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AppSense, Inc.

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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) (as that document is changed from time to time by Manufacturer) 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.appsense.com/legals](http://www.appsense.com/legals)) 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

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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.



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- (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.



# APPSENSE® END USER LICENSE AGREEMENT

This End User License Agreement ("EULA") is a legal agreement between the AppSense entity to which your purchase order for the Software is addressed or (if unstated) AppSense Limited, being a company incorporated in England and Wales and you, as the single legal entity agreeing to be bound by this EULA.

BY ACCESSING, INSTALLING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MAY NOT ACCESS, INSTALL OR USE THE SOFTWARE AND YOU SHOULD CONTACT YOUR SOFTWARE VENDOR WITHIN 30 DAYS TO REQUEST A REFUND.

## 1 DEFINITIONS

1.1 "**Designated Customer Access**" means (as applicable) access to the standard user interfaces of the Software and/or use of the functionality of the Software, that you may grant to a designated third party for whose dedicated benefit you have licensed the Software and in respect of which you have provided advance written notice to AppSense that you are providing outsourced services. Designated Customer Access only applies where you are an IT outsourcing company that is providing outsourced services to a client company.

1.2 "**Software**" means the software product licensed to you under this EULA, in object code form only and including (without limitation) any related components provided with the Software, electronic or printed documentation, and any updates, modifications and versions that AppSense may provide to you unless and to the extent that such items are accompanied by separate terms, whereby those separate terms shall prevail.

1.3 "**Software License Key**" means a serial number issued to you by AppSense to access and use the Software.

## 2 GRANT OF LICENSE

2.1 **License.** Subject to the terms of this EULA AppSense hereby grants you a perpetual, non-exclusive, non-transferable license to use the Software for your own information processing and computing needs, to the extent permitted by your payment of applicable license fees (if any) and/or your Software License Key(s). Depending on the licensing model used to calculate the applicable license fees paid by you to use the Software (whether per user, per platform or any other AppSense approved licensing model), the applicable Software License Key will further limit use of the Software accordingly. Where a Software License Key refers to a 'named user' it shall be deemed to refer to a single natural person who is authorised to access or have use of the Software, regardless of whether that person is accessing or using the Software at any given time.

2.2 **Restrictions.** The Software is licensed, not sold. You may not use the Software other than as expressly stated in this EULA; all other rights are reserved to AppSense. You may not: (i) adapt, reverse engineer, decompile, disassemble, modify, or make error corrections to any part of the Software, create or attempt to create any derivative works from the Software or attempt to derive the source code to the Software or override any technical restrictions, except and only to the extent that applicable law expressly permits such actions despite this limitation; (ii) sell, lease, rent, license, sublicense, novate or otherwise transfer in whole or in part the Software or the Software License Key(s) to any third party; (iii) disclose, provide, make available or permit use of the Software by or for the benefit of any third party (except Designated Customer Access) without AppSense's written consent. For the avoidance of doubt, your employees and directors shall not be considered as being third parties; (iv) remove or alter any trademarks, copyright notices or any proprietary notices from the Software; (v) copy the Software except for a reasonable number of copies for archival or back-up purposes; or (vi) allow the Software to become the subject of any charge, lien or encumbrance.

2.3 **New Products.** You acknowledge that AppSense may develop and market different computer programs which use portions of the Software and which perform all or part of the functions performed by the Software. Nothing contained in this EULA shall give you any rights with respect to such computer programs.

2.4 **Restricted use.** The Software is licensed for the purpose set forth in the applicable documentation for the Software and is not designed or offered for any user's specific purpose. The Software is not designed, developed or intended for distribution or use with any equipment the failure of which could lead to death, personal injury or physical or environmental damage (including, without limitation, any nuclear facilities, aircraft navigation or communications or medical equipment).

## 3 EVALUATION AND NOT FOR RESALE LICENSES

In addition to the other sections of this EULA, the following provisions shall apply to Evaluation Software and NFR Software (each as defined below). In the event of any conflict between this Section 3 and the other terms of this EULA, the terms stated in this Section 3 shall apply.

3.1 **Evaluation License.** If available, the Software may be accessed and used with no-fee evaluation Software License Keys. If you access and/or use the Software with an evaluation Software License Key ("Evaluation Software") you may use the Evaluation Software until the expiration date stated on the evaluation Software License Key (or if not stated, for 30 days from the date of issue of the evaluation Software License Key) and in accordance with any user limitations specified on the evaluation Software License Key, only to evaluate the suitability of the Evaluation Software for licensing on a cost basis. Upon the expiration date, the Evaluation Software must immediately be uninstalled and all copies destroyed. You acknowledge that AppSense is not obligated to permit further use of the Evaluation Software past the expiration date.

3.2 **Not for Resale License.** If available, the Software may be accessed and used with no-fee not for resale ("NFR") Software License Keys. If you access and/or use the Software with an NFR Software License Key ("NFR Software") you



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may only use the NFR Software for demonstration purposes (and not for your information processing or computing needs) in accordance with any user limitations specified on the NFR Software License Key for the period specified in the NFR Software License Key (if any) and this license may be terminated by AppSense at any time in writing, with or without cause. Upon the expiration date or termination by AppSense, the NFR Software must immediately be uninstalled and all copies destroyed.

