretion believes it is required to do so by law. At Imation's sole discretion, Imation may terminate or suspend any feature or service contained in the Imation Product,

Software or Service. If Imation terminates or suspends any feature or service, for reasons other than those listed in the prior sentence or in Section 2.2, Imation will either reimburse a pro-rata share of the fees paid, as determined by Imation in its sole discretion, for such feature or service, or substitute such feature or service with a substantially similar feature or service.

2.2 Automatic Renewal; Termination of Services. Services provided in connection with the Imation Product shall automatically renew for successive one-year terms at Imation's then current pricing unless you provide written notice to Imation at least thirty days prior to the end of the current term of Service and close your account for the Imation Service. Your notice should be sent via email to securitycs@Imation.com, or in writing to Imation's address at: 910 East Hamilton Ave, Suite 410, Campbell CA 95008

At Imation's sole option, Imation may suspend or terminate the Imation Service immediately: (i) if Imation suspects that someone other than you knows, is using or attempting to use your Security Data (although Imation has no obligation to investigate whether any such unauthorized use is occurring), (ii) if you have breached these Terms of Use, (iii) if you have failed to make payments for the Imation Services, or (iv) if Imation in its sole discretion believes it is required to do so by law.

2.3 Reinstatement of Lapsed Services. If your Imation Service is suspended, your account number and data are maintained active for one year. If your Imation Service is not reinstated within such one year period, then your account and Imation Service will be terminated. If there is a lapse in Services for any period of time, any subsequent purchase of Services, which will be permitted at Imation's sole discretion, will be deemed purchased retroactive to the date on which any prior Services concluded and you will be charged with an additional twenty percent (20%) reinstatement fee for the lapsed support period.

2.4 Survival. Except for the provision of Imation Services hereunder, all applicable provisions of these Terms of Use shall survive termination, including, without limitation, provisions related to intellectual property, warranty disclaimers, limitations of liability, indemnification, and the miscellaneous provisions.

### **3. WARRANTY, DISCLAIMER OF WARRANTY**

3.1 LIMITED DEVICE WARRANTY. Imation warrants that Imation Products meet all the published hardware specifications and are free of any material defects in materials or workmanship that would prevent such Imation Products from performing to the published hardware specifications for one (1) year from the date of activation (the "Warranty Period").

If any Imation Product fails to so conform, or proves to have any such defects during such Warranty Period, Imation, at its option, will provide you a new or refurbished Imation Product at no charge to you. The foregoing warranty (i) applies only to the Customer or Agent with proof of purchase, (ii) will not apply to Imation Products that have been damaged as a result of negligent handling, modification, disassembly or misuse, and (iii) will not apply to Imation Products that have self-destructed due to too many failed password attempts, as this represents proper functionality of the Imation Product.

Imation Products are not warranted to operate without failure. Imation Products should only be incorporated in systems designed with appropriate redundancy, fault tolerance or back-up features.

Accordingly, Imation does not recommend the use of Imation Products in life support systems or other applications where failure could cause injury or loss of life. Therefore if you decide to use Imation Products in connection with such

applications you assume all risk of such use and agree to indemnify and hold harmless the Imation Indemnitees against any liabilities, claims, damages, costs and expenses (including reasonable attorney's fees) which arise from such use.

3.2 LIMITATION OF IMATION'S WARRANTY. EXCEPT AS EXPLICITLY SET FORTH ABOVE, THE IMATION PRODUCTS, SOFTWARE AND SERVICES ARE PROVIDED "AS-IS" AND IMATION MAKES AND YOU RECEIVE NO WARRANTY (EXPRESS, IMPLIED OR STATUTORY) WITH RESPECT TO THE IMATION PRODUCTS, SOFTWARE OR SERVICES. IMATION EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. YOU UNDERSTAND AND ACKNOWLEDGE THAT, EXCEPT AS EXPLICITLY SET FORTH ABOVE, IMATION DOES NOT WARRANT THAT THE IMATION PRODUCTS, SOFTWARE OR SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT OPERATION OF THE IMATION PRODUCTS, SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY IMATION, ITS EMPLOYEES, DISTRIBUTORS, DEALERS OR AGENTS SHALL CREATE ANY WARRANTY OF ANY KIND. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO ONE (1) YEAR FROM THE DATE OF PURCHASE OF THE APPLICABLE IMATION PRODUCT OR SERVICE, AS THE CASE MAY BE. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS.

