CyberSponse, Inc.

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Suite 4-151

Chandler, AZ 85226

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.

TERMS OF SERVICE

This Terms of Service Agreement, together with the Service Level Agreement, Acceptable Use Policy, any other documents referenced herein and any amendments signed between the parties (collectively, this "Agreement") is made between CyberSponse, Inc., a Delaware corporation ("CyberSponse") and the Corporation or entity (collectively "Customer") that executes and delivers a SaaS License ("SaaS License") for the provision of Software of a Services ("SaaS") as mutually agreed upon.

BY EXECUTING AND DELIVERING THE SAAS LICENSES, CLICKING THE "I ACCEPT" BUTTON, SIGNING AN AGREEMENT OR ACCESSING OR USING ANY OF THE SAAS, CUSTOMER EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT.

1. Definitions

"Acceptable Use Policy" or "AUP" means the CyberSponse Acceptable Use Policy, posted at http://cybersponse.com/aup, as such policy may be amended from time to time by CyberSponse.

"Beta SaaS" means pre-production versions of SaaS that are offered by CyberSponse to certain customers for the sole purpose of testing and evaluating such SaaS.

"Confidential Information" means all confidential and proprietary information of a party disclosed either before or after the effective date of this Agreement and marked as such (if such information is capable of being so marked) regarding such party's products and business that are disclosed by such party (the "Disclosing Party") to the other party (the "Non- Disclosing Party") under this Agreement including, but not limited to, the Disclosing Party's intellectual property. Confidential Information also includes (a) the unpublished prices and other terms of service, audit and security reports, data center designs and other proprietary

technology and (b) information transmitted to or from, stored on, or otherwise processed by the servers or other devices used in the provision of the SaaS. Notwithstanding the foregoing, Confidential Information does not include: (i) information in the public domain at the time of delivery, (ii) information subsequently published or otherwise made part of the public domain through no fault of the Non-Disclosing Party or its representatives, (iii) information in the Non-Disclosing Party's possession at the time of disclosure and not acquired by the Non-Disclosing party directly or indirectly from Disclosing Party or its representatives on a confidential basis, (iv) which becomes available to the Non-Disclosing Party on a non-confidential basis from a source not under an obligation of confidentiality to the Disclosing Party,

(v) workflows, or (vi) information that is independently developed without reference to the Confidential Information, as evidenced by written records maintained in the ordinary course of business.

"Fees" means the Setup Fees, Recurring Fees and Non-Recurring Fees.

"Initial Term" means that period of time commencing upon the Service Commencement Date and ending at the mutually agreed upon termination date if such SaaS license is not renewed.

"Non-Recurring Fees" mean those fees set forth on the SaaS License that are due when and if a particular Service is utilized, such as additional bandwidth used by Customer during the term of this Agreement.

"Recurrence Period" means the recurring period upon which Customer agrees to pay for the SaaS as set forth in the SaaS License.

"Recurring Fees" mean those fees set forth on the SaaS License that are due on a recurring basis throughout the term of this Agreement upon each Recurrence Period.

"Renewal Term" means the subsequent renewal of the Initial Term or any Renewal Term, commencing upon expiration of such Initial Term or Renewal Term and ending upon the expiration of the SaaS License period set forth on the SaaS Invoice.

"Service Commencement Date" means that date upon which Customer is given access by CyberSponse to begin using the SaaS.

"Service Level Agreement" means the CyberSponse Service Level Agreement, posted at http://cybersponse.com/sla, as such agreement may be amended from time to time by CyberSponse.

"SaaS" means Software as a Service requested by Customer and provided by CyberSponse as set forth on a SaaS License.

"Setup Fees" mean those fees set forth on the SaaS License that are due upon the Service Commencement Date and represent the initial fees necessary to initially set up and configure the SaaS.

"Support" means the telephone and online technical support provided by CyberSponse in connection with the SaaS. "User" means Customer or any other person or entity that Customer permits to access or otherwise use the SaaS.

