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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 <http://oblong.com/pages/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.

MASTER SOFTWARE, HARDWARE AND MAINTENANCE AGREEMENT

This **MASTER SOFTWARE, HARDWARE AND MAINTENANCE AGREEMENT** (“**Agreement**”) is entered into as of _____, 201__ (“**Effective Date**”), between Oblong Industries, Inc., a Delaware corporation having a place of business at 923 E. Third St., Unit 111, Los Angeles, CA 90013 (“**Oblong**”), and _____, a _____ corporation having a place of business at _____ (“**Customer**”).

1. INTRODUCTION

1.1 **Agreement.** This Agreement (including any Order Form, Statement of Work or Appendix attached hereto or entered into in connection with this Agreement) establishes the terms under which Customer may use the Software and Hardware, and under which Oblong will maintain the Software and Hardware and provide professional services if requested.

1.2 **Order Forms; Purchase Orders.** The Oblong software and hardware products and components which Customer is authorized to use, the license fees, maintenance fees, professional services fees, and any special terms of this Agreement will be specified in one or more Order Forms signed by both parties and any Statement of Work entered into in connection with this Agreement. If the parties have executed an Order Form, such Order Form represents a binding commitment to purchase the Software, Hardware and/or services described therein, and the issuance of a purchase order by Customer is not necessary for Oblong to bill and collect the fees owed by Customer. The terms of any such Order Form are incorporated herein by reference. If Oblong agrees to provide professional services to Customer, they will be provided pursuant to the terms of a Statement of Work executed by both parties, provided that a Statement of Work shall not be required for installation services. In no event shall any supplemental or inconsistent terms and conditions contained in any purchase order or similar document issued by Customer be binding upon Oblong. Oblong’s delivery of Software, Hardware or services pursuant to such a purchase order or similar document shall not constitute acceptance of, and Oblong hereby rejects, any such terms.

2. DEFINITIONS

2.1 **“Confidential Information”** means the business, technical and financial information belonging to the disclosing party and its licensors, including without limitation, all Software, source code, inventions, algorithms, know-how and ideas and the terms and conditions of this Agreement, that is designated in writing as confidential, or that is disclosed in a manner that a reasonable person would understand the confidentiality of the information disclosed. Confidential Information does not include information that (i) is previously rightfully known to the receiving party without restriction on disclosure, (ii) is or becomes known to the general public, through no act or omission on the part of the receiving party, (iii) is disclosed to the receiving party by a third party without breach of any separate nondisclosure obligation, or (iv) is independently developed by the receiving party.

2.2 **“Documentation”** means any administration guides, installation and user guides, and release notes that are normally provided by Oblong to end users of the Software.

2.3 **“Error”** means a failure of the unmodified Software to operate as described in the Documentation in all material respects, provided that such condition is reported by Customer to Oblong during an annual Maintenance Term and can be verified by both parties. The further definition and classification of Errors is set forth in the Maintenance Appendix.

2.4 **“Hardware”** means any and all hardware specified in an Order Form or purchase order, excluding any Software installed thereon.

2.5 **“Intellectual Property Rights”** means patents, design patents, copyrights, trademarks, Confidential Information, know-how, trade secrets, moral rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.

2.6 **“Maintenance”** means the technical support, Error correction, Hardware and Software maintenance services provided hereunder during any Maintenance Term, as described in the Maintenance Appendix.

2.7 **“Release”** means a major new version of the Software that, in the discretion of Oblong, is represented by a change to the left of the decimal point in the version number of the Software (e.g., x.0 to y.0). Oblong will maintain and support the current Release and one Release below the current release of the Software.

2.8 **“Services”** means installation, customization and other professional services to be performed by Oblong pursuant to an applicable Statement of Work executed by the parties, provided that a Statement of Work shall not be required for installation services.

2.9 **“Software”** means the Oblong products, components and modules identified in an Order Form or purchase order, excluding any Hardware. The term **“Software”** also includes any Error corrections, patches, workarounds, Updates, Upgrades and Releases provided by Oblong to Customer as part of Maintenance or as specified in an applicable Order Form. Error corrections, patches, workarounds, Updates, Upgrades and Releases will be provided on a when and if available basis.

