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

1. **Scope.** This Carahsoft Rider and the Manufacturer End User License Agreement (EULA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").
2. **Applicability.** The terms and conditions in the attached Manufacturer EULA 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 (t) 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 I 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.

This SOFTWARE LICENSE AND EVALUATION AGREEMENT ("Agreement") is entered into by and between Invincea, Inc., a Delaware corporation with offices at 3975 University Drive, Suite 460, Fairfax, VA 22030 ("INVINCEA"), and the party identified as "LICENSEE" above, and is effective as of the date of INVINCEA's signature below ("Effective Date"). In consideration of the mutual promises contained in this Agreement and other valuable considerations, the parties agree on the terms and conditions set forth below.

TERMS AND CONDITIONS

1. DEFINITIONS As used in this Agreement:

1.1 Authorized Use means use of the Product(s) for which LICENSEE has purchased a license in the manner specified in the Documentation and as may be separately agreed in writing between LICENSEE and INVINCEA.

1.2 Documentation means any specification and use documentation made available by INVINCEA to its end user customers generally with regard to the Products.

1.3 Evaluation Products means Products loaned to LICENSEE by INVINCEA and delivered via download for evaluation by LICENSEE under this Agreement. Special terms applicable to Evaluation Products are set forth in Section 10 of this Agreement.

1.4 Open Source Software means computer software owned by third parties, licensed under the terms of various published license agreements and redistributed by INVINCEA to its customers together with the Products.

1.5 Products means a combination of Software and Open Source Software.

1.6 Services means (a) the INVINCEA maintenance and support services described, and upon such terms as may be contained, in INVINCEA's then current published Services offerings referenced in <https://www.invincea.com/support/SLAs/> and hereby made part of this Agreement, and (b) any other work to be performed by INVINCEA for LICENSEE as specified in a LICENSEE purchase order or other separate agreement accepted by INVINCEA.

1.7 Software means INVINCEA's browser protection software and all of its components, and other related INVINCEA software programs, in object code format only, that helps users guard against Web-borne threats. Software includes without limitation all copies in whole or part, backups, related documentation and manuals, information relating to such Software, printed listings of code, and any workarounds, maintenance releases, enhancements, and Updates provided by INVINCEA to LICENSEE under this Agreement. The term "Software" shall not be deemed to include any Open Source Software.

1.8 Updates means error corrections, bug fixes, patches, additions, enhancements, upgrades or modified versions of the Software made available by INVINCEA to its customers that receive maintenance and support Services from INVINCEA.

1.9 User means a person who is authorized by LICENSEE to use, or who has access to or receives any benefit of exposure to, the applicable Software, regardless of whether the individual is actively using the Software at any given time. If a single person uses, has access to or receives

any benefit of exposure to multiple instances of the Software, then each such instance counts as a User.

2. ORDERS. LICENSEE shall purchase and license Services and Software by submitting written and signed purchase orders (which term, for purposes of this Agreement, shall be deemed to include order forms prescribed by INVINCEA, if any) for written acceptance by INVINCEA. Each purchase order shall specify the Services and the items and license terms of Software being ordered and their prices. Upon acceptance of the purchase order by INVINCEA and the acceptance by LICENSEE of this Agreement, the license of the Software and the provision of Services shall be governed by the terms of this Agreement. Fees payable for Services and licenses shall be as set forth in accepted LICENSEE purchase orders issued under this Agreement. Any preprinted provisions of LICENSEE's purchase orders or other terms that conflict with the terms of this Agreement shall not apply, exception to such provisions and terms is hereby given and as between INVINCEA and LICENSEE the terms set forth in this Agreement shall be applicable and control. INVINCEA reserves the right to change its prices and related terms and conditions at any time without notice, provided that any such changes shall not affect orders already accepted. All Software, Open Source Software and Documentation shall be delivered via electronic download. All Products shall be deemed accepted by LICENSEE upon delivery.

