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

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1. **Scope.** This Carahsoft Rider and the Manufacturer Agreement establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").

2. **Applicability.** The terms and conditions in the attached Manufacturer Agreement (www.bomgar.com/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 Agreements are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft' s contract #GS-35F-0119Y, including, but not limited to the following:

(a) **Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under Government contracts as set forth in Government Order 4800.2H 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

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

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

> Carahsoft may request cancellation or termination of the 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 Agreement referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

(g) Force Majeure. Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer Agreement referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

(h) Assignment. All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer Agreement are hereby deemed to be deleted.

(i) Waiver of Jury Trial. All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer Agreement are hereby deemed to be deleted.

(j) Customer Indemnities. All Manufacturer Agreement clauses referencing Customer Indemnities are hereby deemed to be deleted.

(k) Contractor Indemnities. All Manufacturer Agreement clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

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

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

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

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

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

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

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

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

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

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

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

BOMGAR CORPORATION END USER LICENSE AGREEMENT

In consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Definitions.** Except as may otherwise be defined herein, the following terms are defined for the purposes of this EULA and any Order Form as follows:

"Beta Software" has the meaning set forth in Section 2.5.

"Bomgar" means Bomgar Corporation, a Delaware corporation.

"Bomgar Software" means the package of proprietary computer software programs in Object Code as identified on the Order Form.

"Bomgar Virtual Appliance" means the package of proprietary computer software programs in Object Code as identified on the Order Form.

"Concurrent User(s)" means an employee or authorized agent of Customer who is directly or indirectly accessing the Software at any particular point in time. Should the same employee or authorized agent of Customer have multiple simultaneous accesses to the Software, each access shall be separately considered a Concurrent User A license for a Concurrent User only grants access rights to individuals; devices and machines may not utilize a Concurrent User license to access to the Software.

"Confidential Information" means information that is of value to Bomgar and is treated as confidential, including, but not limited to, pricing, volume discounts, future business plans, patterns, devices, methods, techniques, know-how, drawings, processes, financial data, financial plans, product plans and information regarding actual or potential customers or suppliers.

"Customer" means an Ordering Activity, an entity entitled to order under GSA Schedule contracts as defined in GSA Order ADM 4800.2H, as may be revised from time to time..

"Documentation" means the written or electronic documents, help files, and other textual matter that describes the specifications, functionality, and limitations, which are included with the Software. Documentation shall not include Source Code.

"Effective Date" means the earlier of the following: (i) the complete execution of this EULA, (ii) the applicable date of any Order Form, or (iii) the date Customer first installs any Products or receives any Services from Bomgar.

"EULA" means this End User License Agreement.

"Fee(s)" means the applicable fee (as set forth on the Order Form) paid by Customer to Bomgar for the Products and/or Services. Customer shall reimburse Bomgar for pre-approved actual, reasonable travel and out-of-pocket expenses incurred, as set forth in the Order Form and/or SOW or otherwise approved by Customer in writing, for any Services that must be performed away from Bomgar's facilities.

"Feedback" has the meaning set forth in Section 2.5.

"Hardware" means the computer equipment, including licenses to any firmware or software incorporated therewith, manufactured by Bomgar, its affiliate(s) or third-party original equipment manufacturer(s) and distributed by Bomgar or a Bomgar authorized reseller to Customer.

"License" means the rights granted in Section 2 below.

"Maintenance Services" means the services provided by Bomgar to Customer as described in Section 3.

"Mobile SDK" means the files, libraries, and tools provided or made available to Customer by Bomgar pursuant to this EULA as further described in Section 2 below.

"Object Code" means Software code produced by a compiler from the Source Code and is in the form of machine language that a computer can execute directly.

"Order Form" means the purchase order, ordering document, or similar document, between Bomgar, or a Bomgar authorized reseller and Customer referencing the licensing of the Software, Hardware, Services, and any Maintenance Services. The Order Form is a material part of this EULA.

"Products" means the Hardware purchased and/or Software licensed by Customer.

