

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.).

End User License Agreement

This Agreement (the “Agreement”) is made by and between WARATEK Inc., (“WARATEK” or “Licensor”) and the Government Customer, as defined in the attached Carahsoft Rider to Manufacturer Commercial Supplier Agreements (the “Customer” or “Licensee”) (WARATEK or Customer may be referred to herein as a “Party” and they may be referred to herein collectively as the “Parties”)

This Agreement is comprised of the following:

- This End User License Agreement
- Exhibit A – Definitions

In the event of a conflict among the above listed documents, the documents are listed in descending order of precedence. For the avoidance of doubt, **Exhibit A** takes precedence over the Commercial Terms and Support & Maintenance terms set forth in Task or Delivery Order but not over the End User License Agreement.

NOW THEREFORE, in exchange for the consideration described herein, the Parties agree as follows:

1. Definitions

The definitions which apply to this Agreement including all exhibits are attached as **Exhibit A** and incorporated herein by reference.

2. License Grants

2.1 WARATEK grants to Licensee a non-exclusive and non-transferable perpetual license to the Software described in Commercial Terms for the Use described in the Commercial Terms and in the Software documentation and as set forth below at the prices set forth in the Commercial Terms. All Licenses granted are subject to the terms and conditions set forth in this Agreement.

2.2 License Key. Licensee acknowledges that the Software contains a license key. WARATEK will provide Licensee with a license mechanism and a related key. This mechanism and key pair shall control the modules, functions and features as licensed in accordance and defined in the applicable License Schedule. If Licensee subsequently purchases

additional modules and functions, WARATEK shall provide Licensee with additional license keys in order to update the mechanism and license pair. In the event Licensee signs a click-charge subscription for production engines, the mechanism and key pair shall take control of such click-charge counter. Licensee agrees not to acquire or use any license key or similar computer code for the Software provided by another supplier than WARATEK or one of its authorized partners/resellers or distributors.

2.4 Backup/Archival Copy. Licensee may make one (1) backup/archival copy of the Software provided this copy is not installed or Used on any Computer. Licensee may not sell, assign or transfer any copy of the Software, except where specifically set forth in the applicable license terms (such as in the applicable Open Source Software terms). Any copies that Licensee is permitted to make pursuant to this Agreement must contain the same copyright and other proprietary notices that appear on or in the Software. Except as provided for above, Licensee may not copy the Software.

2.5 Any non-compliance with the above stated obligations is considered to be a material breach of this Agreement.

2.6 The WARATEK Software, as well as know-how and the relevant documentation are owned by WARATEK and WARATEK LTD and its structure, organization and code are the valuable trade secrets of WARATEK and WARATEK LTD. Any and all intellectual property rights of the WARATEK Software and integrated third party software (i.e. Adobe PDF Library technology) remain in the ownership of the respective owner(s) which retain title and full ownership rights thereto. The WARATEK Software is also protected by United States and International copyright law and International Treaty provisions.

Except as stated herein, **this Agreement does not grant Licensee any intellectual property rights in the Software or in any component of the Software.** Licensee is only allowed to use the programs contained in the Software for which it has paid the License Fee and for which it has received the authorization to use the Software.

2.7. Any rights not expressly granted to Licensee are reserved by WARATEK LTD and WARATEK, which retain title and full ownership right under the copyright laws of the United States or any other jurisdiction or foreign laws. Neither WARATEK LTD, WARATEK nor their respective resellers and distributors are obligated to provide, nor is Licensee acquiring any right of any kind with respect to, the source code for the Software. Licensee acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with WARATEK LTD's or WARATEK's ownership of or rights with respect to the Software. Furthermore, Licensee agrees not to limit or interfere in any manner with the ownership and intellectual property rights related to integrated third party software program(s).

Except as otherwise expressly permitted in this Agreement, Licensee may not:

- modify or create any derivative works of any Software or Software documentation
- decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for any Software (except to the extent applicable laws specifically prohibit such restrictions)
- re-distribute, encumber, sell, rent, lease, sublicense the Software, except as to Licensee's Affiliates.

3. **Support**

3.1 Customer has agreed to buy Support services from WARATEK ("Initial Support Term") as provided for in **Exhibit C**. If Customer buys Support after the Initial Support Term, WARATEK may increase the cost of support by no more than 5% per year.