2.10 **“Update”** means an update, enhancement, modification, bug-fix, patch or Error correction, that Oblong makes generally available to end users of the Software to whom Oblong owes a support obligation, but excludes hardware, software or services for which Oblong would generally charge an additional fee. Updates shall be deemed to be Software for purposes of the Agreement.

2.11 **“Upgrade”** means a revision of the Software to improve the existing functionality of the Software. **“Upgrade”** does not include (i) any separately priced product or module offered by Oblong that is not included in an Order Form under this Agreement (i.e., Oblong products that have not been purchased by Customer); (ii) any new, separately priced Oblong product or module released during the term of this Agreement; and (iii) any product or module that provides substantial new functionality not included in the Software previously licensed to Customer.

2.12 “Workaround” means a procedural change, modification or patch for a particular version of the Software, which may be of a temporary or interim nature, to help avoid an Error.

3. LICENSE GRANTS AND RESTRICTIONS

3.1 License. There are no implied licenses under this Agreement and Oblong and its licensors reserve all rights, title and interest in and to the Software not expressly granted to Customer under this Agreement. All Software licensed pursuant to this Agreement is unpublished copyrighted material, constitutes trade secrets and proprietary data of Oblong and is Confidential Information of Oblong. Subject to Customer’s compliance with the terms and conditions of this Agreement, Oblong grants to Customer a perpetual, worldwide, non-exclusive, non-sublicensable, non-transferable (except in connection with a permitted assignment of this Agreement under Section 14.13 of this Agreement) license as set forth herein.

3.2 License to Use Software.

3.2.1 Customer may use the Software only (i) in accordance with the Documentation, (ii) for Customer’s internal business purposes and (iii) on the Hardware purchased from Oblong pursuant to an applicable Order Form.

3.2.2 Customer has no right to receive, use or examine any source code or design documentation relating to the Software.

3.2.3 Customer may make a reasonable number of copies of the Documentation in support of Customer’s authorized use of the Software, provided that Customer does not remove any of Oblong’s proprietary notices from the Documentation.

3.3 Restrictions. Customer will not and will not allow a third party to: (i) decompile, reverse engineer, disassemble or otherwise attempt to derive, analyze or use any source code or underlying ideas or algorithms related to the Software by any means whatsoever (except to the extent that such restrictions are prohibited by applicable statutory law); (ii) remove or alter any product identification, copyright or other notices; (iii) use or allow the use of the Software by or for the benefit of third parties, including without limitation by renting, leasing, lending, timesharing, or using for service bureau purposes; (iv) except as specified in the Documentation provided by Oblong, incorporate into or with other software any part of the Software; (v) collect or disseminate benchmark performance information or analysis for purposes other than internal issue resolution or as requested by Oblong; (vi) reproduce the Software; (vii) sell, distribute, translate or market the Software; (viii) modify or create derivative works based on the Software (except for applications that were developed by Customer as set forth in the Documentation); (ix) install any other software on the Hardware, or modify or use the Hardware for any other purpose not expressly permitted in the Documentation, or install or use the Software installed on the Hardware on any hardware not provided or approved by Oblong; or (x) use the Software outside of any field of use specified in an Order Form. Customer agrees to ensure that there is no breach, compromise or violation, by Customer employees, consultants, or independent contractors, of such obligations and Oblong’s rights and title to the Software. Customer shall be responsible for any breach, compromise or violation of this Agreement by any employees, consultants or independent contractors of Customer.

4. HARDWARE

Oblong will provide to Customer the Hardware, as specified in one or more Order Forms signed by both parties. All shipments of Products purchased or licensed pursuant to this Agreement will be made, (a) for United States domestic addresses, F.O.B. Oblong’s designated facility, and (b) for deliveries to non-United States addresses, EXW Oblong’s designated facility (as defined in Incoterms 2010). Oblong shall prepay all shipping and insurance and will include the charges in Customer’s invoice. If Customer sells Hardware to a third party for any reason, Customer must delete all Software and any other products or software from the Hardware prior to sale to the third party.

