

Bromium
20813 Stevens Creek Blvd
Cupertino, CA 95014
www.bromium.com

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 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.

BROMIUM SOFTWARE LICENSE AGREEMENT

This Bromium Software License Agreement (the "**Agreement**") is made and entered into as of June __, 2013 (the "**Effective Date**"), by and between Bromium, Inc., a corporation organized and existing under the laws of the State of Delaware and with offices located at 20813 Stevens Creek Boulevard, Suite 150, Cupertino, CA 95014 ("**Bromium**" or "**Licensor**"), and _____ a U.S. government agency with offices located at _____ ("**Licensee**"). This Agreement shall be treated as an Addendum under Federal Acquisition Regulation ("FAR") 52.212-4.

WITNESETH:

WHEREAS, Licensee desires to license from Bromium certain software and for Bromium to perform related maintenance and support services as set forth herein; and

WHEREAS, Bromium desires to license such software to Licensee and to provide such maintenance and support services on the terms and conditions set forth herein. The parties recognize that, in certain instances, Bromium's authorized resellers may perform tasks described herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Bromium and Licensee, intending to be legally bound, hereby agree as follows:

1. Definitions. Capitalized terms not otherwise defined in this Agreement are defined herein:

(a) "**Affiliate**" or "**Affiliates**" shall mean, as to Licensee, any other entity that directly or indirectly controls, or is under common control with, or is directly or indirectly controlled by, Licensee. As used in this definition, the term "control" (including, with cotRelative meanings, the terms "controlled by" and "under common control with" as used with respect to any entity) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such entity.

(b) **"Documentation"** shall mean any and all operation and user manuals, training materials, guides, commentary listings and other materials for use by a licensee of the Software, including but not limited to materials identifying any and all files describing the control structure and all functions of the Software, which can be maintained and modified at any executable code level, custom programs, utilities, tools, make files, file layouts, instructions, control logic, flow charts, internal documentation, designs, drawings, prints, technical data, statements of principles of operation and schematics necessary or useful for the effective understanding and use of the Software, and all other such documentation as is necessary to install, use, support and administer the Software in executable code form or any portion thereof. The Documentation is a "commercial item" as defined in FAR 2.101.

(c) **"License Fee" or "License Fees"** shall mean the amounts set forth in **Schedule A**, and/or any applicable Schedule (as defined in Section 2), which Licensee shall pay to Bromium in consideration for the License(s) granted hereunder.

(d) **"Maintenance Fee" or "Maintenance Fees"** shall mean the amounts set forth in Schedule A, and/or any applicable Schedule, which Licensee shall pay to Bromium in consideration for the Maintenance Services if Licensee elects to receive Maintenance Services.

(e) **"Maintenance Services"** shall mean the maintenance and support services for the Software set forth in Schedule A, and/or any applicable Schedule, if Licensee elects to receive any such and support maintenance services.

(f) **"Purchase Order" or "Purchase Orders"** shall mean a purchase order submitted hereunder by Licensee from time to time to Bromium for Software and/or Maintenance Services. If the Licensee accepts and clicks through this Agreement and an associated quote in an online purchase form, or signs a printed official and valid quote from Bromium with this document attached, then this combination of purchase documents will be considered an acceptable substitute for a formal Purchase Order. All Purchase Orders shall reference this Agreement and shall state that all terms and conditions in this Agreement shall apply to and be deemed a part of all such Purchase Orders. In the event a Purchase Order is issued pursuant to the Agreement that fails to reference the Agreement, such failure shall not affect the applicability of this Agreement. In the event of any conflict or inconsistency between the Purchase Order and the Agreement, the Agreement shall prevail.

(g) **"Software"** shall mean the applications, modules and/or components, in executable code form, set forth in Schedule A, and/or any applicable Schedule, as well as any Updates thereto. The Software is a "commercial item" as defined in FAR 2.101.