"Professional Services" means the services that are described in an Order Form and/or applicable statement of work ("SOW") under the terms and conditions of this EULA. Such SOW may be amended or modified in writing by both parties hereto.

"Reseller" means an authorized reseller of Bomgar.

"Services" means Professional Services and/or Maintenance Services.

"Software" means the package of computer programs licensed to Customer on any Order Form or incorporated into Hardware. Unless specifically indicated or the context requires otherwise, the term Software shall include all Upgrades. Software includes all Third Party Software and all terms applicable to Software generally shall apply to Third Party Software, except as expressly stated herein.

Software shall include the Bomgar Software and/or the Bomgar Virtual Appliance to the extent applicable.

"Source Code" means Software code written by a programmer in a high-level language and readable by people but not computers. Source code must be converted to Object Code before a computer can read or execute the program.

"Third Party Software" means Software that is owned and licensed by parties other than Bomgar and that is either included with the Hardware, integrated with or made part of the Software, or otherwise necessary for the operation of the Software.

"Upgrade" means any modification, correction, enhancement, deletion, or substitution to Software, including but not limited to, any data file or module thereto that may be provided by Bomgar or a third party, whether under this EULA, any Third Party Software license, or any other agreement between Customer and Bomgar. Upon the installation of any Upgrade of the Software, Customer's License to previous versions of the Software terminates.

2.   License.

2.1   Subject to the terms, conditions, and limitations set forth in this EULA, including the payment of the applicable Fee, Bomgar hereby grants to Customer a limited, perpetual, non-exclusive, non-transferable, non-sublicenseable, non-proprietary Object Code License to do the following:

For BOMGAR SOFTWARE:

(a) install, use, and execute the Bomgar Software for concurrent use by the number of Concurrent Users Licenses granted on the Order Form; (b) use the Documentation only for the purpose of installation and use of the Bomgar Software as authorized herein; and (c) make one back-up copy of the Bomgar Software and Documentation solely for disaster recovery purposes.

For BOMGAR VIRTUAL APPLIANCES:

(a) install, use, and execute the Bomgar Virtual Appliance on one VMware virtual machine; (b) use the Documentation only for the purpose of installation and use of the Bomgar Virtual Appliance on a VMware virtual machine; and (c) make one back-up copy of the Bomgar Virtual Appliance and Documentation solely for archival purposes.

The License granted hereunder does not include any other rights except as expressly specified herein. Any use or copying of the Software or Documentation not expressly authorized hereunder is prohibited and a breach of this EULA.

FOR EVALUATIONS:

In the event that Customer is using the Software for an evaluation, then the terms and conditions of use of the Evaluation Agreement between Customer and Licensor shall govern the use of the Software. Such license shall be a limited term license for the period as set forth in the Evaluation Agreement. If

no such term is set forth in Evaluation Agreement, then the term shall be for fifteen (15) days from delivery of the Software to Customer.

2.2   This License is granted solely for Customer to utilize the Software in support of its internal business activities or to provide third party remote support to its customers. Except as specifically permitted in this EULA, Customer shall not, and shall not allow third parties to, directly or indirectly (i) use any Confidential Information to create any software or documentation that is similar to any of the Software or Documentation; (ii) encumber, transfer, rent, lease, time-share or use the Software in any service bureau arrangement or for the benefit of any third party; or (iii) copy (except as expressly authorized herein), distribute, manufacture, adapt, create derivative works of, translate, localize, port or otherwise modify the Software.

2.3   All Third Party Software is licensed to Customer in accordance with a separate license agreement(s) included with the Software, listed in the Documentation, or available at http://www.bomgar.com/gpl.htm. Customer agrees to abide by all of the terms and conditions of such Third Party Software license agreement(s). To the extent that any such Third Party Software license terms conflict with the rights granted to Customer hereunder or the restrictions imposed on Customer hereunder, such license terms shall control over the conflicting provision of this EULA solely with respect to such particular Third Party Software.