2. CyberSponse Obligations

CyberSponse will not begin providing the SaaS and Support until Customer has satisfied CyberSponse's order approval criteria. Subject to Customer compliance with all of the terms and conditions of this Agreement, CyberSponse shall provide the SaaS and Support to Customer during the term of this Agreement in accordance with the commitments made in the Service Level Agreement and in accordance with applicable law. In the event of a failure by CyberSponse to meet the obligations of this Section 2, Customer's sole and exclusive remedy and CyberSponse's sole obligation are the issuances of Service Credits as set forth in the Service Level Agreement.

3. Customer Obligations

Customer is solely responsible for the content of any postings, data or transmissions using SaaS, or any other use of the SaaS by a User. Customers are responsible for keeping Customer account permissions, billing, and other account information up to date using the CyberSponse portal, and Customer must use reasonable security precautions in connection with Customer use of the SaaS. Customer agrees to fully comply with all of the obligations and restrictions set forth in the Acceptable Use Policy.

Certain SaaS features are designed to help Customer comply with regulatory guidelines that may be applicable to Customer. Customer is responsible for understanding the regulatory requirements applicable to Customer's business and for selecting and using CyberSponse SaaS in a manner that satisfies the requirements. Additionally, if payment card information, healthcare related information, or personally identifiable information will be transmitted to or from or stored on equipment in conjunction with the SaaS, Customer shall disclose to CyberSponse such fact prior to any such transmission and/or storage.

4. Fees

Customer's initial invoice will include any Setup Fees and the pro-rated portion of the Recurring Fees from the Service Commencement Date until expiration of the Recurrence Period. Thereafter, CyberSponse will invoice Customer in advance for the Recurring Fees and in arrears for the Non-Recurring Fees at the beginning of each Recurrence Period.

The Recurring Fees set forth in the SaaS License shall remain fixed during the Initial Term. Upon commencement of any Renewal Term, the Recurring Fees for the SaaS shall be subject to the published fees then in effect at the date of such renewal.

5. Payments

Unless otherwise agreed by CyberSponse, payment for SaaS is due on the invoice date. Any amount not paid when due will bear late payment interest at the rate of the lesser of 1.5% per month or the highest rate permitted by law from the due date until paid. Customer shall be liable

for all costs and expenses incurred by CyberSponse in collecting amounts that are past due, including reasonable attorneys' fees.

Customer shall be responsible for and shall pay, and shall reimburse CyberSponse on request, if CyberSponse is required to pay, any sales, use, value-added or other tax (excluding any tax that is based on CyberSponse's net income), assessment, duty, tariff, or other fee or charge of any kind or nature that is levied or imposed by any governmental authority on the SaaS.

Any Service Credit that we may owe Customer, such as a credit for failure to meet a Service Commitment as set forth in the Service Level Agreement, will be applied only as a credit to Fees due from Customer for future SaaS, and will not be paid to Customer as a refund.

Customer must notify CyberSponse in writing of any disputed Fees within fourteen (14) days of the invoice date for such Fees. If Customer do not notify CyberSponse within such period, Customer have waived any right to dispute such amounts, either directly or indirectly or as a set-off, or defense in any action or efforts to collect amounts due to CyberSponse.

6. Suspension of SaaS

Customer acknowledge and agree that CyberSponse may suspend providing the SaaS to Customer, in whole or in part, without liability if (i) Customer fails to pay the Fees due CyberSponse for a period of twenty-eight (28) days after the date of the invoice, (ii) Customer is in violation of the Acceptable Use Policy, (iii) Customer fails to reasonably cooperate with CyberSponse's investigation of any suspected breaches of this Agreement, (iv) CyberSponse reasonably believes that the servers hosting the SaaS have been accessed or manipulated by a third party without Customer or CyberSponse's consent, (v) CyberSponse reasonably believes that suspension of the SaaS is necessary to protect the CyberSponse environment generally, or (vi) CyberSponse is obligated to suspend SaaS via subpoena, court order or otherwise as required by law. CyberSponse may restrict access to Customer data stored on CyberSponse's servers during any suspension. In the event of any suspension of SaaS pursuant to

subsections (i), (ii) or (iii), Customer shall pay CyberSponse a reconnection fee of $150.00 as a condition of reactivation

of the SaaS, in addition to full payment of the balance due on the account, including late payment interest, if any.

