

Voxer
760 Market Street, 5th Floor
San Francisco, CA 94102

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

- 1. Scope.** This Carahsoft Rider and the Manufacturer End User License Agreement (EULA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").
- 2. Applicability.** The terms and conditions in the attached Manufacturer EULA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's EULA are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's contract #GS-35F-0119Y, including, but not limited to the following:
 - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
 - (b) Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.
 - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - (d) Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.
 - (e) Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's

EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court..

- (f) Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- (h) Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.
- (i) Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.
- (j) Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) Contractor Indemnities.** All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) Renewals.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) Future Fees or Penalties.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (o) Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any

third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.

(p) Installation and Use of the Software. Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.

(q) Dispute Resolution and Venue. Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

(r) Limitation of Liability: Subject to the following:

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

(s) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

(t) Public Access to Information. Manufacturer agrees that the EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA and this Rider will be available to the public.

(u) Confidentiality. Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.

Last updated: July 8, 2013.

Voxer Pro Business Online Terms of Service

These Voxer Pro Business Online Terms of Service ("Agreement") is entered into between you ("Customer", "you", "your") and VoxerPro LLC, a Delaware LLC with its principal place of business at 760 Market Street, 5th Floor, San Francisco, CA 94102 and its affiliates ("Voxer") and the entity agreeing to these terms ("Customer").

1. **Services.** Voxer Pro Business is a messaging service that permits authorized users to send voice, text and image messages to other users or groups of users via a smart phone or other supported device using the Voxer Pro Business application (the "App") (the Voxer Pro Business messaging service and the App together constitute the "Service"). Voxer Pro Business provides a web-based administrative console permitting entities to provision users and create user groups, and other such features and functions as Voxer may provide from time to time. Voxer will make the Service available to you as a beta product. Voxer may update the beta product from time to time but is under no obligation to do so.

2. **Restrictions on Use of the Services.** You agree that you and your authorized employees and independent contractors ("Authorized Users") will not to use the Services to: (a) upload or distribute any computer viruses, worms, or any software intended to damage or alter a computer system or data; (b) send unsolicited advertising, promotional materials, spam, chain letters, pyramid schemes or any other form of unsolicited messages, whether commercial or otherwise; (c) harvest or collect data regarding other users, including e-mail addresses, without their consent; (d) attempt to gain unauthorized access to or interfere with servers or networks connected to or used with the Services or violate the policies of such networks; (e) harass or interfere with another user's use and enjoyment of the Service; or (f) engage in any illegal or unlawful activity. In addition, you may not access or use the Service for benchmarking or similar purposes, except with Voxer's specific prior written consent. Customer is responsible for all activities of its Authorized Users.

3. **Content.**

3.1 **Responsibility for Content and License.** The Service enables users to transmit content, such as voice, text and images ("User Content"). You are responsible for

your Authorized Users' User Content. By uploading, transmitting or otherwise providing User Content via the Service, you represent that you own, or have the necessary rights to use, reproduce, and distribute, and to authorize Voxer and other users to use, reproduce, and distribute, such User Content, and you grant Voxer a non-exclusive, transferable, sub- licensable, royalty free, worldwide license to use, reproduce, and distribute any such User Content for purposes of providing, maintaining and improving the Service. Voxer's use of such content will be in accordance with its privacy policy:
www.voxer.com/legal/business/privacy.html.

3.2 Restrictions on Content. You agree that your Users will not to use the Services to upload, transmit, or otherwise provide any User Content (a) that violates any third-party right, including any copyright, privacy right, right of publicity, or any other Intellectual property or proprietary right, (b) that is unlawful, harassing, vulgar, defamatory, misleading, pornographic, obscene, patently offensive (e.g., material that promotes racism, bigotry, hatred, or physical harm of any kind against any group or individual) or otherwise objectionable; or (c) in violation of any law, regulation, or obligations or restrictions imposed by any third party. You may not state or imply that your User Content is in any way provided, sponsored or endorsed by Voxer. You agree that you will maintain and enforce a policy that complies with the Digital Millennium Copyright Act ("DMCA") and will act promptly to remove any infringing material from the Service if you or Voxer receives a notice qualifying under the DMCA.

3.3 Visibility of and Storage of User Content. Content your Authorized Users send to other users will appear on other users' devices and these communications are also stored in our database. Even if an Authorized User removes this content from his or her device or account, copies may remain viewable on the devices of other users to whom the content was transmitted and may remain stored in our database. Therefore, you should be aware that User Content that Users send to other users cannot be removed from their devices unless the other user removes the data. Other users may also share any User Content sent to them.

