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

- 1. Scope.** This Carahsoft Rider and the Liquidware Labs ('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

 - (a) Error! Unknown document property name.**

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.

LIQUIDWARE LABS, INC.
SOFTWARE LICENSE AGREEMENT V.2009-11

This Software License Agreement (“Agreement”) is entered into between Liquidware Labs, Inc. (“Liquidware”), and the Customer identified in an Order (“Customer”).

BACKGROUND. The terms and conditions of this Agreement apply to all Orders between Liquidware and the person or entity identified on an Order (the “Customer”). In the event of a conflict between the provisions in an Order and this Agreement, the provisions of this Agreement will govern and control to the extent of such conflict unless a provision in an Order is expressly agreed to by Liquidware, in which case and only to the extent expressly agreed, the Order will govern. Liquidware and Customer may also enter into an Addendum (as defined below) to this Agreement. In the event of a conflict between the provisions in an Addendum and this Agreement or an Order, the provisions in the Addendum shall govern and control to the extent of such conflict. The terms of an Order and this Agreement will prevail over any conflicting provision in any purchase order or any other instrument of Customer regardless of execution by Liquidware unless such provision is expressly agreed to by Liquidware. Services performed by Liquidware for Customer other than the Support Services described below will be performed according to the terms of Liquidware’s Professional Services Agreement.

1. DEFINITIONS. As used in the Agreement, and in addition to any other terms defined herein, the following terms have the following meanings:

“Addenda” or “Addendum” means any written addendum to this Agreement that is fully executed by the authorized representatives of Customer and Liquidware that sets forth additional detail regarding Customer’s and Liquidware’s business relationship and/or amends this Agreement.

“Agreement” means these this Agreement, an Order and, if applicable, one or more Addenda.

“Documentation” means the Liquidware authored user guides and manuals accompanying the Licensed Software and any “Help” files accessible during use of the Licensed Software.

“Delivery Date” has the meaning assigned to this term in Section 4.3.

“Effective Date” means the date of execution of an Order.

“Error” means a substantial failure of a Supported Version of the Software to perform the material functions described in the Documentation.

“Error Correction” means either a software modification or addition that, when made or added to a Supported Version, causes the Licensed Software to perform the material functions described in the Documentation.

“License” means the collective license rights granted to Customer according to the terms of Section 2.

“Licensed Software” means the software licensed under this Agreement.

“Order” means Liquidware’s sales order form that references and incorporates this Agreement and is fully executed by the authorized representatives of Customer and Liquidware.

“Third Party Software” means software that is included in or provided with the Licensed Software that is not proprietary to Liquidware and that is identified in the Documentation accompanying the software as third party software.

“Support Policy” and “Support Services” mean the specific support services to be provided by Liquidware under the terms of Section 3.

“User” means the number of User(s) as specified in an Order.

“Update” means a Licensed Software release that is (i) generally deemed by Liquidware to be an Error Correction release and generally does not contain new functionality, and (ii) generally provided to Liquidware’s customers as part of Support Services for the Licensed Software. Update releases shall be designated by a change in the digit of the release number to the right of the decimal (i.e., X.1 to X.2).

“Upgrade” means a Licensed Software release that (i) contains new functionality and enhancements in addition to Error Corrections, and (ii) is generally provided to Liquidware’s customers as part of Support Services for the Licensed Software. Upgrade releases shall be designated by a change in the digit of the release number to the left of the decimal (i.e., 1.X to 2.Y).

“Workaround” A procedure defined by Liquidware and followed by Customer to avoid an Error without substantially impairing use of the Software.

2. LICENSED SOFTWARE TERMS.

2.1 License. Subject to the terms of the Agreement, Liquidware grants Customer, upon payment of the applicable license fees indicated on an Order, the limited, non-exclusive, nontransferable (except as provided in Section 4.14) perpetual right and license to (i) use the executable version of the Licensed Software on the number of Users set forth in the applicable Order(s); (ii) make a reasonable number of backup copies of the Licensed Software as needed for archival use only; and (iii) make multiple copies of the Documentation for Customer’s internal use. Each Order will indicate the maximum number of Users for which the Licensed Software is licensed. Customer may not use the Licensed Software on more than the authorized number of Users.

