

**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.

**(CLEVERSAFE EUA- CARAHSOFT FINAL 3-19-2012)**

**RESELLER AGREEMENT**  
**FEDERAL GOVERNMENT RESALES**

Cleversafe Inc. ("Company"), located at 222 S Riverside Plaza, Suite 1700, Chicago IL 60606, and the party designated at the end of this agreement ("Reseller") agree to comply with and be subject to this Reseller Agreement (the "Agreement"). This Agreement shall commence as of the date last signed below (the "Effective Date").

**1. Reseller Functions.**

1.1 Sale of Products. Company has developed certain appliances comprised of certain proprietary hardware and software (described in Exhibit A attached) (the "Products"). The Products are Commercial Items as that term is defined in the Federal Acquisition Regulation ("FAR"), Subpart 2.101 (48 C.F.R. 2.101), and specifically are Commercially available Off-the-Shelf ("COTS"). Reseller will function as a non-exclusive reseller to purchase from Company and market, sell and provide the Products as COTS to end user customers of Reseller (the "End Users"), together with the maintenance and support services set forth in Section 4.9 and any additional implementation services provided by Reseller. The Company reserves the right, from time to time, and without obligation or liability to Reseller of any kind, to: (a) add to or delete from the list of the Products specified in Exhibit A; and, (b) change or terminate the level or type of service or support that Company makes available for the Products. The Company will make commercially reasonable efforts to provide Reseller with advance notice of any of the changes described in the foregoing clauses (a) and (b). Acceptance of orders under this Agreement is solely at Company's discretion.

1.2 Territory. Reseller's rights to resell the Products shall be limited to the geographic area specified below Reseller's signature, to sales to U.S. federal government End Users, and sales to contractors and consultants formally authorized to make purchases off of, or under, a United States General Services Administration ("GSA") Federal Supply Schedule ("FSS") or Multiple Award Schedule ("MAS") Contract, or other U.S. federal government purchasing vehicle(s) (the "Territory") and in all cases shall not be exclusive, unless otherwise agreed in writing.  
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This Agreement does not automatically extend to cooperative purchasing by state and local agencies. The Company reserves the right, from time to time, and without obligation or liability to Reseller of any kind, to add to or delete from the Territory.

**2. Prices.**

2.1 General Terms. All prices for Products and maintenance and support services are in U.S. dollars and payments shall be made in U.S. dollars free of any currency controls or other restrictions, by certified check or wire transfer, to the address or bank account designated by Company. The price of the Products will be at the then-current list price in effect at the time Reseller submits the purchase order to Company (the "Price List"), less the discount set forth in Exhibit B.

2.2 Price Increase. Company shall give Reseller thirty (30) days advance written notice of any Price List increase, and Reseller will be permitted to place a single order during such period for Products at the former price in a quantity no greater than the aggregate quantity of Products ordered by Reseller in the ninety (90) days preceding the date of Company's notice.

2.3 Price Decrease. Company shall promptly notify Reseller in writing prior to any Price List decrease. Company reserves the right to offer special prices to third parties without notice.

2.4 Taxes. Reseller shall be responsible for all taxes of any nature which become due with regard to the Products, except for taxes on Company's income. In addition, Reseller shall pay all import and export duties, government permit fees, license fees,

customs fees and similar fees levied as a result of the existence or operation of this Agreement and any penalties, interest, collection costs and withholding costs associated with any of the foregoing.

### **3. Terms.**

3.1 Forecasts. By the first day of each month, Reseller will provide Company with a ninety (90) day, non-binding, written rolling sales forecast for the Products using a format provided by Company.

3.2 Opportunity Registration. Resellers must register each opportunity with the Company prior to selling any Products to such End User hereunder. Until further directed, opportunities are registered by completing an opportunity registration form as outlined in Exhibit F and submitting the form electronically to Company's partner email address, [partners@cleversafe.com](mailto:partners@cleversafe.com). Resellers will be notified within two (2) business days as to the registration status of the opportunity. Reseller acknowledges and agrees that Company may reject any opportunity in Company's sole discretion.

3.3 Orders. Reseller shall submit purchase orders electronically and each such order shall specify: (a) the name of the End User company; (b) the name, e-mail address and telephone number of the individual at End User company authorized to issue the order on behalf of such End User; (c) the name, e-mail address and telephone number of the technical/buyer contact at End User; and (d) the Company part number that corresponds to the Product ordered. All orders for Products shall be subject to acceptance by Company. The terms and conditions of this Agreement shall apply to all orders submitted to Company and supersede any different or additional terms on Reseller's purchase orders or order acknowledgments. Orders issued by Reseller to Company are solely for the purpose of requesting delivery dates and quantities. Orders not accepted within five (5) business days of submission shall be deemed rejected. Company shall use reasonable efforts to make prompt deliveries of accepted orders, but Company shall not be liable for any damages to Reseller or to any other person (including End Users) for Company's failure to fill any orders, or for any delay in delivery or error in filling any orders. Company's standard lead-time is fifteen (15) days. If orders for the Products exceed Company's inventory, Company shall allocate available inventory on a basis Company deems equitable.

3.4 Cancellations and Rescheduling. Orders for Products are final upon acceptance by Company and may not be cancelled or rescheduled.

3.5 Shipments. All shipments will be made to F.O.B. shipping point (as such address is specified in the "ship to" portion of the applicable order). Delivery will be deemed complete and title and risk of loss or damage to the Products will pass to Reseller upon delivery to the carrier. Company shall pack all Products shipped in accordance with standard commercial practices. Company shall prepay all shipping, freight and insurance charges incurred in such shipment of Product (including shipments of evaluation units), and shall invoice Reseller, and Reseller will reimburse Company for such charges promptly after receipt of the invoice.

3.6 Payment. Payment for the Products ordered from Company are due at the time of the order by check or other means satisfactory to Company. Reseller may not setoff against

Company's invoices amounts that Reseller claims are due to it under this Agreement or otherwise. Company may, in its sole discretion, grant credit approval to Reseller and in such event, all payments shall be due within thirty (30) days after Company's invoice date, however it is acknowledged that different payment terms may be agreed to on a case by case basis. The invoice date shall not be before the actual date of shipment. All undisputed sums not paid when due shall accrue interest daily at the lesser of one and one-half percent (1½%) or the highest rate permissible by law until paid in full. Company reserves the right to terminate or modify the terms of credit payments when, in its sole discretion, Company believes that its payments may be at risk. If Reseller is delinquent in the payment of any sum due hereunder, the Company will have the right to suspend performance under this Agreement (including under any and all orders placed against this Agreement) until such delinquency is corrected, in addition to all other rights or remedies available at law or in equity.

### **4. Duties of Reseller.**

4.1 End User Agreement. Reseller shall offer and resell the Products in the form received from Company, i.e., solely as COTS Products. Reseller will incorporate the Company's then current End User Agreement (as the license customarily provided to the public for the Products and which is consistent with federal procurement law as set forth in FAR Part 211, 212 and Defense Federal Acquisition Regulation Supplement 227.7102-1 and 227.7202-1), limited warranty statements and proprietary rights statements into the federal government contract and/or federal government Purchase Order/Task Order under which the Products are being acquired before delivering any Products to the government Customer or End User. Reseller shall either obtain from each government Customer End User a signed original of the End User Agreement in the form attached as Exhibit E and deliver such original version to Company within one (1) business day of the End User's signature or evidence to the satisfaction of the Company that the End User Agreement in the form attached as Exhibit E has been made a part of the contract under which the government Customer acquires the Product. In no event will Company be required to ship Products until after Company has received either such signed original of the End User Agreement or evidence that it has been made a part of the contract under which the government Customer is acquiring the Product. Reseller will mark all Products in accordance with the applicable government End User contract to assert the COTS nature of the Products and to achieve the protections set forth in Company's then current End User Agreements, limited warranty statements and proprietary rights statements. Reseller must promptly provide written notice to the Company of any issue raised concerning, or challenge made, by a federal government Customer or End User to any restrictive marking or rights assertion made by the Company for or in any of the Company's Products, technical data, or computer software, including, but not limited to, any requests for validation of asserted restrictions or restrictive markings made under or referencing one, or both, DFARS clause(s) 252.227-7019, Validation of Asserted Restrictions – Computer Software and 252.227-7037, Validation of Restrictive Markings on Technical Data.

