

**Carahsoft Rider to Manufacturer Commercial Supplier Agreements**  
**(for U.S. Government End Users)**  
**Revised 20160504**

- 1. Scope.** This Carahsoft Rider and the Manufacturer’s Commercial Supplier Agreement (CSA) 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’s CSA 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 CSA is inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft’s Multiple Award Schedule 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 Government contracts as set forth in Government Order 4800.2H 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 General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of 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 CSA: (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 CSA. 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 CSA.
- (e) Termination.** Clauses in the Manufacturer's CSA referencing termination or cancellation of the Manufacturer's CSA are hereby deemed to be deleted. Termination shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:
- Carahsoft may request cancellation or termination of the CSA 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 and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) Force Majeure.** Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.
- (h) Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA 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 (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All of the Manufacturer's CSA 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 of the Manufacturer's CSA 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 of the Manufacturer's CSA 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 GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w)(1)(x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).
- (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's CSA, 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's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w)(1)(iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.

**(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 CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA 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. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).

## **ENTERPRISE eKNOWLEDGE PRODUCT LICENSE AGREEMENT**

This Agreement is by and between SECURITY INNOVATION, INC., a Delaware corporation having its principal place of business at 187 Ballardvale St, Suite A202, Wilmington, MA 01887 (“Security Innovation”) and the Government Customer (“Licensee”).

WHEREAS, Security Innovation is engaged in the design and development of multimedia training and reference content systems, and software for secure software development and other training; and

WHEREAS, Licensee desires to consume the Security Innovation secure software development multimedia training and reference content, and/or other training detailed and described in the Purchase Order; and

WHEREAS, Security Innovation is willing to grant Licensee a Subscription and/or On-Site license enabling the Licensee to use Security Innovation’s training and reference solutions on the terms and conditions set forth in this Agreement:

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **ARTICLE I - DEFINITIONS**

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

1.1 “Affiliate” means any corporation, company, partnership, joint venture, firm and/or entity which controls, is controlled by or is under common control with Licensee.

1.2 “Confidential Information” means all materials, trade secrets, or other information regarding a party’s technology, products, business information, or objectives which is designated as confidential in writing by the disclosing party, whether by letter or by the use of an appropriate stamp or legend, prior to or at the time any such material, trade secret, or other information is disclosed by the disclosing party to the other party. Notwithstanding the foregoing to the contrary: (a) materials, trade secrets, or other information which is orally, electronically or visually disclosed by a party, or is disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information if the disclosing party, within thirty (30) days after such disclosure, delivers to the other party a written document or document describing the materials, trade secrets, or other information and referencing the place and date of such oral, electronic, visual or written disclosure and the names of the person or persons to whom such disclosure was made; and (b) information obtained by either party while visiting the other party’s facility, however obtained, shall constitute Confidential Information of the other Party.

1.3 “Deliverables” means the items listed in the purchase order to be delivered by Security Innovation to Licensee pursuant to Article II of this Agreement.

1.4 “End-User” means an employee or affiliate of Licensee who consumes paid for Licensed Products, for use within the bounds of the Permitted Use.

1.5 “Licensee” means the organization subscribing to or otherwise licensing the Security Innovation Product as well as its respective employees, affiliates and subcontractors.

1.6 "Security Innovation Product" means Security Innovation's proprietary multimedia training and reference systems and includes Security Innovation proprietary content and the software delivery system including, but not limited to: Safelight, PCI Essentials, TEAM Processor, TEAM Mentor and TEAM Academy

1.7 "Permitted use" means the following application areas:

- (a) Internal training of Licensee employees
- (b) Internal training of Licensee affiliates

1.8 "Internal" means within the Licensee organization and not part of a public or external event where the Security Innovation Product is used to train individuals who are not End-Users.

1.9 "Subscription" means an annually renewable or fixed term license for a specific number of End-Users and Content for a fixed fee. A subscription includes maintenance and support, but not including installation or customization costs, as part of the annual fixed fee and is hosted by Security Innovation or installed on the Licensee's Learning Management System (LMS).

