

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

1. **Scope.** This Carahsoft Rider and the Manufacturer Agreement 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 Agreement 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 Agreement's 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 Government contracts as set forth in Government 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement are hereby deemed to be deleted.
- (j) **Customer Indemnities.** All Manufacturer Agreement clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All Manufacturer Agreement 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 Agreement 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 Agreement 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 Agreement, 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 Agreement 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 Agreement and this Rider contain no confidential or proprietary information and acknowledges the Agreement and this Rider will be available to the public.
- (u) **Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.

This Skytree End User Agreement ("EUA") is a legal agreement between Ordering Activity, an entity entitled to order under GSA Schedule contracts as defined in GSA Order ADM 4800.2H and as may be revised from time to time, ("CUSTOMER"), and Skytree, Inc. ("SKYTREE").

1. DEFINITIONS

- 1.1 **"Confidential Information"** means any and all information related to a party's business (including software, source code and specifications, trade secrets, technical information, business forecasts and strategies, personnel information and proprietary information of third parties provided to the other party in confidence) that is labeled or identified as "confidential" or "proprietary"; and if disclosed orally or otherwise in intangible form, is confirmed as such in writing within thirty (30) days of such disclosure. Without limiting the foregoing, all Software and Documentation shall be deemed the "Confidential Information" of SKYTREE.
- 1.2 **"Delivery Date"** means date the Software is available for download by CUSTOMER.
- 1.3 **"Documentation"** means SKYTREE's published user and administration manuals and other documentation for the Software that are furnished to CUSTOMER by SKYTREE.
- 1.4 **"Ordering Document"** means a purchase order issued by CUSTOMER, a SKYTREE Purchase Schedule or similar document for ordering Software and/or Support Services and obligating CUSTOMER for the associated fees.
- 1.5 **"Software"** means the specific quantity and part number of SKYTREE proprietary software product(s) specifically listed in Ordering Document(s) hereto as licensed to CUSTOMER in object code format including Revisions (as defined in a Technical Support Schedule).
- 1.6 **"Subscription"** means the provision of Software licenses, Documentation and Support Services for the term purchased by CUSTOMER for the Subscription Fee as described in an Ordering Document.
- 1.7 **"Subscription Fee"** shall mean the annual fee for Subscription specified in an Ordering Document.
- 1.8 **"Support Service(s)"** means the provision of support services by SKYTREE for the Software as described in a Technical Support Schedule or Configuration Support Schedule as incorporated with an Ordering Document.
- 1.9 **"User"** means any individual who accesses the Software on behalf of CUSTOMER.
- 1.10 **"Virus"** means any computer code designed to: (1) disrupt, disable, harm, or otherwise impede the licensed operation of a computer program or computer system; or (2) damage or destroy any data files residing on a computer system without the user's consent.

2. LICENSE

- 2.1 **GRANT.** Subject to the terms and conditions of this EUA and timely payment of all fee(s) described in the applicable ordering document(s), SKYTREE hereby grants to CUSTOMER a nonexclusive, non-sublicenseable, nontransferable license, during the Subscription term specified in the Ordering Documents, to: (1) install the Software on computer hardware, in object code form only, in the quantity as expressly specified in the Ordering Documents; (2) use, perform and display the installed copy of the Software in accordance with the Documentation, for CUSTOMER's internal purposes only, subject to the usage metrics and limitations set forth in the Ordering Documents; and (3) make reasonable copies of the Software solely for the purpose of backup or archiving.
- 2.2 **RESTRICTIONS.** CUSTOMER acknowledges and agrees that the Software and its structure, organization, and source code constitute valuable trade secrets and Confidential Information of SKYTREE and its suppliers, and CUSTOMER. CUSTOMER agrees not to: (1) modify, adapt, alter, translate, or create derivative works from the Software; (2) merge the Software with any other software; (3) distribute, sublicense, lease, rent, loan, or otherwise transfer the Software to any third party; (4) use the Software other than as described in the Documentation; (5) use the Software on or with any system for which it was not intended (as described in the Documentation); or (6) use the Software in any time-sharing, outsourcing, service bureau, hosting, application service provider or managed service provider environment. CUSTOMER shall not remove, alter, or obscure in any way all proprietary rights notices (including copyright, patent, and trademark notices and symbols) of SKYTREE or its suppliers contained on or within the copies of the Software furnished by SKYTREE to CUSTOMER. CUSTOMER shall not disassemble, reverse engineer, analyze, decompile, modify, convert or translate the Software or apply any procedure or process to the Software in order to ascertain, derive and/or appropriate for any reason or purpose the source code for the Software or any Confidential Information, trade secret information or process or software contained in the Software, except as otherwise expressly permitted by applicable law that may not lawfully be excluded by agreement between the parties.
- 2.3 **OWNERSHIP.** As between CUSTOMER and SKYTREE, except for the nonexclusive licenses expressly granted to CUSTOMER in Section 2.1, SKYTREE and its suppliers retain all right, title and interest in and to the Software. There are no implied licenses in this EUA, and all rights not expressly granted hereunder are reserved to SKYTREE and its suppliers.
- 2.4 **OPEN SOURCE SOFTWARE.** The Software may contain or be provided together with open source software. Each item of open source software is subject to its own applicable license terms, which can be found in either the Documentation or applicable notices. Copyrights to the open source software are held by the copyright holders indicated in the documentation or the applicable notices.