4.2 Efforts. Reseller will use diligent efforts to (a) market, sell and distribute the Products as COTS within the Territory; and (b) protect Company's intellectual property rights in the Products and will promptly report to Company any infringement of such rights of which Reseller becomes aware. Reseller will not

employ any deceptive, misleading or unethical practices in its marketing, sale and distribution of the Products.

4.3 Business Plan. Within sixty (60) days of the Effective Date, the parties will work together in good faith to jointly develop and agree upon a business plan, which plan will specify the strategies, as well as a detailed marketing plan, for reaching specific prospects. The parties may modify such business plan from time to time upon the mutual agreement of the parties.

4.4 Identification As Reseller. Reseller shall identify itself as a "Company Reseller" on its Internet web site, line cards, and similar materials used in the Reseller's day-to-day customer contact activities.

4.5 Installation and Consulting Services. Reseller must ensure that the following consulting and installation services are available to all End Users: (a) Product installation and configuration; and (b) integration of the Products into the End User's existing computing infrastructure as needed to complete installation.

4.6 Training. Within thirty (30) days of the Effective Date, at least 2 of Reseller's employees will have successfully completed Company's "Training" program, and Company shall provide such training to Reseller, which training shall take place at a date and place to be mutually agreed upon in writing by the parties. Reseller shall be solely responsible for all of the expenses of its employees to attend such training, including, without limitation, transportation, food and lodging.

4.7 General. In carrying out this Agreement, Reseller will conduct itself in an ethical and lawful manner and in dealing with the government will not violate 31 U.S.C. 1352 (concerning payments to influence federal transactions), 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act, 41 U.S.C. 51-58, 10 U.S.C. 2409 relating to whistleblower protections, 49 U.S.C. 40118, Fly American, and the Procurement Integrity Act (Subsection 27(a) of the Federal Procurement Policy Act, (42 U.S.C. 423) as amended by Section 814 of Public Law (101-189) to obtain information or to secure business for itself or others. The Reseller exercise its best efforts to achieve a high level of customer satisfaction; will conduct business in a manner that reflects favorably at all times on the Products and the good name, goodwill and reputation of the Company; and will do nothing to bring the reputation of Company into disrepute. The Reseller does and will continue to comply with the Anti-Kickback Act of 1986 (41 U.S.C. 51-58). The Reseller warrants and represents that it is eligible to receive and perform federal government contracts and is a responsible contractor as that term is used in federal government contracting.

4.8 Prohibitions. Reseller shall not enter into any agreement, contract or arrangement with any government or government representative or with any other person, firm, corporation, entity or enterprise imposing any legal obligation or liability of any kind on Company. Without limiting the generality of the foregoing, Reseller specifically shall not sign Company's name to any commercial paper, contract or other instrument and shall not contract any debt or enter into any agreement, either express or implied, binding Company to the payment of money and/or in any other regard. Reseller shall have no right or authority, express or implied, directly or indirectly, to offer the Products as other than COTS, or to alter, enlarge or limit the representations or guarantees expressly contained in the End User Agreement. If Company elects to amend the terms and

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conditions of the End User Agreement, such revised version will become a part of the Agreement for purposes of this Section after Company delivers a copy of the new version to Reseller.

4.9 Maintenance and Support. Reseller will encourage End Users to enter into a minimum of a one (1) year Maintenance and Support agreement with the Reseller which will be sold along with the Products by the Reseller. Reseller will provide the first level maintenance and support services to the End User as described in Exhibit C. Company reserves the right to enter into a Maintenance and Support agreement with the End User for first level support if Company reasonably believes that such support being provided by Reseller is inadequate. If Reseller purchases one (1) year of second and third level maintenance and support services from Company for an End User, Company will provide such second and third level support to Reseller and/or directly to End User, as Company deems necessary to perform such support obligations; provided, however, that Reseller understands that there may be additional charges and modifications to maintenance and support terms and conditions for maintenance and support services in countries which are not located in North America or the European Union. For Maintenance and Support services in such country, Reseller shall request a quotation from Company. Reseller will advise its End Users in writing of appropriate and available maintenance and support services according to the terms set forth on Exhibit C.

4.10 Privacy and Data Protection. Reseller shall comply with all applicable privacy and data protection laws, and shall maintain appropriate technical and organizational measures to protect data (including data that personally identifies an individual) that it collects, accesses or processes, against unauthorized or unlawful processing or transfer, and against unauthorized access, loss or destruction. Reseller agrees and understands that it may be necessary for Company to collect, process and use Reseller's and End User's data in order to perform its obligations to provide Support. Reseller consents, and has obtained End User's consent, for these activities and to the transfer of the data to affiliated companies and service providers of Company located throughout the world who are subject to confidentiality agreements with Company.

## 5. Duties of Company.

5.1 Company Marketing Obligations. Company will participate with Reseller in mutually agreeable joint quarterly marketing activities designed to assist the Reseller in generating leads for the Products in the Territory. The form of participation will depend upon the event and available resources, but may include financial sponsorship, event attendance by Company personnel, mailing assistance, marketing materials or other appropriate assistance as may be offered by Company.

5.2 General Marketing Activities. Company will conduct ongoing marketing activities to generate End User awareness and demand for the Products, provide the Reseller with sales literature, Product specifications and marketing collateral appropriate to the market opportunity in the Territory. Company will provide joint sales call and pre-sales technical assistance to Reseller as appropriate to the opportunities presented to Company by Reseller.

5.3 Federal Compliance. The Company will execute, as necessary and appropriate, the Buy American Act ("BAA") Certificate at FAR 52.225-2 (FEB 2009) and the Trade Agreements Act ("TAA") Certificate at FAR 52.225-6 (JAN 2005),

and the representations and warranties that are mandatory for federal COTS subcontractors (generally FAR 52.212-3). The Company will accept the FAR 52.244-6, Subcontracts for Commercial Items clause, and DFARS 252.244-7000, Subcontracts for Commercial Items and Commercial Components (DoD Contracts) if required by the Prime Contract and if applicable. The Company's pricing, terms and conditions are based on its offering Commercial Items (primarily COTS) Products, and the Company generally will not accept any "flowdown" clauses that are not mandatory for Commercial Item subcontracts.

## **6. Proprietary Rights.**

6.1 Ownership. All rights, title and interest, including all intellectual property rights, in the Products are and will remain the sole and exclusive property of Company and its third party suppliers, whether the Products are separate or combined with any other products. Company's rights under this Section 6.1 will include, without limitation, all intellectual property rights in: (a) all copies of the software that is either embedded on and/or bundled with the Products (the "Licensed Software"), in whole and in part; and (b) all modifications to, and derivative works based upon, the Products.

6.2 Restrictions. Reseller shall not, and shall not permit others to: (a) modify, disassemble, decompile or reverse engineer any Products; (b) copy, enhance or otherwise reproduce any Products, in whole or in part; (c) remove, modify or otherwise tamper with notices or legends on the Products or any labeling on any physical media containing the Licensed Software; or (d) use the Products in any manner to provide service bureau, time sharing or other computer services to third parties. Reseller's rights in the Products will be limited to those expressly granted in this Agreement. Reseller shall have no right to distribute the Licensed Software except as COTS Software embedded on and/or bundled as part of the Product. End Users' rights to use the COTS Licensed Software shall be subject to the terms of the Company's End User Agreement.