3.2 **Term**. WARATEK shall provide Support for a term of one (1) year from the effective date of this Agreement. Such term shall be automatically renewed each year for an additional one (1) year renewal term unless one party notifies the other party in writing of its intent not to renew the Support services ninety (90) prior to the expiration of the then current Support term.

3.3 **Termination**. Either party may terminate Support services at the end of any term by giving written notice to the other party at least ninety (90) days prior to the end of such term. Additionally, either party may terminate Support services if the other party breaches any material term or condition of this Agreement and such breach is not remedied within thirty (30) days after receiving written notice thereof. In the event that Customer terminates this Support for cause, it shall be

entitled to a pro rated refund of any fees paid for services not received.

4. **Conditions of Service**

4.1 **Licensee Assistance**. Licensee agrees to provide WARATEK reasonable access to Licensee personnel authorized to answer questions or resolve problems reported by Licensee regarding the Products. Licensee also agrees to implement all Updates and Upgrades provided by WARATEK within a reasonable time which means no longer than twelve (12) months after the commercial release by WARATEK. If the new release is necessary to resolve an existing problem, Licensee agrees to implement such release as soon as reasonably possible. When WARATEK offers a new release and Licensee does not implement such release, WARATEK has no obligation with regard to the problem resolved by the new release.

4.2 **Retirement of Releases**. WARATEK shall provide Support for Product versions from the date the version becomes generally available until such version is retired. Unless otherwise set forth in an executed written agreement between the parties to this Maintenance Agreement, WARATEK shall retire prior commercial releases of the Products (i.e. discontinue Maintenance Services) as follows: (i) six (6) months after the commercial release of the subsequent maintenance release; (ii) no sooner than six (6) months after the commercial (generally available) release; (iii) no sooner than twelve (12) months after the commercial release of a new major upgrade.

4.3 **Use of Updates**. Licensee's use of any Updates provided by WARATEK as part of Support shall be governed by all license limitations and restrictions, and all other terms and conditions of this Agreement. WARATEK may, upon thirty days prior written notice to Licensee, change the services included in Support provided, any such change shall not materially or substantially decrease the service level commitments described in Exhibit C. Such changes will not become effective until acceptance and commencement of any renewal term.

5. **Payment**

Unless otherwise provided for in the Commercial Terms, Customer shall make payment to WARATEK as follows:

For Software, payment terms are 50% with order and then the remaining 50% NET 30 after receipt of WARATEK's invoice.

Services will be invoiced and paid in advance of the provision of the Services. If cancellation of scheduled Services occurs up to 30 days prior to the scheduled service, there will be no fee. If cancellation occurs 14 to 29 days prior to scheduled service, a 25% cancellation fee will be charged. Cancellations within 14 days prior to the scheduled services will be charged the full price of the contracted services.

Maintenance will be invoiced annually in advance.

Any invoice which remains unpaid for 30 days after payment is due (a "Late Payment") will draw interest at 2% per month until paid. If WARATEK retains counsel to collect a Late Payment, Customer shall pay WARATEK's cost of collecting the Late Payment including reasonable attorney's fees.

Where pricing is based on volume, Licensee shall maintain accurate records as necessary to verify compliance with this Agreement including the pricing and payment terms. WARATEK may conduct one or more audits to verify such compliance. All audits shall be conducted at WARATEK's expense, unless such audit establishes that the Licensee has underpaid WARATEK by more than ten (10%) percent of the Fees actually due, in which case Carahsoft, acting on behalf of Waratek, may invoice Licensee for all amounts due plus a penalty equal to 25% of the underpayment and the expense of the audit.

Notwithstanding the foregoing, invoicing and payment shall be in accordance with General Services Administration Acquisition Regulation (GSAR) 552.212-4(g) and (i).

6. Mutual Confidentiality

Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information," and each party agrees that it will not, during or after the term of this Agreement, permit the duplication, use, or disclosure of any such Confidential Information to any person (other than an employee, agent or representative of the other party who must have such information for the performance of its obligation hereunder or in the execution of the duties of his or her employment), unless such duplication, use or disclosure is specifically authorized by the other party in writing. Licensee agrees that Licensor shall expressly be entitled to disclose Confidential Information provided by Licensee to its own employees, agent or representatives as well as to such of its parent company WARATEK LTD as well as to employees of WARATEK. The aforesaid disclosure shall always be strictly confined to the extent that required in order to fulfill Licensor's obligations under this Agreement and under a valid Support Agreement with Licensee. Such aforesaid disclosure shall always be strictly

confined to the extent necessary in order to fulfill Licensor's obligations under this Agreement and under a valid Support Agreement with Licensee.