3.3 LIMITATION ON INTERNATIONAL USE. IMATION DOES NOT MAKE ANY REPRESENTATION OR WARRANTY THAT ANY CONTENT OR USE OF THE IMATION PRODUCTS, SOFTWARE OR SERVICE IS APPROPRIATE OR AVAILABLE FOR USE IN LOCATIONS OUTSIDE OF THE UNITED STATES OR WHERE IT IS ILLEGAL OR PROHIBITED BY LAW OR BY IMATION.

#### **4. LIMITATION OF LIABILITY**

4.1 LIMITATION OF IMATION'S LIABILITY. IN NO EVENT WILL IMATION OR ANY OF ITS OFFICERS, DIRECTORS, SHAREHOLDERS, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS, LICENSORS, OR THIRD PARTY SERVICE PROVIDERS (COLLECTIVELY, THE "IMATION INDEMNITEES") BE LIABLE FOR ANY CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION, LOSS OF DATA, FILES, PROFIT OR GOODWILL OR THE COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICE), INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, WHETHER IN AN ACTION UNDER CONTRACT, NEGLIGENCE OR ANY OTHER THEORY, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OF USE, THE IMATION PRODUCTS, SOFTWARE OR SERVICES, THE INABILITY TO USE THE IMATION PRODUCTS, SOFTWARE OR SERVICES OR THOSE RESULTING FROM ANY MERCHANDISE OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, IMATION SHALL NOT BE RESPONSIBLE UNDER ANY THEORY OF LIABILITY OR DAMAGES FOR ANY LOSS OF DATA AS A RESULT OF USE OF THE IMATION PRODUCTS, SOFTWARE OR SERVICES OR ANY COMPONENTS THEREIN. EXCEPT AS EXPLICITLY SET FORTH ABOVE, THE AGGREGATE LIABILITY OF IMATION, AND IMATION'S THIRD PARTY SERVICE PROVIDERS UNDER THESE TERMS OF USE SHALL NOT EXCEED ONE HUNDRED DOLLARS.

4.2 NO LIABILITY FOR THIRD PARTY ACTIONS. EXCEPT WHERE APPLICABLE LAW REQUIRES A DIFFERENT RESULT, IMATION WILL NOT BE LIABLE FOR ANY LOSS OR LIABILITY RESULTING IN WHOLE OR IN PART FROM ANY ACT OR FAILURE TO ACT OF YOUR EQUIPMENT OR SOFTWARE, OR THAT OF A BROWSER PROVIDER, BY AN INTERNET ACCESS PROVIDER, BY AN ONLINE SERVICE

PROVIDER OR BY AN AGENT OR SUBCONTRACTOR OF ANY OF THEM, NOR WILL IMATION OR IMATION'S SERVICE PROVIDERS OR OTHER AGENTS BE RESPONSIBLE FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, ECONOMIC OR OTHER DAMAGES ARISING IN ANY WAY OUT OF YOUR ACCESS TO OR USE OF, OR FAILURE TO OBTAIN ACCESS TO, THE IMATION PRODUCTS, SOFTWARE OR SERVICES.

4.3 PERFORMANCE FAILURE. IN NO EVENT WILL IMATION BE LIABLE FOR ANY FAILURE OF PERFORMANCE DUE TO CIRCUMSTANCES BEYOND IMATION'S CONTROL (SUCH AS POWER OUTAGE, COMPUTER VIRUS, MALWARE, SPYWARE, KEY LOGGER APPLICATION, SYSTEM FAILURE, FIRE, FLOOD, EARTHQUAKE, TERRORISM, ACT OF WAR, OR EXTREME WEATHER).