(h) **"Specifications"** shall mean the functional and technical requirements and specifications for the Software set forth in Schedule A, and/or any applicable Schedule, as such specifications may be modified, updated, or amended from time to time upon the mutual written agreement of the parties.

(i) **"Update"** shall mean each modification, enhancement or revision to the Software that: (i) corrects errors, problems, mistakes or defects caused by or resulting from an incorrect

functioning of the Software or failure of the Software to meet its specifications; (ii) supports new releases of operating Software and devices; (iii) increases the speed, efficiency or ease of operation of the Software; (iv) adds additional capabilities to or otherwise improve functions of the Software; or (v) provides additional value to the Software.

2. LICENSE . Subject to the other terms and conditions of this Agreement, Bromium hereby grants to Licensee and its Affiliates a nonexclusive, worldwide, non-transferable, perpetual license to use the Software in executable code form, for use in the course of their business operations and for all their own internal business purposes, including but not limited to processing their own information and that of their customers and clients as part of their business (the "**License**"). The License shall also be deemed to include a corresponding license to use the Documentation to the extent necessary for Licensee or its Affiliates to exercise their rights with respect to the Software under the License. **ALL RIGHTS NOT EXPRESSLY GRANTED HEREIN ARE RESERVED BY BROMIUM OR ITS LICENSORS .**

3. ADDITIONAL SOFTWARE . If Licensee submits a Purchase Order to Bromium requesting new or additional Software products or Maintenance Services, then upon acceptance of the Purchase Order by Bromium, the parties shall endeavor to execute and attach a new Schedule to this Agreement substantially in the form of Schedule A (each a "**Schedule**"). Each executed Schedule shall be numbered sequentially (as "Schedule A-1", "Schedule A-2", "Schedule A-3", etc.) and shall include a listing of the applicable new or additional Software products and their Specifications, and/or any Maintenance Services, as well as any applicable License Fees, Maintenance Fees, discounts, operating environments, or delivery and installation sites. The terms of this Agreement shall apply to each new Schedule attached hereto, and each reference in this Agreement to "Schedule A" shall also be deemed to refer to each such new Schedule. No party shall be bound by the terms of a Schedule until the Schedule has been executed by both parties.

4. RESTRICTIONS. Licensee may not sublicense, assign, or otherwise transfer the License to the Software or accompanying Documentation except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign or transfer any of the rights, duties or obligations hereunder is void. The Software contains trade secrets, and in order to protect them, Licensee may not decompile, reverse engineer or disassemble the Software, or otherwise reduce the source code of the Software to a human perceivable form. Licensee may not lease, loan, resell for profit, distribute, or create derivative works of the Software. Licensee may not (i) permit a third party to exploit the Software in violation of the License granted herein, or (ii) operate the Software for or on behalf of any third party (including as a service used by a third party). Licensee may not create, develop, or use any software or services to circumvent or otherwise gain access in a manner that would violate any technical restrictions that control access to the Software. Licensee will promptly notify Bromium of any unauthorized disclosure, reproduction, or distribution of the Software, which comes to Licensee's attention, or which it reasonably suspects.

5. TITLE. The Software and accompanying Documentation, in whole or in part, including any Updates, are the property of Bromium and are protected by United States and international copyright laws and treaty provisions. This Software License is not a sale and does not transfer to

Licensee any title or ownership interest in or to the Software or any patent, copyright, trade secret, trade name, trademark or other proprietary or intellectual property rights related to the Software. All right, title and interest in and to the Software remains with Bromium. Licensee shall not remove, alter, or obscure any proprietary notices contained on or within the Software and shall reproduce such notices on any back-up copy of the Software.

6. DELIVERY. Within two (2) business days of Bromium's receipt of a Purchase Order, Bromium shall deliver to Licensee written acceptance or rejection of the Purchase Order. Thereafter, the parties shall promptly execute a Schedule as set forth in Section 3. Upon execution of the Schedule, Bromium shall deliver to Licensee the required number of copies of the Software and Documentation as set forth in the Schedule. ALL SOFTWARE TO BE PROVIDED HEREUNDER WILL BE DELIVERED ELECTRONICALLY.

