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

1. **Scope.** This Carahsoft Rider and the 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 (www.⬚⬚⬚/us.html) 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.

(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.

(x) matters

MASTER SOFTWARE LICENSE AGREEMENT

This agreement is made as of _____ 20____by and between xMatters, inc., a California corporation having its principal place of business at 12647 Alcosta Blvd., Suite 425, San Ramon, California, USA 94583, ("xMatters") and

Name: _____ ("Licensee")

Address: _____

_____

_____

Licensee's purchase and use of the xMatters products and services specified in each Schedule mutually entered into hereunder are subject to all terms and conditions in this agreement, including all schedules and attachments hereto (collectively, "Agreement"). Each party represents and warrants to the other that the person entering into this Agreement is authorized to sign this Agreement on behalf of said party.
. .

LICENSEE

By: _____
Authorized Signature

_____
Print Name/Title

Date: _____

XMATTERS, INC.

By: _____
Authorized Signature

_____
Print Name/Title

Date: _____

TERMS AND CONDITIONS

1.   Definitions
1.1   "Affiliate" means with respect to a party, any entity which directly or indirectly is Controlled by such party.
1.2   "Confidential Information" has the meaning set forth in Section 12.
1.3   "Control" means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity
1.4   "Documentation" means the user manuals relating to the use of the Software delivered with the Software.
1.5   "Effective Date" means the date Licensee executes this Agreement.
1.6   "Schedule" means an ordering document for Software or Services agreed to by xMatters and Licensee. Each Schedule will reference this Agreement; and (iii) be subject to the terms and conditions hereof.
1.7   "Services" means installation, consulting, implementation, training or other professional services provided hereunder by xMatters to Licensee.
1.8   "Software" means a machine executable copy of the object code of the software products and applications licensed by xMatters to Licensee under this Agreement.
1.9   "Software Updates" means all Software updates and enhancements that xMatters generally makes available at no additional charge to its customers who are current in payment of annual support fees.
1.10   "Taxes" means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes.
1.11   "Work Product" means all work product developed or created by xMatters during the course of providing support or

Services to Licensee, including without limitation pre-existing xMatters templates and code.

2.   License
**2.1   **Subject to the terms and conditions of this Agreement, xMatters grants Licensee and its Affiliates a royalty-free, fully paid-up, nonexclusive, perpetual, irrevocable, transferable (only to a successor in interest as permitted hereunder) license to use the Software and Documentation solely for internal business purposes.
**2.2   **The foregoing license is limited to the maximum number of servers, and/or processors, sources, users or other scope limitations specified on a Schedule. Subject to the foregoing license, Licensee may (a) make copies, install and use the Software at Licensee's worldwide sites; and (b) make a reasonable number of copies of the Software solely for back up and archival purposes .
**2.3   **Software Updates may be used in accordance with the terms and restrictions hereunder relating to Software.
**2.4   **xMatters shall deliver the Software, Documentation and Software Updates via either physical shipment (e.g. compact disk) or file transfer protocol. Delivery has occurred (i) if done through physical shipment, upon receipt; and (ii) if done using file transfer protocol, when the Software, Documentation or Software Update has been made available to Licensee on the xMatters website and xMatters has provided Licensee notification of such availability.

3.   License Restrictions. Except as expressly authorized herein or permitted under applicable law, Licensee shall not:
**3.1   **reverse engineer the Software;
**3.2   **resell, sublicense, lease, time-share or otherwise make the Software available to any third party;

3.3 modify, copy or create derivative works based on the Software;

3.4 use or access the Software for the purpose of building a competitive product; or

3.5 use the Software, or permit it to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without xMatters' prior written consent.

4. Support Services

4.1 Provided Licensee is subscribing to support and is current in payment of support fees, xMatters will provide support in accordance with the terms and conditions described in its then current customer support policy. As long as this Agreement is in effect the level of support shall not be materially less than that defined in xMatters' current customer support policy. Prior to discontinuing support services for any Software product line, xMatters shall provide Licensee with at least six (6) months advance notice.

4.2 Support includes telephone support and one (1) machine executable copy of Software Updates. Licensee may make copies of the Software Updates and related Documentation provided hereunder subject to the terms and conditions of this Agreement. Initial year support commences on the date the Software is delivered by xMatters or on the date of invoice for additional licenses of the Software made by Licensee.

4.3 xMatters shall have no obligation to provide support if Licensee fails to make any support payments when due and fails to cure the same after written notice to do so from xMatters, or if Licensee otherwise elects to discontinue support. In order to reinstate support Licensee must first pay xMatters the then current annual support and all past unpaid support fees.

4.4 xMatters shall have no obligation to provide support to the extent any problem with the Software is due to (i) Software that has been altered, damaged or modified by Licensee or Licensee's agents without the consent of xMatters; (ii) Software that is not the then-current or previous sequential release; (iii) Licensee's negligence, hardware malfunction or other causes beyond the reasonable control of xMatters; (iv) Software installed in an operating environment for which the Software has not been licensed; or (v) a failure that cannot be reproduced at xMatters' facility or via remote access to Licensee's facility.