3. PAYMENT. Once a purchase order has been accepted by INVINCEA the term of any license purchased under it cannot be subsequently changed without the written agreement of the parties. All license fees and payments shall be nonrefundable regardless of whether the LICENSEE uses the Software or not. LICENSEE shall promptly remit payment in U.S. Dollars to INVINCEA for all amounts due under this Agreement and any related purchase order net thirty (30) days from the date of the invoice. Amounts not paid within such thirty (30) day period shall bear interest at the rate of one and one-half percent (1.5%) per month or at the highest lawful rate, whichever is less, from the date such amount is due until payment is received. The claimed failure of INVINCEA to perform any obligation under this Agreement will not justify or empower LICENSEE to withhold such fees or amounts by way of setoff or otherwise. LICENSEE will reimburse INVINCEA for all costs and expenses incurred, including but not limited to attorneys' fees, in collecting any overdue amounts. Payment terms may be revised by INVINCEA at any time with prior written notice upon any adverse change in LICENSEE's payment history or financial status. INVINCEA shall have the right to cancel any order placed or to refuse or delay its delivery or performance for failure of LICENSEE to make any payments due INVINCEA in accordance with the terms of this Agreement. LICENSEE will pay all sums equal to taxes (including, without limitation, sales, withholding, value-added,

and similar taxes) and any duties paid or payable, however designated, levied or based on amounts payable to INVINCEA under this Agreement, but exclusive of United States federal, state, and local taxes based on INVINCEA's net income, and will reimburse INVINCEA for any such sum that INVINCEA is required to collect or pay with respect to transactions under this Agreement.

4. LICENSES AND CONDITIONS

4.1 Products.

4.1.1 Subject to the terms and conditions of this Agreement, INVINCEA hereby grants to LICENSEE a limited, nonexclusive, personal, non-sublicenseable and non-transferable license under INVINCEA's intellectual property rights to install, and if applicable evaluate, the Software solely for Authorized Uses in its internal business operation during the applicable license term purchased by LICENSEE. LICENSEE may only use the Software subject to the maximum User limitations, if any, that are indicated on the applicable purchase order. The license granted in this Section 4.1.1 above for each Software product shall remain in effect only during the applicable license term for that Software, and upon the expiration or termination of that term such license shall terminate in accordance with the provisions of Section 9.3 below. LICENSEE agrees (a) to respect and observe and not to alter, remove, or conceal any copyright, trademark, trade name, or other proprietary marking that may appear on or in the Products, and (b) that LICENSEE is responsible for itself obtaining any additional software, hardware, or technologies not provided by INVINCEA under this Agreement and required to operate the Products, including but not limited to communications devices and Internet access services. LICENSEE may make one (1) copy of the Products and the Documentation for archival and backup purposes, provided that LICENSEE will reproduce on or in such copy any copyright, trademark, trade name, or other proprietary marking that may appear on or in the Products or Documentation copied.

4.1.2 LICENSEE may permit its authorized contractors to access the Products solely in connection with the performance of services for LICENSEE, provided that (i) LICENSEE shall be liable for the acts of any such contractors, and that (ii) LICENSEE shall cause such contractors to abide by the provisions of this Agreement, and shall indemnify INVINCEA for their failure to do so.

4.1.3 The Products include proprietary information owned by INVINCEA and its third party licensors, and the Software and the Documentation are provided to LICENSEE solely under license and not by sale. INVINCEA and its third party licensors will continue to own their respective interests and intellectual property rights in the Products and will be entitled to terminate this Agreement in accordance with Section 9 below, and demand the return of their respective products, upon any failure of LICENSEE to comply with the terms of this Agreement or the conditions or restrictions imposed by third parties and referred to in Section 4.2 below.

4.1.4 INVINCEA reserves the right to make changes to any Products whenever such changes, (a) are required for safety, (b) facilitate performance in accordance with specifications, or (c) represent substitutions and modifications in accordance with applicable product performance specifications, provided however that such changes shall not impede LICENSEE's Authorized Use of any Products.

4.1.5 LICENSEE acknowledges and agrees that as part of its normal operation the Software may collect certain data relating to (a) use of the Software, (b) any viruses, malware, Trojan Horses, and other malicious or harmful code discovered by the Software (collectively "Viruses"), (c) the behavior or operation of such Viruses, and (d) the data that is affected by the Viruses (collectively "Virus Data"). In the event LICENSEE has licensed INVINCEA's Threat Server software to collect Virus Data, a copy of the Virus Data will be sent by the Software to LICENSEE for its evaluation. If LICENSEE has not licensed INVINCEA's Threat Server software to collect Virus Data, Virus Data will be sent by the Software to INVINCEA for its evaluation. The parties agree that they shall own all rights to the Virus Data jointly without accounting.