1.10 "On-Site" means an annually renewable or fixed term license for a specific number of End-Users and Content for a fixed fee, not including installation or customization costs, exclusively for use in the Licensee's Learning Management System (LMS). An on-site license does not include maintenance or support after the first year and must be purchased annually on the anniversary of the Effective Date by Licensee.

## **ARTICLE II -- DELIVERABLES**

2.1 Delivery. Within 30 days following receipt of the Order, Security Innovation shall deliver the Deliverables to Licensee.

## **ARTICLE III – LICENSE GRANT**

3.1 Licenses. Subject to the terms and conditions of this Agreement and in the purchase order— User Counts, Subscriptions, Installation Type (Hosted or Licensee LMS) and Locations, Security Innovation hereby grants to the Licensee a worldwide, nonexclusive, non-transferable, license:

(a) to use the Security Innovation Product internally on Licensee's Learning management system (LMS) to train End Users or;

(b) to use the software internally via Security Innovation's secure online LMS to train End Users

3.2 No Other Rights. Licensee hereby acknowledges that it shall have no right to sell, convey, transfer, license, sublicense, modify, or otherwise dispose of Security Innovation Product, except as provided herein. Licensee further acknowledges that its rights are limited to those of a licensee only, and that: (i) Security Innovation retains all title to and intellectual property rights in the Security Innovation Product; (ii) nothing herein shall be construed as

granting Licensee any right, title and interest other than as specifically set forth herein; and (iii) nothing herein shall be construed as granting any group, division or Affiliate of Licensee any right, title and interest or license to use Security Innovation Product.

3.3 License Limitations. The licenses granted in Section 3.1 are subject to the following additional limitations:

- (a) Licensee may not in any way sell, lease, rent, license, sublicense or otherwise distribute the Security Innovation Product or any part thereof or the right to use any part of the Security Innovation Product to any person or entity
- (b) Without Security Innovation's prior written consent, Licensee shall not modify, translate, reverse engineer, decompile, disassemble or recreate the Security Innovation Product or any part thereof, and shall prohibit End Users from doing the same.
- (c) The licenses granted herein do not permit Licensee to provide services to third parties utilizing Licensee Products or the Security Innovation Product.

3.5 Contractors. Licensee may grant internal access and use of Security Innovation Product to Licensee's contractors performing services or work related to Licensee's business.

3.6 Affiliates. If Licensee wishes to extend this Agreement to an Affiliate of Licensee, Licensee shall give Security Innovation written notice of any such arrangement and provide to Security Innovation such information as Security Innovation may reasonably request in order for Security Innovation to review details of the proposed Affiliate. Security Innovation shall notify Licensee of its decision within 30 days of receipt of the information from Licensee. Security Innovation shall not withhold its consent unreasonably as long as compensation for additional users is forthcoming as part of the request.

#### **ARTICLE IV – OWNERSHIP OF INTELLECTUAL PROPERTY**

4.1 Ownership. With respect to the intellectual property of Security Innovation and Licensee relating to this Agreement:

- (a) any intellectual property developed by Security Innovation or Licensee prior to the Effective Date shall remain the intellectual property of that party.
- (b) any intellectual property that is developed solely by Security Innovation, and relevant to the scope of this Agreement (including, without limitation, the Security Innovation Product) shall remain the intellectual property of Security Innovation.
- (c) any intellectual property that is developed solely by Licensee, and relevant to the scope of this Agreement shall be owned by Licensee.

#### **ARTICLE V – MARKETING REQUIREMENTS**

Reserved

## **ARTICLE VI – TRADEMARKS**

6.1 Use of Security Innovation Trademarks. Security Innovation hereby grants to Licensee a non-exclusive, limited license to use the applicable Security Innovation trademarks and logos listed on APPENDIX A (“Trademarks”) solely as permitted in this Agreement. Licensee understands and agrees that the use of any Trademark in connection with this Agreement shall not create any right, title or interest, in or to the use of the Trademark and that all such use and goodwill associated with the Trademark will inure to the benefit of Security Innovation. Licensee agrees not to register or attempt to register any Security Innovation Trademarks. All trademarks, service marks, trade names, logos, or other words or symbols identifying or associated with the Software or the business of Security Innovation (“Marks”) remain the exclusive property of Security Innovation and its Licensors. Licensee will not do anything to impair those proprietary rights or seek to acquire or register any rights in the Marks or use any trademarks, service marks, trade names, logos or other words or symbols that are confusingly similar to the Marks in any language.