3.4 Review of and Deletion of Content. We have the right (but not the obligation) to review any User Content that is used with the Services and not post, delete or modify any User Content that in our sole judgment violates this Agreement, or may otherwise violate the rights of, harm, or threaten the safety of any user or any other person or our systems, or create liability for us or any user. While we may store User Content, we also have no obligation to store User Content for any period of time or to create or provide you with any copies.

3.5 Third-Party Content. The Services may display, contain links to, or otherwise give you access to third-party communications, content, products, services or websites ("Third-Party Content"). You acknowledge that Voxer does not monitor, investigate or endorse Third-Party Content. We do not control and do not guarantee the accuracy, integrity, or quality of such Third-Party Content. By using the Services, you may be exposed to content that is offensive, indecent or otherwise objectionable. Your access to and use of Third-Party Content is at your sole discretion and risk and Voxer and its affiliates, partners, suppliers and licensors shall have no liability to you in connection with your access to and use of the Third-Party Content.

4. Intellectual Property.

4.1 Except for the rights expressly granted herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or other intellectual property.

4.2 License. Subject to the terms of this Agreement, Voxer grants you a non-sublicensable, non-assignable, non-exclusive license to use the Service, including the App, for your internal business purposes, in accordance with this Agreement and the documentation or instructions supplied by Voxer. This license is limited to use by the number of Authorized Users ordered and paid for by you.

4.3 Restrictions. You shall not (and shall not allow others to): (a) make the Service available over a network or other environment permitting use by multiple users or otherwise transfer or distribute the Service, (except the foregoing shall not restrict the use of the Service by the number of Authorized Users ordered and paid for by you); (b) reverse engineer, disassemble or decompile the Service or otherwise derive or attempt to derive the source code or structure of the Service (except as and only to the extent any foregoing restriction is

prohibited by applicable law);(c) modify, reproduce, or create derivative works of the Service;(d) remove any copyright or other proprietary notices contained in the Service (e) directly or indirectly export or re-export the Service; or (f) remove, circumvent, or interfere with any digital rights management or security tools or other similar technologies available on or in the Service.

5. Access to the Services

5.1 Customer Administration of the Services. Customer shall specify one or more Administrators through the Admin Console who will have the rights to access Admin Account(s) and to administer the Authorized User Accounts. Customer is responsible for: (a) maintaining the confidentiality of the password and Admin Account(s); (b) designating those individuals who are authorized to access the Admin Account(s); and (c) ensuring that all activities that occur in connection with the Admin Account(s) comply with the Agreement. Customer agrees that Voxer's responsibilities do not extend to the internal management or administration of the Services for Customer and that Voxer is merely a data-processor.

5.2 Availability. Voxer will make commercially reasonable efforts to maintain a reasonable level of uptime and to deliver messages in a reasonably prompt manner. Voxer reserves the right at any time with reasonable advance notice to Customer to limit Customer's and your Authorized Users' access to and use of the Services in order to perform repairs, make modifications, or to do so without advance notice as a result of circumstances beyond Voxer's reasonable control. Voxer may alter or modify all or part of the Services from time to time. Such alterations and modifications, or both, may include, without limitation, the addition or withdrawal of features, products, services, software or changes in instructions, provided that this does not result in material decrease in the functionality of the Service.

5.3 Support Procedures. Customer will, at its own expense, respond to questions and complaints from Authorized Users or third parties relating to Customer's or Authorized Users' use of the Services. Customer will use commercially reasonable efforts to resolve support issues before escalating them to Voxer. If Customer cannot resolve a support issue consistent with the above, then Customer may escalate the issue to Voxer. Customer's contacts may submit cases over the Web or other means designated by Voxer. Customer's contacts will be asked to provide their company name and contact information, and each case will be assigned a unique case number. Voxer will use commercially reasonable efforts to promptly respond to each case within two (2) hours during regular business hours (Pacific Time) and will use commercially

reasonable efforts to promptly resolve each case. Actual resolution time will depend on the nature of the case and the resolution. A resolution may consist of a fix, workaround or other solution in Voxer's reasonable determination.

5.4 User Names and Business Identifiers. When you choose a user name or identifier for your business account, you must own, control or otherwise have the right to use such identifier. Voxer reserves the right to remove or take back and such identifier if Voxer believes it is appropriate to do so, such as when a trademark owner complains.