2.2 Termination. The License is effective until terminated. Customer

may terminate a License at any time by (i) Customer ceasing its use of the Licensed Software, and (ii) either returning to Liquidware all copies of the Licensed Software in Customer’s possession or control or by certifying in writing to Liquidware that such copies in use have been destroyed. The License may be terminated by Liquidware if (i) Customer fails to pay any amounts remaining unpaid at least thirty (30) days after the invoice date and Customer continues to fail to pay Liquidware within ten (10) days after written notice of such payment default has been sent to Customer, or (ii) Customer continues to violate any material terms and conditions of this Agreement after Liquidware delivers written notice of such violation to Customer and provides Customer at least fifteen (15) days after the date of such notice to cure the violation. Upon any termination of the License, Customer agrees to (i) immediately cease all use of the Licensed Software, and (ii) either return to Liquidware all copies of the Licensed Software in Customer’s possession or control or certify in writing to Liquidware that such copies have been destroyed.

2.3 Limitations. Customer shall not, and shall not permit others to: (i) transfer or sublicense the Licensed Software; (ii) provide third parties with access to the Licensed Software; (iii) trace, disassemble, reverse engineer or decompile the Licensed Software, source code, structure, algorithms or ideas underlying such Licensed Software, or cause or permit reverse engineering, disassembly or recompilation of the Licensed Software; (iv) avoid, circumvent or disable any security device, procedure, protocol or mechanism that Liquidware may include, require or establish with respect to the Licensed Software; (v) publish or provide the results of any benchmark or comparison tests run using the Licensed Software to any third party, without the prior written consent of Liquidware; or (vi) modify the Licensed Software without the prior written consent of Liquidware.

2.4 Third Party Software. The Documentation accompanying the Licensed Software delivered to Customer will identify any and all Third Party Software that is delivered to Customer with or included in the Licensed Software. In addition to the terms set forth in the Agreement, the Third Party Software is provided to Customer according to the terms set forth in the Documentation accompanying the Licensed Software that such Third Party Software is included in or provided with.

2.5 Reservation of Rights. Liquidware reserves all rights not expressly granted herein. Except as set forth in the Agreement, no express or implied license or right of any kind is granted to Customer regarding the Licensed Software, including, but not limited to, any right to use, reproduce, market, sell, distribute, transfer, translate, modify, adapt, and disassemble, decompile, or reverse engineer the Licensed Software or create derivative works based on the Licensed Software or any portions thereof, or obtain possession of any source code or other technical material relating to the Licensed Software.

2.6 Ownership. Liquidware and its licensors reserve all rights not expressly granted herein. The License is not an agreement for sale of software. Except as set forth in the Agreement, no express or implied license or other right of any kind regarding the Licensed Software is granted to Customer. Customer shall reproduce and include the copyright notices and other proprietary notices on all copies of the Licensed Software that Customer is authorized to make.

2.7 Restricted Rights. The Licensed Software is provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Restricted Rights clause at FAR 52.227-19, subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause in DFARS 252.227-7013, or subparagraph (d) of the Commercial Computer Software Licensing at NASA FAR Supplement 16-52.227-86, or their equivalent, as applicable. Contractor/manufacturer is Liquidware Labs, Inc., 3600 Mansell Road, Suite 200, Alpharetta, Georgia 30022.