6.2 Use of Licensee Trademarks. Licensee agrees to use Security Innovation’s name, web address and logo in a manner consistent with Licensee’s partner programs or as may otherwise be agreed between the parties. Security Innovation understands and agrees that the use of any Trademark in connection with this Agreement shall not create any right, title or interest, in or to the use of the Trademark and that all such use and goodwill associated with the Trademark will inure to the benefit of Licensee. Security Innovation agrees not to register or attempt to register any Licensee Trademarks. All trademarks, service marks, trade names, logos, or other words or symbols identifying or associated with the Licensee Products or the business of Licensee (“Marks”) remain the exclusive property of Licensees and its Licensors. Security Innovation will not do anything to impair those proprietary rights or seek to acquire or register any rights in the Marks or use any trademarks, service marks, trade names, logos or other words or symbols that are confusingly similar to the Marks in any language.

## **ARTICLE VII – SUPPORT**

7.1 Internal Technology Support. After the first year of this Agreement, Licensee shall obtain support for the On-Site license of Security Innovation Product, as further described on APPENDIX B, from Security Innovation for the purpose of Licensee’s provision of support to its End User and Resellers. For any subsequent years, Licensee may, but shall not be required to, obtain Support Services, provided the Security Innovation still provides such Support Services.

## **ARTICLE VIII – FEES, ROYALTIES AND PAYMENTS**

In consideration of the licenses granted by Security Innovation and the Support Services provided by Security Innovation to Licensee in this Agreement, Licensee agrees to pay to Security Innovation a license fee as follows:

8.1 License Fee. In consideration of Security Innovation’s delivery of the Deliverables, Licensee agrees to pay to Security Innovation a license fee as defined in the purchase order.



8.2 Taxes. Licensee will pay all government taxes, duties and tariffs not based on either Security Innovation's net income from all sources or Security Innovation's aggregate net worth, including, but not limited to, sales, use, transfer, value-added, privilege, property taxes, import and export duties or tariffs, or amounts levied in lieu thereof, based on charges payable under this Agreement whether such taxes and duties are now or hereafter imposed under the authority of any federal, state, local or other taxing jurisdiction. Customer will comply with all requirements of the laws imposing such taxes and duties, including, without limitation, paying any interest or penalties relating to such taxes and duties. If applicable, Customer will provide Security Innovation with a Certificate of Exemption issued pursuant to such laws.

8.3 Interest on Overdue Payments. Licensee shall pay interest on all amounts that are not paid to Security Innovation pursuant to this Agreement on the date due, at an annual rate equal to the lesser of: (a) twelve percent (12%), and (b) the maximum interest rate permitted under applicable law, calculated daily from the due date until the date payment is received by Security Innovation.

### **ARTICLE IX – PAYMENT INSTRUCTIONS**

9.1 Payment Instructions. All payments by Licensee under this Agreement shall be made in accordance with the terms and conditions of GSA Multiple Award Schedule Contract GS-35F-0119Y to Carahsoft Technology Corporation.

### **ARTICLE X– RECORDS, REPORTS AND AUDIT RIGHTS**

10.1 Records. Licensee shall keep all records of account as are necessary to demonstrate compliance with its obligations under Article VIII for a period of three years from the due date for the payment of such sums as are payable in accordance with Article VIII (the “Audit period.”).

10.2 Reports. Within thirty (30) days after the last business day of each calendar quarter, Licensee shall provide Security Innovation with a written user count report should the user count exceed the count agreed to. Such report, at a minimum, shall contain information detailing the number of users and the number of courses consumed.