IN THE EVENT CYBERSPONSE TAKES ANY ACTION PURSUANT TO THIS SECTION, IT SHALL HAVE NO LIABILITY

TO CUSTOMER OR ANYONE CLAIMING BY OR THROUGH CUSTOMER. Nothing herein shall preclude CyberSponse from pursuing other remedies available by statute or otherwise permitted by law.

7. Term

The term of this Agreement shall be for the mutually agreed upon length of SaaS dictated in the SaaS License provided to and agreed upon Customer. This Agreement will be in effect on the date that Customer agrees, signs or accesses or otherwise uses CyberSponse's Technology, whichever occurs first, and continue until the initial term has been exhausted as covered in the SaaS License. This Agreement will automatically renew for successive Renewal Terms at the end of the Initial Term or any Renewal Term; provided, however, either party may terminate this Agreement for convenience upon at least thirty (30) days' prior written notice to the other party.

8. Termination for Breach

Without limiting Customer right to early termination pursuant to Section 7, Customer may terminate this Agreement in the event of a material breach by CyberSponse upon no less than fifteen (15) days' prior written notice and opportunity to cure such material beach.

Without limiting CyberSponse's rights to suspend the SaaS pursuant to Section 6, CyberSponse may terminate this Agreement in the event of a

material breach by Customer upon no less than fifteen (15) days' prior written notice and opportunity to cure such material beach. Notwithstanding the foregoing, CyberSponse may terminate this Agreement immediately if Customer violates the Acceptable Use Policy, whether or not Customer subsequently cures such violation.

Expiration or termination of this Agreement shall not relieve Customer requirement to pay Fees for SaaS provided prior to the effective date of termination.

9.Maintenance

CyberSponse may from time to time conduct routine tests, maintenance, upgrade or repair on any part of the network, and CyberSponse shall use commercially reasonable efforts to give Customer prior notice thereof. Customer acknowledges that there may be instances where it is not practicable for CyberSponse to give advance notice of a disruption, for example, in the event of an emergency, and CyberSponse shall be entitled to disrupt the SaaS to conduct restoration and remedial works without prior notice.

10 . Confidential Information

Each party will safeguard and keep confidential all Confidential Information of the other and will return the other's Confidential Information upon request, except to the extent further retention of such Confidential Information is necessary for a party to perform any post-termination obligations or exercise any post-termination rights under this Agreement. Each party agrees to safeguard the other's Confidential Information using measures that are equal to the standard of performance used by the Non-Disclosing party to safeguard its own Confidential Information of comparable value, but in no event less than reasonable care. Neither party will use any Confidential Information of the other party for any purpose except to implement its rights and obligations under this Agreement and as otherwise expressly contemplated by this Agreement; provided, however, that if any party or its representatives is requested or required to disclose any Confidential Information by a subpoena or court order, that party will promptly notify the other party (unless prohibited by such subpoena or order) of such request or requirement so that the other party may seek

an appropriate protective order or other appropriate relief and/or waive compliance with provisions of this Agreement, and if, in the absence of such relief or waiver hereunder, any party or its representative are, in the opinion of its counsel, legally compelled to disclose Confidential Information, then that party may disclose so much of the Confidential Information to the person compelling disclosure as is, according to such opinion, required, without liability hereunder.