2.8 Software Warranties. If Customer purchases the License, Liquidware warrants to Customer for a period of ninety (90) days after the Effective Date (the “Warranty Period”) that (i) the Licensed Software will substantially perform in accordance with the Documentation; (ii) the storage media, if any, upon which the Licensed Software is delivered is free of defects in material and workmanship under normal use; and (iii) the Licensed Software does not contain any known virus or other routine that can disable, erase or otherwise harm the Licensed Software, or Customer’s other software or data. The above warranties specifically exclude defects resulting from: (i) modifications made to the Licensed Software by anyone other than Liquidware; (ii) Customer’s failure to install the most recent Error Correction, Update or Upgrade; (iii) Customer’s use of the Licensed Software in connection with any computer equipment or devices that do not meet the minimum requirements set forth in the Documentation; or (iv) Customer’s use of the Licensed Software in a

manner that is not authorized in the Agreement. Liquidware does not warrant that use of the Licensed Software will be uninterrupted or error free. The Warranty Period only applies to each new License for Licensed Software obtained by Customer and delivery of Error Corrections, Updates and Upgrades shall not restart or have any other effect on the Warranty Period.

2.9 Software Warranty Remedies. Customer's sole and exclusive remedy and Liquidware's sole responsibility for a breach of the warranty in Section 2.8 is to either repair or replace, at Liquidware's option, the non-conforming Licensed Software that does not conform to the warranty in Section 2.8; provided, however, that Liquidware receives a warranty claim during the Warranty Period.

2.10 Infringement Indemnity.

(a) If an action is brought against Customer claiming that the Licensed Software infringes any third party copyright or patent or misappropriates any third party trade secret rights, then Liquidware shall indemnify Customer and hold Customer harmless against all damages and costs awarded against Customer, or settlements entered into by Liquidware on Customer's behalf, in the action, subject to Section 2.10(b) below, but only if: (i) Customer notifies Liquidware promptly and in writing upon learning of such claim; (ii) Liquidware is given sole control of any proceedings or negotiations in connection with the claim; (iii) Customer takes no action that in Liquidware's reasonable judgment materially impairs Liquidware's defense of the claim; and (iv) at Liquidware's expense, Customer cooperates and assists in the defense or settlement of the claim, as reasonably requested by Liquidware.

(b) In performing its indemnity obligations in Section 2.10(a), Liquidware may, at its option and expense, either (i) substitute a substantially equivalent non-infringing item for the infringing item; (ii) modify the infringing item so that it no longer infringes but remains functionally equivalent; or (iii) obtain for Customer the right to continue using such item. If none of the foregoing is commercially practicable in Liquidware's reasonable opinion, Liquidware may terminate the applicable License and will accept a return of the infringing Licensed Software and refund to Customer the following portion of the license fees paid therefore: $(60 - \text{Number of months elapsed since the Effective Date}) / 60$. The indemnity in Section 2.10 will not apply if and to the extent that the infringement claim results from (i) a modification of the Licensed Software not provided by Liquidware; (ii) a failure to promptly install an Error Correction, Update or Upgrade; or (iii) the combination of the Licensed Software with items not provided by Liquidware.

(c) NOTWITHSTANDING ANY OTHER PROVISIONS OF THE AGREEMENT OR AN ORDER, THIS SECTION 2.10 STATES THE ENTIRE LIABILITY AND OBLIGATION OF LIQUIDWARE WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

2.11 Audit. Liquidware may, at its expense, conduct an audit to verify that Customer is using the Licensed Software in accordance with the provisions of the Agreement. Any such audit shall be conducted during regular business hours and shall not unreasonably interfere with Customer's business activities. If an audit reveals that Customer has distributed or allowed use of the Licensed Software in excess of the use permitted by the Order and this Agreement, then Customer shall pay Liquidware for such unauthorized use based on the Liquidware retail price list in effect at the time the audit is completed. If the unpaid license fees exceed five percent (5%) of the license fees paid, then Customer shall pay Liquidware's reasonable costs of conducting the audit. Liquidware shall conduct audits no more than once per calendar year; provided however that if the underpaid fees exceed five percent (5%) of the license fees paid then Liquidware shall be entitled to conduct a second audit within the same year.