10.3 Audit Rights. To assure compliance with the payment and reporting requirements of this Agreement, Security Innovation or an independent auditor of its choosing may examine, inspect and audit the applicable records of Licensee and its Affiliates from time to time, but no more frequently than twice per year. In the event any such audit of Licensee’s records indicates an underpayment of an amount equal to or greater than five percent (5%) of any amounts due hereunder, Carahsoft Technology Corporation may invoice Licensee for the costs of such audit and any underpayment in the amounts ascertained from such audit. The provisions of this Section shall survive expiration or termination of this Agreement.

**ARTICLE XI – CONTRACT ADMINISTRATIVE CONTACTS**

11.1 Notices. Any notice or other communication pursuant to this Agreement shall be sent to the address for Carahsoft Technology Corporation or the Government Customer identified in the Purchase Order by overnight courier, or regular mail. Any such communication shall be effective upon receipt by the party to whom it is addressed.

**ARTICLE XII – ASSIGNMENT**

12.1 Assignment. This Agreement and the license contained herein are personal to Licensee and may not be assigned or transferred by Licensee, without the prior written consent of Security Innovation. For purposes hereof, an “assignment” shall include any change in control of Licensee whereby another person or entity acquires 50% or greater ownership of Licensee.

**ARTICLE XIII – CONFIDENTIALITY**

13.1 Treatment of Confidential Information. Each party hereto shall maintain the Confidential Information of the other party in confidence, and shall not disclose, divulge, or otherwise communicate such Confidential Information, including but not limited to the terms of this Agreement, to others, or use it for any purpose, except pursuant to, and in order to carry out, the terms and objectives of this Agreement or the written consent of the other party. Each party hereby agrees to exercise every reasonable precaution to prevent and restrain the unauthorized disclosure of such Confidential Information by any of its directors, officers, employees, consultants, subcontractors, licensees, or agents.

13.2 Release from Restrictions. The provisions of Section 13.1 shall not apply to Confidential Information disclosed hereunder which;

- (a) was known or used by the receiving party prior to its date of disclosure to the receiving party; or
- (b) either before or after the date of disclosure to the receiving party is lawfully disclosed to the receiving party by sources rightfully in possession of such Confidential Information other than the disclosing party; or
- (c) either before or after the date of disclosure to the receiving party, becomes published or generally known to the public, through no fault of the receiving party, its Affiliates or sub-licensees; or
- (d) is required to be disclosed by the receiving party to comply with applicable laws or applicable rules of any securities exchange on which the receiving party’s securities are traded, to defend or prosecute litigation, or to comply with governmental regulations, provided however that the receiving party provides prior written notice of such disclosure to the other party and takes reasonable and lawful actions to avoid and/or minimize the degree of such disclosure.

#### **ARTICLE XIV – WARRANTIES**

##### **14.1 Representations and Warranties of Security Innovation.**

(a) Security Innovation represents and warrants to Licensee that all corporate action on the part of Security Innovation, its officers, directors and stockholders necessary for: (i) the authorization, execution and delivery of this Agreement and (ii) the performance of all obligations of Security Innovation hereunder has been taken and this Agreement constitutes the legal and binding obligation of Security Innovation, enforceable against Security Innovation in accordance with its terms.

(b) Security Innovation further represents and warrants to Licensee that: (i) it has sufficient right, title and interest in the Security Innovation Product to enter into this Agreement; and (ii) the Security Innovation Product is the original work of Security Innovation and its licensors and was developed without unauthorized access to or knowledge of any third party confidential materials.

(c) THE SECURITY INNOVATION PRODUCT AND THE DELIVERABLES ARE PROVIDED AS IS. SECURITY INNOVATION DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED WITH RESPECT TO THE SECURITY INNOVATION PRODUCT OR THE DELIVERABLES.

Security Innovation warrants that Software will substantially conform to the applicable Documentation for such Software and that any media will be free from manufacturing defects in materials and workmanship until the expiration of the warranty period. Security Innovation does not warrant that the operation of Software shall be uninterrupted or error free, that all defects can be corrected, or that Software meets Customer's requirements, except if expressly warranted by Security Innovation in its quote. Support Services for Software are available for separate purchase and the Support Options are identified at the Product Notice

**14.2 Representations and Warranties of Licensee.** Licensee represents and warrants to Security Innovation that all corporate action on the part of Licensee, its officers, directors and stockholders necessary for: (i) the authorization, execution and delivery of this Agreement and (ii) the performance of all obligations of Licensee hereunder has been taken and this Agreement constitutes the legal and binding obligation of Licensee, enforceable against Licensee in accordance with its terms. The execution of this Agreement and the performance of the transactions contemplated by this Agreement by Licensee will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or require a consent under its Certificate of Incorporation or Bylaws (as amended or restated to date) or any agreement or other instrument to which Licensee is a party or by which it or any of its property is bound.