4.4 APPLICATION OF LIMITATIONS. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF AN ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. YOU ACKNOWLEDGE THAT BUT FOR THE FOREGOING DISCLAIMERS, THE FEES CHARGED FOR THE IMATION PRODUCTS AND SERVICES WOULD BE HIGHER.

## **5. INDEMNIFICATION**

5.1 Indemnification. Except to the extent that Imation is liable to you under these Terms of Use, you agree to indemnify and hold Imation and its Indemnitees harmless from any and all third party claims, liability, damages and/or costs (including but not limited to reasonable attorney's fees) arising from (a) a third party claim, action, or allegation of infringement, misuse, or misappropriation based on information, data, files, or other materials submitted by you to us; (b) any breach of these Terms of Use or any fraud or manipulation; (c) any third party claim, action, or allegation brought against Imation arising out of or relating to a dispute with you over the Terms of Use or purchase or sale of any goods; (d) your violation of any law or rights of a third party; (e) your use, or use of your account by any third party who has your permission to use your Security Data; or (f) any claim arising out of a loss of personal or proprietary data of you or others. Imation reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with Imation in asserting any available defenses. You will not settle any action or claims on behalf of Imation without the prior written consent of Imation. This indemnification is provided without regard to whether Imation's claim for indemnification is due to the use of the Imation Products, Software or Services by you or your authorized representative.

## **6. GENERAL PROVISIONS**

6.1 Modifications. Except as otherwise required by law, rule, or regulation, Imation may change the terms of these Terms of Use from time to time and at any time. When changes are made, Imation will update these Terms of Use on our website. The website will be updated on the effective date, unless an immediate change is necessary to maintain the security of the system or unless a law, rule or regulation requires that it be updated an earlier time. If such a change is made, and it can't be disclosed without jeopardizing the security of the system, these Terms of Use will be updated within thirty (30) days after the change. You will be notified as soon as possible when any changes are made which materially affect your rights, such as changes regarding how your information is maintained or used. As always, you may choose to accept or decline changes by continuing or discontinuing use of the Imation Products, Software and Services. It is your responsibility to review these Terms of Use including the Privacy Policy from time to time in order to be aware of any such changes.

6.2 Dispute Resolution and Governing Law. The parties agree that any dispute or controversy arising out of, in relation to, or in connection with these Terms of Use, or the validity, enforceability, construction, performance or breach

thereof, shall be settled by binding arbitration in St. Paul, Minnesota, USA by one (1) arbitrator mutually agreeable to the parties, or, if the parties cannot agree, as otherwise provided by the rules of the American Arbitration Association. Nothing in this clause shall preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The decision and/or award rendered by the arbitrator shall be written, final and non-appealable and may be entered in any court of competent jurisdiction. The parties agree that, any provision of applicable law notwithstanding, they will not request, and the arbitrator shall have no authority to award, punitive or exemplary damages against any party. The costs of any arbitration, including administrative fees and fees of the arbitrator, shall be shared equally by the parties. Each party shall bear the cost of its own attorneys' fees and expert fees. These Terms of Use will be construed and interpreted in accordance with the laws of the State of Minnesota, without reference to its conflict-of-laws rules. The sole jurisdiction and venue for actions related to the subject matter hereof brought before the courts shall be the Minnesota state and U.S. federal courts located in St. Paul, Minnesota.

6.3 Assignment. Imation may assign its interest, or assign or delegate any of its rights and responsibilities under these Terms of Use to independent contractors or any other party. You may not assign or transfer any of your rights or obligations under these Terms of Use.

6.4 NOTICES. UNLESS OTHERWISE REQUIRED BY APPLICABLE LAW, IN THE EVENT THAT IMATION IS REQUIRED TO PROVIDE A NOTICE OR OTHER COMMUNICATION TO YOU IN WRITING, THAT NOTICE OR OTHER COMMUNICATION MAY BE SENT TO YOU ELECTRONICALLY TO YOUR INTERNET ADDRESS AS REFLECTED IN IMATION'S THEN CURRENT RECORDS.