3. SUPPORT SERVICES.

3.1 Support Fees. Support Services for the Licensed Software are offered to Customer at Liquidware's then current fees for Support Services (the "Support Fees"). Liquidware offers Support Services on a twelve (12) month cycle that begins on the Effective Date (each such twelve (12) month cycle is referred to herein as the "Annual Support Term"). At the time of ordering the Licensed Software, Customer may elect to lock-in the price for Support Fees by purchasing Support Services for one or more Annual Support Terms. Except where Customer has pre-paid Support Fees as described above, on or about forty five (45) days prior to commencement of the next Annual Support Term, Customer will be invoiced Liquidware's then current Support Fees for the Support Services for the next Annual Support Term. If the invoiced Support Fees are not paid on or before commencement of the Annual Support Term corresponding to the unpaid Support Service Fees, then the Support Services shall lapse. If Customer licenses additional Licensed Software over the course of any Annual Support Term, then Liquidware may prorate the renewal Support Fees for expiring Support Services to set the expiration of the new Annual Support Term with the expiration of the Annual Support Term of the last Licensed Software licensed purchased.

3.2 Description of Support Services. The Support Services are described in the current Liquidware Customer Support Policy located at www.liquidwarelabs.com. The Support Policy is subject to change at any time without notice at the sole discretion of Liquidware.

3.3 Reinstating Support Services. If Customer lets the Support Services lapse and later desires to reinstate Support Services, then Customer may reinstate the Support Services by paying to Liquidware all Support Fees that would have been due during the time Customer ceased receiving support plus an additional five percent (5%) of such amount and Customer agrees to install all Error Corrections, Updates and Upgrades necessary to bring Customer's installation of the Licensed Software current with the most recent release.

3.4 Remote Access. Liquidware's Support Services may include remote diagnostics. Upon Liquidware's request, Customer will implement the necessary hardware, software and telecommunication services reasonably requested by Liquidware to facilitate remote diagnostics and remote installation of Error Corrections, Updates and Upgrades.

4. GENERAL TERMS.

4.1 Invoicing and Payment. Customer shall pay those amounts indicated in an Order according to such payment term specified.

4.2 Taxes. The amounts set forth in an Order are net amounts exclusive of all sales, use, withholding, excise, value added, and ad valorem taxes incurred by Customer or imposed in the performance of the Agreement or otherwise due as a result of the Agreement. Customer will be responsible for any and all such taxes and charges.

4.3 Delivery. As soon as commercially practicable after Liquidware's acceptance of an Order, Liquidware shall deliver or make available via electronic download to Customer the Licensed Software and Documentation ordered. Notwithstanding any provision under a separate Addendum which may require Liquidware to perform certain services in the nature of installation of the Licensed Software or configuration of Customer's computers, networks or other systems, delivery shall be deemed complete upon (i) tender to a commercial carrier by Liquidware of media upon which the Licensed Software and Documentation are digitally stored, or (ii) delivery of an access key to Customer allowing Customer to download the Licensed Software (the "Delivery Date"). Any delivery dates or period for delivery on an Order are approximate and not a guarantee. Under no circumstances will Liquidware be liable for failure of delivery or delay in delivery, caused in whole or in part by circumstances beyond Liquidware's reasonable control. In such circumstances, Customer is not relieved from accepting delivery and paying the agreed price when the cause interfering with delivery is removed.

4.4 Installation. Customer is responsible for installation of the Licensed Software unless otherwise provided in the Order.

4.5 Warranty Claims. Customer will initiate all Licensed Software warranty claims by contacting Liquidware's then-current support number. If Liquidware investigates a warranty claim that Liquidware reasonably determines to be caused by operator error, system configuration other than as described in the Documentation, or any other cause not covered by the warranties described in this Agreement, then Liquidware may, in its discretion, charge for Liquidware's services at Liquidware's then current rates for Liquidware's investigation of the warranty claim.

4.6 Mutual Representations. Each party warrants and represents to the other that it has the authority to enter into each Order and this Agreement and that its performance under the Order and this Agreement will not violate any agreement by which either of them is bound.

4.7 Warranty Disclaimers. EXCEPT AS SET FORTH IN SECTION IN THIS AGREEMENT, COMPANY MAKES NO REPRESENTATIONS, WARRANTIES, OR GUARANTEES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, ORAL OR WRITTEN, WITH RESPECT TO THE LICENSED SOFTWARE, THE SUPPORT SERVICES AND ANY OTHER SERVICES PROVIDED PURSUANT TO THE AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OR CONDITION (I) OF MERCHANTABILITY, (II) OF SATISFACTORY QUALITY, (III) OF FITNESS FOR A PARTICULAR PURPOSE, (IV) NON-NON-INFRINGEMENT, OR (V) ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.