2.4   The License to the Software may also include the ability of Customer to distribute to end users the Mobile SDK in conjunction with Customer's proprietary software application. Customer must ensure that the Bomgar copyright and other proprietary notices that appear in the Mobile SDK and related Documentation are retained and reproduced in full in all copies of the Mobile SDK that Customer makes as permitted under this EULA. Customer must not sell, redistribute, rent, lease, lend or sublicense all or any part of the Mobile SDK, or enable or allow others to do such things. Customer must not use the Mobile SDK for any purpose that is not expressly permitted under this EULA. Except for the limited license granted to Customer in this EULA, all rights, title, and interest in and to the Mobile SDK and any Upgrades that are made available to Customer under the EULA remain, at all times, the sole and exclusive property of Bomgar. Apart from the license rights expressly set out in this EULA, Bomgar may terminate Customer's ability to distribute such Mobile SDK to end users upon thirty (30) days written notice to Customer.

2.5   Beta Testing. Bomgar may provide Customer with beta test versions of its Software ("Beta Software") for evaluation and feedback which shall be free of charge and without warranty of any kind. Customer is not obligated to use the Beta Software; however, if Customer elects to do so then the following terms shall apply: (a) The Beta Software is provided to Customer "As Is" and may contain bugs or errors; (b) Bomgar makes no warranties and disclaims all liabilities with respect to the Beta Software, and (c) Customer agrees to respond to Bomgar's questions regarding Customer's use of the Beta Software. If Customer provides any feedback to Bomgar regarding the Beta Software, Customer agrees that Bomgar may use and incorporate into Bomgar's Products and Services any suggestions, recommendations, ideas, or other feedback (collectively "Feedback") that Customer provides and Customer shall not be entitled to any compensation. Customer grants to Bomgar, free of charge, all rights to the Feedback. Bomgar may suspend or terminate the Beta Software at any time.

Customer further agrees: (i) not to use the Software to distribute, post, or otherwise make available any software or computer files that contain a virus, worm, Trojan horse, or other harmful component; (ii) not to use the Software for any illegal activity; (iii) not to use the Software to disrupt or interfere with any other networks, websites, or security; (iv) not to use the Software to infringe any third party's

intellectual property rights; (v) not to use the Software to distribute any libelous, harassing, defamatory, violent, illegal, vulgar, offensive, slanderous, or otherwise objectionable material of any kind; (vi) not to gain unauthorized access to computer systems or devices that Customer does not have permission to access; (vii) not use the Software under false pretense to gain access to a third party's computer, network, or information. Customer is responsible for the actions and inactions of its employees, agents, and consultants.

3. **Maintenance Services; Professional Services**.

3.1   Maintenance Services.

(a) In conjunction with any license granted hereunder, Customer shall purchase Maintenance Services for a period of one year from the Effective Date (the "Maintenance Period").   In the event that Customer has existing licenses already subject to Maintenance Services, Bomgar may, but is not obligated to, prorate the fee for the Maintenance Services in order to coordinate the renewals of all of Customer's Maintenance Services. While Maintenance Services are provided on a per Concurrent User basis, Customer must purchase Maintenance Services for all Concurrent Users licenses it has at the time. Maintenance Services do not include onsite service visits by Bomgar at Customer's location. The Maintenance Services shall be the services specified on Bomgar's website at http://www.bomgar.com/maintenance.htm or such other webpage of which Bomgar shall notify Customer by email to Customer's email address.

(b) After the termination or expiration of the Maintenance Period, Customer may purchase additional Maintenance Services by payment to Bomgar of the then current Maintenance Services fee in the GSA Schedule contract for an additional year(s)' coverage if such Maintenance Services are commercially available from Bomgar to its customers. In the event that Customer elects not to extend the Maintenance Period and later seeks to reinstate such Maintenance Services, it will be in Bomgar's sole discretion whether to reinstate such Maintenance Services and on what terms.

(c) [Applicable if Customer is purchasing through a Reseller]. Unless Customer, Reseller, and Bomgar have otherwise agreed in writing, Bomgar shall not be responsible for first (1st) level support to Customer which shall be the sole responsibility of Reseller. Bomgar shall not be responsible for the provision of any Maintenance Services unless Bomgar has received the applicable Fees.