11.   Limited Warranty & No Legal Advice

CyberSponse represents that it shall provide the SaaS in compliance with its Service Level Agreement. EXCEPT FOR THIS WARRANTY, CYBERSPONSE AND ITS LICENSORS DISCLAIM ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE SAAS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CYBERSPONSE SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. FURTHER, CYBERSPONSE MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, AND SHALL HAVE NO LIABILITY WHATSOEVER, WITH RESPECT TO THE ACCURACY, DEPENDABILITY, PRIVACY, SECURITY, AUTHENTICITY OR COMPLETENESS OF DATA TRANSMITTED OVER THE INTERNET, OR ANY INTRUSION, VIRUS, DISRUPTION, LOSS OF COMMUNICATION, LOSS OR CORRUPTION OF DATA, OR OTHER ERROR OR EVENT CAUSED OR PERMITTED BY OR INTRODUCED THROUGH THE INTERNET OR THE SERVERS UPON WHICH THE SAAS ARE PROVIDED. CUSTOMERS ARE SOLELY RESPONSIBLE FOR IMPLEMENTING ADEQUATE FIREWALL, PASSWORD AND OTHER SECURITY MEASURES TO PROTECT CUSTOMER SYSTEMS, DATA AND APPLICATIONS FROM UNWANTED INTRUSION, WHETHER OVER THE INTERNET OR BY OTHER MEANS.

NOTHING CONTAINED WITHIN THE SAAS IS TO BE CONSTRUED AS LEGAL ADVICE. CUSTOMER EXPRESSLY AGREES TO CONSULT WITH ITS OWN INDEPENDENT COUNSEL AND TO NOT RELY ON ANYTHING CONTAINED WITHIN ANY OF CYBERSPONSE'S SYSTEMS, SOFTWARE, SERVICES, OR ANY OTHER COMMUNICATIONS FOR LEGAL MATTERS. ANY REFERENCE

WITHIN THE SERVICES OR SOFTWARE TO LAWS OR REGULATIONS ARE FOR GENERAL REFERENCE ONLY. CUSTOMER UNDERSTANDS THAT IT HAS THE OPPORTUNITY AT ANY TIME DURING THE USE OF THE SERVICES TO REVIEW ALL POTENTIAL COURSES OF ACTION WITH ITS OWN COUNSEL AND AGREES TO TAKE FULL RESPONSIBILITY FOR ITS OWN COMPLIANCE WITH ALL APPLICABLE LEGAL, REGULATORY, AND CONTRACTUAL REQUIREMENTS.

12.   Limitation of Liability

EXCEPT FOR CYBERSPONSE'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT, CYBERSPONSE'S AND ITS LICENSOR'S CUMULATIVE LIABILITY TO CUSTOMER AND ALL OTHER PARTIES FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE USE OF THE SAAS OR ANY FAILURE OR DELAY IN DELIVERING THE SAAS SHALL NOT EXCEED THE TOTAL FEES PAID BY CUSTOMER DURING THE PERIOD OF THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED OR THE PRO RATA EQUIVALENT IF THE RECURRENCE PERIOD IS ANNUAL. EXCEPT TO THE EXTENT SET FORTH IN THE SERVICE LEVEL AGREEMENT, CYBERSPONSE SHALL HAVE NO LIABILITY SHOULD THERE BE ANY DELAY IN THE PROVISION OF THE SERVICE.

CYBERSPONSE AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR OTHER INDIRECT DAMAGES, OR FOR LOST PROFITS OR LOST DATA ARISING OUT OF THE USE OR INABILITY TO USE THE SAAS OR ANY DATA SUPPLIED THEREWITH OR ANY FAILURE OR DELAY IN DELIVERING THE SAAS, EVEN IF CYBERSPONSE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGE AND AGREE THAT UNDER NO CIRCUMSTANCE SHALL CYBERSPONSE ASSUME ANY LIABILITY OR RESPONSIBILITY TO CUSTOMER FOR SUSPENSION OF SERVICE TO THE EXTENT PERMITTED BY THIS AGREEMENT.