4.1.6 LICENSEE shall not itself, or through any affiliate, agent, or third party: (a) decompile, disassemble, or otherwise reverse engineer any Software, or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of any Software by any means whatsoever, except to the extent applicable laws specifically prohibit such restrictions, (b) modify, adapt, translate, or create derivative works based upon any Software, (c) transfer, lease, loan, sublicense, sell, resell for profit, distribute, or otherwise grant any rights (including but not limited to a right to access or use) in any Software in any form to any other party, (d) use any Software on a commercial time-sharing, rental, or service bureau basis, or in any manner or for any purpose other than an Authorized Use, or (e) disclose to any third party any underlying ideas or algorithms, performance information, test results or analyses learned by LICENSEE or created by or for LICENSEE (including, without limitation, benchmarks) relating to any Software. LICENSEE shall only have the rights with respect to the Products expressly set forth in this Agreement; all other rights are expressly reserved to INVINCEA and its licensors. In the event LICENSEE believes that an action by it under Section 4.1.5 (a) above would be warranted and permitted by applicable law, it shall give INVINCEA not less than ninety (90) days prior written notice of such belief to enable INVINCEA and any affected licensor of INVINCEA to evaluate whether such laws' requirements necessitate such action.

4.1.7 LICENSEE acknowledges that the Products, and all trade secret, copyright, patent, trademark, trade name, and other intellectual and proprietary rights in the Products, are and at all times shall remain the valuable property of INVINCEA and its licensors, or their respective successors or assigns. LICENSEE agrees that, except as provided in this Section 4, nothing contained in this Agreement shall be construed as granting or conferring by implication, estoppel, or otherwise, any license or right under any patent, trademark, copyright, or other proprietary right, whether now existing or hereafter obtained, and no such license or other right shall arise from this Agreement or from any acts or omissions in connection with the execution of this Agreement or the performance of the obligations of the parties.

4.1.8 LICENSEE agrees to promptly notify INVINCEA of any violation of any of the terms of this Section 4.1 by LICENSEE or others of which LICENSEE becomes aware.

4.2 Open Source Software. INVINCEA will redistribute certain Open Source Software to LICENSEE for LICENSEE's use with Products. As a condition of its use of the Open Source Software, LICENSEE represents and warrants that it will familiarize itself with, and comply with and be responsible for observing, the conditions and restrictions required of software users by the owners of such Open Source Software as referenced in <http://www.invincea.com/index.php?/support/Documentation/>.

5. SERVICES

5.1 Availability . Maintenance and support Services shall be provided to LICENSEE by INVINCEA in accordance with the terms and prices of INVINCEA's then current published Services offerings contained in <https://www.invincea.com/support/SLAs/>. INVINCEA will not be responsible for providing Services for (a) any Third Party Software, or (b) any Software that is not configured in accordance with the specifications set forth in the Documentation and the applicable purchase order.

5.2 Conditions. Services to be provided by INVINCEA under this Agreement require cooperation between LICENSEE and INVINCEA, and LICENSEE recognizes and accepts certain responsibilities. These LICENSEE responsibilities include but are not limited to (a) providing INVINCEA with specific details regarding LICENSEE's business requirements and operating procedures as they relate to the application of the Services to be performed by INVINCEA, (b) proper installation of and timely access to all necessary network devices and other computer hardware, facilities, and applications and other software in accordance with mutually agreeable and reasonable schedules, (c) development and signing of statement of work agreements where appropriate, (d) assignment of appropriate personnel to coordinate Services delivery with INVINCEA in a timely manner, and (e) agreeing on a timely basis to relevant delivery schedules.

6. LIMITED WARRANTY

6.1 Software. INVINCEA warrants that the Software delivered to LICENSEE by INVINCEA will for a period of thirty (30) days from the date of delivery perform when utilized in an Authorized Use substantially as specified in the applicable Documentation. If LICENSEE satisfactorily demonstrates to INVINCEA within such thirty (30) day period that an item of Software does not so perform then, as INVINCEA's sole and exclusive liability and as LICENSEE's sole and exclusive remedy, INVINCEA shall at its sole option either (a) correct the errors reported by LICENSEE, (b) replace the Software with substantially conforming Software, or (c) refund the price paid for the nonconforming Software. INVINCEA does not warrant the results of its correction or replacement services or that all errors will be corrected. Correction or replacement and the issuance of any corrections, patches, bug fixes, workarounds, upgrades, enhancements, or Updates by INVINCEA to LICENSEE, shall not be deemed to begin a new, extended, or additional warranty period. Any replacement Software will be warranted for the remainder of the original warranty period. The foregoing warranty shall not apply: (i) if the Software is used with products not specified in or contemplated by the Documentation, (ii) if any modifications are made to the Software by LICENSEE or any third party, (iii) to errors in the Software due to accident, abuse, abnormal stress or environment or improper use by LICENSEE, or (iv) to Software provided on a no charge or evaluation basis