#### **ARTICLE XV – INDEMNITIES**

**15.1 Infringement Indemnification by Security Innovation.** Security Innovation agrees that it shall, at its own expense, defend, or at its option settle, any action or claim instituted against Licensee, and pay any award or damages assessed or settled upon against Licensee resulting from such action or claim, insofar as the same is based upon a claim that the Security Innovation Product as delivered to Licensee infringes any United States patent, trademark,

copyright or trade secret of a third party or a claim that Security Innovation has no right to license the Security Innovation Product to Licensee hereunder. Such obligation is subject to the following conditions: (i) Licensee shall notify Security Innovation in writing immediately after Licensee first becomes aware of a claim; (ii) Security Innovation shall have the right to control and direct the investigation, preparation, defense and settlement of the action; and (iii) Licensee shall give Security Innovation all reasonably available information, assistance and authority. The foregoing indemnity shall not apply if the alleged infringement claim arises from use of other than the current unaltered release of the Security Innovation Product, or combination of the Security Innovation Product with other software or hardware not provided by Security Innovation, if such action would have been avoided but for such use or combination.

15.2 Infringement Indemnification by Licensee. Licensee agrees to indemnify and hold Security Innovation harmless from and against all damages, costs and expenses (including legal fees) incurred by Security Innovation to the extent they arise out of a claim that any Licensee ordered customized/branded Security Innovation Product infringes a patent, copyright, trademark or trade secret or other intellectual property right of a third party. Such obligation is subject to the following conditions: (i) Security Innovation shall notify Licensee in writing immediately after the date Security Innovation first becomes aware of a claim; (ii) Licensee has sole control of the settlement, compromise, negotiation and defense of any such action; and (iii) Security Innovation gives Licensee all reasonably available information, assistance and authority, at Licensee's expense, to enable Licensee to do so. **THE FOREGOING STATES THE ENTIRE AND EXCLUSIVE OBLIGATION OF LICENSEE TO SECURITY INNOVATION RELATING TO ANY ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

15.3. Exclusive Sole Remedy. If as a result of any binding settlement among the parties or a final determination by a court of competent jurisdiction, the Security Innovation Product is held to infringe a third party's United States patent, trademark, copyright or trade secret and its use is enjoined, or if Security Innovation reasonably determines in its sole discretion that the Software may become subject to an injunction, Security Innovation shall have the option to: (a) obtain for Licensee the right to continued use of the Security Innovation Product; (b) replace or modify the Security Innovation Product so it is no longer infringing and is substantially similar in functionality to the enjoined Security Innovation Product; or (c) refund the license fees paid by Licensee hereunder less depreciation for use assuming straight line depreciation over a five year useful life and terminate this Agreement. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE FOREGOING STATES SECURITY INNOVATION'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO CLAIMS OF INFRINGEMENT OF THIRD PARTY PROPRIETARY OR INTELLECTUAL PROPERTY RIGHTS OF ANY KIND, AND Security Innovation EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF NON-INFRINGEMENT.**

## **ARTICLE XVI – LIMITATIONS**

### 16.1. Limitation of Liability.

(a) Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the failure of a party to exercise reasonable care in the performance of its obligations under this Agreement.

(b) THE AGGREGATE LIABILITY OF EITHER SECURITY INNOVATION UNDER ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF THEIR OBLIGATIONS UNDER THIS AGREEMENT (WHETHER IN CONTRACT, TORT, NEGLIGENCE, WARRANTY OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT THEN PAYABLE TO SECURITY INNOVATION BY LICENSEE UNDER THIS AGREEMENT.