5. INSTALLATION & SITE PREPARATION

Installation Services are not included in the purchase price unless otherwise indicated on the one or more Order Forms signed by both parties. Oblong will use commercially reasonable efforts to provide installation services if applicable. Customer shall have the responsibility (even if installation services are to be provided by Oblong) to prepare the site environmentally and provide the required services, power, Internet connectivity, HVAC, permits, licenses, equipment to move and unpack the Hardware and the like. Failure to provide such site preparation services will result in a service charge by Oblong at its standard hourly rates to cover lost time of its service personnel. Customer shall maintain its premises in a safe condition and comply with all applicable laws, statutes and regulations governing workplace health and safety. Oblong shall not indemnify or hold Customer harmless from any liability that Customer may incur as a result of Oblong’s installation services.

6. LIMITED WARRANTY & DISCLAIMER

6.1 Limited Warranty. Oblong warrants to Customer that: (i) the Software and Hardware will materially perform in accordance with the applicable Documentation for thirty (30) days after initial delivery to Customer; (ii) any Services performed by Oblong hereunder will be performed in a workman-like manner, in accordance with general industry standards; and (iii) the Software as delivered by Oblong does not contain any Trojan horses, worms, or undocumented disabling devices.

6.2 Exclusions. Oblong’s warranties in this Section 6 shall not extend to problems that result from: (i) Customer’s failure to implement all Updates issued by Oblong during the warranty period; (ii) any alterations or additions to the Software not performed by or at the direction of Oblong; (iii) the relocation, movement or modification of any fixed component of the Hardware by any party other than Oblong; (iv) failures in operation of the Software that are not reproducible by Oblong; (v) Software operated in violation of this Agreement or not in accordance with Documentation therefor or applicable Order Form; or (vi) failures which are caused by Customer’s software or other software, hardware or products not licensed or provided hereunder. Any work performed by Oblong as a result of these exclusions will be pursuant to a Statement of Work executed by both parties.

6.3 **Remedies.** For any Software or Services not in conformance with this Section 6, Oblong will, at its discretion and cost, either repair, replace or reperform the Software or Service, as applicable. This is Customer's exclusive remedy, and Oblong's sole liability arising in connection with the limited warranties herein.

6.4 **Disclaimer.** EXCEPT AS OTHERWISE STATED HEREIN, NEITHER OBLONG NOR ITS SUPPLIERS MAKE ANY OTHER WARRANTIES, AND HEREBY DISCLAIM ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, REGARDING THE USE AND RESULTS OF THE TECHNOLOGY, OR THAT USE WILL BE UNINTERRUPTED OR ERROR-FREE, AND ALL WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE.

7. OWNERSHIP

7.1 **Oblong Ownership of Software.** Oblong and its licensors retain all rights, title, and interest, and all Intellectual Property Rights, in the Software and Documentation, including any modifications, enhancements maintenance releases, Error corrections, patches, Releases, Workarounds, Updates and Upgrades thereto. Oblong will own all Intellectual Property Rights in any deliverables or work product prepared in connection with any professional services engagement, unless otherwise specified in an applicable Statement of Work (the "Deliverables"). Oblong agrees to grant to Customer a royalty-free, non-exclusive, worldwide, perpetual license, under any copyrights in the Deliverables, solely for Customer's internal use, or use by a third party on Customer's behalf solely in connection with the Software.

7.2 **Customer Ownership of Customer Materials.** Customer will retain ownership of all right, title and interest, and all Intellectual Property Rights, to any data, software, Confidential Information or other material created by or for Customer by a third party (other than Oblong or its contractors) prior to or apart from this Agreement (the "Customer Materials").

7.3 **Third Party Software.** Customer's license to third party software that is installed on, embedded within or used in connection with its Software or Hardware (operating systems and the like) will be governed exclusively by the terms of the separate software license agreements of the third party, and such licenses will be shipped with the Software or Hardware.

8. PAYMENT

8.1 **License and Maintenance Fees; Due Date.** License and Maintenance fees for Order Form(s) are invoiced on the shipping date. Annual Maintenance fees are due annually in advance no later than the renewal of the Maintenance Term as specified in Section 9.2 below.