13.   Indemnification

CyberSponse shall defend, indemnify and hold Customer, Customer affiliates or any of Customer or their respective employees, agents or suppliers, harmless from and against any and all costs, liabilities, judgments, actions, losses and expenses (including, but not limited to, reasonable attorneys' fees and fees of experts) (collectively, "Losses") arising out of any threatened or actual claim, suit, action, arbitration or proceeding (collectively, "Claims") by any third party arising out of or relating to (i) CyberSponse's gross negligence or willful misconduct or (ii) a claim that the SaaS as provided by CyberSponse under this Agreement infringes upon the United States patent or copyright of a third party; provided that (a) Customer gives CyberSponse prompt written notice of the claim, (b) Customer permits CyberSponse sole control over the defense and settlement of the claim, and (c) Customer reasonably cooperates with CyberSponse in the defense and/or settlement of the claim.

Customer shall defend, indemnify and hold CyberSponse, its affiliates or any of its respective employees, agents or suppliers, harmless from and against any and all Losses arising out of or relating to (i) Customer's gross negligence or willful misconduct or (ii) Customer's violation of the Acceptable Use Policy or the law; provided that (a) CyberSponse gives Customer prompt written notice of the claim, (b) CyberSponse permits Customer sole control over the defense and settlement of the claim, and (c) CyberSponse reasonably cooperates with Customer in the defense and/or settlement of the claim. Customer obligation under this Section 13 includes claims arising out of acts or omissions by Customer employees, Users and any other person who gains access to the SaaS as a result of Customer failure to use reasonable security measures.

14.   Ownership of Intellectual Property; Hardware

Both CyberSponse and Customer shall retain all right, title and interest in and to each party's respective intellectual property rights, including without limitation, all patents, inventions, trademarks, copyrights and trade secrets. Any intellectual property used, developed or otherwise reduced to practice in providing the SaaS to Customer shall be the

sole and exclusive property of CyberSponse and/or its licensors, unless specifically agreed to in writing otherwise.

Customer acknowledges and agrees that Customer does not acquire any ownership interest in any of the servers or other hardware used to provide the SaaS hereunder. Similarly, we do not acquire any ownership interest in the content or data that Customer store on the servers or transmit via the SaaS.

15. Beta SaaS

If Customer elects to participate in any evaluation or test of CyberSponse Beta SaaS, then Customer acknowledges that such Beta SaaS are provided "AS IS, AS AVAILABLE" with no warranty whatsoever. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CYBERSPONSE DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE BETA SAAS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

Customer acknowledge that the Beta SaaS are a pre-release, pre-production version and may not work properly, and that Customer use of the Beta SaaS may expose Customer to unusual risks of operational failures. Customer should not use Beta SaaS in a live production environment, and Customer must not use the Beta SaaS in any hazardous environments, life support, or weapons systems.

Customer agrees to provide prompt feedback regarding Customer experience with the Beta SaaS in a form reasonably requested by us, including information necessary to enable us to duplicate errors or problems Customer may experience. Customer agrees that all information regarding Customer beta test, including Customer experience with and opinions regarding the Beta SaaS, is "Confidential Information" of CyberSponse, as defined in these Terms of Service, and may not be disclosed to a third party or used for any purpose other than providing feedback to CyberSponse.

Customer agrees that we may use Customer feedback for any purpose whatsoever, including product development purposes. At our request Customer will provide us with comments that we may use publicly for press materials and marketing collateral. Any intellectual property

inherent in Customer feedback or arising from Customer testing of the Beta SaaS shall be owned exclusively by CyberSponse.

The commercially released version of the Beta SaaS may change substantially from the pre-release version, and programs that use or run with the pre-release version may not work with the commercial release or subsequent releases.