16.2 Limitation of Damages. IN ANY EVENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOST PROFITS OR LOSS OF BUSINESS OR FOR ANY ECONOMIC LOSS OR FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **ARTICLE XVII – TERM OF AGREEMENT**

17.1 Term. This Agreement shall be effective as of the Effective Date and effective term as identified in the Purchase Order unless terminated upon the mutual agreement of the Parties or in accordance with the provisions of Article XVIII.

## **ARTICLE XVIII– TERMINATION**

18.1 Termination for Insolvency. If Licensee shall cease to carry on its business for any reason, be liquidated or dissolved, become insolvent, enter into an agreement for the benefit of its creditors, or file any petition or case under any bankruptcy law or if any such petition or case is filed against it which remains undismissed after sixty (60) days, then this Agreement and all rights, privileges and license granted hereunder shall terminate upon written notice by Security Innovation.

18.2 Termination for Breach. Upon any material breach or default of this Agreement by either party, the non-breaching party shall have the right to terminate this Agreement upon forty-five (45) days' written notice to the breaching party, unless the breaching party shall have cured any such breach or default prior to the expiration of such sixty (60) day period.

## **ARTICLE XIX– EFFECT OF TERMINATION**

19.1 Consequences of Termination. Upon termination of this Agreement for any reason, all rights, privileges and licenses granted hereunder shall immediately cease, provided, however, that nothing herein shall be construed to release either party from any obligation that accrued or matured prior to the effective date of such termination. Upon termination of this Agreement for any reason, Licensee agrees to immediately cease use of all Security Innovation Product and to

cease use of all Confidential Information of Security Innovation, and to return all Confidential Information of Security Innovation to Security Innovation.

Any termination or expiration of this Agreement shall not affect any accrued rights or liabilities of either party. The obligations of each party under Sections 4, 6, 8, 10, 13, 14, 15, 16, 18, 19 and 20 shall survive termination or expiration of this agreement.

## **ARTICLE XX – GENERAL PROVISIONS**

20.1 Governing Law. This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the Commonwealth of Massachusetts, U.S.A. without giving effect to any conflict of laws principles.

20.2 Injunctive Relief. It is expressly agreed that a material breach of this Agreement will cause irreparable harm to Security Innovation and that a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, Security Innovation and/or Security Innovation Licensors shall be entitled to seek injunctive relief against Licensee in the event of any threatened or actual violation of any or all provisions in this Agreement.

20.3 Severability. The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

20.4 No Waiver. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party.

20.5 Export Controls.

(a) The Security Innovation Products are eligible for (and are being exported under) License Exception ENC of the Export Administration Regulations C.F.R. 740.17 and Security Innovation have submitted all notifications required to establish such eligibility. Licensee agrees to make only such uses of the Security Innovation Products, as are in compliance with that status. Without limiting the forgoing, Licensee agrees: (i) not to develop any foreign products using the [Security Innovation Product(s)]; and (ii) not to modify the Security Innovation Products, in such a way as to add or substitute cryptographic algorithms or otherwise modify the encryption functionality of such products.

(b) Licensee shall not re-export an Security Innovation Product to any destination or end user in violation of any acceptable laws or regulations of the United States government. Licensee shall be solely responsible for compliance with all such laws and regulations and for obtaining any and all export or import licenses or permits that may be required from Licensee to lawfully conduct its business with respect to the Security Innovation Products,

(c) Licensee shall obtain all necessary licenses and authorizations for governments or other relevant bodies to enable Licensee to fulfill its obligations under this Agreement, which shall include, but not be limited to, customs clearances, registration of the

Agreement if appropriate, export licenses, exchange control clearances, trading permits and registration for Value Added Tax (VAT) or its equivalent.

20.6 No Agency. Nothing herein shall be deemed to constitute Security Innovation, on the one hand, or Licensee, on the other hand, as the agent or representative of the other, or as joint venturers or partners for any purpose.

20.7 Headings. The headings contained in this Agreement are for convenience of reference only and shall not be considered in construing this Agreement.

20.8 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns.

20.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of such together shall constitute one and the same instrument.