6.3 Trademark License Grant. During the term of this Agreement, each party (the "Licensor") hereby grants to the other party (the "Licensee") a non-exclusive, worldwide, non-sublicensable, non-assignable license to use the Licensor's trademarks, as each is listed in Exhibit D attached (the "Licensed Marks"), solely in connection with its exercise of the rights described in this Agreement and fulfillment of its marketing obligations, as such obligations are stated in this Agreement. The Licensee shall comply with the Licensor's trademark guidelines as updated from time to time. The Licensor shall provide to the Licensee a copy of such guidelines promptly following the execution of this Agreement.

6.4 Approval. The Licensor shall have the right to approve the Licensee's use of the Licensed Marks. Prior to the Licensee's use of the Licensed Marks, the Licensee shall submit a written request for approval of such use to the Licensor. The Licensor shall not unreasonably withhold its consent to any use by the Licensee. If the Licensor does not object in writing, specifying the reasons for objection, within ten (10) business days of receipt of such request, the Licensor shall be deemed to have approved the request (the "Licensor Approval Process"). The Licensee may submit revised requests for approval of any use to which the Licensor objects, which shall be governed by the Licensor Approval Process. The Licensee agrees to cooperate with the Licensor in facilitating the Licensor's oversight of the Licensee's use of the Licensed Marks. The Licensor shall

have the right to receive free samples of all advertising and promotional materials on which such trademarks are used. The Licensee shall comply with all requests from the Licensor to correct any improper uses of the Licensed Marks.

6.5 Licensed Marks Ownership. Each party, as a Licensee, acknowledges that, as between the Licensor and the Licensee, that the Licensor is the sole and exclusive owner of the Licensed Marks. The Licensee agrees that its use of the Licensed Marks shall inure to the benefit of and be on behalf of the Licensor. The Licensee acknowledges that the Licensee's utilization of the Licensed Marks will not create any right, title or interest in such Licensed Marks in the Licensee. Each party, as a Licensee, shall use the Licensed Marks so that they create a separate and distinct impression from any other trademark that may be used or affixed to materials bearing the Licensed Marks or used in connection with services provided under the Licensed Marks.

6.6 Registration of Marks. Only the Licensor of the Licensed Mark, and not the Licensee of such Licensed Mark, is entitled to register such Licensed Marks or similar trademarks in any class of products or services in the Territory. Each party agrees not to obtain or attempt to obtain by any manner whatsoever any right, title or interest in or to any of the Licensor's Licensed Marks, domain name or any confusingly similar trademarks. Neither party will take nor authorize any activity inconsistent with such exclusive right, including without limitation, challenging or assisting others to challenge the Licensor's Licensed Marks (except to the extent such restriction is expressly prohibited by applicable law) or the registration thereof or attempt to register any trademarks, marks or trade names confusingly similar to those of the Licensor. If a party breaches this Section 6.7 with respect to one or more of the Licensor's Licensed Marks, such party hereby assigns and agrees to assign to the other party all right, title and interest in and to any and all such applications or registrations of such Licensor's Licensed Mark.

## **7. Indemnification.**

7.1 Infringement Claims. Company will defend any suit or proceeding brought against Reseller based on a third party claim that any of the Products (excluding any Third Party Software (as defined in the End User Agreement)) as furnished by Company under this Agreement, infringes any U.S. patent of any third party issued on or before the Effective Date or any third party's copyright or that Company misappropriated any third party's trade secret rights in the development thereof. Company will pay all settlements and damages finally awarded therein against Reseller, provided that Reseller: (a) promptly informs Company of such suit or proceeding, and furnishes to Company a copy of each communication, notice or other action relating thereto; (b) gives Company the authority, information and reasonable assistance necessary to settle or litigate such suit or proceeding; and (c) does not settle, or agree to settle, any such suit or proceeding without the prior written permission of Company. If any such Product is held in any such suit to infringe and the use of such Product is enjoined, or in Company's judgment likely to issue, Company will have the option, at its own discretion and expense, to: (w) procure for Reseller the right to continue using such Product; (x) replace such Product with a non-infringing Product of similar quality and purpose; (y) modify such Product to make it non-infringing, provided the modified Product remains similar in quality and purpose to such Product; or (z) pay the depreciated value of such Product to End User and accept its return.

7.2 **Exceptions.** Company will not be obligated to defend or be liable for costs and damages to the extent that infringement, or a claim thereof, arises out of or is related to: (a) a modification made to the infringing Product by Reseller or a third party; (b) use or combination of such Product with products or data not provided by Company; (c) use of other than the latest unmodified release of Product made available to Reseller by Company if such infringement would have been avoided by the use thereof; or (d) use or distribution of such Product after Reseller receives notice that the Product infringes a patent rights of a third party.

7.3 **Limitations.** THE FOREGOING STATES THE ENTIRE LIABILITY OF COMPANY AND RESELLER'S SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT BY ANY PRODUCT FURNISHED UNDER THIS AGREEMENT.

7.4 **Reseller Indemnity.** Reseller shall indemnify, defend and hold Company harmless from any claims or damages (inclusive of Company's attorneys' fees) made against Company as a result of (a) any negligence, misrepresentation, error or omission on the part of Reseller or its representatives or (b) any claims, warranties or representations made by Reseller or Reseller's employees or agents which differ from any warranty that differs from the warranty disclaimer set forth in End User Agreement or (c) breach of Section 13.1 ("Export"), 13.2 ("U.S. Government Rights") and 13.3 ("Compliance with Federal Laws"). The foregoing obligation is subject to Company: (a) giving Reseller notice of any such claim; (b) allowing Reseller to control the defense and settlement of such claim although the Company may meaningfully participate in the defense and settlement, and that no settlement will include, expressly or by implication, any admissions of wrong-doing or illegal activities by the Company; (c) not entering into any settlement or compromise of such claim without Reseller's prior written consent; and (d) providing reasonable assistance requested by Reseller in the defense or settlement of such claim.

## **8. Warranties and Warranty Disclaimers.**

8.1 Each party warrants that it (a) has full power and authority to enter into the Agreement and perform its obligation herein, (b) will conduct business in a professional manner and in compliance with all applicable laws; (c) will avoid deceptive, misleading, or unethical practices that are or might be detrimental to the other party or its products or services; and (d) will make no false or misleading representations with respect to the other party's products or services.

8.2 **Disclaimer.** CLEVERSAFE WARRANTS THE PRODUCTS ONLY TO END USERS PURSUANT TO THE TERMS OF THE END USER AGREEMENT. NEITHER CLEVERSAFE NOR ITS LICENSORS OR VENDORS MAKE ANY WARRANTIES TO RESELLER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. ALL IMPLIED WARRANTIES AS TO SATISFACTORY QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR NONINFRINGEMENT ARE EXPRESSLY DISCLAIMED. NEITHER CLEVERSAFE NOR ITS LICENSORS WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR THAT THEIR USE WILL BE UNINTERRUPTED.

## **9. Limitation of Liability.**

9.1 **Indirect and Consequential Damages.** EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS OR A

PARTY'S BREACH OF THEIR CONFIDENTIALITY OBLIGATIONS, EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY NOR COMPANY'S LICENSORS SHALL HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY OTHER THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, LOSS OF USE OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, AND IRRESPECTIVE OF WHETHER SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

9.2 **Direct Damages.** EXCEPT FOR LIABILITY ARISING UNDER BREACHES OF SECTIONS 10 ("CONFIDENTIALITY") AND EACH PARTY'S INDEMNIFICATION OBLIGATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY'S TOTAL LIABILITY FOR ANY CLAIMS OR CAUSES ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID OR PAYABLE FROM RESELLER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO SUCH DAMAGES, WHICHEVER AMOUNT IS GREATER. IN ADDITION, COMPANY'S LICENSORS SHALL NOT BE LIABLE FOR DAMAGES OF ANY KIND.