**3.3 Warranty Disclaimer.** The warranty referenced in Section 5.1 is not applicable to Evaluation Software or NFR Software. THE EVALUATION SOFTWARE AND/OR NFR SOFTWARE IS PROVIDED TO YOU 'AS IS' WITHOUT ANY WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS EULA APPSENSE, ITS LICENSORS AND RESELLERS HAVE NO LIABILITY FOR ANY DAMAGES RESULTING FROM USE OF THE EVALUATION SOFTWARE OR NFR SOFTWARE.

**3.4 No Support.** AppSense has no obligation under this EULA to provide any support to you for the Evaluation Software or NFR Software.

## 4 TERMINATION

Without prejudice to any other rights, AppSense may terminate this EULA immediately and without notice if you fail to comply with any term of this EULA. In such event you shall not be permitted to make any further use of the Software and you must immediately remove and destroy all copies of the Software (including all back-up copies).

## 5 LIMITED WARRANTY AND LIMITATION OF LIABILITY

**5.1 Limited Warranty.** AppSense warrants that the Software will substantially conform to the description contained in the applicable end user documentation for a period of ninety (90) days from the date of issue of the Software License Key to you ("Warranty Period"). Where the Software does not substantially conform to the description contained in the applicable end user documentation then your sole remedy shall be that AppSense shall, at its option, repair the defects, replace the Software or refund the license fees you paid for the Software. This warranty shall not apply where the failure or defect is attributable to misuse, abuse, misapplication or failure to properly install the Software and/or AppSense has not received written notice of the defect within the Warranty Period. Any replacement or corrected Software shall be warranted as set out herein for the remainder of the original Warranty Period or 30 days, whichever period is longer. EXCEPT FOR THE PRECEDING WARRANTY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, APPSENSE AND ITS SUPPLIERS AND LICENSORS PROVIDE THE SOFTWARE 'AS IS' AND HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOU ACCEPT THAT NO SOFTWARE IS ERROR FREE OR UNINTERRUPTED AND YOU ARE STRONGLY ADVISED TO REGULARLY BACK-UP YOUR DATA. ANY IMPLIED WARRANTIES THAT CANNOT BE EXCLUDED ARE LIMITED TO THE WARRANTY PERIOD OR TO THE SHORTEST PERIOD PERMITTED BY APPLICABLE LAW.

**5.2 Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE INDEMNITY IN SECTION 9.2, YOU AGREE THAT IN NO EVENT SHALL APPSENSE, ITS AFFILIATES, SUPPLIERS OR AUTHORIZED DISTRIBUTORS BE LIABLE FOR ANY LOST GOODWILL, LOST SAVINGS, LOST PROFITS OR LOST OPPORTUNITIES OR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER IN ANY WAY RELATING TO THIS EULA OR RESULTING FROM THE USE OF OR INABILITY TO USE THE SOFTWARE AND THE AGGREGATE LIABILITY OF SUCH PERSONS SHALL NOT IN ANY EVENT EXCEED THE LICENSE FEES PAID BY YOU FOR THE SOFTWARE. THE FOREGOING LIMITATIONS APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND APPLY EVEN IF APPSENSE HAS BEEN NOTIFIED OF, OR REASONABLY COULD HAVE FORESEEN, THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE. NOTHING IN THIS EULA SHALL HAVE THE EFFECT OF LIMITING OR EXCLUDING ANY LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OR FOR FRAUD OR FOR ANY OTHER LIABILITY TO THE EXTENT THAT IT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

## 6 SUPPORT AND SUBSCRIPTION SERVICES NOT INCLUDED

AppSense will not provide any support services under this EULA and this EULA does not give you any rights to modifications, updates, upgrades or new versions to the Software. You may purchase support and subscription services separately. If you have purchased AppSense support and/or subscription services with the Software (whether directly from AppSense or through its authorized resellers or distributors) then these services are provided to you under the Terms and Conditions for Support and Subscription Services at [www.appsense.com/legals](http://www.appsense.com/legals) in effect at the time of your order and by accepting this EULA you are accepting those Terms and Conditions, unless and to the extent that separate terms accompany those services. Upon renewal of any services, the Terms and Conditions for Support and Subscription Services in effect at the time of your renewal order shall apply, unless other terms accompany those services. Any software or related materials that AppSense provides to you as part of any support or subscription services are considered part of the Software and are subject to the terms and conditions of this EULA. If you purchase Technical Hotline Support and/or Subscription Services for the Software, you are required to purchase and maintain such services at the same level for all licenses of the Software. If you decide not to purchase support and/or subscription services, you may not update any licenses with any modifications of the Software.

