Recommind, Inc.
650 California Street
San Francisco, CA 94108
www.recommind.com

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)(I)(B)), the Contracts Disputes Act of 1978 (41. U.S.C. § 601-613), the Prompt Payment Act, the Anti- Assignment statutes (3I 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-O 119Y, including, but not limited to the following:

1. **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.

2. **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 20I0) (AUG 1987). and 52.212 -4 (f) Excusable delays. (JUN 20I 0) regarding which the GSAR and the FAR provisions shall take precedence.

3. **Contract Formation.** Subject to FAR Sections 1.60I (a) and 43.I02, 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.

4. **Audit.** During the term of this s 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.

5. **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.

(ii) **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.

(iii) **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.

(iv) **Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.

(v) **Contractor Indemnities.** All Manufacturer EULA clauses that (I) 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.

e) Future Fees or Penalties. All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341,41 U.S.C. II), 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. 390I, 5 U.S.C. 504 are hereby deemed to be deleted.

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

g) 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.

h) 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.

i) 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.

j) 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.

k) 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.

l) 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.

m) 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.

END USER SOFTWARE LICENSE AND MAINTENANCE & SUPPORT SERVICES AGREEMENT

IMPORTANT — PLEASE READ CAREFULLY

TERMS AND CONDITIONS APPLICABLE TO RECOMMIND, INC.'S SOFTWARE PRODUCTS

This End User Software License and Maintenance & Support Services Agreement ("Agreement") is an agreement between you, an individual or an individual acting on behalf of your employer, a corporation, partnership, or other legal entity that will be using the Recommind's proprietary software ("End User"), Recommind, Inc., a Delaware corporation ("Recommind"), and the provider from whom you have requested the proprietary software ("Product"). By using the Product, End User hereby agrees to the terms of this Agreement. If End User does not agree to the terms of this Agreement, User should discontinue use of the Product and contact its Provider immediately.

TERMS AND CONDITIONS

End User hereby agrees that the following terms and conditions will apply to each Product license granted and to all Maintenance & Support Services provided under this Agreement.

6. DEFINITIONS

6.1 *"Documentation"* shall mean the user manuals, training manuals, consulting papers, operator instructions and other written material furnished by Recommind in conjunction with the Products.

6.2 *"Effective Date"* shall mean the date so specified on the signature page hereof.

6.3 *"Intellectual Property Rights"* means any and all rights, titles and interests, whether foreign or domestic, in and to any and all trade secrets, patents, copyrights, service marks, trademarks, know-how, or other intellectual property rights, as well as any and all moral rights, rights of privacy, publicity and similar rights of any type under the applicable laws or regulations of any governmental, regulatory, or judicial authority, foreign or domestic.

6.4 *"License Fee"* shall be the one-time fee payable for the license rights granted under this Agreement.

6.5 *"Maintenance & Support Services"* shall mean the technical support services specified in Section 3 of this Agreement.

6.6 *"Maintenance & Support Services Fees"* shall mean the fees payable annually for Maintenance & Support Services as set forth in Section 3 of this Agreement.

6.7 *"Product"* or *"Products"* shall mean the computer software program(s) owned or distributed by Recommind and subsequent Updates, fixes, patches or error corrections thereto, whether in printed or machine readable form.

6.8 *"Update"* shall mean a set of procedures or new program code that Recommind implements as part of Maintenance & Support Services to correct errors in the Product and which may include modifications to improve performance or a revised version or release of the Product which may incidentally improve its functionality, together with related Documentation.

6.9 *"User"* shall mean a specific individual authorized to use the Product.