9.3 **Failure of Essential Purpose.** THE LIMITATIONS SET FORTH IN SECTION 7.3 ("LIMITATIONS") ABOVE AND THIS SECTION 9 SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**10. Confidentiality.** Each party acknowledges that by reason of its relationship under this Agreement, it may have access to certain information and materials relating to the other party's business, plans, customers, software technology, and marketing strategies that is confidential and of substantial value to the other party (the "Confidential Information"), which value would be impaired if such information were disclosed to third parties. Each party agrees that it will not use in any way for its own account nor for the account of any third party, nor disclose to any third party, any Confidential Information revealed to it by the other party. Each party further agrees that it will take every reasonable precaution to protect the confidentiality of the Confidential Information. Upon any breach or threatened breach of this Section, each party, as a disclosing party, shall be entitled to injunctive relief, which relief shall not be contested by the other party, as a receiving party.

**11. Relationship of the Parties.** Reseller is, and at all times shall be, an independent contractor in all matters relating to this Agreement. This Agreement is a commercial agreement between businesses. Reseller has no authority, apparent or otherwise, to contract for or on behalf of Company, or in any other way legally bind Company in any fashion, nor shall Reseller be authorized to make any representations about Company or its services other than to set forth Company's responsibilities as outlined in this Agreement.

## **12. Terms & Termination.**

12.1 **Term of Agreement.** This Agreement is effective as of the Effective Date and shall continue for an initial term of twelve



(12) months. The Agreement will automatically renew for successive renewal periods of twelve (12) months unless terminated by either party by providing at least sixty (60) days' written notice prior to the end of the then-current term.

**12.2 Termination for Convenience.** Either party may terminate this Agreement at any time and for any reason, without cause, and without penalty, and without compensation of any kind, except as expressly set forth herein, effective ninety (90) days after giving written notice of termination to the other party.

**12.3 Immediate Termination For Cause.** Company may immediately terminate this Agreement by providing written notice of such termination to Reseller upon the occurrence of any of the events described below:

(a) Reseller materially breaches any of the terms or conditions of this Agreement;

(b) Reseller ceases to exist as a business entity or otherwise terminates or significantly limits its business operations;

(c) Reseller is liquidated, dissolved, reorganized, merged, sells substantially all of its assets, enters into receivership or changes its management, voting control or corporate form;

(d) Reseller makes an assignment for the benefit of creditors;

(e) Reseller is insolvent or unable to pay its debts as they mature in the ordinary course of business, or if there are any proceedings instituted by or against the Reseller in bankruptcy or under any insolvency laws or for reorganization, receivership or dissolution; or

(f) Reseller fails to secure or renew any license or permit necessary for the conduct of its business, or if any such license is revoked or suspended for any reason.

**12.4 Effects of Termination.** Upon any termination of this Agreement: (a) Reseller shall immediately cease the marketing, sale and distribution of all of the Products; (b) upon request from the other party, each party shall return or destroy all copies of the other party's Confidential Information in its possession and/or control within thirty (30) days after the effective date of such termination and certify in writing that such party has complied with its obligations hereunder; (c) except in the event of Company's termination of this Agreement due to Reseller's breach, for a period of ninety (90) days following such termination, Reseller may continue to sell or distribute the Products remaining in Reseller's inventory as of the effective date of termination so long as such distribution remains in compliance with the terms and conditions applicable prior to termination; (d) in the case where Company does terminate this Agreement due to Reseller's breach, Reseller shall promptly return all Products in its possession to Company unless otherwise mutually agreed by the parties in writing; (e) any and all payment obligations, will immediately become due, regardless of whether longer periods of time were previously agreed upon by the parties; and (f) all licenses granted herein shall terminate except as may be required to exercise the rights expressly set forth in this Section 12.4.

**12.5 Survival.** The provisions of Sections 3.5 ("Payment"), 6 ("Proprietary Rights"), 7 ("Indemnification"), 8.2 ("Product Warranty"), 8.6 ("Disclaimer"), 9 ("Limitation of Liability"), 12.4 ("Effects of Termination"), 12.5 ("Survival"), 12.6 ("No Damages Upon Termination"), 13 ("Export, U.S. Government Rights, and Compliance with Federal Laws") through 20 ("Entire Agreement") shall survive any termination or expiration of this Agreement. The provisions of Section 10 ("Confidentiality") shall survive for three (3) years after any termination or expiration of this agreement.

**12.6 No Damages for Termination.** NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR DAMAGES OF ANY KIND, INCLUDING SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ON ACCOUNT OF THE TERMINATION OR EXPIRATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS. RESELLER WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE ANY COMPENSATION OR REPARATIONS ON TERMINATION OR EXPIRATION OF THIS AGREEMENT UNDER THE LAW OF THE TERRITORY OR OTHERWISE, OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT. NEITHER PARTY WILL BE LIABLE TO THE OTHER ON ACCOUNT OF TERMINATION OR EXPIRATION OF THIS AGREEMENT FOR REIMBURSEMENT OR DAMAGES FOR THE LOSS OF GOODWILL, PROSPECTIVE PROFITS OR ANTICIPATED INCOME, OR ON ACCOUNT OF ANY EXPENDITURES, INVESTMENTS, LEASES OR COMMITMENTS MADE BY EITHER PARTY OR FOR ANY OTHER REASON WHATSOEVER BASED UPON OR GROWING OUT OF SUCH TERMINATION OR EXPIRATION.

### **13. Export, U.S. Government Rights, and Compliance with Federal Laws.**

**13.1 Export.** Reseller acknowledges and agrees that the Products and related products, technology, and information are subject to the export control laws and regulations of the United States, including, but not limited to, the Export Administration Regulations and the sanctions regimes of the U.S. Department of Treasury, Office of Foreign Assets Control. Reseller acknowledges and agrees that it shall not export the Products or related products, technology or information without prior written permission from Company.

**13.2 U.S. Government Rights.** The Products are Commercial Items as that term is defined in FAR Subpart 2.101, and include commercial technical data, commercial computer software and commercial computer software documentation. If acquired by or on behalf of a civilian agency, the U.S. Government acquires this COTS Product subject to Cleversafe's customary commercial license, and the Government's rights to use, modify, reproduce, release, perform, display, or disclose the COTS commercial computer software and/or COTS commercial computer software documentation embedded in or bundled with the Products, is as set forth in the Cleversafe End User Agreement which the Reseller shall make a part of each contract under which a Government End User obtains access to the Products, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this COTS Product subject to Cleversafe's customary commercial license, and the Government's rights to use, modify, reproduce, release, perform, display, or disclose the COTS commercial computer software and/or COTS commercial computer software documentation embedded in or bundled with the Products, is as set forth in the

Cleversafe End User Agreement which the Reseller shall make a part of each contract under which a Government End User obtains access to the Products, as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software, computer software documentation or technical data related to the Cleversafe Products and Cleversafe Commercial Software acquired under this Agreement and in any Subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed.

**13.3 Compliance with Federal Laws.** In the performance of this Agreement, each Party shall comply, to the extent relevant and applicable, with the following FAR clauses pertinent to Commercial Item contracts and subcontracts, which are hereby incorporated by reference, with the same force and effect as if they were set forth expressly herein: 52.203-13, Contractor Code of Business Ethics and Conduct (APR 2010); F.A.R. 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010); F.A.R. 52.219-8, Utilization of Small Business Concerns (DEC 2010); F.A.R. 52.222-26, Equal Opportunity (MAR 2007); F.A.R. 52.222-35, Equal Opportunity for Veterans (SEP 2010); F.A.R. 52.222-36, Affirmative Action for Workers with Disabilities (OCT 2010); 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010); 52.222-50 Combating Trafficking in Persons (FEB 2009); F.A.R. 52.247-64, Preference for Privately Owned U.S. Flag Commercial Vessels (FEB 2006); and F.A.R. 52.223-18 Contractor Policy to Ban Text Messaging While Driving (AUG 2011).

**14. Assignability.** This Agreement is not assignable or transferable, in whole or in part, by Reseller, whether voluntary, by merger, operation of law or otherwise without Company's prior written consent. Company may assign this Agreement without notice to or consent of Reseller in the event of a merger (by operation of law or otherwise), reorganization, consolidation or sale of all or substantially all of Company's assets.