## 7 CONFIDENTIALITY

You shall keep confidential, and not disclose to any third party (except your employees or staff members or as maybe required by law or any legal or regulatory authority) any information of a confidential nature which you may be provided in connection with this EULA which relates to AppSense or its affiliates (including, without limitation, the Software,



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documentation, the underlying computer code to which you may obtain or receive access, the functional or technical design, logic, or other internal routines or workings of the Software, commercial know-how or trade secrets).

## 8 AUDIT

You shall maintain accurate and complete records regarding your use of the Software and you shall permit AppSense (or persons authorized by AppSense) to inspect such records and your computer equipment in order to verify that your use of the Software is in compliance with the EULA and that you have paid the applicable license fees and services fees for the Software. AppSense may not conduct an audit more than once per calendar year and such audits shall take place during normal business hours and on reasonable prior notice. Without prejudice to any other rights and remedies, where such audit reveals any underpayment, you shall immediately pay such underpayment to AppSense and where any underpayment is more than five percent (5%) of the amounts payable by you for the audited period you shall promptly reimburse AppSense for the costs of the audit.

## 9 INTELLECTUAL PROPERTY RIGHTS

**9.1 Intellectual Property and Other Rights.** You acknowledge that all intellectual property rights and other rights in and to the Software and documentation, including (without limitation) all patents, trademarks, know-how, copyright, rights in software and any other intellectual property rights arising therein in any jurisdiction anywhere in the world belong to AppSense or its licensors and you shall have no rights in or to the Software other than the right to use it in accordance with the terms of this EULA.

**9.2 Indemnity.** AppSense undertakes at its own expense to indemnify, hold harmless and defend you from and against any losses, liabilities, damages or costs (including reasonable legal fees) awarded to a third party or agreed to in settlement between such third party and AppSense, resulting from any third party claim that your use of the Software in accordance with this EULA infringes any intellectual property rights ("Claim"); provided, however, that you promptly notify AppSense in writing of a Claim, assist AppSense in defending or settling the Claim (at AppSense's cost), allow AppSense complete and immediate control of the Claim and do nothing which may prejudice AppSense's defence of such Claim. If any Claim is made or appears possible, AppSense may (at its option) modify or replace the Software so that it is no longer infringing, obtain the right for you to continue using the Software or, if AppSense determines that neither of those alternatives is reasonably available, AppSense may terminate this EULA and refund the license fees actually paid by you for the affected Software less a reasonable charge for use of the Software to the date of termination. This Section shall not apply where the Claim is attributable to misuse, abuse, misapplication or combination of the Software with third party software not approved by AppSense. This Section states the entire liability of AppSense in respect of a Claim, in lieu of all other rights and remedies. Nothing in this Section shall restrict or limit your general obligation to mitigate a loss which you may suffer or incur as a result of a Claim. This Indemnity shall not apply to NFR Software or Evaluation Software.

## 10 GENERAL

**10.1 Government Restrictions.** You may not export or re-export the Software (directly or indirectly) in any form or to any recipient in violation of any applicable government restrictions. Each of the components that constitute the Software is a "commercial item" as that term is defined at 48 of the US Code of Federal Regulations ("C.F.R"). 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire only those rights in the Software and Documentation that are provided by this EULA.

**10.2 Governing law.** If you acquired this Software in the United States, this EULA is governed by the laws of the State of New York without regard to conflict of laws principles and the parties agree that, to the fullest extent permitted, the provisions of the Uniform Computer Information Transactions Act and/or any federal or state statutory adoptions or equivalent in effect at any time (whether before or after the date of this EULA) shall not apply to this EULA. If you acquired this EULA outside of the United States, this EULA is governed by the laws of England and Wales, without regard to conflict of laws principles. In either case, the United Nations Convention for the International Sale of Goods shall not apply.

**10.3 Variation.** No variation to this EULA shall be effective unless it is in writing and signed by AppSense and you.

**10.4 Entire Agreement.** This EULA is the complete and exclusive statement of the agreement between AppSense and you and supersedes all prior or contemporaneous oral or written communications, arrangements, proposals and representations (whether by you, AppSense or any third party) with regard to the Software or any other subject matter covered by this EULA. You acknowledge that, in entering into this EULA, to the fullest extent permitted by law, you agree that you have not relied on any representation, undertaking or promise given by AppSense or implied from anything said or written in negotiations before entering into this EULA (whether innocent or negligent) except as expressly stated in this EULA.

**10.5 Severability.** If any provision of this EULA is held to be unenforceable, void or invalid, the remaining provisions will remain in full force.

**10.6 No Waiver.** No failure or delay to exercise any right or remedy provided under this EULA or by law shall constitute a waiver of that or any other rights or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right shall preclude or restrict the further exercise of that or any other right or remedy.

**10.7 Third Party Rights.** This EULA is for the benefit of AppSense and its affiliates and any such affiliate may directly enforce this EULA. Notwithstanding the foregoing, a person who is not a party to this EULA has no right to enforce any term of this EULA. "Affiliates" refers to any company who is controlled by, controls or is under common control with AppSense and "control" refers to ownership of not less than 50% of voting securities.