5. Consulting Services. xMatters will provide the Services specified in one or more statement of work(s). Licensee and xMatters will sign a separate statement of work for each consulting assignment. All Services shall be billed on a time and materials basis unless the parties expressly agree otherwise in writing.

6. Fees and Payment Terms.

6.1 All undisputed fees shall be due and payable within thirty (30) days of receipt of invoice. Support services fees shall be billed on an annual basis payable in advance.

6.2 Upon execution of a Schedule and except as expressly provided in this Agreement, payment obligations defined in such Schedule are non-cancelable and, all payments made by Licensee are non-refundable. Any payment not received from Licensee by the due date may result in suspension of Licensee's ability to receive Software Updates or support until payment is made. Licensee shall reimburse xMatters for all reasonable, actual costs incurred by xMatters in collection of delinquent amounts not subject to a reasonable and good faith dispute.

6.1 Unless otherwise provided, xMatters' fees do not include any Taxes, and Licensee is responsible for paying all Taxes associated with its purchases hereunder, excluding Taxes based on xMatters' net income or property. If xMatters has the legal obligation to pay or collect Taxes for which Licensee is responsible, the appropriate amount shall be invoiced to and paid by Licensee, unless Licensee provides a valid tax exemption certificate authorized by the appropriate taxing authority.

6.4 Licensee shall reimburse xMatters for all reasonable, pre-approved and appropriately documented travel and related expenses incurred by xMatters in performing Services at Licensee's location. Licensee shall be responsible for its own travel and out-of pocket expenses associated with attending any training services at an xMatters facility.

6.5 Licensee is responsible for monitoring Licensee's use of the Software. If Licensee's use of the Software is found to be greater than that contracted for Licensee will be invoiced for the additional Software licenses, and the unpaid license fees shall be payable in accordance with this Agreement.

7. Ownership. As between the parties, xMatters shall retain all ownership rights in the Software, Documentation and the Work Product, and Licensee shall retain all ownership rights in Licensee Confidential Information and all data, text, files, data, output, programs, files, information, or other information or material that Licensee provides, develops, generates, creates, makes available or uses in conjunction with the Software. xMatters hereby grants to Licensee a non-exclusive, perpetual, worldwide, non-transferable, fully paid up, internal use license to use the Work Product to the same extent as the Software. There are no implied rights and all other rights not expressly granted herein are reserved. No license, right or interest in any xMatters or Licensee trademark, trade name or service mark is granted hereunder. Licensee shall not remove from any full or partial copies made by Licensee of the Software, Software Updates, and Documentation any copyright or other proprietary notice contained in or on the original, as delivered to Licensee.

8. Patent and Copyright Indemnity

8.1 xMatters shall defend, indemnify and hold Licensee harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Licensee by a third party alleging that the use of the Software as contemplated hereunder infringes the intellectual property rights of such third party, provided that Licensee (i) promptly gives written notice of the Claim to xMatters; (ii) gives xMatters sole control of the defense and settlement of the Claim (provided that xMatters may not settle any Claim unless it unconditionally releases Licensee of all liability); and (iii) provides to xMatters, at xMatters' cost, all reasonable assistance in the defense of the Claim.

8.2 xMatters will, at its sole option and expense: (i) procure for Licensee the right to continue using the Software under the terms of this Agreement; (ii) replace or modify the Software to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate the license for the infringing Software and refund Licensee the license fees paid for the infringing Software.

8.3 xMatters shall have no liability for any Claim to the extent (i) the Claim is based upon the use of the Software in combination with any other product, service or device not furnished, recommended or approved by xMatters, if such Claim would have been avoided by the use of the Software without such product, service or device; (ii) the Software has been modified by a party other than xMatters, its agents or Licensee acting at the direction of xMatters, if a Claim would not have occurred but for such modifications; (iii) Licensee fails to use updated or modified Software provided by xMatters at no cost to Licensee to avoid a Claim after notice by xMatters to Licensee of the availability of such updated or modified Software and the fact that use of same will cure such Claim; or (iv) Licensee's use of the Software other than in accordance with this Agreement and the Documentation.

8.4 THE PROVISIONS OF THIS SECTION 8 SET FORTH XMATTERS' SOLE AND EXCLUSIVE OBLIGATIONS, AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO THIRD PARTY CLAIMS THAT THE SOFTWARE INFRINGES OR MISAPPROPRIATES THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

9. Default and Termination

9.1 A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach by the other party if such breach remains uncured at the expiration of such period; (ii) immediately upon written notice if the other party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; or (iii) as otherwise provided herein. Upon any termination for cause by Licensee, xMatters shall refund Licensee any prepaid unused support fees.