6.5. Proprietary Rights. Other than your personal information and other data stored by you on the Imation Products, the Imation Products, Software, Services and all intellectual property rights contained therein and thereto are the property of Imation and/or third party licensors of Imation. You may not rent, lend or lease any Imation Product, Software or Service, or any portion thereof. You may not copy, alter, modify or adapt any Imation Product, Software or Service or accompanying materials or reverse engineer, decompile, disassemble, modify or create derivative works from any Imation Product, Software or Service. The collection, arrangement, and assembly of all content on the Imation Products and Software is the exclusive property of Imation and/or its licensors and is protected by copyright or other intellectual property rights. The trademarks, logos, and Imation Products, Software and Services marks displayed on the Imation Products and Software and in connection with the Imation Services (collectively the "Trademarks") are the registered and unregistered trademarks of Imation. Under no circumstances may you use copy, alter, modify, or change these Trademarks or any other proprietary markings on the Imation Products or Software. Nothing contained on the Imation Products or Software or in connection with the Imation Services should be construed as granting by implication or otherwise any license or right to use any intellectual property right of Imation without the express written permission of Imation.

6.6. Entire Agreement. These Terms of Use and any Imation order form pursuant to which you ordered the Imation Products, Software or Services, represent the sole and exclusive agreement between you and Imation regarding the Imation Products, Software and Services and merges and supersedes all previous and contemporaneous written or oral agreements and understandings regarding the subject matter hereof. If any provision of these Terms of Use is held to be invalid or otherwise unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be invalidated or otherwise affected.

6.7 Miscellaneous. Headings are for reference only and in no way define, limit, construe, or describe the scope or extent of such section. Imation's failure to act with respect to a breach by you or others does not waive its right to act with respect to subsequent or similar breaches.

6.8 Force Majeure. Imation will not be liable for and will not be responsible to you for any delay or failure to perform under these Terms of Use if such delay or failure results from fire, explosion, labor dispute, earthquake, casualty or accident, lack of or failure of transportation facilities and/or services, lack of or failure of telecommunications facilities and/or services including internet services, epidemic, flood, drought, war, revolution, civil commotion, blockade or embargo, act of God, any inability to obtain any requisite license, permit or authorization, or any other cause whatsoever, whether similar or dissimilar to those enumerated, beyond the reasonable control of Imation.

6.9 No Duty to Monitor. Imation does not have any duty to monitor the payments or other transactions that are made in connection with the Imation Products, Software or Services.

6.10 Government Licensee. The Government acknowledges Imation's representation that the Imation Products and Software contain "Restricted Computer Software" as that term is defined in Clause 52.227 19 of the Federal Acquisition Regulations (FAR) and contain "Commercial Computer Software" as that term is defined in Subpart 227.471 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS). The Government agrees that (i) if the Software is supplied to the Department of Defense (DoD), the Software is classified as "Commercial Computer Software" and the Government is acquiring only "restricted rights" in the Software and its documentation as that term is defined in Clause 252.227 7013(c)(1) of the DFARS, and (ii) if the Software is supplied to any unit or agency of the United States Government other than DoD, the Government's rights in the Software and its documentation will be as defined in Clause 52.227 19(c)(2) of the FAR.

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 at DFARS 252.227 7013. Imation Corp. 910 East Hamilton Ave, Suite 410, Campbell CA 95008

6.11 Export Law Compliance. Regardless of any disclosure made to Imation of the ultimate destination of the Imation Products, Software or Service, you warrant that you will not export, directly or indirectly, any Imation Product, Software or Service without first obtaining the approval of Imation and the appropriate export license from the Department of Commerce or other agency of the United States Government.

These Individual Product Terms of Use ("Terms of Use") set forth the legally binding terms of the agreement between Imation Corp. ("Imation") and the End-User ("End-User"), using the Imation Individual Products (known herein as "Imation Products"), any accompanying computer software ("Software") downloaded or delivered to the End-User or Customer, as defined below, acting either for themselves or as the legal representative ("Agent") of an entity ("Customer") purchasing Imation Products and licensing Software. By accepting these Terms of Use, the Agent and Customer are legally bound to these Terms of Use.