7. ACCEPTANCE. Bromium provides evaluation licenses of its Software (each a "**Delivered Item**") for Licensee testing and pre-acceptance before purchase ("**Testing**"). It is assumed that Licensee has availed of this facility and completed successful testing of the Bromium product to their satisfaction. Therefore, unless the relevant Schedule provides to the contrary, upon the receipt of a Purchase Order and the subsequent delivery of the software, Licensee shall be deemed to have accepted the Software ("**Acceptance**"), and Bromium will invoice the Licensee as per the applicable Purchase Order.

8. FEES AND PAYMENTS.

(a) In consideration for Bromium's grant of the License and/or Maintenance Services, if any, upon Acceptance by Licensee, Licensee shall pay Bromium the applicable License Fees and/or Maintenance Fees in accordance with the payment terms set forth in this Section 8.

(b) On a monthly basis, Bromium shall submit to Licensee an invoice listing in detail all License Fees and/or Maintenance Fees incurred by Licensee in the prior month ("**Invoice**"). Licensee shall remit payment to Bromium on undisputed amounts of a properly submitted Invoice within thirty (30) days after Licensee's receipt of the Invoice.

9. SOFTWARE MAINTENANCE. In consideration for the Maintenance Fee, Bromium shall provide Licensee with the Maintenance Services set forth below during the term forth in Schedule A, and/or any applicable Schedule (each a "**Maintenance Term**"), at no additional charge except as expressly set forth herein.

(a) **Software Defects.** Bromium shall notify Licensee of defects or malfunctions in the Software or the Documentation as applicable to Licensee's deployment, which Bromium learns from any source. Bromium shall correct any defects or malfunctions in the Software or the Documentation discovered during the Warranty Period, and the term of any Maintenance Services as per Bromium's development schedule and the Service Levels described below, and provide Licensee with corrected copies of same, without additional charge.

(b) **Telephone & Email Support.** Bromium shall provide to Licensee all reasonably necessary telephone and written consultation and support, designated personnel, and instruction requested by Licensee in connection with its use and operation of the Software or any problems therewith, as set forth in this Section 9, Schedule A, and/or any applicable Schedule.

(c) **Service Levels.** Maintenance Services shall be performed by Bromium under the following service guidelines:

(i) Classification of Errors. An error, defect or other failure to conform to the proper operation of the Software (an "**Error**") shall be classified as follows: (i) A "**Class 1 Error**" is any Error that renders continued use of the Software either impossible or seriously impractical and either interrupts use by Licensee or makes continued use substantially more costly to Licensee. (ii) A "**Class 2 Error**" is any Error that is not a Class 1 Error.

(ii) Notification of Errors. Licensee shall provide Bromium with a list of three (3) authorized Licensee employees/agents that may request support under the terms of this Agreement. These named contacts may request support services by sending reports and queries to the telephone or email address for support listed in Section 9(b). In addition to Section 9(b), Bromium may also provide to Licensee a list of persons (in increasing positions of authority) and their telephone numbers (the "**Calling List**") for Licensee to contact to report an Error. When reporting any Error, Licensee shall provide the classification of the Error and a reasonably detailed explanation, together with underlying data, to substantiate the Error and to assist Bromium in its efforts to diagnose and correct the Error.

(iii) Response Time. Bromium shall use commercially reasonable efforts to respond to Licensee's initial Error reports with off-site telephone consultation, assistance and advice within four (4) hours for Class 1 Errors and within twelve (12) hours for Class 2 Errors but, in any event, Bromium shall respond within twelve (12) working support hours. If the designated person from the Calling List is not available when Licensee makes contact with Bromium to report an Error, then Licensee shall attempt to contact the next more responsible person on the Calling List until contact is made and a designated person responds to the call.