6. Billing and Payment.

6.1 Customer will be billed and will pay for the Services on a monthly basis. Voxer will bill Customer monthly in advance based on the number of Authorized Users ordered by Customer and (ii) monthly in arrears for Authorized Users added during the preceding month. Voxer will provide Customer with the monthly rate for the Services when Customer orders the Services, and will use this rate to calculate the Fees. Beta Customers are entitled to a discount during the initial twelve-month term of the beta Services, which discount shall be reflected at the time of ordering on the Admin Portal.

6.2 Payment. All payments due are in U.S. dollars unless otherwise indicated on the ordering page of the administrative console or invoice. Payment shall be by credit or debit card, unless otherwise agreed in writing by Voxer. Voxer will charge Customer for all applicable Fees when due and these Fees are considered delinquent thirty days from the due date.

6.3 Suspension for Non-Payment. Customer will have thirty days to pay Voxer delinquent Fees. If Customer does not pay Voxer delinquent Fees within thirty days, Voxer may automatically suspend Customer's use of the Services only in accordance with FAR 52.233-1, Performance during disputes.

6.4 Taxes. Customer is responsible for any Taxes, and Customer will pay Voxer for the Services without
6.5 any reduction for Taxes. If Voxer is obligated to collect or pay Taxes, the Taxes will be invoiced to Customer, unless Customer provides Voxer with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by law to withhold any Taxes from its payments to Voxer, Customer must provide Voxer with an official tax receipt or other appropriate documentation to support such payments.

6.6 Purchase Orders. If Customer requires a purchase order number on its invoice, Customer will inform Voxer and Voxer will include such purchase order number on invoices following receipt. If Customer does not provide a purchase order number, Customer waives any purchase order requirement and (a) Voxer will invoice Customer without a purchase order number; and (b) Customer agrees to pay invoices without a purchase order number referenced. Any terms and conditions on a purchase order do not apply to this Agreement and are null and void.

6.7 Change of Rates. After the initial twelve-month beta term, Voxer may revise its rates for the following services term by providing Customer written notice (which may be by email) at least thirty days prior to the start of the following services term.

7. Updates; Feedback.

7.1 Updates to the Service. Voxer may extend, enhance or otherwise modify the Service or portions thereof (collectively, "Updates") from time to time, but Voxer is not obligated to do so. If Voxer furnishes you with Updates to the Services, such

Updates shall be deemed incorporated into the Services shall be subject to the terms of this Agreement.

7.2 Updates to this Agreement. Voxer reserves the right, at its sole discretion, to modify this Agreement, at

any time. If we modify this Agreement we will update the "Last Updated Date" at the top of this Agreement and email a copy of the updated Agreement to the contact person designated by you. By continuing to access or use the Product after we have provided you with notice of a modification, you are indicating that you agree to be bound by the modified Agreement.

7.3 Feedback. We may provide you with a means to provide feedback, ideas or suggestions ("Feedback") regarding the Service. If you choose to provide Feedback, you agree that you retain no rights in such Feedback and Voxer shall own all rights, including intellectual property rights, thereto. You hereby assign all such rights to Voxer.

8. Communications ;Data Collection/Privacy; Security.

8.1 Communications . In order to perform to its specifications, the Services will regularly communicate with Voxer and Voxer affiliates' hardware/software/servers during the normal course of operation and such hardware/software/servers will retrieve, process, transmit and store data received from the App and the devices on which the App is loaded (including voice conversations and text conversations). Additionally, Voxer may contact users by email or other contact information in connection with the Service and this Agreement. You agree that Voxer may send you these communications.

8.2 Data Collection and Privacy Policy. Voxer will have access to Users profile information and User Content. Additionally, Voxer may itself gather and aggregate device data and user activity data. Details about Voxer's collection and use practices can be found at www.voxer.com/legal/business/privacy.html.

8.3 Customer's Data. Subject only to the limited license expressly granted hereunder, as between Customer and Voxer, Voxer acquires no right, title or interest from Customer or your Authorized Users under this Agreement in or to Customer's Data, including any intellectual property rights therein. Customer is solely responsible for Customer's Data that Authorized Users upload, publish, display, link to or otherwise make available on the Service, and Customer agrees that Voxer is only acting as a passive conduit and Data Processor for the online distribution and publication of Customer's Data which Customer controls. Voxer will not review, share, distribute, or reference any of Customer's Data except as provided herein to provide the Services or as may be required by law.