6.2 No Other Warranties. THE LIMITED WARRANTY IN SECTION 6.1 ABOVE IS IN LIEU OF ALL OTHER WARRANTIES FOR ANY PRODUCTS OR SERVICES PROVIDED UNDER OR IN CONNECTION WITH THIS AGREEMENT, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

INVINCEA SPECIFICALLY BUT WITHOUT LIMITATION DOES NOT WARRANT THAT: (I) THE SOFTWARE SHALL MEET ALL OF LICENSEE'S REQUIREMENTS OR SHALL OPERATE IN ALL THE COMBINATIONS WHICH MAY BE SELECTED FOR USE BY LICENSEE, (II) THE OPERATION OF THE SOFTWARE SHALL BE ERROR-FREE OR UNINTERRUPTED, (III) ALL ERRORS OR DEFECTS IN THE SOFTWARE SHALL BE CORRECTED, OR (IV) ANY SECURITY MECHANISMS IMPLEMENTED BY THE SOFTWARE WILL NOT HAVE INHERENT LIMITATIONS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THAT THE ABOVE EXCLUSIONS MAY NOT APPLY TO LICENSEE. THIS WARRANTY GIVES LICENSEE SPECIFIC LEGAL RIGHTS. LICENSEE MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

6.3 Exclusions. THE OPEN SOURCE SOFTWARE AND ANY EVALUATION PRODUCTS ARE PROVIDED TO LICENSEE "AS IS" WITHOUT WARRANTY OF ANY KIND BY INVINCEA, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. No representation or other affirmation of fact, whether made by INVINCEA employees or otherwise, shall be deemed a liability by INVINCEA for any purpose or give rise to any liability of INVINCEA whatever unless contained in this Agreement.

7. INFRINGEMENT

7.1 Indemnity by INVINCEA. If a third party acting against LICENSEE claims, threatens to claim or obtains a judicial or administrative determination that any Software infringes its patent, copyright, or trade secret rights, INVINCEA shall defend LICENSEE at INVINCEA's expense and pay all damages that a tribunal finally awards. INVINCEA shall also have the right at its sole option and expense to (a) obtain for LICENSEE the right to continue using the infringing item, (b) replace the infringing item or modify it so that it shall become non-infringing with no substantial degradation, or (c) remove the infringing portion of the Software and refund the proportional fee that LICENSEE paid for such portion, pro rata, on a one-year straight-line depreciation basis, provided that LICENSEE shall promptly notify INVINCEA in writing of the claim, and allow INVINCEA to control, and cooperate with INVINCEA in, the defense and any related settlement negotiations. In no event shall INVINCEA's liability under this Section 7 exceed the amount paid by LICENSEE to INVINCEA for any allegedly infringing Products.

7.2 Exceptions. Notwithstanding the provisions of Section 7.1 above, INVINCEA shall have no obligation to LICENSEE for any claim arising from the license or use of any Software (a) that has been modified by a party other than INVINCEA, (b) used to practice any process, or used in combination with other products not provided by INVINCEA where such infringement would not have occurred but for such use in combination with such other products. (c) from failure of LICENSEE to use updated Software provided by INVINCEA for avoiding such infringement. or (d) that is part of any Evaluation Products. INVINCEA shall not be bound by any settlement of any charge of infringement made without the prior written consent of INVINCEA. LICENSEE shall indemnify and hold INVINCEA harmless from any loss, cost, or expense in connection with any claim, suit, or proceeding brought against INVINCEA or LICENSEE insofar as it is based on a claim that the use of any Software infringed because of the way it was

modified or altered by parties other than by INVINCEA, or because it was used in a manner for which it was not designed or for a use not an Authorized Use.