8.2 **Services Fees.** The fees for the Services shall be set forth in the Order Form(s) or Statement(s) of Work, provided that a Statement of Work shall not be required for installation services. If the scope of Services changes from what is defined in an Order Form or Statement of Work, Customer will be billed on a time and materials basis at the then current Oblong daily rates. Unless otherwise provided in an Order Form or Statement of Work, Customer will reimburse Oblong for Travel Expenses and all direct and out-of-pocket expenses reasonably and actually incurred by Oblong in connection with the provision of the professional and education services. "Travel Expenses" include all out-of-pocket expenses reasonably and necessarily incurred by Oblong when providing Services to Customer. Oblong will comply with Customer's reasonable travel policy if it is made available to Oblong in writing prior to the Effective Date. For fixed-price charges (including for professional services, training and/or expense reimbursement charges), Oblong will invoice Customer 50% of the charge upon execution of the Order Form or Statement of Work and 50% upon completion of the Services, unless otherwise agreed therein. Services rendered on a time and materials basis will be invoiced monthly in arrears at the then current Oblong daily rates.

8.3 **Payment Terms and Interest.** All invoices are payable net thirty (30) days after the invoice date. Without limiting any other remedies, payments received later than thirty (30) days after the invoice date will accrue late charges at a rate of one and one-half percent (1.5%) per month, or the maximum rate allowed under law, whichever is lower, until the date paid.

8.4 **Taxes.** Fees are exclusive of all taxes, levies or duties, and Customer will be responsible for payment of such taxes, levies or duties, excluding only U.S. taxes based solely upon Oblong's income. If Oblong has the legal obligation to pay or collect taxes for which Customer is responsible pursuant to this Section 8.4, Oblong will invoice the amount of such taxes to Customer, and Customer agrees to pay such amount, unless Customer provides Oblong a valid tax exemption certificate authorized by the appropriate taxing authority.

8.5 **Currency.** Unless otherwise specified in an Order Form or purchase order, all fees are payable in U.S. Dollars.

9. TERM AND TERMINATION

9.1 **License Term.** Subject to Section 9.3, the term of all licenses granted hereunder will be perpetual.

9.2 **Maintenance Terms.** The "Maintenance Term" shall be one (1) year from the initial shipping date under the initial Order Form, unless a different period is specified on the initial Order Form. Thereafter, Maintenance services will automatically renew for successive periods of one (1) year, at Oblong's then-current fees, unless either party gives written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current Maintenance Term. If Customer purchases additional Software or Hardware from Oblong during the first six (6) months of a Maintenance Term, then Customer must purchase Maintenance associated with the additional products and the term and fees for such additional Maintenance will be prorated so that all annual Maintenance expires on the same date; if Customer purchases additional Software or Hardware from Oblong after the first six (6) months of a Maintenance Term, then Customer must purchase Maintenance associated with the additional products and the terms and fees for such additional Maintenance shall extend for the remainder of the then-current Maintenance Term, plus an additional twelve (12) months, so that the Maintenance Term for such products renews with the Maintenance Term for the original Hardware and Software. For example, if the original purchase was concluded on January 1, 2013 and a subsequent purchase on March 1, 2013, the initial Maintenance Term for the March 1, 2013 purchase would end on January 1, 2014. If additional Hardware and Software were purchased on July 1, 2013, then the initial Maintenance Term for such purchase shall begin on July 1, 2013 and end on January 1, 2015. The Maintenance Term is subject to any earlier termination under Section 9.3.

9.3 **Hardware Maintenance Term.** After three (3) years from the applicable initial shipping date pursuant to the first Order Form for the particular Hardware component ("**Hardware Maintenance Term**"), Customer must purchase replacement Hardware from Oblong in the event of a failure of such Hardware.

9.4 **Termination.** Either party may terminate this Agreement immediately on written notice and the licenses granted hereunder if the other party (i) becomes insolvent and becomes unwilling or unable to meet its obligations under this Agreement, (ii) files a petition in bankruptcy, (iii) is subject to the filing of an involuntary petition for bankruptcy which is not rescinded within a period of forty-five (45) days, (iv) fails to cure a material breach of any material term or condition of this Agreement within thirty (30) days of receipt of written notice specifying such breach, or (v) materially breaches its obligations of confidentiality hereunder.

9.5 **Effects of Termination.** Upon termination of this Agreement for any reason, any amounts owed to Oblong under this Agreement before such termination will be immediately due and payable. If the termination was made by Oblong based upon the provisions of Section 9.4, all licensed rights granted in this Agreement will immediately cease, and Customer will promptly discontinue all use of the Software and Documentation, erase all copies of the Software from the Hardware, and return to Oblong or destroy all copies of the Software, Documentation and any other Oblong Confidential Information on tangible media in Customer's possession or control and certify in writing to Oblong that it has fully complied with these requirements.