8.4 Security. Voxer has implemented commercially reasonable technical and organizational measures designed to secure Customer's Data from accidental loss and from unauthorized access, use, alteration or disclosure. However, Voxer cannot guarantee that unauthorized third parties will never be able to defeat those measures or use Customer's Data for improper purposes. Customer acknowledges that all Customer Data is provided to Voxer at Customer's and its Authorized Users' own risk.

9. Term and Termination

9.1 Term. The Term of the Agreement will commence as of the Effective Date set forth in the Order Form and, unless specified otherwise in the Order Form, will end on the Contract End Date set forth in the Order Form or upon earlier termination in accordance with Sections 9.2 or 9.3, below.

9.2 Termination by Customer . The Agreement may be terminated by Customer (i) in the event of a material breach by Voxer of any provision of the Agreement and Yammer fails to cure such breach within thirty (30) days of written notice;or (ii) upon Voxer's bankruptcy, reorganization or assignment for the benefit of creditors.

9.3 Termination by Voxer . Voxer may terminate this agreement (i) if Customer defaults in the timely payment of any amounts due Voxer and fails to cure within thirty (30) days of receipt of written notice;(ii) immediately if Customer breaches any provisions of Section 2 or Section 4;(iii) in the event of a material breach by Customer of any other provision of the Agreement and Customer fails to cure such breach within thirty (30) days of written notice;(iv) upon thirty (30) days notice for any or no reason;or (v) upon Customer's bankruptcy, reorganization or assignment for the benefit of creditors .

9.4 Effect of Termination . If the Agreement is terminated pursuant to this Section 9, then, unless otherwise specifically provided for in writing by the parties, the following will apply: (a) any license rights granted to Customer with respect to the Services will terminate as of the effective date of the termination; (b) Voxer will have no obligation to provide the Services to Customer or your Authorized Users after the effective date of the termination ;(d) Customer will pay Voxer any amounts payable for Customer's and your Authorized Users' use of the Services through the effective date of the termination ;No refunds of prepaid fees shall be made to Customer in connection with any termination pursuant to Section 9.3. The following Sections of this Agreement shall survive any termination :3.1, 3.4, 4.3, 6, 7.3, 10, 14, 15 and 16.

10. WARRANTY DISCLAIMER ; LIMITATION ON LIABILITY ; INDEMNITY .

10.1 YOU ACKNOWLEDGE THAT THE PRODUCT IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. EXCEPT AS EXPRESSLY PROVIDED HEREIN, VOXER, ITS LICENSORS AND VOXER AFFILIATES SHALL NOT BE RESPONSIBLE FOR ANY COSTS, EXPENSES OR OTHER LIABILITIES INCURRED BY ANYONE AS A RESULT OF THE FAILURE OF THE PRODUCT OR IN CONNECTION WITH YOUR USE OF OR ACCESS TO THE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAWS, VOXER , ITS LICENSORS AND VOXER AFFILIATES DISCLAIM ALL WARRANTIES RELATING TO THE PRODUCT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES AGAINST INFRINGEMENT OF THIRD-PARTY RIGHTS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER VOXER NOR VOXER AFFILIATES OR LICENSORS SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY (A) FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, OR (B) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR (C) FOR ANY AMOUNT IN EXCESS OF AMOUNTS PAID BY CUSTOMER IN THE 3 MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR DAMAGES. EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL, BARGAINED FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION EXCHANGED HEREUNDER AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT. YOU UNDERSTAND AND AGREE THAT NEITHER VOXER NOR VOXER AFFILIATES OR LICENSORS ARE RESPONSIBLE FOR ANY LOSS OF LIFE, PERSONAL INJURY, OR ECONOMIC DAMAGE RESULTING FROM THE USAGE OF THE PRODUCT.

10.3 YOU AGREE THAT YOU WILL NOT USE THE PRODUCT WHILE OPERATING A MOTOR VEHICLE,

FOR TIME-CRITICAL OR EMERGENCY SERVICES OR EVENTS, OR FOR ANY OPERATION WHERE INJURY, DEATH, OR ECONOMIC DAMAGE COULD OCCUR.

10.4 INDEMNITY. You agree to hold harmless and indemnify Voxer, and its subsidiaries, affiliates, officers, agents, employees, advertisers, licensors, suppliers or partners, from and against any third party claim arising from or in any way related to your use of Voxer Services, violation of these Terms of Service or any other actions connected with use of Voxer Services, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature. In such a case, Voxer will provide you with written notice of such claim, suit or action.