(iv) **Class 1 Errors.** For any Class 1 Error, Bromium shall take all reasonably necessary steps to supply a reasonable work-around or correction to Licensee as soon as possible. This will include assigning qualified, dedicated staff to work on the Error twenty-four (24) hours per day, seven (7) days per week at either the Bromium site or Licensee site as necessary. Upon detecting or being notified of a Class 1 Error, Bromium shall immediately assemble the appropriate personnel to analyze the problem, identify potential solutions and determine the best plan of action. Licensee shall be permitted to participate in this process. Bromium personnel shall be dedicated to resolving the Error until an acceptable work-around or correction is supplied or until Licensee determines in its reasonable judgment after consultation with Bromium that a work-around or correction cannot be produced.

(v) **Class 2 Errors.** For any Class 2 Error, Bromium shall work with Licensee to document the Error through mutually established standards. Class 2 Errors shall be resolved

according to mutually agreed priorities. Bromium personnel shall be dedicated to resolving Class 2 Errors through Bromium's normal software support procedures.

10. SOFTWARE MAINTENANCE CONTRACT AND RENEWAL OPTION. No later than (60) sixty days before the expiration of the initial and any renewed Maintenance Term, Bromium shall notify Licensee of such expiration in writing, and shall provide Licensee with an updated Schedule for Licensee's review, which shall include any updates to the Maintenance Fees for the renewal of the Maintenance Term.

11. TAXES. Bromium shall state separately on its invoices taxes excluded from the Agreement price, and the Licensee agrees either to pay the amount of the taxes to Bromium or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

12. TERMINATION.

(a) Termination without Cause. Licensee may terminate (i) the License to the Software, or (ii) the Maintenance Services, in whole or in part, at any time by providing written notification to Bromium, as provided for in FAR 52.212-4(1).

(b) Termination for Cause. To the extent permitted by law, each party shall have the right to terminate this Agreement, in whole or in part, in the event of the other party's material breach of an obligation, representation or warranty set forth in this Agreement; provided, however, that such termination will not become effective unless and until (i) the party not in default has given the other party written notice of breach, which notice shall state in reasonable detail the nature of said breach, and (ii) the party allegedly in default shall have failed to remedy said default to the reasonable satisfaction of the Party not in default within 15 days following the giving of the notice.

(c) Effect of Termination.

(i) Any early termination of this Agreement, whether for a Party's breach or otherwise, shall be without prejudice to any claims or damages or other rights of one Party against the other Party.

(ii) In the event of early termination of this Agreement by either Party:

(1) License shall pay Bromium all undisputed amounts due for services rendered prior to the termination date.;

(2) If any fees have been prepaid by Licensee, Bromium shall refund to Licensee the amount of any such prepaid fees that exceeds the value of services actually rendered by provider prior to the termination date; provide however, that except for termination of this Agreement for cause by Licensee, in accordance

with Section 12(b), or as provided in Section 14(c), any License Fees paid by Licensee to Bromium under the Agreement are not refundable.

(iii) Upon the termination of this Agreement for cause by Bromium, in accordance with Section 12(b), Licensee will return the Software and any accompanying Documentation in any form to Bromium.

(iv) Upon the expiration or termination of this Agreement for any reason each party will, in accordance with the other party's instructions, promptly deliver to the other party all Confidential Information of the other party.

(d) Sections 5 (Title), 12(c) (Effect of Termination), 13 (Confidentiality), 14 (Warranty), 15 (Indemnification), 16 (Limitation of Liability), and 18 (Miscellaneous) shall survive any termination of the Agreement

13. CONFIDENTIALITY.

(a) Definition of Confidential Information. As used herein, "**Confidential Information**" means this Agreement and all proprietary or confidential information of a party ("**Disclosing Party**") that is disclosed to the other party ("**Receiving Party**"), whether orally or in writing, which is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. "**Confidential Information**" shall include, without limitation, information and materials relating to the Disclosing Party's (i) financial and business affairs, (ii) know-how, processes, trade secrets, procedures, or methods of operation, (iii) proposed or existing projects, programs, and products, (iv) sales and marketing materials and methodologies, and (v) employees, customers, clients, and suppliers. "**Confidential Information**," however, shall not include any information which the Receiving Party can establish (x) was known to the Receiving Party before disclosure to the Receiving Party under this Agreement as a result of being made generally available in the public domain, or (xi) becomes publicly known and made generally available in the public domain after disclosure to the Receiving Party under this Agreement, or is received by the Receiving Party from a source other than the Disclosing Party, in both cases other than by a breach of an obligation of confidentiality.