Each party shall use reasonable diligence, and in no event less than that degree of care which such party uses in respect to its own Confidential Information of like nature, to prevent the unauthorized disclosure or reproduction of such Confidential Information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions.

Confidential Information shall not include: information which is in the public domain; information known to the recipient party as of the date of this Agreement, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source who is not under an obligation of confidentiality with respect to such information. The provisions of this Section 4 shall survive any termination or expiration of this Agreement.

7. Assignment.

Provided Licensee gives Licensee timely written notice, Licensee may assign its rights and obligations under this Agreement without prior written approval by WARATEK to any Licensee Affiliate.

8. Export Rules.

Licensee agrees that the Software will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as an export controlled item under the Export Laws, Licensee represents and warrants that it is not a citizen, or otherwise located within, an embargoed nation and not otherwise prohibited under the Export Laws from receiving the Software. All rights to use the Software are granted on condition that such rights are forfeited if Licensee fails to comply with the terms of this Agreement and the applicable Schedules hereto.

9. Limited Warranty and Disclaimer

9.1 Provided that Licensee has paid the applicable license fee, WARATEK warrants that for a period of ninety (90) days from the date of successful completion of Software implementation, the Software substantially conforms to its published specifications

and the media on which the Software is furnished will be free of defects in materials and workmanship under normal use. Such warranty shall be extended and continued so long as Customer pays for Support.

9.2 WARATEK warrants and covenants that : (i) WARATEK has the power and authority to execute and deliver the Agreement; (ii) WARATEK has taken all necessary corporate action to authorize the execution and delivery of the Agreement, and the Agreement is and shall be the legal, valid, and binding obligation of WARATEK enforceable in accordance with its terms; (iii) WARATEK owns or has acquired rights to all proprietary interests in the Software and documentation necessary to grant the licenses set forth in the Agreement; (iv) to the knowledge of WARATEK, the Software contains no virus, Trojan horse, worm, or other software routines designed either to permit unauthorized access by third parties or to disable, erase or otherwise harm Licensee's data, hardware or computer system; (v) the documentation is reasonably sufficient for the operation and maintenance of the Software by reasonably competent and trained End Users; and (vi) all Services provided by WARATEK will be performed in a workmanlike manner pursuant to generally accepted industry standards..

a) WARATEK AND ITS SUPPLIERS PROVIDE NO REMEDIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED FOR ANY SAMPLE APPLICATION CODE, ALPHA CODE OR TRIAL VERSION OF THE SOFTWARE. ANY TRIAL VERSION OR TEST VERSION (NON GA VERSION) OR SAMPLE APPLICATION CODE OF THE SOFTWARE ARE PROVIDED "AS IS".

b) EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY WITH RESPECT TO SOFTWARE OTHER THAN ANY SAMPLE APPLICATION CODE OR TRIAL VERSION, WARATEK, ITS SUPPLIERS AND RESELLERS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. WARATEK DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION.

c) IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS

FROM THE DATE OF SHIPMENT OF THE SOFTWARE.

e) NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY WARATEK, ITS SUPPLIERS AND RESELLERS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

f) ANY AND ALL WARRANTIES SHALL BE VOID IF THE SOFTWARE HAS BEEN MODIFIED WITHOUT AUTHORIZATION BY WARATEK OR IF INSTALLED ON OR USED WITH EQUIPMENT BY LICENSEE WHICH DOES NOT MEET THE MINIMUM REQUIREMENTS NECESSARY FOR PROPER OPERATION AS SET FORTH BY WARATEK AND PROVIDED TO LICENSEE. NEITHER PARTY SHALL BE LIABLE FOR ANY FAILURE OR DELAY IN PERFORMANCE DUE TO ANY CAUSE BEYOND SUCH PARTY'S CONTROL INCLUDING BUT NOT LIMITED TO ACCIDENT, ACTS OF GOD, FIRE OR WATER DAMAGE, ACTS OF WAR, RIOTS, STRIKES, LIGHTNING, ELECTRICAL DISTURBANCES OR OTHER SIMILAR CAUSES.

10. Sole and Exclusive Remedy

Licensee's exclusive remedy for any breach of the warranty as set forth in herein is described below. Provided that Customer makes a timely written warranty claim to WARATEK within the warranty period, at WARATEK's sole discretion, WARATEK will either (1) supply Licensee with a copy of the Software that substantially conforms to the published documentation, or (2) provide a replacement for the defective media, or (3) refund a pro-rated portion purchase price of the Software to Licensee.