7.3 Limitation. THIS SECTION 7 STATES THE ENTIRE LIABILITY OF INVINCEA TO LICENSEE AND ANY AND ALL THIRD PARTIES, WHETHER FOR DAMAGES OR OTHERWISE, FOR INFRINGEMENT OF ANY COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHT WITH RESPECT TO ANY PRODUCTS OR SERVICES FURNISHED BY INVINCEA UNDER THIS AGREEMENT.

8. LIMITATION OF LIABILITY

8.1 Limitation. It is expressly agreed that each party's maximum liability for damages to the other party under or in connection with this Agreement, regardless of the form of legal action, whether in contract or in tort, including negligence, shall in no event exceed the actual payments received by INVINCEA for the Products or Services that caused such damage or that are directly related to the cause of action, except that no such limitation on damages shall apply to losses due to either party's breach of Section 11.11 or LICENSEE's breach any of the licenses or license restrictions set forth in this Agreement.

8.2 No Consequential Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR PUNITIVE, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, OR LOSS OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS, OR, IF REASONABLY FORESEEABLE, INCURRED BY THE OTHER PARTY OR CLAIMED AGAINST THE OTHER PARTY BY ANY OTHER PARTY, EXCEPT THAT NO SUCH LIMITATIONS ON CONSEQUENTIAL DAMAGES SHALL APPLY IN THE EVENT OF BREACH BY EITHER PARTY OF SECTION 11.11 OR BREACH BY LICENSEE OF ANY OF THE LICENSES OR LICENSE RESTRICTIONS CONTAINED IN THIS AGREEMENT. NEITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM THE NEGLIGENCE OF A PARTY OR THAT OF ITS EMPLOYEES OR AGENTS OR IN RELATION TO ANY OTHER LIABILITY THAT MAY NOT BY APPLICABLE LAW BE EXCLUDED OR LIMITED IS EXCLUDED OR LIMITED AND NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS AN ATTEMPT TO EXCLUDE OR LIMIT SUCH LIABILITY.

8.3 Reasonability. The parties agree that the provisions of this Agreement fairly allocate the risks between INVINCEA, on the one hand, and LICENSEE on the other. LICENSEE acknowledges and agrees that its pricing reflects the allocations of risk and the limitations of liability specified in this Agreement, and that INVINCEA would not enter into this Agreement without such allocations and limitations.

9. TERM; TERMINATION

9.1 Tenn. Unless otherwise specifically indicated and mutually agreed to on LICENSEE's accepted purchase order or other written agreement between the parties, this Agreement shall be effective from the Effective Date and shall continue in full force and effect as long as Software is in use by LICENSEE as permitted by the terms of this Agreement and unless and until terminated as set forth elsewhere in this Agreement.

9.2 General. Upon any material breach or default of this Agreement by either party, the other party shall have the right to terminate this Agreement, any or all licenses granted and

Services to be performed under it and their respective terms effective on thirty (30) days' prior written notice. Such termination shall become automatically effective unless the breaching or defaulting party shall have cured any material breach or default prior to the expiration of the thirty (30) day period. This Agreement and the term of any or all licenses may also be terminated immediately upon (a) bankruptcy, insolvency, or placing of the assets or the business of the other party in the hands of a receiver or trustee, (b) filing of a petition for bankruptcy or reorganization by or against the other party, (c) dissolution or liquidation of the other party, or (d) failure of LICENSEE to pay any sum when due under or in connection with this Agreement. Neither party shall be liable to the other for its failure to perform its obligations under this Agreement, except for payment obligations, during any period in which such performance is delayed or rendered impracticable or impossible due to circumstances beyond its reasonable control.

9.3 Consequences. In the event of termination of this Agreement for any reason, LICENSEE shall promptly (a) discontinue all use of the Software and Documentation; (b) erase or destroy any Software and Documentation contained in the computer memory or data storage apparatus under the control of LICENSEE, (c) return to INVINCEA all copies of the Software provided by INVINCEA in LICENSEE's possession, and (d) certify in writing to INVINCEA, within thirty (30) days of termination of this Agreement, that LICENSEE has complied with the foregoing. Upon termination of this Agreement any sums owed to INVINCEA under this Agreement will be immediately due and payable, and all licenses granted in this Agreement shall terminate. Sections 4, 4.1.2, 4.1.5, 4.1.6, 6 through 9, 10.2.2, 10.4, 10.5 and 11 shall survive any termination of this Agreement.