**15. Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, such provision shall be severed from the remainder of this Agreement, and such remainder will remain in force and effect.

**16. No Waiver.** A waiver of any default or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed.

**17. Applicable Law.** This Agreement shall be governed by, and construed in accordance with the laws of the State of Illinois, excluding its conflict of laws provisions. The parties agree the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

**18. Amendments.** Except as expressly set forth hereunder, amendments or revisions to this Agreement must be in writing, signed by both Company's and Reseller's duly authorized representatives.

**19. Notices.** Any notice provided for or permitted under this Agreement will be in writing and will be treated as having

been given (a) when delivered personally; (b) when sent by confirmed facsimile or telecopy; (c) one (1) business day after being sent by nationally recognized overnight courier with written verification of receipt; or (d) three (3) business days after being mailed postage prepaid by certified or registered mail, return receipt requested, to the party to be notified, at the address first set forth above, or at such other place of which the other party has been notified in accordance with this Section 19.

**20. Entire Agreement.** This Agreement, together with the Exhibits constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior and/or simultaneous representations, discussions, negotiations and agreements, whether written or oral.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, do hereby execute this instrument, with each signatory warranting its authority to enter into this Agreement on behalf of the party it represents.

**Company**

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Signature

---

Printed Name

---

Title

---

Date

**“Reseller”**

---

Signature

---

Printed Name

---

Title

---

Date

---

Territory

**EXHIBIT A**  
**COMPANY PRODUCTS**

**Slicestor®**

**Accesser®**

**Manager**

**dsNet OnDemand™**

**EXHIBIT B****Price List and Discounts****A. List Prices****Manager Series**

PRODUCT	DESCRIPTION	LIST PRICE	STATUS
Manager 2100 SW	Dispersed Storage Network Manager License	\$ 10,000/ea	Available
Manager 2100	Dispersed Storage Network Manager w/Redundant Power Supplies	\$ 3,700/ea	Available

**Accesser® Series**

PRODUCT	DESCRIPTION	LIST PRICE	STATUS
Accesser® 2100 SW	Dispersed Storage Router License	\$ 6,000/ea	Available
Accesser® Client SDK	Dispersed Storage Router SDK License	\$ 7,500/ea	Available
Accesser® 2100	Dispersed Storage Router with (2) 1 GbE ports	\$ 3,800/ea	Available
Accesser® 2100	Dispersed Storage Router with (2) 10 GbE ports (cables not included)	\$ 4,500/ea	Available

**Slicestor® Series**

PRODUCT	DESCRIPTION	LIST PRICE	STATUS
Slicestor® 4D SW	Dispersed Storage Server – 4 HDD Spindles License	\$ 5,500	Available
Slicestor® 12D SW	Dispersed Storage Server – 12 HDD Spindles License	\$ 14,500	Available
Slicestor® 2100	Dispersed Storage Server, (4) 2 TB Enterprise SATA HDDs	\$ 3,600	Available
Slicestor® 2200	Dispersed Storage Server, (12) 2 TB Enterprise SATA HDDs	\$ 11,000	Available
Slicestor®2210	Dispersed Storage Server, (12) 3 TB Enterprise SATA HDDs	\$ 14,000	Available 2H 2011

**All Pricing in US Dollars and Subject to Change without Notice**

## Maintenance and Support \*

PRODUCT	DESCRIPTION	LIST PRICE	STATUS
Manager 2100 SW Support	Annual Support, 24x7 and SW Upgrades, Manager 2100 SW	\$ 1,300/yr	Available
Manager 2100 Support	Annual Support, 24x7, Manager 2100 Appliance, 4hr Parts Replacement	\$ 473/yr	Available
Accesser® 2100 SW Support	Annual Support, 24x7 and SW Upgrades, Accesser 2100 SW	\$ 780/yr	Available
Accesser® Client SDK Support	Annual Support, 24x7 and SW Upgrades, Accesser SDK	\$ 820/yr	Available
Accesser® 2100 Support	Annual Support, 24x7, Accesser 2100 Appliance, 4hr Parts Replacement	\$ 473/yr	Available
Slicestor® 4D SW Support	Annual Support, 24x7 and SW Upgrades, 4 HDD Spindle SW	\$ 716/yr	Available
Slicestor® 12D SW Support	Annual Support, 24x7 and SW Upgrades, 12 HDD Spindle SW	\$ 1,885/yr	Available
Slicestor® 2100 Support	Annual Support, 24x7, Slicestor 2100 Appliance, NBD Parts Replacement	\$ 484/yr	Available
Slicestor® 2200 Support	Annual Support, 24x7, Slicestor 2200 Appliance, NBD Parts Replacement	\$ 1,363/yr	Available

## Training

PRODUCT	DESCRIPTION	LIST PRICE	STATUS
Training dsNet Administration	dsNet Installation, Configuration and Administration	\$ 3,000/per	Available
Training dsNet Advanced Administration	dsNet Advanced Administration and Optimization	\$ 3,500/per	Available

**All Pricing in US Dollars and Subject to Change without Notice**

**\* Multi-year bundled Maintenance and Support pricing available upon request**

### **B. Discounts**

Discount levels for purchase orders placed within 12 months of execution of agreement is as follows:

Up to \$500,000	15% discount from List Price for products only (HW + SW)
From \$500,001 to \$2,000,000	___% discount from List Price for products only (HW + SW)
Over \$2,000,001 to \$5,000,000	___% discount from List Price for products only (HW + SW)
Over \$5,000,000	___% discount from List Price for products only (HW + SW)

Note Reseller / System Integrator may request a specific discount level different from this schedule for a specific opportunity if market conditions warrant. In such case, approval of such discount will be solely the decision of Company and shall have no effect on any other discount levels.

## Exhibit C

### Maintenance and Support

END USER will receive technical support for Products, which they have purchased. The following services will be provided as part of Maintenance and Support:

- Problem management, troubleshooting and system diagnosis
- Hardware maintenance, including advanced replacement
- Software maintenance (including software updates, upgrades and new releases)

Cleversafe offers 24x7x365 telephone support which will be addressed in accordance with the support levels below:

#### Support Levels

Problems reported to Cleversafe Technical Support will be assigned a severity level based on the impact to the END USER's business. The severity level structure is defined as follows:

- **Severity 1** - CRITICAL means an existing dsNet system is down or there is a critical impact to END USER's business operation. END USER and Cleversafe both will commit full-time resources to resolve the situation.
- **Severity 2** - HIGH means operation of an existing dsNet system is severely degraded or significant aspects of END USER's business operation are negatively impacted by unacceptable dsNet performance. END USER and Cleversafe both will commit full-time resources during Standard Business Hours to resolve the situation.
- **Severity 3** - MEDIUM means operational performance of the dsNet system is impaired, although most business operations remain functional. END USER and Cleversafe both are willing to commit resources during Standard Business Hours to restore service to satisfactory levels.

END USER may suggest a problem severity level but Cleversafe, in its reasonable discretion, shall have the right to assign a problem severity level. Cleversafe's Technical Support staff may change the problem severity levels and will respond to problems based on severity of the issue.

Problem Definition	Response Time
Severity Level 1	Within 1 hour
Severity Level 2	Within 4 hours
Severity Level 3	Within 24 hours

#### Advanced Replacement Support

Cleversafe offers advanced replacement services for hardware components that are covered for END USERS that have paid the annual maintenance fee to Cleversafe. The advanced replacement service makes a pool of hardware components available for delivery the next business day for Slicestor appliances and 4 hour advance replacement for Accessors and Managers directly to the END USER that has identified a failing hardware component in an installed Product. The advanced replacement service is available only to END USER that purchases the support service from Cleversafe. In order to receive an advanced replacement part, an RMA record must be created with Cleversafe and/or its component supplier and the END USER must return to Cleversafe the failing part in a reasonable time frame using return shipping materials.