9.6 **Survival.** The following provisions of this Agreement will remain in effect following the expiration or termination of this Agreement for any reason: 6.4 (Disclaimer), 7 (Ownership), 8 (Payment), 9.5 (Effects of Termination), 9.6 (Survival), 10 (Limitations of Liability), 11 (Indemnification), 12 (Confidentiality) and 14 (General).

10. LIMITATIONS OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, OBLONG AND ITS SUPPLIERS WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY AMOUNTS IN EXCESS, IN THE AGGREGATE, OF THE FEES PAID BY CUSTOMER HEREUNDER; (II) ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, RELIANCE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS; (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES; (IV) LOSS, INACCURACY, OR CORRUPTION OF DATA OR INTERRUPTION OF USE; OR (V) ANY MATTER BEYOND ITS REASONABLE CONTROL. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11. INDEMNIFICATION

11.1 **Indemnity.** Oblong will defend, indemnify and hold Customer harmless against any third party claims, liabilities or expenses incurred (including reasonable attorneys' fees), as well as amounts finally awarded in a settlement or by a court arising from any claim or allegation by a third party that the Software infringes or misappropriates a valid United States patent, copyright or trade secret right of a third party; *provided* that Customer gives Oblong: (i) prompt written notice of any such claim or allegation; (ii) control of the defense and settlement thereof; and (iii) reasonable assistance in such defense or settlement. If any Software becomes or, in Oblong's opinion, is likely to become the subject of an injunction, Oblong may, at its option, (a) procure for Customer the right to continue using such Software, (b) replace or modify such Software so that it becomes non-infringing without substantially compromising its functionality, or, if (a) and (b) are not reasonably available to Oblong, then (c) terminate Customer's license to the allegedly infringing Software and refund to Customer the Customer Fees actually paid for such infringing Software, depreciated on a straight-line basis over three (3) years. The foregoing states the entire liability of Oblong with respect to infringement of patents, copyrights, trade secrets or other intellectual property rights.

11.2 **Exclusions.** The foregoing obligations shall not apply to: (i) Software modified by any party other than Oblong, if the alleged infringement relates to such modification, (ii) Software combined or bundled with any non-Oblong products, processes or materials where the alleged infringement relates to such combination, (iii) the use of a version of the Software other than the version that was current at the time of such use, as long as Oblong shall have provided Customer with such non-infringing version, (iv) Software created to the specifications of Customer; or (v) infringement or misappropriation of any proprietary right in which Customer has an interest. Customer will defend, indemnify and hold Oblong harmless against any costs, claims, damages or expenses incurred (including reasonable attorneys' fees), as well as amounts finally awarded in a settlement or by a court arising from any such claim or allegation, subject to conditions reciprocal to those in Section 11.1.

12. CONFIDENTIALITY

Except as expressly and unambiguously allowed herein, the receiving party will hold in confidence and not use or disclose any Confidential Information and shall similarly bind its employees, consultants, independent contractors and clients in writing. Upon the expiration or termination of this Agreement, all of the Confidential Information (including any copies) will be returned to the disclosing party, and receiving party will make no further use of such materials. If required by law, the receiving party may disclose Confidential Information of the disclosing party, but will give adequate prior notice of such disclosure to the disclosing party to permit the disclosing party to intervene and to request protective orders or other confidential treatment thereof.

13. EXPORT

The Software, Hardware and related technical data may be subject to U.S. export control laws, including without limitation the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer shall comply with all such regulations and agrees to obtain all necessary licenses to export, re-export, or import the Software and related technical data.

14. GENERAL

14.1 No Agency. Oblong and Customer each acknowledge and agree that the relationship established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to: (i) give either party the power to direct or control the day-to-day activities of the other; (ii) deem the parties to be acting as partners, joint venturers, co-owners or otherwise as participants in a joint undertaking; or (iii) permit either party or any of either party's officers, directors, employees, agents or representatives to create or assume any obligation on behalf of or for the account of the other party for any purpose whatsoever.