3.2   Professional Services. Bomgar will provide such resources and utilize such employees and/or contractors as it deems necessary to perform the Professional Services. The manner and means used by Bomgar to perform the Professional Services desired by Customer are in the sole discretion and control of Bomgar and its agents. Bomgar shall use commercially reasonable efforts to meet the project schedules and time of performance of Professional Services set forth in the applicable SOW, and Customer agrees to cooperate in good faith to allow Bomgar to achieve completion of Professional Services in a timely and professional manner. Customer understands and agrees that Bomgar's provision of the Professional Services may depend on completion of certain Customer tasks or

adherence to Customer schedules within Customer's control; consequently, the project schedule, time of performance, and Professional Services may require equitable adjustments or changes in the event such Customer tasks or schedules change, are modified, or are not completed as anticipated. For any Professional Services provided onsite at Customer's location, Bomgar shall comply with Customer's policies and procedures for onsite vendors, and Customer agrees to provide such policies and procedures in advance to Bomgar.

4.   Term.

This EULA shall commence upon the Effective Date and shall continue until the later of (i) Customer no longer has any Software licensed hereunder, (ii) all Hardware provided hereunder has ceased to function and has been properly disposed of by Customer, (iii) Customer is not contracted to receive any Services hereunder, or (iv) if (i) through (iii) of this Section were not applicable, three (3) years.

5.   Termination.

5.1   n addition to any other remedies Bomgar may have at law or in equity, upon termination of the License, Customer shall within five (5) days return to Bomgar the Software, Documentation, Confidential Information, and all copies thereof, or upon request by Bomgar, in its sole discretion, destroy the same and certify in writing by an officer of Customer that same have been destroyed together with the manner, date, and time of such destruction.

5.2   Termination shall not release Customer and Customer shall remain liable to Bomgar for all amounts incurred and/or due and payable as of the effective date of termination. Except as may otherwise be provided in the Third Party Software license agreements, Customer's license to Third Party Software terminates at such time as Customer's license to the Software terminates.

5.3   The provisions of Sections 7, 8, 9, 10 and 11 (and all other provisions which by their nature would extend beyond the term of this EULA) shall survive the termination of this EULA.

6.   Fees and Payments.

6.1   For additional purchases of Products or Services after the initial purchase under this EULA, Customer may issue a purchase order which shall be governed by the terms of this EULA. Bomgar acceptance shall be the performance and delivery of the applicable Products and/or Services.

6.2   [Applicable if Customer is purchasing through a Reseller]. Customer's license to use Software is contingent upon payment to Bomgar of the applicable Fees by Reseller.

7.   Title and Prohibited Actions.

7.1   All right, title, and interest in and to the Software and the Documentation, including, without limitation, the media on which the same are furnished to Customer, are and shall remain the sole and exclusive property of Bomgar; provided, however, that Bomgar claims no right in the Third Party Software or Documentation, and the same is owned exclusively by the licensors of same. Customer

acknowledges that no right, title, or interest in or to the Software, or the Documentation is granted pursuant to this EULA, and no such assertion shall be made by Customer. Title to the Hardware shall pass to Customer (except for embedded Software) upon the delivery of the Hardware and payment of the applicable Fees.

7.2   Customer acknowledges that the Software and Documentation are works copyrighted under United States federal copyright law and protected by other intellectual property rights and embody valuable confidential and secret information of Bomgar or their Third Party licensors, the development of which required the expenditure of considerable time and money. Except as expressly provided in a Third Party License EULA or by law, Customer shall not in any manner or under any circumstances use, copy, modify, enhance, merge, reverse engineer, reverse assemble, decompile, or in any way alter the Products or Documentation or any copy, adaptation, transcription, or merged portion thereof or otherwise attempt to derive Source Code therefrom. Customer shall not permit or allow any person to remove any proprietary or other legend or restrictive notice contained or included in any material provided by Bomgar, and Customer shall not permit or allow any person to reproduce or copy any such material except as specifically provided in this EULA. Customer agrees to maintain any and all of