3. DELIVERY

- 3.1 **SUBSCRIPTION.** The term for Subscription shall begin on Ordering Document effective date and continue for the length of time as specified in said Ordering Document
- 3.2 **SOFTWARE.** If a specific Delivery Date is agreed to by the parties, the Delivery Date shall promptly follow receipt and acceptance of an Ordering Document. To receive the Software, CUSTOMER shall provide reasonable assistance to coordinate with SKYTREE to receive a download link.
- 3.3 **SUPPORT SERVICES**
 - 3.3.1 **DELIVERY.** SKYTREE agrees to provide Support Services during the term of Subscription for the fees and at the level identified in the applicable Ordering Document.
 - 3.3.2 **RESTRICTIONS.** SKYTREE shall have no responsibility to provide Support Services for Software: (i) modified or altered by any third party; (ii) due to failure by computer hardware, equipment or software not provided by SKYTREE; (iii) due to accident, neglect, misuse or improper use; or (iv) that requires application management or administration.

4. FEES AND PAYMENTS

- 4.1 **PAYMENT TERMS.** CUSTOMER's fees and payment term shall be set forth in the Ordering Document. **AUDIT**
4. **AUDIT.** During the term of this EUA and for a period of three (3) years thereafter: (1) CUSTOMER shall maintain complete and accurate written records of CUSTOMER's Software use, which includes peak number of Users; and (2) SKYTREE shall have the right, no more than once per year, during normal business hours, upon at least thirty (30) days' prior written notice and consistent with any applicable security measures, to inspect and audit said records in order to verify that CUSTOMER has paid to SKYTREE the correct amounts owed and complied with the usage metrics and limitations in the Ordering Document(s). In the course of conducting the audit, SKYTREE shall abide by CUSTOMER's standard site access rules and regulations, and shall take steps to minimize any disruption to the normal conduct of CUSTOMER's business. The audit shall be conducted at SKYTREE's expense.
- 4.3 **USER REPORTS.** SKYTREE will have the right, no more than twice per year and upon at least ten (10) business day prior written notice, to request an electronic copy of the Software User report from CUSTOMER's Server administrator(s).

5. EFFECT OF TERMINATION

- 5.1 **EFFECT OF TERMINATION.** Upon the expiration or any termination of this EUA, all licenses granted hereunder shall immediately terminate and CUSTOMER shall return or destroy all copies of all licensed materials and SKYTREE Confidential Information. Sections 1 (Definitions), 2.2 (Restrictions), 2.3 (Ownership), 5.1 (Effect of Termination), 6.3 (Disclaimer), 8 (Limitation of Liability), 9 (General), and any payment obligations that accrued prior to termination of this EUA, shall survive any such termination.