#### Software Maintenance

Cleversafe offers software maintenance to END USERS that purchase and implement our products. END USERS are entitled to software maintenance as long as they pay the annual maintenance fee in advance for the period. Note there is a requirement that END USER maintain its Products at current version or one release prior, in order to get the continued benefits of software maintenance. Software maintenance entitles END USER to have access to updates, upgrades and new releases for Cleversafe's commercial software. Application of updates, upgrades and implementation of new releases will be guided by the Cleversafe's Technical Support staff.

#### Education Services and Documentation

Cleversafe will provide education and training services for END USER for a fee. These services will cover the architecture, implementation, usability and trouble shooting of the Product. In addition, Cleversafe will make available setup, installation and user documentation for END USER on the company's commercial website

[www.cleversafe.com/support/](http://www.cleversafe.com/support/)

**Exhibit D**  
**Trademarks**

**1.     Company Marks:**



- Cleversafe ®
- Dispersed Storage ® ™
- Accesser ®
- Slicestor ®
- Storage Internet ® ™
- Distributed Rebuilder ™
- dsNet ™
- Omnience ™
- PerfectBits ™
- SecureSlice ™
- SmartClient ™
- SmartRead ™
- SmartWrite ™
- SteadyStream ™

**2.     Reseller Marks:**

**[RESELLER TO PROVIDE]**



## Exhibit E

### Perpetual Software License and End User Agreement

This Perpetual Software License and End User Agreement (the "Agreement") is made by and between Cleversafe Inc. ("Cleversafe") and the end user identified below (the "End User") as of the date last set forth below (the "Effective Date"). The "Product" consists of (a) Commercially available off-the-shelf ("COTS") proprietary appliances that constitute the dispersed storage solution (the "Hardware"), (b) proprietary COTS software (the "Software"), and (c) proprietary COTS documentation (the "Documentation").

**1. SCOPE.** This Agreement governs End User's use of the Product. End User may not transfer the Product or the Hardware, Software or Documentation without the express written consent of Cleversafe except as explicitly set forth herein. In the case of any transfer, Cleversafe shall continue to own all rights, title and interest in and to any intellectual property embodied in the Products, including without limitation, the Software.

#### **2. License.**

**2.1 Grant.** Subject to the terms and conditions of this Agreement, Cleversafe grants to End User a personal, non-transferable, non-exclusive, perpetual limited license to use the Software, in object code form only and any related Documentation for internal use only and solely as fully integrated into the Hardware.

**2.2 Third Party Software.** Certain software licensed from third parties ("Third Party Software") provided with or within the Products is subject to other terms and conditions imposed by the licensors of such Third Party Software. As applicable, the terms of End User's use of the Third Party Software is subject to and governed by the respective licenses; except that this Section 2.2 ("Third Party Software"), Section 9.5 ("Disclaimer of Warranties") and Section 10 ("Limitation of Liability") of this Agreement also govern End User's use of the Third Party Software. End User may view the list of Third Party Software and the full text of the relevant licenses for such Third Party Software through request for the document from Cleversafe and End User agrees to comply with terms and conditions contained in all such Third Party Software licenses with respect to the applicable Third Party Software.

**3. License Restrictions.** This Agreement does not permit End User or any third party to: (i) modify, translate, reverse engineer, decompile, disassemble (except to the extent that this restriction is expressly prohibited by law) the Software or otherwise attempt to discover the source code of all or any portion of the Software; (ii) modify, translate or create derivative works of all or any portion of the Software; (iii) copy the Software (other than a single copy solely for back-up or archival purposes); (iv) rent, lease, sell, offer to sell, distribute, or otherwise transfer rights to the Software except as expressly authorized in this Agreement; or (v) remove any proprietary markings, copyright notices, logos, trademarks, trade names or labels on the Products. Except as expressly set forth in

Section 2, no licenses of any kind are granted hereunder, whether by implication, estoppel or otherwise.

#### **4. Terms & Termination.**

**4.1 Term of Agreement.** This Agreement commences on the Effective Date and is perpetual unless earlier terminated as provided in this Section 4.

**4.2 Termination for Convenience.** The Government End User has the right to terminate this End User Agreement for its sole convenience. In the event of such termination, this license shall immediately terminate and Cleversafe shall immediately stop all Maintenance and Support Services, if any, and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Agreement, Cleversafe shall be paid a percentage of the Agreement price reflecting the percentage of the Agreement performed prior to the notice of termination, plus reasonable charges Cleversafe can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. Cleversafe shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This Section 4.2 does not give the Government any right to audit Cleversafe's records. Cleversafe shall not be paid for any work performed or costs incurred which reasonably could have been avoided after receipt of written notice from the Government End User of the Termination for Convenience, or the effective date of the termination if after the date the notice is received. If End User terminates for convenience, no refund shall be provided.

**4.3 Immediate Termination For Cause.** Cleversafe may immediately terminate this Agreement by providing written notice of such termination to End User upon the occurrence of any of the events described below:

(a) End User materially breaches any of the terms or conditions of this Agreement;

(b) End User ceases to exist as a business entity or otherwise terminates or significantly limits its business operations;

(c) End User is liquidated, dissolved, reorganized, merged, sells substantially all of its assets, enters into receivership or changes its management, voting control or corporate form;

(d) End User makes an assignment for the benefit of creditors;

(e) End User is insolvent or unable to pay its debts as they mature in the ordinary course of business, or if there are any proceedings instituted by or against the End User in bankruptcy or under any insolvency laws or for reorganization, receivership or dissolution; or

(f) End User fails to secure or renew any license or permit necessary for the conduct of its business, or if any such license is revoked or suspended for any reason.

**4.4 Effects of Termination.** Upon any termination of this Agreement: (a) End User shall immediately cease use of the Products; (b) upon request from the other party, each party shall return or destroy all copies of the other party's Confidential Information in its possession and/or control within thirty (30) days after the effective date of such termination and certify in writing that such party has complied with its obligations hereunder; (c) End User shall promptly return all Products in its possession to Cleversafe unless otherwise mutually agreed by the parties in writing; (d) any and all payment obligations, will immediately become due, regardless of whether longer periods of time were previously agreed upon by the parties; and (e) all licenses granted herein shall terminate except as may be required to exercise the rights expressly set forth in this Section 4.4.

**4.5 Survival.** The provisions of Sections 4.4 ("Effects of Termination"), 4.5 ("Survival"), 4.6 ("No Damages Upon Termination"), 5 ("Payment Terms, Shipping and Acceptance"), 7 ("Proprietary Rights"), 9 ("Warranty to End User"), 10 ("Limitation of Liability"), 12 ("Indemnification") through 20 ("Entire Agreement") shall survive any termination or expiration of this Agreement. The provisions of Section 8 ("Confidentiality") shall survive for three (3) years after any termination or expiration of this agreement.

**4.6 No Damages for Termination.** IN CONNECTION WITH THE TERMINATION OR EXPIRATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR DAMAGES OF ANY KIND, INCLUDING SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. END USER WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE ANY COMPENSATION OR REPARATIONS ON TERMINATION OR EXPIRATION OF THIS AGREEMENT UNDER THE LAW OF THE TERRITORY OR OTHERWISE, OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT. NEITHER PARTY WILL BE LIABLE TO THE OTHER ON ACCOUNT OF TERMINATION OR EXPIRATION OF THIS AGREEMENT FOR REIMBURSEMENT OR DAMAGES FOR THE LOSS OF GOODWILL, PROSPECTIVE PROFITS OR ANTICIPATED INCOME, OR ON ACCOUNT OF ANY EXPENDITURES, INVESTMENTS, LEASES OR COMMITMENTS MADE BY EITHER PARTY OR FOR ANY OTHER REASON WHATSOEVER BASED UPON OR GROWING OUT OF SUCH TERMINATION OR EXPIRATION.

## **5. PAYMENT TERMS, SHIPPING AND ACCEPTANCE.**

**5.1 Fees.** End User will pay Cleversafe the fees invoiced in accordance with quoted payment terms. If no terms are listed regarding payment terms, then the payment terms shall be net thirty days from the invoice date.