Bomgar's copyright, trademark, and other notices on the Products and Documentation and shall reproduce such notices on any and all copies, in whole or in part, thereof (which copies may only be made as expressly permitted herein). Customer will not take any action that jeopardizes Bomgar's proprietary rights or acquire any right in the Software or the Confidential Information. Bomgar will own all rights in any copy, translation, modification, adaptation, or derivation of the Software or other items of Confidential Information, including any improvement or development thereof. Customer will obtain, at Bomgar's request, the execution of any instrument that may be appropriate to assign these rights to Bomgar or perfect these rights in Bomgar's name. Bomgar is a licensee of United States Patent Nos. 6,928,479 and 6,177,932 for the Bomgar Software.

7.3   Notwithstanding anything to the contrary in Section 7.2, should any applicable laws (such as national laws implementing EC Directive 2009/24) expressly give Customer the right to perform any of the prohibited activities without Bomgar's consent, Customer shall, before exercising such right, notify Bomgar of its intent to exercise any such rights and only exercise such rights if Bomgar has not, within twenty (20) business days after Bomgar's receipt of such request, agreed to provide Customer with the result which Customer would otherwise have obtained by exercising such rights (in which case Customer shall pay Bomgar its then-standard rates for such work).

7.4   Customer understands and agrees that the Software may be protected by devices, including but not limited to, key codes and password protection that disables use of the Software except in accordance with the uses allowed hereunder. Customer will not attempt, directly or indirectly, to disable, bypass, or defeat such devices. Customer shall not allow any third party to have access to the Software for the purposes of providing Maintenance Services without Bomgar's prior written consent.

7.5   Customer represents and warrants that Customer, its directors, officers, employees, contractors and agents shall only use the Products and Documentation, and any copies thereof, as permitted by applicable laws and with the knowledge and consent of the owner and user of each computer on which the Software is installed or with which the Software is used. Customer accepts complete and full responsibility for all use of the Software.

7.6   Customer hereby acknowledges and agrees that in addition to any audit rights granted herein, Bomgar may verify Customer's compliance with this EULA through online verification procedures which may include gathering product information (e.g. Bomgar product, Bomgar version, Bomgar Box host) and Session/Connection Type (e.g. OS version, Jumpoints, Bomgar Customer application information and timestamps). In addition, Customer acknowledges that the Software provides for trouble support notification to Bomgar in the event of a Software failure.

7.7   Customer shall keep the Products and the Documentation in a safe and secure location and preclude unauthorized persons from having access thereto. Customer hereby permits Bomgar reasonable access to all premises where the Products may be installed or used, during normal business hours, and upon reasonable notice in order to inspect the Software and to confirm compliance with the terms hereof.

8.   Disclaimers and Limitation of Liability.

8.1   CUSTOMER IS SOLELY RESPONSIBLE FOR ITS USE OF THE SOFTWARE AND SHALL AT ALL TIMES USE THE SOFTWARE IN COMPLIANCE WITH ALL APPLICABLE LAWS. THE PRODUCTS, SERVICES, AND DOCUMENTATION ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS ONLY, AND BOMGAR MAKES NO PROMISES, REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED, REGARDING OR RELATING TO THE SAME, OR TO ANY OTHER MATERIAL FURNISHED OR PROVIDED TO CUSTOMER PURSUANT TO THIS EULA OR OTHERWISE. TO THE MAXIMUM EXTENT ALLOWED BY LAW, BOMGAR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT WITH RESPECT TO PRODUCTS AND SERVICES OR THE USE THEREOF. BOMGAR DOES NOT WARRANT OR REPRESENT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ANY DEFECTS IN THE PRODUCTS OR DOCUMENTATION ARE CORRECTABLE OR WILL BE CORRECTED. BOMGAR SHALL HAVE NO RESPONSIBILITIES OR LIABILITY FOR INCORRECT DATA OR INFORMATION INPUT INTO THE SOFTWARE OR FOR ERRORS IN OUTPUT, CALCULATIONS, OR RESULTS CAUSED BY THE SAME OR THE HARDWARE OR THIRD PARTY SOFTWARE. BOMGAR DOES NOT WARRANT THAT THERE ARE NO DISCREPANCIES BETWEEN THE SOFTWARE AND DOCUMENTATION. BOMGAR PROVIDES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH RESPECT TO ANY THIRD PARTY SOFTWARE. CUSTOMER ACKNOWLEDGES THAT THE RECORDING FEATURES OF THE SOFTWARE MAY SUBJECT CUSTOMER TO LAWS AND/OR REGULATIONS REGARDING THE RECORDING OF COMMUNICATIONS, AND CUSTOMER ACKNOWLEDGES THAT IT IS SOLELY RESPONSIBLE FOR COMPLIANCE WITH SUCH LAWS AND/OR REGULATIONS.