6. REPRESENTATIONS AND WARRANTIES

- 6.1 **PERFORMANCE WARRANTY.** For a period of forty five (45) days after initial delivery of the Software ("Warranty Period"), SKYTREE warrants that the Software, when used as permitted by this EUA and in accordance with the Documentation, shall operate substantially as described in the Documentation. If the Software fails to conform to the foregoing warranty, SKYTREE shall, at its own expense, for breach of this warranty, correct any reproducible nonconformity in the Software reported in writing to SKYTREE by CUSTOMER during the Warranty Period.
- 6.2 **SUPPORT SERVICES.** SKYTREE will perform its responsibilities and provide the Support Services under this Agreement in a professional and workman-like manner.
- 6.3 **VIRUSES.** Prior to delivery, SKYTREE shall use commercially reasonable efforts to scan the Software with a commercially-available antivirus program before delivery to reduce the possibility of the existence of a Virus. If, within ten (10) days of delivery, CUSTOMER demonstrates that the Software, as supplied by SKYTREE contains a Virus, SKYTREE's obligations shall be to (i) use commercially reasonable efforts to promptly provide CUSTOMER with such pertinent information as may be in SKYTREE's possession about the infection of the Software by the Virus, in order to help mitigate the detrimental effects of the Virus; and (ii) deliver a new copy or copies of the Software free of the identified Virus, at no charge to CUSTOMER.
- 6.4 **DISCLAIMER.** EXCEPT TO THE EXTENT EXPRESSLY SET FORTH ABOVE IN THIS SECTION 6, SKYTREE EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES AND CONDITIONS WITH RESPECT TO THE SOFTWARE AND ALL MATERIALS OR SERVICES PROVIDED BY THIS EUA, WHETHER IMPLIED, EXPRESS, OR STATUTORY. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C 7101-7109.

7. INDEMNIFICATION

- 7.1 **INDEMNITY.** SKYTREE shall:
- 7.1.1 Defend and hold harmless CUSTOMER from any third-party claim, suit, or proceeding alleging that the Software, unmodified and as originally delivered, when used as permitted by this EUA and in accordance with the Documentation and the licenses granted hereunder, infringes or misappropriates any (i) third-party U.S. patent issued as of the Effective Date; or (ii) any copyright or trade secret that arises under the laws of the United States (a "Claim"); and
- 7.1.2 Indemnify CUSTOMER for all settlement amounts agreed to by the litigants or damages finally awarded or assessed by a court of competent jurisdiction for a Claim.
- 7.2 **EXCLUSIONS.** SKYTREE shall have no obligations under this Section 7 with respect to any Claims that arise from or relate to (1) any modifications to the Software created by any person other than SKYTREE if not at the express direction of SKYTREE; (2) any combination of the Software with any third-party hardware, software, or other materials where such combination is the object of the claim; or (3) the use of any version of the Software other than the latest version made available to CUSTOMER by SKYTREE.
- 7.3 **MITIGATION.** If any element of the Software has become, or if SKYTREE reasonably believes is about to become, the subject of a Claim, SKYTREE may, at its sole option: (1) obtain a license to permit CUSTOMER to use the Software in accordance with this EUA; (2) modify the Software in a manner such that it is no longer infringing but maintains substantially the same functionality; or (3) terminate CUSTOMER's license to use all or part of the Software in exchange for a refund of fees paid, less a prorated deduction to reflect past beneficial use calculated on a straight-line basis assuming a useful life of three (3) years.
- 7.4 **PROCEDURES.** CUSTOMER must: (1) promptly notify SKYTREE in writing of any Claim; (2) permit SKYTREE to intervene in the suit and participate in the defense and settlement of such Claim to SKYTREE consistent with 28 USC 516, provided that SKYTREE may not enter into any settlement adversely affecting CUSTOMER's interests without CUSTOMER's prior written consent; and (3) reasonably cooperate with SKYTREE in such defense at SKYTREE's expense. CUSTOMER shall have the right to participate in the defense at CUSTOMER's own expense with counsel of CUSTOMER's choice. The indemnity in this Section 7 states CUSTOMER's sole and exclusive remedy, and SKYTREE's entire liability, for infringement of third-party intellectual property rights arising from or related to this EUA