(b) Protection of Confidential Information. The Receiving Party will keep in confidence and trust all Confidential Information of the Disclosing Party, and will not use, reproduce, or disclose to others any Confidential Information without the Disclosing Party's advance written consent, except (i) as may be directly necessary in the ordinary course of performance of the Services under this Agreement, or (ii) in accordance with a judicial or other governmental order, provided however, that, to the extent reasonably possible, the Receiving Party shall give the Disclosing Party reasonable notice prior to making any such disclosure in sufficient time so the Disclosing Party may object to such disclosure if it so chooses, and

provided further, that the Receiving Party shall disclose only that portion of the Confidential Information that it is legally required to disclose.

14. WARRANTY.

(a) Authority. Bromium represents and warrants (i) that it has the right and authority to enter into this Agreement and to carry out its obligations under this Agreement and (ii) that the execution, delivery, and performance of this Agreement have been duly authorized by all requisite corporate action on the part of Bromium. Bromium represents and warrants that Bromium is not under any preexisting obligation inconsistent with the provisions of this Agreement. Bromium warrants that, to the best of Bromium's knowledge, there is no other contract or duty on Bromium's part, which conflicts with or is inconsistent with this Agreement.

(b) Compliance with Laws. Bromium warrants that Bromium will comply with all laws applicable to the performance of its obligations under this Agreement and to the provision of its obligations under this Agreement.

(c) Performance. Bromium warrants that it will perform the services under this Agreement with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional procedures and industry standards prevailing at the time the services are performed, and that all services will meet the necessary specifications. Bromium further represents and warrants that all Bromium personnel used to perform services under the Agreement, including permitted subcontractors, possess the knowledge, skill and experience necessary to perform such services.

(d) No Infringement. Bromium represents and warrants that it is and will be the owner of the Software and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the intellectual property and other rights granted in this Agreement without the further consent of any third party. Bromium further represents and warrants that the Software does not infringe or constitute an infringement of any intellectual property right of any third party.

(e) No Viruses. Bromium represents and warrants that the Software contains no viruses or other computer instructions or technological means intended to, or which reasonably may, disrupt, damage, or interfere with the use of computers or related systems.

(f) Licenses and Permits. Bromium represents and warrants that Bromium has, and shall maintain in effect for the duration of this Agreement, all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required of Bromium to render the services under this Agreement. Bromium shall also ensure that all permitted subcontractors are similarly licensed and qualified.

(g) EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR

FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Bromium does not warrant that the Software will operate without immaterial interruption or that it will be free from minor defects or errors that do not materially affect its performance, or that the Software will be compatible with other software that are not described in the Documentation , Specifications, or included with the Software . Except as provided in Section 14(c), Licensee assumes responsibility for the selection of the Software to achieve Licensee's intended results, and for the installation of, use of, and results obtained from the Software.

15. INDEMNIFICATION

Bromium , shall indemnify, defend, and hold Licensee, its Affiliates, and their respective officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns harmless from and against any and all actions, demands, disputes, damages, liabilities, costs, and expenses (including but not limited to attorney fees and costs) arising from or relating to (a) any allegation that the Software, or any part thereof, infringes any patent, copyright, trademark, trade secret, or other proprietary right of any third party, (b) any negligence or willful misconduct of Bromium in the performance of its obligations under the Agreement, and (c) any breach or default in the performance of any of Bromium 's obligations under this Agreement including without limitation, any breach of any warranty or representation.

16. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY LAW , IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL , INDIRECT, EXEMPLARY , PUNITIVE , INCIDENTAL, OR SIMILAR DAMAGES (INCLUDING , WITHOUT LIMITATION , LOSS OF PROFITS) , REGARDLESS OF THE FORM OF ACTION , WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY THEREOF AND EVEN IF SUCH DAMAGES WERE FORESEEABLE.

Provided, however, this clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of this Agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. 3729-3733

17. INSURANCE.

(a) Required Insurance Coverage. Bromium will, at its sole expense, provide and maintain in full force and effect during the term of this Agreement , the following insurance policies:

(i) Commercial General Liability insurance coverage to include premises and operations , personal/advertising injury, products /completed operations, and liability assumed under an insured contract (including defense costs assumed under contract), with limits of not less than \$1,000,000 per occurrence , \$3,000,000 general aggregate , and \$3,000,000 products/completed operations aggregate. Such insurance shall provide, or be endorsed to

provide, that Licensee and its officers, directors, and employees are to be covered as additional insureds with respect to liability arising out of Bromium's performance under this Agreement; and

(ii) Workers' Compensation insurance covering Bromium's own employees as required by law, to include Employer's Liability coverage with a limit of not less than \$1,000,000 per accident for bodily injury or disease.

(b) Insurance Carriers. All insurance required of Bromium hereunder shall be through insurance carriers licensed to do business in the State of California.

18. MISCELLANEOUS.

(a) Notices. All notices or other communications given hereunder shall be in writing and shall be deemed to have been duly given (i) on the date delivered if delivered by personal delivery or by overnight delivery service by a reputable carrier; or (ii) on the third (3rd) business day after mailing via U.S. registered or certified mail, first class, postage prepaid. Any notices or other communications given hereunder shall be addressed as follows, provided that either party may specify a different address by written notice to the other party in accordance with this paragraph:

If to Bromium:	If to Recipient:
Attn: Legal Department	Attn: Legal Department
Bromium, Inc.	_____
20813 Stevens Creek Boulevard, Suite 150	_____
Cupertino, CA 95014	_____

(b) Entire Agreement. This Agreement and all exhibits and Schedules hereto, constitutes the complete and exclusive understanding and agreement between Bromium and Licensee relating to the subject matter hereof and supersedes all prior or contemporaneous understandings, agreements, and communications, and/or advertising with respect to such subject matter.

(c) Conflicts. In the event of any conflict between the terms of this main body of the Agreement and those of any attachment, including without limitation any Schedule or Purchase Order, the terms of this main body will govern, except in the case where an attachment expressly provides otherwise, in which case such terms shall govern only for that attachment.

(d) Headings. The headings of the sections and paragraphs are for convenience only and shall not be considered in construing this Agreement.

(e) Modification. This Agreement cannot be amended or modified except by an instrument in writing executed by duly authorized representative of both parties.

(f) Waiver. Neither Party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than (i) by an authorized representative and (ii) in an explicit written waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

(g) Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

(h) Assignment. Neither party may assign this Agreement, whether voluntarily or by operation of law without the other party's prior written consent, as provided for in FAR 42.12. Subject to the foregoing, this Agreement shall bind and inure to the benefit of each party's successors and permitted assigns.

(i) Governing Law. This Agreement is governed by the federal statutes, regulations and common law of the United States..

U) Venue. The Contract Disputes Act of 1978 shall control the resolution of any dispute relating to this Agreement.

(k) Publicity. Bromium shall obtain written approval from Licensee prior to using in any form of publicity or disclosure of Licensee's name, logo, trademarks, service marks, copyrights or any other proprietary classification of Licensee or its affiliates.

(l) Counterparts. This Agreement may be executed in several counterparts, all of which shall constitute one agreement.

(m) Attorneys' Fees. If any legal action is necessary to enforce the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled, to the extent permitted by applicable federal law.

* * *