WARATEK shall have no responsibility to Customer for a Software failure if the failure of the Software has resulted from Licensee's conduct including, without limitation. Misconfiguration, accident, abuse, misapplication, or if the failure arises out of use of the Software with other than a recommended hardware configuration as provided by WARATEK documentation.

11. Indemnity

WARATEK will defend, at its own expense, and hold Licensee harmless against any legal action brought against Licensee based on a claim that the Software infringes an Intellectual Property Right of a third party, and WARATEK will pay any final judgment

against Licensee in any such action attributable to any such claim or incurred by Licensee through settlement of such claim. Claims with respect to any of the Open Source Software and/or Third party software programs shall be subject to their respective license agreements and WARATEK disclaims any and all liability with respect to any claims of infringement with respect to those software programs. However, all such defense and payments of final judgment are subject to the conditions that Licensee must: (i) notify WARATEK promptly in writing of such claim, (ii) permit WARATEK to have sole control of the defense, compromise or settlement of such claim, including any appeals, and (iii) reasonably cooperate with WARATEK in the defense or settlement of such claim. WARATEK will pay those costs, damages or reasonable attorney's fees incurred by Licensee in connection with such action or claim but shall only pay Licensee's legal fees which were incurred by Licensee after Licensee gave WARATEK notice of the claim and before WARATEK assumed control of the defense.

Nevertheless, the parties agree that WARATEK's entire liability under this Agreement for any claim or legal action related to an infringement of a third party Intellectual Property Right shall be limited to 125% of the amount of the Licensee's paid License Fees for the Software in the prior twelve (12) months. Should the Software become, or in WARATEK's opinion be likely to become, the subject of any such infringement claim, Licensee shall permit WARATEK, at WARATEK's option and expense, to (i) procure for Licensee the right to continue using the Software, or (ii) replace or modify the Software so that it becomes non-infringing and maintains the same functionality or (iii) terminate the right to use the Software, upon which termination Licensee agrees to promptly destroy all copies of the Software and certify the same to WARATEK, whereupon WARATEK will refund Licensee's License Fees for the Software up to 100% the total amount of the Licensee's paid License Fees for the Software in the prior twelve (12) months.

12. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WARATEK OR ITS RESELLERS OR DISTRIBUTORS OR CUSTOMER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF OR THE INABILITY TO USE THE SOFTWARE EVEN IF ADVISED OF THE POSSIBILITY THEREOF,

AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN ANY CASE WARATEK'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL NOT EXCEED 100% OF LICENSE FEES PAID TO LICENSOR FOR THE SOFTWARE IN THE PRIOR TWELVE (12) MONTHS.

The limitations of liability set forth in this Section shall not apply to: (i) claims by a party for breach of Confidentiality; (ii) the extent the party seeking the benefit of the limitation has engaged in wilful misconduct, gross negligence or has intentionally harmed the other party; (iii) claims for personal injury and (iv) claims for which there is actual insurance coverage for such claim and the deductible shall be paid by the party carrying such coverage (in which case the maximum liability of a party shall be the greater of the maximum liability set forth in this section or the amount of actual insurance coverage).

WHERE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES; HOWEVER, THE EXCLUSION OF WARATEK'S WARRANTY IN THIS LIMITED WARRANTY SECTION SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

13. License Term and Termination

This Agreement shall be effective for the term of the License grant unless terminated earlier, either through mutual agreement by the parties or by Licensee's breach of the Agreement; provided however, Licensee shall have thirty (30) days from written notice to cure any such breach, if curable. Upon termination, Licensee must immediately destroy the Software and all accompanying written materials and all copies thereof (including copies stored in computer memory) and shall so certify to WARATEK in writing.

14. Disputes

14.1 This Agreement will be governed by and construed under the laws of the State of New York and under the federal laws applicable therein.

Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by the other party, which waiver shall be effective only with respect to the specific obligation described therein. If any provision hereof is found to

be void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

15. Notices

All notices or other communications herein provided to be given or which may be given by any party to the other, shall be deemed to have been duly given when made in writing, including an electronic writing which can be authenticated and time stamped or delivered in person, or upon receipt if deposited in the United States or Canadian mail, postage, pre-paid, certified mail, return receipt requested, as follows:

Notices to the Licensee shall be delivered to the address identified in the Purchase Order.