8. LIMITATION OF LIABILITY

- 8.1 **CONSEQUENTIAL DAMAGES.** EXCEPT FOR ANY INFRINGEMENTS OF SKYTREE'S INTELLECTUAL PROPERTY RIGHTS (INCLUDING ANY BREACH OF SECTIONS 2.2 OR 2.3) OR CONFIDENTIALITY (SECTION 9.5), IN NO EVENT WILL SKYTREE OR ITS SUPPLIERS BE LIABLE FOR ANY LOST DATA, LOST PROFITS, SECURITY BREACH OR GOVERNMENTAL FINE DUE TO RELIANCE ON THE SOFTWARE OR SUPPORT SERVICES, OR CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, ARISING FROM OR RELATING TO THIS EUA, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- 8.2 **DAMAGE CAP.** EXCEPT FOR ANY BREACH OF CONFIDENTIALITY (SECTION 9.5), IN NO EVENT SHALL SKYTREE'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS EUA, WHETHER IN CONTRACT OR TORT OR OTHERWISE, EXCEED A SUM EQUAL TO THE HIGHER OF EITHER: (1) THE TOTAL OF ALL FEES PAID BY CUSTOMER PURSUANT TO SECTION 4.1 (PAYMENT TERMS) TO SKYTREE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FIRST GIVING RISE TO LIABILITY; OR (2) ONE HUNDRED THOUSAND DOLLARS (U.S. \$100,000). THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM.
- 8.3 **EXCLUDED USES.** THE SOFTWARE IS NOT INTENDED FOR USE IN CONNECTION WITH ANY NUCLEAR, AVIATION, MASS TRANSIT, OR MEDICAL APPLICATION OR ANY OTHER INHERENTLY DANGEROUS APPLICATION THAT COULD RESULT IN DEATH, PERSONAL INJURY, CATASTROPHIC DAMAGE, OR MASS DESTRUCTION, AND CUSTOMER AGREES THAT SKYTREE WILL HAVE NO LIABILITY OF ANY NATURE AS A RESULT OF ANY SUCH USE OF THE SOFTWARE.
- 8.4 **ACKNOWLEDGEMENT.** THE PARTIES ACKNOWLEDGE THAT THE TERMS OF THIS SECTION 8 (LIMITATION OF LIABILITY): (1) REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS EUA AND THAT THE PARTIES WOULD NOT ENTER INTO THIS EUA WITHOUT THESE LIMITATIONS OF LIABILITY; AND (2) WILL APPLY EVEN IF ANY EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE LIMITATIONS OF LIABILITY CONTAINED IN THIS EUA WILL APPLY ONLY TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AND NOTHING IN THIS EUA PURPORTS TO LIMIT EITHER PARTY'S LIABILITY IN A MANNER THAT WOULD BE UNENFORCEABLE OR VOID AS AGAINST PUBLIC POLICY IN THE APPLICABLE JURISDICTION. THE TERMS OF SECTION 8 SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 USC 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

9. GENERAL

- 9.1 **INDEPENDENT CONTRACTORS.** The parties are and at all times shall be and remain independent contractors as to each other, and at no time shall either party be deemed to be the agent or employee of the other. No joint venture, partnership, agency, or other relationship shall be created or implied as a result of this EUA. Furthermore, neither party shall have the authority to, and shall not purport to, enter into any contract or commitment on behalf of the other party.
- 9.2 **GOVERNING LAW.** This EUA, and any and all actions arising from or in any manner affecting the interpretation of this EUA, shall be governed by, and construed solely in accordance with, the laws of the United States, without giving effect to any conflicts of laws principles that would require the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods and Uniform Computer Information Transactions Act (UCITA) to the extent allowed by law shall not apply to this EUA.
- 9.3 **LAWS AND REGULATIONS**
- 9.3.1 **COMPLIANCE.** The parties shall comply with all provisions of any applicable laws, regulations, rules, or orders relating to the rights granted herein and to the testing, production, transport, export, re-export, packaging, labeling, distribution, sale or other use of the Software, Support Services or as otherwise applicable to a party's activities hereunder. The parties shall obtain such written assurances regarding export and re-export as may be required. With respect to any export transaction pertaining to this EUA, SKYTREE shall cooperate with CUSTOMER to affect compliance with all applicable export regulation.
- 9.3.2 **GOVERNMENT RESTRICTIONS.** The Software is comprised of "commercial items", "commercial computer software", and "commercial computer software documentation" as such terms are as defined in FAR 2.101 and DFARS 252.227-7014(a)(1). The Software is provided to any federal, state or local government agency only subject to the terms and conditions of this EUA and such additional terms as provided by SKYTREE in a schedule to the EUA or as agreed by the parties in a properly executed writing and that are consistent with: (i) the policies set forth in 48 C.F.R. 12.212 (for federal, state and local civilian agencies); or (ii) the policies set forth in 48 C.F.R. 227.7202-1 and 22.7202-3 (for units of the Department of Defense).
- 9.4 **ASSIGNMENT.** CUSTOMER may not assign this EUA (whether expressly, by implication, or by operation of law, including in connection with any merger or sale of assets or business), or delegate its performance under this EUA (either in whole or in part), to any third party without obtaining SKYTREE's prior written consent. SKYTREE may assign this EUA or any rights granted herein only in accordance with FAR Part 42.12. Any purported transfer, assignment, or delegation in violation of this Section 9.4 shall be null and void when attempted and of no force or effect. Subject to the foregoing, this EUA shall bind and inure to the benefit of the successors and permitted assigns of SKYTREE and CUSTOMER.
- 9.5 **CONFIDENTIALITY.** Each party agrees: (1) to hold the other party's Confidential Information in strict confidence; (2) not to disclose such Confidential Information to any third parties, except as described below; and (3) not to use any Confidential Information except for the purposes of this EUA. Each party may disclose the other party's Confidential Information to its responsible employees and contractors with a bona fide need to know, but only to the extent necessary to carry out the purposes of this EUA. The restrictions set forth in this section shall not apply to any Confidential Information that the receiving party can demonstrate (i) was known to it prior to its disclosure by the disclosing party; (ii) is or becomes publicly known through no wrongful act of the receiving party; (iii) has been rightfully received from a third party authorized to make such disclosure without restriction; (iv) is independently developed by the receiving party; (v) has been approved for release by the disclosing party's prior written authorization; or (vi) has been disclosed