7. LICENSE GRANT

7.1 License and Documentation Rights Granted

a) Subject to the payment of applicable license fees and compliance with the other provisions of this Agreement, Recommind hereby grants to End User a limited, non-exclusive, non-transferable, non-sublicensible and nonassignable license to use the Products and Documentation obtained pursuant to this Agreement solely for End User's own internal business purposes. In connection with such use, End User shall have the right to make one (1) copy of the Products for normal backup and archival purposes only provided that End User in making such backup copy reproduces all titles, trademark, copyright and restricted and proprietary rights notices contained on or in or embedded within the Products.

b) End User shall not, and will not, permit its employees, officers, directors or agents to:

(i)   Modify, alter or cause or permit the reverse engineering, disassembly, or decompilation, or otherwise attempt to discover, extract, and/or exploit the source code or any trade secrets of the Software or any portion thereof, without Recommind's express prior written consent, except to the extent clearly and expressly permitted by applicable law and then only after End User has notified Recommind in writing of its intention to exercise its rights under such law, including the scope of End User's intended activities;

(ii)   Use the Products to provide or allow any third party to provide data processing services, commercial timesharing, rental, or any similar sharing arrangement to others;

(vi)   Relicense, sublicense rent or lease the Software or the Documentation;

(vii)   Use the Software or the Documentation to provide facility management, third-party training, service bureau or similar services for the benefit of third parties (including, for the avoidance of doubt, serving as an application services provider or otherwise processing data or other requests of any third party); or

(viii)   Access or integrate with the Software (including in developing modules and interconnectors) or the Software database other than through the application programming interface for the Software publishing by Recommind's licensors.

c)   End User shall use the Documentation solely in support of End User's authorized use of the Products. Documentation may not be copied except for a reasonable number of copies as reasonably necessary for End User's internal business use of the Products as permitted hereunder**.**

d)   End User shall maintain adequate books and records concerning its use of the Product and compliance with the terms of this Agreement. During the terms of this Agreement and for two (2) years thereafter, at Recommind's expense, Recommind (or its appointed representative) may audit End User's compliance with this Agreement. Any such audit shall be conducted during normal business hours at End User's offices and shall not interfere unreasonably with End User's business activities.

e)   Each Party reserve all rights not expressly granted in this Agreement and disclaim all implied licenses, including implied licenses to trademarks, copyrights, trade secrets and patents.

8.   SERVICES

8.1   Maintenance & Support Services
If End User purchases Maintenance & Support Services, Recommind will provide Maintenance & Support Services in the form of error corrections detailed in Section 3.3 or Updates as detailed in Section 3.4. For Product which is supported, Maintenance & Support Services are provided only for (i) the current release of the Product, and (ii) the most recent previous major release (i.e. Version 3.0 to 4.0) of the Product for a period of six (6) months after the current release is first made available to End User; after which time Recommind shall have no obligation to support such release, unless otherwise agreed in a separate written agreement between the parties. The initial effective date for Maintenance & Support Services is the Effective Date of this Agreement.

8.2   Maintenance & Support Services Fee
The annual fee for Maintenance & Support Services for each copy of the Product used by End User shall be based on the then-current GSA list price for the Product. Such fee shall be due to Recommind annually, upon the
Effective Date and each anniversary thereof. The Maintenance & Support Services Fee will cover the first twelve (12) months following the Effective Date of the Agreement.

8.3   Error Corrections
Recommind shall exercise commercially reasonable efforts to correct any error reported by the End User in the unmodified Product in accordance with the priority level reasonably assigned to such error by Recommind. The End User acknowledges that all reported errors may not be corrected. Confidential Information may be disclosed to a subcontractor or Recommind Licensor that is assisting Recommind with a technical support issue, and End User consents to such disclosure. Recommind shall not be responsible for providing Maintenance & Support Services for any (i) customized modifications to the Product prepared by Recommind for the End User (which shall only be provided pursuant to a separate written agreement between the Parties); (ii) errors which are not generated by the Product as delivered by Recommind to End User; (iii) service which becomes necessary due to failure or incompatibility of computer hardware, equipment or software not supplied by Recommind; (iv) service which becomes necessary due to improper maintenance other than by Recommind; and (v) failure of electric power, storage or use in improper or adverse environmental conditions, misuse, negligence, catastrophe, operator error or causes other than customary use as permitted in the Agreement. At End

User's request, Recommind may provide services in response to the issues detailed in this Section 3.3(i) – (v) at Recommind's then-current time and materials rate for professional services.

8.4   Product Updates

Recommind shall provide End User with Updates and one (1) copy of the related Documentation provided End User is current on its payment of Maintenance & Support Services Fees. Recommind may, in its sole discretion, modify the Product and deliver Updates to End User which may add new and/or eliminate existing features, functions, operating environment and/or hardware platforms to the Product.