By using Imation Products and Software, the End-User will be deemed to have agreed to and be bound by all of the provisions of these Terms of Use. As used herein, Imation Products will refer only to those Imation Products purchased for or by the End-User and for which full payment has been made.

In the event that you are the Agent of the Customer on whose behalf you will use or set up the Imation Products and Software, you hereby represent and warrant that you are the duly authorized agent of such Customer and that such Customer (i) has received a copy of these Terms of Use; (ii) has duly and properly approved the purchase use of the Imation Products and Software on such Customer's behalf and has authorized you to enter into these binding Terms of Use by and on behalf of such Customer; and (iii) has agreed to pay all costs, fees and expenses which result from purchasing and using the Imation Products and Software on behalf of such Customer. Without limiting anything contained herein, you and Customer acknowledge, accept and agree to indemnify, defend and hold Imation and its officers, directors, shareholders, employees, consultants, agents, partners, service providers, affiliates and licensors (collectively, "Indemnified Parties") harmless from any liabilities, claims, damages, costs and expenses (including reasonable attorneys fees) which arise from a breach of this representation by you or as a result of any action or omission by you. For purposes of these Terms of Use, the word "you" or "your" shall mean End-User, Agent, Customer, Customer as acting through its duly authorized Agent and any other person or entity which has agreed to these Terms of Use.

When you click on the "I Agree," button you agree that you are intending to create an electronic signature affirming your full understanding and agreement to be legally bound by all of the Terms of Use, and you are warranting that you have the power and authority to enter into these Terms of Use and are over the age of 18 years at the time you click on the "I Agree" button. Failure to agree to these Terms of Use will not diminish the rights you have under the Limited Device Warranty. These Terms of Use contain a procedure for dispute resolution - see Section 6.2. Imation advises that you print and retain a copy of these Terms of Use before you click on the "I Agree" button. The most current version of these Terms of Use will always be available for your review under the Terms of Use link found on Imation's website.

## **1. PRODUCT USAGE REQUIREMENTS**

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1.2 Grant of License. Subject to the terms and conditions set forth herein, Imation hereby grants you a nonexclusive, nontransferable right and license to use internally for data storage and security purposes: (i) the Software that is resident on a Product only on such Product and in accordance with the documentation accompanying such Product. To the extent that the Customer is an entity purchasing Imation Products and Software for use by End-Users employed by

such Customer, these Terms of Use grant to such Customer a non-exclusive, non-transferable right and license to reproduce for and deliver to each End-User within such Customer's employ who received an Imation Product, one copy of the Software to enable each such End-User to operate the Imation Product for its intended use. The foregoing licenses may not be transferred nor assigned. Except as expressly set forth herein with respect to Customers which are entities, no End-User nor any Customer may reproduce, distribute or modify, translate, adapt, arrange, or create derivative works based on the Software. Any rights not granted herein are specifically retained by Imation.

1.3 Equipment. You acknowledge that in addition to your purchase of the Imation Product and Software, you are responsible for and must provide all computer hardware, Internet connection, telephone and other equipment, and operating system software necessary to access and use the Imation Products and Software.

1.4 Imation Product Fees. Except for the fees in connection with your initial purchase of the Imation Product, there are no required fees to use the Imation Product. However, Imation may charge additional fees in connection with certain additional services or to extend use of some services.

1.5 Activation Procedure. During the activation process, you will be given an opportunity to create passwords and password prompts that will give you access to the Imation Product, Software, Materials and related services. The passwords and prompts can be changed at a later time by following the instructions on the Imation website. In order to activate the Imation Product, you may need to provide a valid email address (your "Personal Information"), which can be used to identify you, contact you regarding your account, and for additional authentication. Upon providing Imation with the information required in the online activation process, confirmation of receipt of the activation will be sent to you via email. Only upon submission of such confirmation of your activation will your Imation Product be activated with Imation ("Activated").