8.2   IN NO EVENT SHALL BOMGAR, AND/OR BOMGAR'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, DISTRIBUTORS, MARKETING PARTNERS, RESELLERS, PARENT, AFFILIATES OR SUBSIDIARIES (COLLECTIVELY THE "BOMGAR PARTIES") BE LIABLE FOR ANY LOSS OF DATA, COSTS OF SUBSTITUTE GOOD OR SERVICES, LOSS OF PROFITS OR INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THIS EULA, OR THE USE OR INABILITY TO USE ANY PRODUCTS OR DOCUMENTATION, BASED ON ANY THEORY OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, EVEN IF BOMGAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.3   BOMGAR PARTIES' CUMULATIVE LIABILITY TO CUSTOMER FOR ALL CLAIMS RELATING TO: (A) DEFECTIVE SERVICES SHALL NOT EXCEED THE FEES PAID BY THE CUSTOMER FOR THE SERVICES GIVING RISE TO THE CLAIM (WHICH FOR MAINTENANCE SERVICES SHALL NOT EXCEED THE ANNUAL MAINTENANCE FEES PAID BY THE CUSTOMER FOR THE PERIOD IN WHICH THE DEFECTIVE MAINTENANCE SERVICES WERE PERFORMED); OR (B) THE PRODUCTS OR OTHERWISE RELATING TO THIS EULA, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL PRODUCT FEES (AS

APPLICABLE) PAID TO BOMGAR HEREUNDER WITH RESPECT TO PRODUCT(S) (AS APPLICABLE) GIVING RISE TO THE CLAIM.

8.4   THE BOMGAR PARTIES SHALL NOT BE LIABLE FOR CLAIMS BROUGHT MORE THAN TWO YEARS AFTER THE FACTS GIVING RISE TO SUCH CLAIMS WERE FIRST DISCOVERABLE. EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN A WRITTEN EULA BETWEEN BOMGAR AND CUSTOMER, BOMGAR SHALL HAVE NO RESPONSIBILITY WITH RESPECT TO ANY THIRD PARTY SOFTWARE, AND CUSTOMER WILL LOOK SOLELY TO THE LICENSOR(S) OF THE THIRD PARTY SOFTWARE FOR ANY REMEDY.

8.5   THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

9.   Indemnification.

9.1   Bomgar shall have no liability for (i) any modifications made to any software, hardware, firmware, other materials that are made or requested by Customer; (ii) compliance with Customer's designs, specifications, or instructions; (iii) use of technical information   or technology provided by Customer; (iv) use of Software, the Hardware, or Third Party Software in a manner or with software or hardware not approved or prohibited by Bomgar; (v) use of any release of the Software other than the most current made available to Customer, (vi) claims in which Customer or any affiliate of Customer has an interest or (vii) use of the Software or Hardware with software or hardware not provided by Bomgar or otherwise specified in the applicable Documentation.

9.2   If any Software becomes or, in Bomgar's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, Bomgar may, at its option, (i) procure for Customer the right to continue using such Software, (ii) replace or modify such Software so that it becomes non-infringing without substantially compromising its functionality, or, if (i) and (ii) are not reasonably available to Bomgar, then (iii) terminate Customer's license to the allegedly infringing Software and repurchase the affected licenses less depreciation at the rate of thirty three percent and one third (33.33%) per year, or pro rata for part of the year, from the date of payment to the date of removal of the applicable Software, and terminate the EULA. If Bomgar selects option (ii) or (iii), Customer shall immediately refrain from use of the allegedly infringing Software. THIS SECTION SETS FORTH THE ENTIRE OBLIGATION OF BOMGAR AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT AND MISAPPROPRIATION CLAIMS AND ACTIONS.