20.10 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, failure of suppliers, riots, insurrection, fires, floods, storms, earthquakes, acts of God, war, governmental action, labor conditions, or any other cause which is beyond the reasonable control of such party. If such failure or delay continues for at least ninety (90) days, the party not subject to the force majeure shall be entitled to terminate this Agreement by notice in writing to the other.

20.11 Entire Agreement. The parties acknowledge that this Agreement, together with its Appendices, sets forth the entire Agreement and understanding of the parties as to the subject matter hereof and this Agreement shall not be subject to any change or modification except by the execution of a written instrument executed by both parties.

**APPENDIX A**

Security Innovation Trademarks

TeamMentor<sup>™</sup>

TeamProfessor<sup>™</sup>

Security Innovation<sup>sm</sup>

Aerolink<sup>™</sup>



## APPENDIX B

### Security Innovation Product Maintenance and Support

Security Innovation will provide maintenance and technical support for the subscribed to or licensed content and will act as the primary contact for any issues with the hosting vendor's Learning Management System (LMS). Technical support is provided for issues related to the use of the content and includes, but is not limited to:

- Questions regarding the content, testing or general use of an eLearning module
- Questions regarding the content and use of the eGuidance system
- Questions regarding the availability and function of the hosted LMS
- Bug reports for both content and hosted LMS
- Repairs to content or hosted LMS

Maintenance is provided for all content in eKnowledge products as part of a normal subscription or as purchased as part of an on-site license on an "as available" basis. Updates include improvements and/or additions, and/or other changes to subscribed to or licensed content.

Technical support and maintenance do not include the following:

- Modifications to content required by LICENSEE owned LMS
- Consulting/technical work needed to integrate with LICENSEE LMS
- Modifications to content required by LICENSEE to meet internal requirements
- Technical or other support for LICENSEE LMS

Technical support is available business days from 09:00 am to 06:00 pm at the following:

support@securityinnovation.com

+1.978.694.1008, Option 2

### HOSTING VENDOR SERVICE LEVEL AGREEMENT

Following is the unfiltered service level agreement (SLA) from the current LMS hosting provider. Support calls should be directed to Security Innovation and Security Innovation will manage the interface with the hosting vendor.

BLATANT

**Technical Support Service Levels.** On receiving a request for technical support, Blatant gathers the support request information, categorizes the support request and creates a retrievable record of the request. All timelines for resolution are from the time that Blatant becomes aware of the error. Each party will notify the other promptly upon becoming aware of any error. Upon becoming aware of an error, Blatant will respond or escalate its support in accordance with the following levels of severity (“Severity Levels”):

275, 1011 9th Ave SE Calgary,  
AB T2G 0H7  
Canada  
[www.absorblms.com](http://www.absorblms.com)

- Level A: your operations that use the Service are significantly and adversely impacted because of the error. The Service is not available to Users, or functions or features are unavailable or the production system is down or significantly impaired and requires immediate attention. For example, course content does not load, or Users cannot log in.
- Level B: the Service is functioning, but with impairment. For example, not all menus load, reports do not generate and browser specific issues.
- Level C: your operations that use the Service are not significantly impacted by the error, but there continues to be a problem that is a nuisance. For example, graphics are missing, certificates do not print, or a small number of learners are affected.
- Level D: any error that is not a severity A, B, or C error is a severity D error. In the event you report an error with low severity that becomes more critical, you may contact Blatant’s technical support and request that the severity level for the error be upgraded. For example, spelling errors or errors not related to recording of learner data.

**Technical Support Action Times.** Blatant will respond or escalate its support in accordance with the following response times:

<u>Severity Level</u>	<u>First Response*</u>	<u>First Update</u>	<u>Subsequent Update</u>
<u>A</u>	<u>2 hours</u>	<u>4 hours</u>	<u>8 hours</u>
<u>B</u>	<u>4 hours</u>	<u>8 hours</u>	<u>End of next business day</u>
<u>C</u>	<u>8 hours</u>	<u>Next business day</u>	<u>2 business days</u>
<u>D</u>	<u>Next business day</u>	<u>2 business days</u>	<u>3 business days</u>

\*calculated as hours during primary business hours of operation, being 9:00 am – 5:00 pm MST.