9.   OWNERSHIP AND NON-DISCLOSURE

9.1   Ownership

a)   End User acquires only the right to use the Products and Documentation for its internal business operations and does not acquire any rights of ownership. The Products may contain or express intellectual property or materials licensed by Recommind from third parties (the "Recommind Licensors"). Recommind and Recommind Licensors retain the Intellectual Property Rights in and to the Products not specifically granted to End User hereunder, and any use of these items beyond the scope permitted by this Agreement shall constitute a material breach of this Agreement. Recommind's Licensor are intended third-party beneficiaries of this Agreement. All right, title, and interest in and to the Products shall at all times remain with Recommind and Recommind Licensors. Recommind's Licensors are intended third party beneficiaries of the rights in this Agreement. End User is prohibited from removing or modifying any Recommind or Recommind Licensor program marking or any notice of ownership and proprietary rights.

b)   Third party technology may be appropriate or necessary for use with some Recommind Licensors' programs as specified in the application package documentation or as otherwise notified by Recommind. Such Recommind Licensors' technology is licensed to End User for use with the application package under the terms of the Recommind's Licensors' license agreement specified in the application package documentation or as otherwise notified by Recommind.

c)   Specific portions or files in the Product may incorporate free or open source software code (collectively "FOSS"). Recommind will obtain the appropriate licenses to permit End User to use the FOSS with the Product as identified in the Documentation.

n)   Any ideas, know-how, or techniques concerning the Products or their use which may be developed, conceived or reduced to practice by Recommind in the course of providing services under this Agreement, including without limitation enhancements or modifications made to the Products (collectively, "Developments"), shall be the exclusive property of Recommind. Recommind may in its sole discretion, develop, use, market, and license any Developments or any specifications, designs, software or data processing material that is similar or related to that which was developed by Recommind for End User. Recommind shall not be required to disclose information concerning any Developments which Recommind deems to be proprietary and confidential.

o)   Notwithstanding subsection (e) above, if consulting services rendered by Recommind will by mutual agreement include the design or development of applications, other software, documentation, or other intellectual property specific to End User's needs ("Custom Work Product"), then the parties must agree on a case by case basis on the ownership rights in or to such Custom Work Product prior to Recommind's commencement of such services. Such agreement on ownership rights must be stipulated in the applicable Order Form. Notwithstanding the parties' agreement that End User shall own any particular Custom Work Product, any Developments and any proprietary software or other items previously developed and/or owned by Recommind included in the Custom Work Product shall remain the exclusive property of Recommind. Recommind hereby grants to End User a worldwide, non-exclusive, perpetual, non-transferable, royalty-free license to copy and use solely for End User's internal purposes all Developments and other Recommind-owned items included in the Custom Work Product. All copies of any Custom Work Product which is wholly or partially owned by Recommind shall include Recommind's copyright notice and may not be provided to third parties without Recommind's prior written consent.

9.2   Non-Disclosure

a)   By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Confidential Information shall be limited to the Products, information related thereto and all information clearly marked as confidential.

b)   A party's Confidential Information shall not include information which (i) is or becomes a part of the public domain through no act or omission of the other party; or (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; or (iii) is lawfully disclosed to the other party by a

third party without restriction on disclosure, or (iv) is independently developed by the other party. Results of benchmark tests run by End User may not be disclosed unless Recommind consents to such disclosure in writing.

c) The parties agree, both during the term of this Agreement and after termination of this Agreement and of all licenses granted hereunder, to hold each other's Confidential Information in confidence. The parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than the implementation of this Agreement. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this Agreement.

10. TERM AND TERMINATION

10.1 Term
This Agreement and each license granted hereunder shall continue in perpetuity, unless terminated as provided in Paragraph 5.2 below or otherwise agreed by the Parties (the "Term").

10.2 Termination
End User may terminate this Agreement or any license at any time, without refund, and subject to payment of all fees incurred prior to termination. Recommind may terminate this Agreement or any license upon written notice if End User breaches this Agreement and fails to correct the breach within thirty (30) days following the date of Recommind's written notice specifying the breach.