10. SPECIAL TERMS APPLICABLE TO EVALUATION PRODUCTS ONLY

10.1 Components and Tens. LICENSEE and INVINCEA shall agree separately on the components comprising the Evaluation Products and the length of the evaluation period. The use of the Evaluation Products and the provision of any related Services shall be governed by the terms of this Agreement. INVINCEA shall provide Software and Documentation and any other software via electronic download. Unless the parties shall otherwise agree in writing, INVINCEA shall loan the Evaluation Products to LICENSEE at no charge for a period of time agreed between the parties. Title to the Evaluation Products shall at all times remain in INVINCEA and its licensors.

10.2 LICENSEE Responsibilities.

10.2.1 LICENSEE shall: (a) be responsible for the proper use and deployment of the Evaluation Products, and for training anyone using the Evaluation Products on their proper use in accordance with any Product use procedures, (b) use the Evaluation Products solely for the limited purposes of conducting its own internal tests to evaluate the performance and functionality of the Evaluation Products in LICENSEE's internal business environment or for LICENSEE's business purposes that are Authorized Uses, (c) make the Evaluation Products available for maintenance and support purposes as requested by INVINCEA on a reasonable basis, subject to mutual agreement between the parties on scheduling, and (d) take appropriate action, by means of agreement, instruction or otherwise, with respect to its employees or other third parties permitted access to the Evaluation Products in furtherance of

its permitted use to ensure that all of its obligations under this Agreement are satisfied.

10.2.2 LICENSEE shall not: (a) use or permit third parties to use the Evaluation Products for production purposes or other commercial purposes, (b) modify or attempt to maintain or repair the Evaluation Products without first obtaining INVINCEA's prior written permission, (c) permit the imposition of any lien, charge or encumbrance on the Evaluation Products while in LICENSEE's possession, or move the Evaluation Products from their initial installation location without first obtaining INVINCEA's prior written permission, or (d) disdose or share operation, performance, design, architecture or any other information on the Evaluation Products, or test results or analyses created by or for LICENSEE (including, without limitation, benchmarks) relating to the Evaluation Products, to or with any third party, which restrictions shall survive any termination of this Agreement.

10.3 Availability of Services. INVINCEA shall provide such maintenance and support Services for the Evaluation Products as it shall determine in its sole discretion are necessary or desirable. INVINCEA will not be responsible for providing Services for (a) any Open Source Software, or (b) any Software that is not configured in accordance with the specifications set forth in the Documentation or separate ly agreed to by the parties.

10.4 Exclusion of Warranties. INVINCEA DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE EVALUATION PRODUCTS, EXPRESS OR IMPLIED, WRITEN OR ORAL, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. This risk allocation reflects the lack of charges for the use of the Evaluation Products.

10.5 Consequences of Termination. In the event of termination of this Agreement or the evaluation for any reason. LICENSEE shall promptly (a) discontinue all use of the Evaluation Products, and (b) return to INVINCEA or destroy (with written certification of destruction to INVINCEA) all copies of the Software and Documentation provided by INVINCEA or in LICENSEE's possession.

10.6 Conversion to Purchase. In the event LICENSEE elects to purchase a license for any of the Evaluation Products prior to their removal by INVINCEA, LICENSEE shall do so in accordance with the provisions of Sections 2 and 3 above, and the terms and conditions of this Agreement shall govern such purchase.

11. GENERAL

11.1 Notices. All notices required or permitted under this Agreement will be in writing and will be deemed given: (a) when delivered personally, (b) when sent by confirmed telex or facsimile, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a commercial overnight carrier specifying next day delivery, with written verification of receipt. All communications will be sent to the principal office of each party or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section 11.1. If the communication is from LICENSEE to INVINCEA, it shall be addressed to "Attn: President." If the communication is from INVINCEA to LICENSEE, it shall be addressed to the Chief Executive Officer of LICENSEE.