Customers are not entitled to any Service Credits under our Service Level Agreement for downtime or other problems that may result from Customer use of the Beta SaaS. Subject to the foregoing limitations, the maximum aggregate liability of CyberSponse and any of its employees, agents, affiliates, or suppliers, under any theory of law (including breach of contract, tort, strict liability, and infringement) for harm to Customer arising from Customer use of the Beta SaaS shall be a payment of money not to exceed One Hundred Dollars ($100.00).

CyberSponse may terminate the Beta SaaS at any time, in its sole discretion

16. Miscellaneous

Non-Solicitation. During the term of this Agreement and for a period of one (1) year thereafter, Customer shall not solicit or hire the Services of any employee or subcontractor of CyberSponse without the prior written consent of CyberSponse.

Force Majeure. CyberSponse shall not be deemed to be in breach of this Agreement and shall have no liability hereunder if its obligations are delayed or prevented by any reason of any act of God, war, terrorism, fire, natural disaster, accident, riots, acts of government, shortage of materials or supplies, failure of any transportation or communication system, non- performance of any of Customer agents or Customer third-party providers (including, without limitation, the failure or performance of common carriers, interchange carriers, local exchange carriers, internet service providers, suppliers, subcontractors) or any other cause beyond its reasonable control.

Notice of Claim and Filing of Suit. Customer must present any claim in writing to CyberSponse within a reasonable time, and in no event longer

than sixty (60) days after the event for which the claim is presented so as to permit the parties to attempt to resolve the claim. No action may be maintained against CyberSponse under this Agreement, unless timely written claim has been given as provided above.

Notices. Except to the extent that notices may be sent by electronic mail as specifically set forth in this Agreement, notices under this Agreement will be sufficient only if (i) mailed by certified or registered mail, return receipt requested, (ii) sent by internationally recognized overnight carrier or (iii) personally delivered. Notices shall be deemed delivered upon receipt by the other party. Notices to Customer shall be sent to the mailing address set forth on the account tab in Customer CyberSponse customer portal. Notices to CyberSponse shall be sent to CyberSponse, Inc., 4939 W Ray Road, Suite 4-151, Chandler, AZ 85226, Attn: Legal. Either party may change their notices address by written notice to the other party.

Survival. The provisions of Sections 1, 10, 11, 12, 13, 14 and 16 shall survive any termination or expiration of this Agreement.

Modification; Authority; Assignment. Without limiting CyberSponse's rights to modify the Acceptable Use Policy or Service Level Agreement as set forth therein, CyberSponse may modify any aspect of this Agreement upon thirty (30) days' prior notice. Should Customer wish to terminate this Agreement as a result of such modification, Customer may do so by sending a notice of termination via a Ticket in CyberSponse.com customer portal any time prior to the effective date of such modification and no Early Termination Fees will apply. Otherwise such modification will remain in effect for the remaining term of this Agreement.

Customer acknowledges that Customer has the authority to enter in to this Agreement on behalf of Customer's company and that Customer may authorize other individuals to purchase additional SaaS services. This Agreement binds any of Customer's authorized users, as well as Customer heirs, executors, successors, and assigns.
Customer may not assign this Agreement without the prior written consent of CyberSponse, which shall not be unreasonably withheld or delayed.

Governing Law; Jurisdiction. This Agreement is governed by the laws of the State of Arizona, excluding its conflicts of laws principles. Customer hereby submits to the exclusive jurisdiction of the federal and state courts of the State of Arizona located in Maricopa County; provided, however, that CyberSponse shall have the right to institute judicial proceedings against Customer or anyone acting by, through or under Customer, in other jurisdictions in order to enforce CyberSponse's rights hereunder through reformation of contract, specific performance, injunction or similar equitable relief.

General. This Agreement, together with the Service Level Agreement, Acceptable Use Policy, any other documents referenced herein and any amendments signed between the parties, constitute the entire understanding between CyberSponse and Customer with respect to subject matter hereof. Terms and conditions as set forth in any purchase order which differ from, conflict with, or are not included in this Agreement, shall not become part of this Agreement unless specifically accepted by CyberSponse in writing.