10.3 Effect of Termination
Termination of this Agreement or any license granted hereunder shall not limit either Party from pursuing any other remedies available to it, including injunctive relief, nor shall such termination relieve End User's obligation to pay all fees that accrued prior to such termination.

10.4 Return of Products upon Termination
Upon termination of this Agreement, End User shall (i) cease using the applicable Products; and (ii) represent in writing to Recommind within thirty (30) days of the termination that End User has destroyed or has returned to Recommind the Products, Documentation and all copies. This requirement applies to copies and storage in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials.

11. INDEMNITY; WARRANTIES; AND LIMITATIONS

11.1 Indemnity
a) Recommind will defend and indemnify End User against all costs (including reasonable attorneys' fees and subject to provisions of Section 6.5) arising from a claim that Products furnished and used within the scope of this Agreement infringe a United States copyright or United States patent provided that (i) End User notifies Recommind in writing within thirty (30) days of the claim; (ii) Recommind has sole control of the defense and all related settlement negotiations; and (iii) End User provides Recommind with the assistance, information and authority necessary to perform the above; reasonable out-of-pocket expenses incurred by End User in providing such assistance will be reimbursed by Recommind.

b) Recommind shall have no liability for any claim of infringement based on (i) use of a superseded or altered release of Products if such infringement would have been avoided by the use of a current unaltered release of the Products that Recommind provides to End User; or (ii) the combination, operation, or use of any Products furnished under this Agreement with programs or data not furnished by Recommind if such infringement would have been avoided by the use of the Products without such programs or data; or (iii) any unauthorized use, reproduction, modification or distribution of the Products provided hereunder.

c) In the event the Products are held or are believed by Recommind to infringe, Recommind shall have the option, at its expense, to (i) modify the Products to be noninfringing; (ii) obtain for End User a license to continue using the Products; (iii) substitute the Products with other software reasonably suitable to End User; or (iv) terminate the license for the infringing Products and refund the license fees paid for those Products, prorated over a five-year term from the Effective Date of the applicable Order Form. This Section 7.1 states Recommind's entire liability for intellectual property infringement.

d) End User shall defend and indemnify Recommind against all arising from any third party claims of invasion of privacy, legal malpractice, unauthorized disclosure of personal or privileged information, or other content-related claims arising out of End User's use of the Products.

11.2 Product Warranty

Recommind warrants that each Product, unless modified by End User, will perform the functions described in the associated Documentation when operated on the specified platform for a period of thirty (30) days from the date of shipment of such Product to End User. Recommind does not warrant that each Product will meet End User's requirements, that the Products will operate in the combinations which End User may select for use, that the operation of each Product will be uninterrupted or error-free, or that all Product errors will be corrected. Recommind will undertake to correct any reported error condition in accordance with its Maintenance & Support Services policies. If Recommind is unable to make any Product operate as warranted, End User shall be entitled to recover the license fees paid to Recommind for such Product. Such recovery shall be End User's sole and exclusive remedy for such breach of Product warranty.

As an accommodation to End User, Recommind may supply End User with preproduction releases of Products, labeled "Alpha", "Beta" or otherwise to indicate their preproduction status. Preproduction releases are not suitable for production use. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, PREPRODUCTION RELEASES ARE PROVIDED TO END USER "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND NEITHER PARTY WILL BE RESPONSIBLE TO THE OTHER FOR ANY LOSSES, CLAIMS OR DAMAGES OF WHATEVER NATURE ARISING OUT OF A END USER'S USE OF A PREPRODUCTION RELEASE.** End User will promptly report any error condition discovered in a preproduction release, and provide Recommind with appropriate test data if necessary to resolve problems encountered by End User with a preproduction release.

11.3   Services Warranty
Recommind warrants that its consulting and professional services will be of a professional quality conforming to generally accepted industry standards and practices. This services warranty shall be valid for thirty (30) days from completion of service. For any breach of the above warranty, End User's exclusive remedy and Recommind's entire liability shall be (i) the reperformance of the services; or (ii) if Recommind is unable to perform the services as warranted, recovery of the fees paid to Recommind for such deficient services.