10.   Confidential Information.

Customer, on its own behalf and on behalf of its employees, officers, directors, agents, and affiliates, during the term of this EULA and thereafter, covenants and agrees that it will not use, disclose,

divulge, disseminate or otherwise make available to any third party any Confidential Information or otherwise make use of any Confidential Information, without the prior written consent of Bomgar except as expressly allowed herein. Customer shall use the highest commercially reasonable degree of care to protect the Confidential Information, including ensuring that its employees or consultants with access to such Confidential Information have agreed in writing not to disclose or use the Confidential Information. Customer shall bear the responsibility for any breaches of confidentiality by its employees and consultants. Within fifteen (15) days after request by Bomgar, Customer shall return to Bomgar all originals and copies of any Confidential Information and all information, records and materials developed therefrom by Customer, or, upon request by Bomgar, in its sole discretion, destroy the same and certify in writing that same have been destroyed together with the manner, date, and time of such destruction. Nothing herein shall prevent Customer from disclosing all or part of the Confidential Information as necessary pursuant to the lawful requirement of a court or governmental agency or when disclosure is required by operation of law; provided that prior to any such disclosure, Customer shall use reasonable efforts to (i) promptly notify Bomgar in writing of such requirement to disclose, and (ii) cooperate fully with Bomgar in protecting against any such disclosure or obtaining a protective order. The foregoing obligations shall not apply if and to the extent that Customer establishes that:

(i) the information communicated was already known to Customer, without obligation to keep it confidential, at the time of its receipt directly or indirectly from Bomgar ; (ii) the information communicated was received by Customer in good faith from a third party lawfully in possession

thereof and having no obligation to keep such information confidential; (iii) the information is independently developed by Customer without use of any Confidential Information received from Bomgar; or (iv) the information communicated was publicly known at the time of its receipt by Customer or has become publicly known other than by a breach of this EULA or other action by Customer.

11.   General Provisions.

11.1   Independent Parties. The parties acknowledge that Bomgar is an independent contractor to Customer, and Bomgar may engage in other business activities at its sole discretion. This EULA does not in any way create or constitute a relationship of employment, partnership, or a joint venture between the parties.

11.2   Assignment. Customer's rights and obligations under this EULA may not be assigned or transferred (including by operation of law) without the prior written consent of Bomgar and any unauthorized assignment or transfer shall be null and void. To the extent allowed by law, Bomgar may assign the EULA or any of its rights and obligations under the EULA to an affiliate or third party, which assignment shall become automatically effective upon assignment. In the case of any permitted assignment or transfer of under this EULA, this EULA or the relevant provisions shall be binding upon, and inure to the benefit of, the parties and their respective successors, executors, heirs, representatives, administrators and permitted   assigns. In the event Bomgar permits Customer to assign this EULA or a License granted hereunder, then the transferee must accept the terms and conditions of this EULA, and Customer's license to use the Software shall automatically terminate upon transfer.

11.3   Force Majeure. Customer agrees that Bomgar shall not be liable for any losses and damage, including consequential damages, detention, or delay or failure to perform any services resulting from causes beyond the reasonable control of Bomgar including, but not limited to, acts of God, acts or omissions on the part of Customer, delays in transportation, failure to obtain supplies not caused by the negligence of Bomgar, changes in governmental regulations, war, or civil disturbance.

11.4   Export Controls. Customer shall comply fully with all export and import laws, regulations, orders, and policies of the U.S., or any other applicable jurisdiction. Customer shall only export or re-export the Software and Documentation, directly or indirectly, in accordance with U.S. Export Administration Regulations, as amended. Customer acknowledges and agrees it is solely responsible for compliance with any and all import and export restrictions, and other applicable laws, in the U.S. or any other applicable jurisdiction. Customer represents that neither the United States Bureau of Industry and Security nor any other federal agency has suspended, revoked or denied Customer's export privileges, and Customer will not use or transfer the Software for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license.