**5.2 Shipment.** Cleversafe will ship Products to End User according to standard shipping terms (FOB shipping point or origin), unless otherwise agreed to in a quote.

**5.3 Acceptance.** The Product shall be deemed accepted by End User upon shipment, which, for the purposes hereof,

shall be defined as the time when title or risk of loss or damage passes to carrier upon delivery of Products to carrier.

**6. MAINTENANCE AND SUPPORT SERVICES.** Subject to End User's payment of the applicable fees to Cleversafe and/or Cleversafe's designee, Cleversafe's designee and Cleversafe will provide maintenance and support services for End User as described in Exhibit A. In future periods, if elected, Maintenance will be payable and subject to a consumer price index adjustment on the maintenance fee stated in the purchase order or End User License Agreement schedule.

## **7. PROPRIETARY RIGHTS.**

**7.1 Ownership.** All rights, title and interest, including all intellectual property rights, in the Products, and any improved, updated, modified or additional parts thereof including any derivatives, are and will remain the sole and exclusive property of Cleversafe and its third party suppliers, whether the Products are separate or combined with any other products. Cleversafe's rights under this Section 7.1 will include, without limitation, all intellectual property rights in: (a) all copies of the Software that is either embedded on and/or bundled with the Products, in whole and in part; and (b) all modifications to, and derivative works based upon, the Products. Nothing herein shall give or be deemed to give End User any right, title or interest in or to the same except as expressly provided in this Agreement. Cleversafe reserves all rights not expressly granted in this Agreement.

**7.2 Restrictions.** End User shall not: (a) modify, disassemble, decompile or reverse engineer any Products; (b) copy, enhance or otherwise reproduce any Products, in whole or in part; (c) remove, modify or otherwise tamper with notices or legends on the Products or any labeling on any physical media containing the Software; or (d) use the Products in any manner to provide service bureau, time sharing or other computer services to third parties. End User's rights in the Products will be limited to those expressly granted in this Agreement. End User shall have no right to use the Software except as embedded on and/or bundled as part of the Product. End Users' rights to use the Software shall be subject to the terms of this Agreement.

**7.3 Trademarks.** End User shall have no right to use Cleversafe's trademarks for any purpose other than as may be integrated into the Product. Cleversafe shall have the limited right to use End User's trademarks solely in connection with the performance of its obligations hereunder. Any additional use of the other party's trademarks shall require the other party's prior written consent.

**7.4 U.S. Government Rights.** The Products are Commercial Items as that term is defined in the Federal Acquisition Regulation ("FAR"), 48 C.F.R. 2.101, and include commercial technical data, commercial computer software and commercial computer software documentation. If acquired by or on behalf of a civilian agency, the U.S. Government acquires this COTS Product subject to Cleversafe's customary commercial license, and the Government's rights to use, modify, reproduce, release, perform, display, or disclose the COTS commercial computer software and/or COTS commercial computer software documentation embedded in or bundled with the Products, is as set forth in this Cleversafe

End User Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the FAR and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this COTS Product subject to Cleversafe's customary commercial license, and the Government's rights to use, modify, reproduce, release, perform, display, or disclose the COTS commercial computer software and/or COTS commercial computer software documentation embedded in or bundled with the Products, is as set forth in this Cleversafe End User Agreement, as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software, computer software documentation or technical data related to the Cleversafe Products and Cleversafe Commercial Software acquired under the General Services Administration ("GSA") Schedule 70 Contract(s), this Agreement or in any Subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed.

**8. CONFIDENTIAL INFORMATION.** The Product, any quotations and purchase orders, and the terms of this Agreement are confidential and proprietary information of Cleversafe and any other information that one party provides to the other party in connection with this Agreement, including information that is provided before execution of this Agreement or during the term of this Agreement, that is identified at the time of disclosure as confidential shall be confidential information (all of the foregoing collectively are referred to as "Confidential Information") of the disclosing party (the "Disclosing Party"). Neither party (the "Receiving Party") will disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (a) to those employees, representatives, or contractors of the Receiving Party who require access to the Confidential Information to perform under this Agreement and who are bound by written agreement not to disclose third-party confidential or proprietary information disclosed to such party, or (b) as such disclosure may be required by law or governmental regulation, subject to the Receiving Party providing to the Disclosing Party written notice to allow the Disclosing Party to seek a protective order or otherwise prevent the disclosure. Nothing in this Agreement will prohibit or limit either party's use of information (i) previously known to it without obligation of confidence, (ii) independently developed by or for it without use of or access to the other party's Confidential Information, (iii) acquired by it from a third party which is not under an obligation of confidence with respect to such information, or (iv) which is or becomes publicly available through no breach of this Agreement. Each party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured party is entitled to seek equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, for any violation or threatened violation of this Section. In the event of any conflict between this Section 8 and a separate non-disclosure agreement entered by the parties, this Section 8 will take precedence with respect to the Product. Within five (5) days after a Disclosing Party's request, the Receiving Party shall return or destroy the Disclosing Party's Confidential Information.

## **9. WARRANTY TO END USER.**

9.1 Limited Warranty. Cleversafe warrants, from the date of shipment of Product to End User and continuing for a period of three (3) years with respect to the hardware portion of the Products and for a period of ninety (90) days with respect to the software portion of the Products (excluding any Third Party Software therein whose license terms shall govern the term thereof), that the Products shall: comply with their written specifications supplied to End User by or on behalf of Cleversafe in connection with the Products. From time to time Cleversafe may permit the purchase additional years of warranty coverage for the hardware portion of the Products for an additional fee- Please see a Cleversafe representative for details.

9.2 Defects. If the Products fail to conform to the warranty in Section 9.1, (a "Defect") then Cleversafe shall, at its option, repair or replace the Product after End User returns the Product. This is End User's sole and exclusive remedy for a breach of the above limited warranty. Cleversafe, in its sole discretion, may revise this limited warranty from time to time.

9.3 Return Procedures. Products are non-returnable except as provided in this Section 9. Prior to any return by End User of any Product, End User shall obtain a return material authorization ("RMA") from Cleversafe. End User shall return the Product with the RMA form to Cleversafe's designated repair facility, freight prepaid within ten (10) days of receipt of the RMA, with a written statement describing the Defect. Cleversafe shall only be obligated under its warranty for Products with Defects that are reproducible by Cleversafe or Cleversafe's designee's in its own execution environment. Cleversafe will be responsible for all return shipping costs of repaired or replacement units to End User; provided, however, that Cleversafe may refuse any Product not accompanied by an RMA and such refused shipments will be returned to End User freight collect. Replacement Products will be warranted for the remaining warranty period of the original Product. If Cleversafe or Cleversafe's designee determines that the Products are not defective within the terms of the warranty, End User will pay Cleversafe all costs of handling, inspection and repair at Cleversafe's or Cleversafe's designee's then current charges. End User agrees that parts utilized in warranty services may be remanufactured and/or refurbished. Repaired or replaced hardware portions of the Products will be warranted for the longer of 90 days or the balance of the original warranty period. Repaired or replaced software portions of the Products will be warranted for the longer of 30 days or the balance of the original warranty period.

9.4 Limitation. The warranty set forth above shall not apply to (1) the extent a Defect is caused by or attributable to any Product that has been installed, modified, repaired or altered, except by Cleversafe; or (2) any Product that has not been maintained in accordance with any handling or operating instructions supplied by Cleversafe or has been subjected to unusual physical or electrical stress, misuses, negligence, accidents, fluctuations in electrical power beyond Cleversafe's specifications or failure of air conditioning or humidity control.

9.5 Disclaimer of Warranties. EXCEPT AS SET FORTH ABOVE, CLEVERSAFE DOES NOT MAKE ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. ALL IMPLIED

WARRANTIES AS TO SATISFACTORY QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR NONINFRINGEMENT ARE EXPRESSLY DISCLAIMED. CLEVERSAFE DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR THAT THEIR USE WILL BE UNINTERRUPTED.