11. Third-Party Code.

The Product utilizes and/or interfaces with other third party material, including open source libraries/components/applications/user interface/utilities (collectively referred to as "Third-Party Code"). <http://voxer.com/legal/business/proprietary-notice.html> provides the notices, disclaimers and licensing requirements for Third-Party Code, together with certain Voxer proprietary notices

12. Publicity/Press. Each Party shall be allowed to refer to the other as a customer of or service provider to (as the case may be) on its website and in marketing materials, including but not limited to case studies, blog posts and webinars, provided that such reference shall not imply an affiliation, sponsorship, or endorsement of the other. Other than as provided in the foregoing sentence, neither Party shall issue any public announcement regarding the subject matter herein without the prior written approval of the other.

13. Mutual Indemnification

13.1 Indemnification by Voxer. Voxer shall defend, indemnify and hold Customer and your subsidiaries, agents, managers, and other affiliated companies and their employees, contractors, agents, officers and directors, harmless from and against any and all third party claims that the Services as provided by Voxer infringe a copyright or misappropriate a trade secret of a third party; provided, that Customer (a) promptly give Voxer written notice of the Claim; (b) give Voxer sole control of the defense and settlement of the Claim (provided that Voxer may not settle any Claim without Customer's prior written consent unless the settlement unconditionally releases Customer of all liability); and (c) provide to Voxer all reasonable assistance, at Voxer's expense.

If the Software and/or the Services become, or, in Voxer's opinion are likely to become, the subject of such a claim, Voxer shall have the right to (i) obtain for Customer the right to continue using the Software and the Services, (ii) replace or modify the Software and/or the Services so that they become non-Infringing, or (iii) terminate the Services and the license granted hereunder to

the Software and provide a pro rated refund to Customer of the fees paid for the Services for the portion of the Term remaining at the time of such termination. THE FOREGOING STATES VOXER'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.

Voxer will have no liability for any infringement claim to the extent it (i) is based on modification of the Services or Software by or at the direction of Customer or its Authorized User; (ii) results from Customer's failure to use an updated version of the Services or Software made available to Customer; (iii) is based on the combination or use of the Software or the Services with any other software, program or device not provided or specified by Voxer if such infringement would not have arisen but for such use or combination or (iv) results from Customer's operation of the Software or the Service in a manner that is inconsistent with its intended use.

15. Confidentiality

15.1 Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information shall include Customer's Data; Voxer's Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Customer's Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party as evidenced by contemporaneous written records.

15.2 Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party,

(i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the

Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

15.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

16. Miscellaneous.

16.1 Waiver. The failure to enforce any term of this Agreement on one occasion shall not prevent enforcement on any other occasion or the enforcement of any other term.

16.2 Assignment. Although fully assignable and transferable by Voxer, neither the rights nor the obligations arising under this Agreement are assignable or transferable by you, and any such attempted assignment or transfer shall be void and without effect unless agreed to in writing by Voxer.

16.3 Governing Law; Venue. This Agreement and any action related thereto shall be governed by and

construed in accordance with the laws of the State of California without regard to the conflicts of laws provisions therein. Customer and Voxer hereby agree and consent to the exclusive jurisdiction of the state and federal courts located in San Francisco County, California with respect to any claim arising under, related to or by reason of this Agreement. This Agreement shall not be governed or affected by any version of the Uniform Computer Information Transactions Act enacted in any jurisdiction. The United Nations Convention on contracts for the International Sales of Goods shall not apply

16.4 Government End Users. The Product and related documentation are "commercial computer software"

and "commercial computer software documentation", respectively, as such terms are used in FAR

12.212. Any use, duplication or disclosure of the Product or the documentation by or on behalf of the US

Government is subject to the restrictions set forth in this Agreement.

16.5 Export. You agree to comply fully with all relevant export laws and regulations of the United States and other applicable jurisdictions ("Export Laws") governing the Product and/or your use thereof. Without limiting the foregoing, you shall not: (a) export or re-export the Product directly or indirectly in violation of Export Laws; nor (b) use the Product for any purposes prohibited by the Export Laws, including but not limited to nuclear, chemical, or biological weapons proliferation.

16.6 Unenforceability. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

16.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, superseding any prior agreements between you and Voxer regarding the Product, and any and all written or oral agreements previously existing between the parties are expressly cancelled (except to the extent otherwise expressly provided herein)

For any questions or comments or complaints or claims with respect to the

Product please contact: VoxerPro LLC, 760 Market Street, Fifth Floor, San

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