14.2 Compliance with Laws. Each party agrees to comply with all applicable laws, regulations, and ordinances relating to their performance hereunder. Without limiting the foregoing, Customer warrants and covenants that it will comply with all then current laws and regulations of the United States and other jurisdictions relating or applicable to Customer's use of the Software including, without limitation, those concerning Intellectual Property Rights, invasion of privacy, defamation, and the import and export of software.

14.3 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of such party.

14.4 Notices. Any notice required or permitted hereunder shall be in writing in English and shall be delivered as follows (with notice deemed given as indicated): (i) by personal delivery when delivered personally; (ii) by established overnight courier upon written verification of receipt; (iii) by facsimile transmission when receipt is confirmed orally; (iv) by certified or registered mail, return receipt requested, upon verification of receipt; or (v) via email with verified receipt. Either party may change its contact person for notices and/or address for notice by means of notice to the other party given in accordance with this Section. Notices shall be sent to the addresses set forth on the signature page hereto.

14.5 Confirmations. Upon request by Oblong, Customer agrees to reasonably cooperate with Oblong's auditors to confirm Customer's compliance with the terms and conditions of this Agreement and any associated Order Form(s) and Statement(s) of Work.

14.6 Marketing; Publicity. Customer agrees to allow Oblong to state that the Customer is a customer on its website and marketing materials. Oblong may issue press releases, white papers and case studies in text and video that references the Customer and its license of the Software, subject to the Customer's prior review and written approval.

14.7 Governing Law; Venue and Jurisdiction. This Agreement shall be interpreted according to the laws of California without regard to or application of choice-of-law rules or principles. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Los Angeles, CA and the parties hereby consent to the personal jurisdiction and venue therein.

14.8 Injunctive Relief. The parties agree that monetary damages would not be an adequate remedy for the breach of certain provisions of the Agreement, including, without limitation, all provisions concerning infringement, confidentiality and nondisclosure, or limitation on permitted use of the Software. The parties further agree that, in the event of such breach, injunctive relief would be necessary to prevent irreparable injury. Accordingly, either party shall have the right to seek injunctive relief or similar equitable remedies to enforce such party's rights under the pertinent provisions of the Agreement, without limiting its right to pursue any other legal remedies available to it.

14.9 Entire Agreement and Waiver. This Agreement and any schedules or appendices hereto, as well as all Order Forms and Statements of Work executed by both parties and referencing this Agreement, shall constitute the entire agreement and contains all terms and conditions between Oblong and Customer with respect to the subject matter hereof and all prior agreements, representations, and statement with respect to such subject matter are superseded hereby. The terms of this Agreement shall control in the event of any inconsistency with the terms of any Order Form, Statement of Work, schedule or appendix. This Agreement may be changed only by written agreement signed by authorized representatives of both Oblong and Customer. No failure of either party to exercise or enforce any of its rights under this Agreement shall act as a waiver of subsequent breaches; and the waiver of any breach shall not act as a waiver of subsequent breaches.

14.10 Severability. In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law, and the other provisions of this Agreement will remain in full force and effect. The parties further agree that in the event such provision is an essential part of this Agreement, they will begin negotiations for a suitable replacement provision.

14.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered (including by facsimile or electronic transmission), shall be deemed an original, and all of which shall constitute the same agreement.

14.12 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the respective parties hereto, their respective successors and permitted assigns.

14.13 Assignment. Neither party may, without the prior written consent of the other party (which shall not be unreasonably be withheld), assign this Agreement, in whole or in part, either voluntarily or by operation of law, and any attempt to do so shall be a material default of this Agreement and shall be void. Notwithstanding the foregoing, a party may assign its rights and benefits and delegate its duties and obligations under this Agreement without the consent of the other party (i) if necessary to satisfy the rules, regulations and/or orders of any federal, state or local governmental agency or body or (ii) in connection with a merger, reorganization or sale of all or substantially all relevant assets of the assigning party to which this Agreement relates; in each case provided that such successor assumes the assigning party's obligations under this Agreement.

14.14 United States Government Users. If a user or licensee of the Software is an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Software, or any related documentation of any kind, including technical data or manuals, is restricted in accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation 227.7202 for military agencies. The Software is commercial

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computer software and the related documentation is commercial computer software documentation. The use of the Software and related documentation is further restricted in accordance with the terms of this Agreement, and any modification hereto.

[SIGNATURE PAGE FOLLOWS]