11.4   Limitations of Warranties
THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11.5   Limitation of Liability
IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOSS OF PROFITS OR REVENUE, OR LOSS OF DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT WITH RESPECT TO SECTION 6.1, RECOMMIND'S LIABILITY FOR DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY END USER UNDER THIS AGREEMENT FOR THE RELEVANT LICENSE OR SERVICE. IF SUCH DAMAGES RESULT FROM END USER'S USE OF THE PRODUCT, SUCH LIABILITY SHALL BE LIMITED TO LICENSE FEES PAID BY END USER FOR THE RELEVANT PRODUCT, PRORATED OVER A FIVE-YEAR TERM FROM THE EFFECTIVE DATE OF THE LICENSE OF THAT PRODUCT.

The provisions of this Section 6 allocate the risks under this Agreement between Recommind and End User. Recommind's pricing reflects this allocation of risk and the limitation of liability specified herein.

12.   MISCELLANEOUS

12.1   Governing Law and Jurisdiction
This Agreement shall be governed and construed under the laws of the State of California. The United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act shall have any application whatsoever to this Agreement. In any legal action relating to this Agreement End User agrees (i) to the exercise of jurisdiction over it by a state of federal court in San Francisco County, California; and (ii) that if End User brings the action, it shall be instituted in one of the courts specified in clause (i) above.

12.2   Notice
All notices, including notices of address change, required to be sent hereunder shall be in English and in writing and shall be deemed to have been received ten (10) days after have been properly mailed, postage prepaid, to the first address listed in the relevant Order Form (if End User) or to the Recommind address on the Order Form (if to Recommind).

12.3   Severability

In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

12.4   Export. End User agrees that it will not export or reexport the Products or Documentation without the appropriate United States Government or any other government licenses. End User shall comply with such laws and agrees not to knowingly export, re-export or transfer data or other information without first obtaining all required United States authorizations or licenses.

12.5   Government Rights

Recommind Products, including Documentation, delivered to U.S. Government end users are "commercial computer software" programs pursuant to the applicable Federal Acquisition Regulation ("FAR") and agency-specific supplemental regulations. As such, use, duplication, disclosure, modification and adaption of the Products, including Documentation, shall be subject to the license and license restrictions set forth in this Agreement, and, to the extent applicable, the additional rights set forth in FAR 52.227-19, Commercial Computer Software - Restricted Rights (June 1967).

12.6   Entire Agreement

This Agreement constitutes the complete agreement between the parties and supersedes all previous agreements or representations, written or oral, with respect to the Products and services specified herein. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party. It is expressly agreed that any term and conditions of End User's purchase order shall be superseded by the terms and conditions of this Agreement. This Agreement shall also supersede the terms of any unsigned license agreement included with any Product or on any Product packaging.

12.7   Nonassignability and Binding Effect

The rights granted herein are restricted for use solely by End User and may not be assigned or transferred to a third party without the prior written permission of Recommind. Notwithstanding the foregoing, upon written notice to the other party, a party hereunder may assign or otherwise transfer this Agreement to the surviving entity as a result of a merger, acquisition or reorganization of such party or a sale of substantially all of such party's assets or stock, provided that such surviving entity is not reasonably deemed by the other party to be its direct competitor. In the case of any permitted assignment or transfer of or under this Agreement, this Agreement or the relevant provisions shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of the parties hereto.

12.8   Force Majeure

Neither party shall be liable to the other for its failure to perform any of its obligations under this Agreement or any Exhibit, except for payment obligations, during any period in which such performance is delayed because rendered impracticable or impossible due to circumstances beyond its reasonable control, provided that the party experiencing the delay promptly notifies the other of the delay.

12.9   Remedies

The parties stipulate that the legal remedies of Recommind in the event of any default or threatened default by End User in the performance of or compliance with any of the terms of this Agreement are not and shall not be adequate, and that such terms may be specifically enforced by a decree for specific performance of any agreement contained herein or by an injunction against a violation of any of the terms of this Agreement or otherwise. No remedies in this Agreement are exclusive of any other remedies but shall be cumulative and shall include all remedies available hereunder or under any other written agreement or in law or equity, including rights of offset.

12.10   Survival

Sections 2, 4.1, 4.2, 5.4, 6.4, 6.5 and 7 herein shall survive termination or expiration of this Agreement.