- by court order or as otherwise required by law, provided that the party required to disclose the information provides prompt advance notice thereof, to the extent practicable, to enable the disclosing party to seek a protective order or otherwise prevent such disclosure.
- 9.6 **NOTICES.** All notices permitted or required by this EUA shall be in writing and shall be delivered by personal delivery, national express courier with a tracking system, or by certified or registered mail, return receipt requested, and shall be deemed given, respectively, on the date of personal delivery, five (5) days after deposit in the mail, or on the date of delivery by courier. Notices shall be addressed to "Legal" and sent to the addresses set forth in the Ordering Document(s). Either party may amend its address for notice upon written notice to the other.
- 9.7 **WAIVERS; AMENDMENT.** No waiver of any terms or conditions of this EUA shall be valid or binding on a party unless such party makes the waiver in hardcopy writing signed by an authorized representative of that party. The failure of one party to enforce any of the provisions of this EUA, or the failure to require at any time the performance of the other party of any of the provisions of this EUA, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of a party to enforce each and every provision thereafter. This EUA may not be altered, amended, modified, or otherwise changed in any way except by a hardcopy written instrument signed by the authorized representatives of each party.
- 9.8 **SEVERABILITY.** If any provision of this EUA is found or held to be invalid or unenforceable by any tribunal of competent jurisdiction, then the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this EUA, which shall remain in full force and effect.
- 9.9 **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: (1) any provision of any present or future law or regulation of the United States or any applicable law that applies to the subject matter hereof; or (2) strikes, shortages, riots, insurrection, fires, flood, storms, explosions, acts of God, war, government action, acts of terrorism, earthquakes, power outages or any other cause that is beyond the reasonable control of such party.
- 9.10 **CONSTRUCTION.** The headings of sections of this EUA are included solely for convenience of reference and are not to be used to interpret, construe, define, or describe the scope of any aspect of this EUA. As used in this EUA, the word "including" means "including but not limited to." Unless otherwise expressly stated to the contrary herein, all remedies are cumulative, and the exercise of any express remedy by either party herein does not by itself waive such party's right to exercise its other rights and remedies available at law or in equity.
- 9.11 **NON-SOLICITATION.** During the term of this EUA, CUSTOMER (including any agents acting on behalf of CUSTOMER) shall not solicit any employee or contractor of SKYTREE for employment or independent contractor services.
- 9.12 **MULTIPLE COUNTERPARTS.** This EUA may be executed in counterparts. Each party represents and warrants that the person signing this EUA on such party's behalf has been duly authorized and empowered to enter into this EUA.