11.2 Assignment. LICENSEE may not assign, delegate or otherwise transfer this Agreement or any of its licenses, rights or duties under this Agreement, whether by operation of law or otherwise, without the prior written consent of INVINCEA. Any attempt to transfer or assign this Agreement without such written consent will be null and void. If the Software is a valid Update, a permitted transfer may be made only in conjunction with the prior version(s) of the Software. INVINCEA may assign this Agreement without LICENSEE's consent to any affiliate or to a person or entity into which it has merged or which has otherwise succeeded to all or substantially all of its business and assets to which this Agreement pertains, by merger, reorganization or otherwise, and which has assumed in writing or by operation of law its obligations under this Agreement. Subject to the previous sentence, the rights and liabilities of the parties hereto will bind and inure to the benefit of their respective successors, executors, and administrators, as the case may be.

11.3 Waiver. The failure of either party to enforce in any one or more instances any of the terms and conditions of this Agreement shall not be construed as a waiver of future performance of any such term or condition. Waiver of any term or condition shall only be deemed to have been made if expressed in writing by the party granting such waiver.

11.4 Severability . If any provision of this Agreement shall be held by a court of law of competent jurisdiction to be illegal, invalid, or unenforceable, that provision shall be reformed, construed, and enforced to the maximum extent permissible and the remaining provisions shall remain in full force and effect.

11.5 Governing Law and Jurisdiction. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia without regard to conflict of laws provisions, provided however that the parties expressly disclaim and exclude the application to this Agreement of the Uniform Computer Information Transactions Act as adopted in Virginia. The federal and state courts sitting in the Eastern District of Virginia shall have exclusive jurisdiction and venue to adjudicate any dispute arising out of this Agreement. Each party hereto expressly consents to the personal jurisdiction of the courts of Virginia and service of process being effected upon it by registered mail sent to the respective addresses referred to in Section 11.1 above. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

11.6 Entire Agreement. This Agreement and its Exhibits and any separate INVINCEA agreement referenced elsewhere in this Agreement constitute the entire understanding between the parties, and supersede all prior discussions, representations, understandings or agreements (including any pre-existing nondisclosure agreement, except as to its surviving terms), whether oral or in writing, between the parties

with respect to the subject matter of this Agreement. Any preprinted or otherwise prescribed provisions of LICENSEE's purchase orders required by LICENSEE other than quantity, price, and the like, or other terms that conflict with the terms of this Agreement, shall not apply, exception to such provisions and terms is hereby given by INVINCEA, and the terms set forth in this Agreement shall be applicable and control. Any modification or amendment to this Agreement must be in writing and signed by authorized representatives of both parties. Except as otherwise provided in Section 4.2 above regarding Open Source Software, any item or service furnished by INVINCEA in furtherance of this Agreement, although not specifically identified in it or in a purchase order referencing this Agreement, shall nevertheless be covered by this Agreement unless specifically covered by some other written agreement executed by LICENSEE and an authorized representative of INVINCEA. The headings and captions used in this Agreement are for convenience only, and shall not affect the interpretation of the provisions of this Agreement.

11.7 U.S. Government Restricted Rights. LICENSEE may not acquire the Software on behalf of the U.S. Government unless INVINCEA has consented to such acquisition in writing. If the Software is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor at any tier, then the Software and the accompanying Documentation are to be considered "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in 48 C.F.R. 12.1212 and 48 C.F.R. 227.7202. Except for any arrangements or agreements that INVINCEA may have with U.S. Government or agency thereof with respect to the Software or intellectual property rights therein, the U.S. Government's rights in the Software and any accompanying Documentation will be only as set forth in this Agreement, in accordance with 48 C.F.R. 227.7201 through 227.7202-4 (for Department of Defense (DOD) acquisitions) and with 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions). The Software is provided with RESTRICTED RIGHTS. The Software is comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12212 and is provided to the Government (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-4.11.8 Export Control. LICENSEE acknowledges that the Software licensed herein is subject to the export control laws and regulations of the United States of America (the "U.S.") and any amendments to them. LICENSEE confirms that with respect to the Software, it will not export or re-export it, directly or indirectly, either to: (a) any countries that are subject to U.S. export restrictions, (b) any end user who LICENSEE knows or has reason to know will utilize it in the design, development, or production of nuclear, chemical or biological weapons, or (c) any end user who has been prohibited from participating in U.S. export transactions by any federal agency or the government of the U.S.. LICENSEE further acknowledges that the Software may include technical data subject to export and re-export restrictions imposed by U.S. law. LICENSEE agrees to indemnify INVINCEA, to the fullest extent permitted by law, from and against any fines or penalties that may arise as a result of LICENSEE's breach of this provision. This export control clause shall survive termination of this Agreement.