11.5   Notices. All notices required to be given hereunder shall be given in writing and shall be delivered either by hand, by certified mail with proper postage affixed thereto, or by facsimile (with

confirmation copy sent by certified mail) addressed to the signatory at the address set forth on the Order Form, or such other person and address as may be designated from time to time in writing in accordance with this Section. All such communications shall be deemed received by the other party upon the earlier of actual receipt or actual delivery.

11.6   Severability. Should a court of competent jurisdiction hold that any provision of this EULA, or portion thereof, is void, invalid, or unenforceable for any reason, that court shall replace that provision with an enforceable one most closely resembling the court's interpretation of the Parties' original intent. Should the court be unable or unwilling to do so, that provision shall be struck from this EULA and all remaining provisions shall continue in force. Each provision is separable and constitutes a separate and distinct covenant.

11.7   Governing Law; Venue, English Language. This EULA shall be construed in accordance with the laws of the United States without regard to that body of law pertaining to conflicts of law, and   expressly excluding (i) the United Nations Convention on Contracts for the International Sale of Goods
(ii) the 1974 Convention on the Limitation Period in the International Sale of Goods (the "1974 Convention"); and (iii) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980..

11.8   Waiver. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

11.9   No Third Party Beneficiaries. Nothing expressed or implied in this EULA is intended, or shall be construed, to confer upon or give any party other than the parties hereto and their respective corporate affiliates, executors, heirs, representatives, administrators, successors and assigns, any rights or remedies under or by reason of this EULA.

11.10   Omitted.

11.11   License to Government. If any Software or Documentation are acquired by or on behalf of a unit or agency of the United States Government (the "Government"), the Government agrees that such software or documentation is "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the Government's rights with respect to such software or documentation are limited by the terms of this EULA, pursuant to FAR § 12.212(a) and/or DFARS § 227.7202-1 (a), as applicable. Any technical data related to such software or documentation are "Limited Rights Data" pursuant to FAR § 52.227-19 with Alternate II, or, if applicable, are provided to the Government subject to DFARS § 252.227-7015. Any use, modification, reproduction, release, performing, displaying, or disclosing of the Software by the Government shall be governed solely by the terms of this EULA.

11.12 Integration and Amendment. This EULA may not be modified, or amended except (i) by written agreement specifically referring to this EULA signed by the parties hereto; (ii) by Customer's acceptance of a subsequent electronic agreement provided by Bomgar with respect to the Software; or (iii) ten (10) business days after Bomgar posts an amendment to this EULA to a webpage which Bomgar shall notify Customer by email to Customer's email address specified on the Order Form, unless Customer notifies Bomgar in writing that Customer does not accept such amendment, in which case this EULA shall immediately terminate. CUSTOMER HEREBY AGREES THAT ANY VARYING OR ADDITIONAL TERMS CONTAINED IN ANY PURCHASE ORDER OR OTHER WRITTEN NOTIFICATION OR DOCUMENT ISSUED BY CUSTOMER IN RELATION TO THE SOFTWARE LICENSED OR HARDWARE PURCHASED HEREUNDER SHALL BE OF NO FORCE OR EFFECT UNLESS AGREED IN WRITING BY BOMGAR.

11.13 Construction. Every covenant, term and provision of this EULA shall be construed simply according to its fair meaning and not strictly for or against any party. Every reference to "including" means "including, without limitation."

11.14 Representations. Customer represents and acknowledges that (i) it has read and understands this EULA; (ii) it has had an opportunity to have its legal counsel review this EULA; (iii) that this EULA has the same force and effect as a signed agreement; (iv) issuance of this license does not constitute general publication of the Software, the Documentation or other Confidential Information.

11.15 Counterparts. This EULA may be executed in one or more counterparts, each of which shall be deemed an original but which together shall constitute the same instrument. Each party agrees to be bound by its own electronic signature, and agrees that it accepts the electronic signature of the other party hereto.