**10. LIMITATION OF LIABILITY.** CLEVERSAFE SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR INDIRECT DAMAGES, RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS, OR DAMAGES ARISING FROM LOSS OF USE, LOSS OF CONTENT OR LOSS OF DATA, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH DAMAGES MAY BE BASED, EVEN IF CLEVERSAFE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE. CLEVERSAFE SHALL NOT HAVE ANY LIABILITY FOR ANY DAMAGES ARISING FROM THE USE OF THE PRODUCTS IN ANY HIGH-RISK ACTIVITY, INCLUDING, BUT NOT LIMITED TO, THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, MEDICAL CARE SYSTEMS, LIFE SUPPORT, OR WEAPONS SYSTEMS. EXCEPT FOR CLEVERSAFE'S AND END USER'S LIABILITY ARISING UNDER SECTION 8 (CONFIDENTIAL INFORMATION) AND SECTION 12 (INDEMNIFICATION), EACH OF THE PARTIES' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE FEES PAID BY END USER TO CLEVERSAFE FOR THE PRODUCT.

**11. EXPORT.** End User acknowledges and agrees that the Products, software, and technology subject to this Agreement are subject to the export control laws and regulations of the United States, including but not limited to the Export Administration Regulations ("EAR"), and sanctions regimes of the U.S. Department of Treasury, Office of Foreign Asset Controls. End User will comply with these laws and regulations. End User shall not without prior U.S. government authorization, export, re-export, or transfer any goods, software, or technology subject to this Agreement, either directly or indirectly, to any country subject to a U.S. trade embargo or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury.

## **12. INDEMNIFICATION.**

**12.1 By Cleversafe for Non-U.S. Government Licensees.** Cleversafe will defend any suit or proceeding brought against End User based on a third party claim that any of the Products (excluding any Third Party Software therein), as furnished by Cleversafe under this Agreement, infringes any U.S. patent of any third party issued on or before the Effective Date or any third party's copyright or that Cleversafe misappropriated any third party's trade secret rights in the development thereof. Cleversafe will pay all settlements and damages finally awarded therein against End User, provided that End User: (a) promptly informs Cleversafe of such suit or proceeding, and furnishes to Cleversafe a copy of each communication, notice

or other action relating thereto; (b) gives Cleversafe the authority, information and reasonable assistance necessary to settle or litigate such suit or proceeding; and (c) does not settle, or agree to settle, any such suit or proceeding without the prior written permission of Cleversafe. If any such Product is held in any such suit to infringe and the use of such Product is enjoined, or in Cleversafe's judgment likely to issue, Cleversafe will have the option, at its own discretion and expense, to: (w) procure for End User the right to continue using such Product; (x) replace such Product with a non-infringing Product of similar quality and purpose; (y) modify such Product to make it non-infringing, provided the modified Product remains similar in quality and purpose to such Product; or (z) pay to End User the depreciated value of such Product and accept its return.

**12.2 Exceptions for Non-U.S. Government Licensees.** Cleversafe will not be obligated to defend or be liable for costs and damages to the extent that infringement, or a claim thereof, arises out of or is related to: (a) a modification made to the infringing Product by End User or a third party; (b) use or combination of such Product with products or data not provided by Cleversafe; (c) use of other than the latest unmodified release of Product made available to End User by Cleversafe if such infringement would have been avoided by the use thereof; or (d) use of such Product after End User receives notice that Product infringes a patent right of a third party. To the extent that any suit or proceeding is brought against Cleversafe based on End User actions or inactions specified in items (a)-(d) of this Section 12.2, End User agrees to defend and indemnify Cleversafe in connection with same.

**12.3 By Cleversafe for U.S. Government Licensees.** Cleversafe shall indemnify the Government and its officers, employees against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States patent, trademark or copyright, arising out of a claim that any of the Products (excluding any Third Party Software therein) as furnished by Cleversafe under this Agreement infringes any U.S. patent of any third party issued on or before the Effective Date or any third party's copyright or trademark infringement claim, provided that Cleversafe is reasonably notified of such claims and proceedings, and, provided that End User: (a) furnishes to Cleversafe a copy of each communication, notice or other action relating thereto; (b) gives Cleversafe a meaningful opportunity to participate in the defense against the claim, and the opportunity to provide information and reasonable assistance to the U.S. Department of Justice necessary to settle or litigate such suit or proceeding; and (c) does not settle, or agree to settle, any such suit or proceeding without the prior written permission of Cleversafe. If any such Product is held in any such suit to infringe and the use of such Product is enjoined, or in Cleversafe's judgment likely to issue, Cleversafe will have the option, at its own discretion and expense, to: (w) procure for End User the right to continue using such Product; (x) replace such Product with a non-infringing Product of similar quality and purpose; (y) modify such Product to make it non-infringing, provided the modified Product remains similar in quality and purpose to such Product; or (z) pay to End User the depreciated value of such Product and accept its return.

**12.4 Exceptions, U.S. Government Licensees.** Cleversafe will not be obligated to defend or be liable for costs and

damages to the extent that infringement, or a claim thereof, arises out of or is related to: (a) a modification made to the infringing Product by End User or a third party; (b) use or combination of such Product with products or data not provided by Cleversafe; (c) use of other than the latest unmodified release of Product made available to End User by Cleversafe if such infringement would have been avoided by the use thereof; or (d) use of such Product after End User receives notice that Product infringes a patent right of a third party.

To the extent that any suit or proceeding is brought against Cleversafe based on End User actions or inactions specified in items (a)-(d) of this Section 12.4, and if, and to the extent that there is a statute that authorizes the United States to provide indemnification or indemnification by the Government is authorized by law, the End User agrees to indemnify Cleversafe in connection with same. Notwithstanding the forgoing, nothing in this agreement is intended, nor shall, prevent nor prohibit the operation of 28 U.S.C. 1498(a), and authorization and consent by the United States, and the ability of Cleversafe to raise authorization and consent as an affirmative defense.

**13. ENFORCEABILITY; SEVERABILITY.** If any provision of this Agreement is found void and unenforceable, it will be replaced to the extent possible with a provision that comes closest to the meaning of the original provision, or if not possible, such provision shall be severed from this Agreement, and such remainder will remain in force and effect. This Agreement shall control if it conflicts with any purchase order and any invoice(s) relating hereto.

**14. ASSIGNABILITY.** This Agreement is not assignable or transferable, in whole or in part, by End User, whether voluntary, by merger, operation of law or otherwise without Cleversafe's prior written consent. Cleversafe may assign this Agreement without notice to or consent of End User in the event of a merger (by operation of law or otherwise), reorganization, consolidation or sale of all or substantially all of Cleversafe's assets, as provided by law, and in accordance with 48 C.F.R. 42.12.

**15. NO WAIVER.** The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

**16. APPLICABLE LAW.** This Agreement will be governed by and construed in accordance with the laws of the State of Illinois and the federal U.S. laws applicable therein, excluding its choice of law provisions, and End User and Cleversafe agree to submit to the personal and exclusive jurisdiction of the courts located in Cook County, Illinois, except that with respect to U.S. Government licensees, this Agreement is governed by the laws of the United States, including the law of federal contracts. The parties agree the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

**17. AMENDMENTS.** Except as expressly set forth hereunder, amendments or revisions to this Agreement must be in writing, signed by both Cleversafe's and End User's duly authorized representatives.

**18. NOTICES.** Any notice provided for or permitted under this Agreement will be in writing and will be treated as having been given (a) when delivered personally; (b) when sent by confirmed facsimile or telecopy; (c) one (1) business day after being sent by nationally recognized overnight courier with written verification of receipt; or (d) three (3) business days after being mailed postage prepaid by certified or registered mail, return receipt requested, to the party to be notified, at the address first set forth herein, or at such other place of which the other party has been notified in accordance with this Section.

**19. ENTIRE AGREEMENT.** This Agreement together with the Exhibits and documents referenced herein constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior and/or simultaneous representations, discussions, negotiations and agreements, whether written or oral.