11.9 Use of LICENSEE Name. LICENSEE agrees that INVINCEA may use LICENSEE's name in INVINCEA's customer list and may publish information identifying LICENSEE as a user of INVINCEA products in advertisements, news releases and releases to professional and trade publications. LICENSEE will have the right to approve each such release prior to its placement, but agrees not to unreasonably withhold its approval.

11.10 Independent Contractors. The relationship of INVINCEA and LICENSEE established by this Agreement is that of independent contractors, and nothing contained in the Agreement will be construed to constitute the parties as partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking. For a period of one (1) year following the completion of any Services performed for LICENSEE under this Agreement, LICENSEE shall not directly or indirectly employ, solicit for employment or contract with any INVINCEA personnel performing such Services for LICENSEE under this Agreement.

11.11 Confidential Information. Each party acknowledges that by reason of its relationship to the other party under the provisions of this Agreement it may have access to certain information and material concerning the other party's business, plans, customers, technology, and products that are confidential and of substantial value to the disclosing party ("Confidential Information"), which value would be impaired if such Confidential Information were disclosed to third parties. Each party agrees to maintain all Confidential Information received from the other, both orally and in writing, in confidence and agrees not to disclose or otherwise make available such Information to any third party without the prior written consent of the disclosing party. Each party further agrees to use the Confidential Information only for the purpose of performing this Agreement. No information shall be deemed confidential unless so marked if given in writing or, if given orally, identified as confidential orally prior to disclosure, except that LICENSEE agrees that any information in whatever form relating to (a) the terms of this Agreement, the Documentation and the underlying ideas, algorithms, techniques, knowhow, design, architecture, functionality, operational methods or coding of the Software, including but not limited to any complete or partial source or object code versions or related patent applications, and (b) performance information, test results, algorithms, techniques, product roadmap and knowhow or analyses created by or for LICENSEE (including, without limitation, benchmarks) relating to the Products, shall be deemed Confidential Information of INVINCEA regardless of the presence or absence of any confidential markings or identification.

11.11.1 The obligations of non-disclosure under this Agreement shall not apply to information which: (a) is or becomes a matter of public knowledge through no fault of or action by the receiving party; (b) was rightfully in the receiving party's possession prior to receipt from the disclosing party; (c) subsequent to disclosure, is rightfully obtained by the receiving party from a third party who is lawfully in possession of such information without restriction; (d) is independently developed by the receiving party without resort to Confidential Information; or (e) is required to be disclosed by law or judicial order, provided that prior written notice of such required disclosure is furnished to the disclosing party as soon as practicable in order to afford the disclosing party an opportunity to seek a protective order and that if such order cannot be obtained disclosure may be made without disclosing party

liability. The receiving party shall promptly notify the disclosing party upon discovery of any loss or unauthorized disclosure of disclosing party's Confidential Information. Whenever requested by the disclosing party, the receiving party shall immediately return to the disclosing party all manifestations of its Confidential Information or, at the disclosing party's option, shall destroy all such Confidential Information as the disclosing party may designate. Recipient's obligation of confidentiality shall survive this Agreement for a period of seven (7) years from the date of its termination, and thereafter shall terminate and be of no further force or effect. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND.

11.11.2 Each party acknowledges that any breach of any of its obligations with respect to the other party's Confidential Information hereunder may cause or threaten irreparable harm to such party. Accordingly, each party agrees that in such event each party shall be entitled to seek equitable relief to protect its interests, including but not limited to temporary restraining orders, preliminary and permanent injunctive relief, as well as money damages.

11.12 Audit. While this Agreement is in effect and for a period of one (1) year after it terminates, INVINCEA will have the right not more often than twice during any calendar year, on reasonable notice to LICENSEE and during normal business hours, to conduct an audit of LICENSEE's books, records, and supporting documentation that relate to any of LICENSEE's obligations under this Agreement. Any underpayment revealed by the audit will promptly be remitted by LICENSEE in a manner designated by INVINCEA. In the event of an underpayment to INVINCEA of five (5%) or more, LICENSEE will also reimburse INVINCEA for the reasonable cost of such audit. On INVINCEA's written request, but not more frequently than annually, LICENSEE will furnish INVINCEA with a statement signed by an officer authorized to legally bind LICENSEE verifying that the Software is being used in full compliance with the provisions of this Agreement.