9.2 Within thirty (30) days after termination of this Agreement, Licensee shall certify in writing to xMatters that all copies of the Software, Software Updates, and Documentation in any form, including partial copies within modified versions, have been destroyed or returned to xMatters.

9.3 The parties' rights and obligations with respect to the fees and payment terms, audit rights, title and protection, confidentiality, patent and copyright indemnification, warranty disclaimers, limitation of liability, attorney's fees, and governing law provisions of this Agreement shall survive termination of this Agreement.

10. Warranties; Disclaimers

10.1 xMatters warrants that it owns or otherwise has sufficient rights in the Software and Work Product to grant to Licensee the rights granted herein

10.2 xMatters warrants for a period of three (3) months from delivery that the Software shall conform in all material respects to the Documentation.

10.3 The warranty in Section 10.2 does not apply to: (i) Software that has been modified by any party other than xMatters; or (ii) Software that has been improperly installed or used in a manner other than as authorized under this Agreement to the extent such modification(s) or improper installation cause the Software to be nonconforming. xMatters does not warrant that the Software will operate in the combinations that Licensee may select for use, or that the operation of the Software will be uninterrupted or error-free, or that all Software errors will be corrected. Any claim submitted under Section 10.2 must be submitted in writing to xMatters within the specified warranty period. As Licensee's sole and exclusive remedy and xMatters' entire liability for any breach of the warranty in Section 10.2, xMatters will repair or replace any nonconforming Software so that it operates as warranted or, if xMatters is unable to do so, terminate the license for such Software and return the license fees paid to xMatters for the nonconforming Software.

10.4 xMatters warrants (i) it will provide the Services in a professional and workmanlike manner consistent with good industry standards and practices; and (ii) that for a period of three (3) months after completion the Services will conform to the applicable statement of work. As Licensee's sole and exclusive remedy and xMatters' entire liability for any breach of the foregoing warranty, xMatters will re-perform the Services, or, if xMatters is unable to do so, return the fees paid to xMatters for such deficient Services.

10.5 EXCEPT AS EXPRESSLY PROVIDED HEREIN, XMATTERS DOES NOT MAKE ANY WARRANTIES OF ANY KIND, WHETHER IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. Limitation of Liability

11.1 EXCEPT FOR DAMAGES RELATED TO (i) XMATTERS' OBLIGATIONS IN CONNECTION WITH SECTION 8 (PATENT AND COPYRIGHT INDEMNITY); (ii) EITHER PARTY'S MATERIAL BREACH OF SECTION 12 ("CONFIDENTIALITY"), OR (iii) EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY LICENSEE TO XMATTERS FOR THE SOFTWARE, SUPPORT OR SERVICES AS TO WHICH THE CLAIM AROSE.

11.2 IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. Confidentiality

12.1 As used herein, "Confidential Information" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed 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, including the terms and conditions of this Agreement (including pricing and other terms reflected in Schedules), the Software, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (iii) was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to Disclosing Party.

12.2 Receiving Party shall not disclose or use any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except with Disclosing Party's prior written consent. Receiving Party shall protect the confidentiality of Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information.

12.3 If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.

12.4 If Receiving Party discloses (or threatens to disclose) any Confidential Information of Disclosing Party in breach of confidentiality protections hereunder, Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies may be inadequate.

12.5. Upon any termination of this Agreement, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party's Confidential Information and, upon request, return to the Disclosing Party or, at the Disclosing Party's election, destroy all materials containing such Confidential Information.

13. General

13.1 This Section 13.1 shall apply only if Licensee is a federal government entity. xMatters provides the Software, including related technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Software include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in this Agreement.

13.2 Neither party may issue press releases relating to this Agreement without the other party's prior written consent. Either party may include the other's name in customer or vendor lists in accordance with the other's standard guidelines.

13.3 The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement.

13.4 Notices shall be in writing and effective upon receipt.

13.5 No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the amendment or waiver is to be asserted. To the extent of any conflict between this Agreement and any other schedule or attachment, this Agreement shall prevail unless expressly stated otherwise. Notwithstanding any language to the contrary therein, no terms stated in a purchase order or in any other order document (other than a Schedule, statement of work, or other mutually executed order document expressly incorporated herein) shall be incorporated into this Agreement, and all such terms shall be void.

13.6 No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, 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, such 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 shall remain in effect.

13.7 Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's possession or reasonable control, and denial of service attacks.

13.8 Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Schedules hereunder), without consent of the other party, to its successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity not involving a direct competitor of the other party. Any attempted assignment in breach of this section shall be void. This Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

13.9 Licensee agrees to comply fully with all applicable regulations of the United States Department of Commerce and with the United States Export Administration Act, as amended from time to time, and with all applicable laws and regulations of other jurisdictions with respect to the exportation and use of the Software.

13.10 This Agreement shall be governed exclusively by the internal laws of the state of California, without regard to its conflicts of laws rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

13.11 This Agreement may be executed by facsimile and in counterparts.

13.12 This Agreement represents the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.