Notices to WARATEK:

James E. Lee
WARATEK Inc.

With a copy to:

Michael J. Gardner, Esq.
Troutman Sanders, LLP.
222 Central Park Avenue, Suite 2000
Virginia Beach, VA 23462
Mike.Gardner@troutmansanders.com
Fax: 757-687-1534
Tel: 757-687-7506

or to such address as the parties may provide to each other in writing from time to time.

Exhibit A

Definitions

“**Computer**” means one central processing unit (CPU) that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions;

“**End User**” means the Licensee of the WARATEK Software Product who acquires the software for use and not for distribution or resale;

“**End User License Agreement**” (EULA) means this WARATEK End User License Agreement for the WARATEK software program(s) and Products;

“**Fees**” means the fees and expenses specified in this Agreement and the applicable Schedules thereto payable by Licensee to WARATEK in respect of the License, and the Maintenance Services; all fees and expenses are stated without any applicable taxes;

“**GA Release**” means the Generally Released Version of WARATEK Software (excluding Beta and earlier Versions, Custom Versions, Trial Version, Test Versions and Code Samples);

“**Instance**” means one loaded code of the Software to run one thread at a time, no matter whether running on a single or multiprocessor Computer;

“**Intellectual Property Rights**” means all rights in inventions, patents, copyrights, design rights, trade marks and trade names, service marks, trade secrets, know-how and any other intellectual property rights (whether registered or unregistered) and all applications for any of them, anywhere in the world;

“**License**” means the License in respect of the Software granted by WARATEK to the Licensee;

“**Open Source License Terms**” means the license terms applicable to Open Source Software included in WARATEK Products

“**Open Source Software**” means Third Party Software available without charge for use, modification or distribution and generally licensed under the GNU Lesser General Public License, Apache or other open source software license;

“**Remote Access**” means an installation of the WARATEK Software Program(s) where a User accesses the said Software from a remote device. The host device allows one or more Users to use the Software at one time through the remote connection. Each remote access

User, network User, or local connection to the remote access host computer who uses the Software is cumulatively counted as one User for license counting purposes;

“**Response Times**” means the times specified in the applicable Maintenance Agreement within which WARATEK shall have commenced analysis of an Incident respectively corrective maintenance after notification from the Licensee of an Incident either by hotline support and advise, a remote diagnostics or if necessary by dispatching a suitably qualified support analyst to the Licensee;

“**Seat**” means a workstation or terminal that can be operated by one User at a time;

“**Site**” shall mean one enterprise location (such can be a contiguous number of buildings, a single building or a production site); Remote buildings thereto within a distance of not more than 3miles shall be accepted as being only one production site provided that Licensee’s management and live control is maintained through one licensing server at the central site through live communication. Remote sites (such as local agencies, home offices) with up to two Users shall be considered to be part of one site provided that they do not run any production at the remote site and provided that control is maintained through one licensing server at the central site through live communication;

“**Software**” or “**Products**” means the WARATEK Software Program(s) (as set forth in the applicable License Schedule with WARATEK) and therein integrated third party software program(s), in each case, supplied by WARATEK or its suppliers or resellers herewith, and corresponding documentation, associated media, printed materials, and online or electronic documentation;

“**Support**” means the services described on **Exhibit C**.

“**Third party software programs**” means in the WARATEK Software integrated third party software such as Adobe PDF Library technology, Datalogics Software etc. and related documentation, and any upgrades, modified versions, updates, additions, and copies thereof;

“**Trial Version**” means a version of the Software, so identified, to be used only to review and evaluate the Software for a specific time period as determined by WARATEK;

“Updates and Upgrades” means any updates or upgrades or new releases of the Software made available by WARATEK Software AG, WARATEK or its resellers or distributors to the Licensee as part of Maintenance Services under the terms of this Agreement and the applicable Maintenance Agreement thereto;

“Use” means to access, install, download, copy or otherwise benefit from the functionality of the Software in accordance with the Software documentation and as set forth in this Agreement;

“User” means any person, program, process, product, or hardware which uses any functionality of the Software;

“Virtual Machine” means a computer operating system (guest) running in emulated hardware within a host operating system. A virtual machine is capable of executing the functions supported by its installed operating system. For license counting, a virtual machine is considered to be the equivalent of a physical machine;

“Warranty Period” means the period set forth in Section 10 of this End User License Agreement.