1.6 Protection of Security Data. Personal Information, usernames, passwords and prompts (collectively "Security Data") exchanged through the Imation Product and Software are protected by advanced encryption techniques. However, these security measures still require your responsible behavior in protecting your Security Data. **YOU SHALL ASSUME THE ENTIRE RESPONSIBILITY AT ALL TIMES FOR THE SUPERVISION, MANAGEMENT, CONTROL AND CONFIDENTIALITY OF YOUR SECURITY DATA AND ASSUME THE ENTIRE RISK FOR THE FRAUDULENT OR UNAUTHORIZED USE OF YOUR SECURITY DATA. YOU UNDERSTAND THAT FAILURE TO PROTECT YOUR SECURITY DATA MAY ALLOW AN UNAUTHORIZED PERSON OR ENTITY TO ACCESS YOUR IMATION PRODUCT AND SOFTWARE.**

1.7 Notification of Others Upon Security Breach. If you believe an unauthorized disclosure of your Security Data has occurred, it is your responsibility to immediately notify each and every person and entity that is affected by such unauthorized disclosure.

1.8 Privacy. Imation is committed to protecting your privacy. Any personal information gathered from you in connection with the Imation Products, Software and Services will be governed by the provisions of the Imation Privacy Policy.

## 2. TERM AND TERMINATION

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Imation may terminate or suspend any feature or service contained in the Imation Product. If Imation terminates or suspends any feature or service, for reasons other than those listed in the prior sentence, Imation will either reimburse a pro-rata share of the fees paid, as determined by Imation in its sole discretion, for such feature or service, or substitute such feature or service with a substantially similar feature or service.

2.2 Survival. All applicable provisions of this Agreement shall survive termination, including, without limitation, provisions related to intellectual property, warranty disclaimers, limitations of liability, indemnification, and the miscellaneous provisions.

### **3. WARRANTY, DISCLAIMER OF WARRANTY**

3.1 LIMITED DEVICE WARRANTY. Imation warrants that the Imation Product meets all the published hardware specifications and is free of any material defects in materials or workmanship that would prevent the Imation Product from performing to the published hardware specifications for one (1) year from the date of purchase.

If any Imation Product fails to so conform, or proves to have any such defects during such one year period, Imation, at its option, will provide you a new or refurbished Imation Product at no charge to you. The foregoing warranty (i) applies only to the original user with proof of purchase, (ii) will not apply to Imation Products that have been damaged as a result of negligent handling, modification, disassembly or misuse, and (iii) will not apply to Imation Products that have self-destructed due to too many failed password attempts, as this represents proper functionality of the Imation Product.

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**9. Export Rules.** You agree that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as export-controlled items under the Export Laws, you represent and warrant that you are not a citizen, or otherwise located within, an embargoed nation (including without limitation Iran, Syria, Sudan, Libya, Cuba and North Korea) and that you are not otherwise prohibited under the Export Laws from receiving the Software. All rights to Use the Software are granted on condition that such rights are forfeited if you fail to comply with the terms of this Agreement.

**10. Governing Law.** This Agreement will be governed by and construed in accordance with the substantive laws in force in the State of Minnesota. You hereby consent to the exclusive jurisdiction and venue of the state courts sitting in Ramsey County, Minnesota, or the federal court in the District of Minnesota to resolve any disputes arising under this EULA. This EULA shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

**11. General Provisions.** If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of this Agreement, which shall remain valid and enforceable according to its terms. This Agreement shall not prejudice the statutory rights of any party dealing as a consumer. This Agreement may only be modified by a writing signed by an authorized officer of Imation. Updates may be licensed to you by Imation with additional or different terms. This is the entire agreement between Imation and you relating to the Software and it supersedes any prior representations, discussions, undertakings, communications or advertising relating to the Software.

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**13. Compliance with Licenses.** If you are a business, government or educational organization, you agree that upon request from Imation or an authorized representative, you will within thirty (30) days fully document and certify that use of any and all Software at the time of the request is in conformity with your valid licenses from Imation.

**14. Specific Exceptions.** You are required to take all reasonable measures to avoid and reduce damages, in particular to make back-up copies of the Software and your computer data subject to the provisions of this Agreement.

**15.** If you have any questions regarding this Agreement or if you wish to request any information from Imation, please use the address and contact information included above to contact the Imation office.

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