4.8 Confidentiality. For purposes of this Section: (i) "Proprietary Information" means Trade Secrets and Confidential Information; (ii) "Trade Secrets" means trade secrets as defined under Georgia law; and (iii) "Confidential Information" means information (other than Trade Secrets) that is of value and treated as confidential. The unauthorized use or disclosure of Liquidware's Proprietary Information will cause great harm to Liquidware. Accordingly, Customer will maintain Liquidware's Proprietary Information in confidence and not disclose, display, transmit, or otherwise make available Liquidware's Proprietary Information in whole or in part to any third party, or use Liquidware's Proprietary Information for any purpose whatsoever other than as expressly authorized in the Agreement. With regard to Trade Secrets, the

obligations in this Section will continue until such time as the Proprietary Information is no longer a Trade Secret (through no fault by Customer). With regard to Confidential Information, the obligations in this Section will continue for a period of three (3) years after initial disclosure thereof.

4.9 MAXIMUM LIABILITY. IN NO EVENT WILL LIQUIDWARE AND ITS SUPPLIER'S AGGREGATE LIABILITY FOR ANY DAMAGES REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, EVER EXCEED THE AMOUNTS RECEIVED BY LIQUIDWARE UNDER THE ORDER GIVING RISE TO THE CLAIM AND RECEIVED DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH CLAIM.

4.10 LIMITATION OF REMEDY. IN NO EVENT WILL LIQUIDWARE AND/OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, GOODWILL, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH AN ORDER OR RESULTING FROM THE USE OF OR INABILITY TO USE THE LICENSED SOFTWARE, INCLUDING THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF LIQUIDWARE AND/OR ITS SUPPLIERS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF THE DAMAGES OCCURRING, AND WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

4.11 Export Controls. The Licensed Software and the underlying information and technology may not be used, exported, re-exported or downloaded (in the case of the Licensed Software) in violation of the laws and administrative regulations of the United States or any other applicable jurisdiction. Customer may not distribute the Licensed Software outside the United States without Liquidware's prior written consent. Liquidware's consent to distribute the Licensed Software shall be conditioned on Customer agreeing to the following: (i) Customer will not transfer, export, or re-export, directly or indirectly, the Licensed Software to Cuba, Iran, North Korea, Libya, Sudan, and/or Syria, or any nationals thereof, or to any other country subject to restriction under applicable laws and regulations, and that Customer is not located in, under the control of, or a national or resident of any such country; (ii) Customer will not use the Licensed Software in any activity related to the development, production, use, or maintenance of Weapons of Mass Destruction, as defined by the U.S. Dept. of Commerce, including without limitation, uses related to nuclear, missile, and/or chemical/biological development and or production and Customer will not transfer, export, or re-export, directly or indirectly to any party engaged in any such activity and if Customer is engaged in the development or production of Weapons of Mass Destruction, Customer acknowledges that it could be subject to and responsible for U.S. export licensing requirements; (iii) Customer will not transfer, export, or re-export, directly or indirectly to any party listed by the U.S. Government or under any applicable law as prohibited from receiving the Licensed Software and that it is not on, or

under control of anybody on, any such list; and (iv) Customer will comply with all applicable laws and regulations whenever Customer transfers, exports, or re-exports the Licensed Software.

4.12 Notices. All notices required to be given hereunder will be given in writing and will be delivered either by hand, by courier with confirmation of receipt, or by certified mail with proper postage affixed thereto addressed to the signatory at the address set forth in the Order, or such other person and address as may be designated from time to time by delivery to the other party of notice of the change in the manner described in this Section. All notices will be deemed received upon the party's receipt of the notice.

4.13 Counterparts. The Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed an original and all of which will constitute the same instrument.

4.14 Assignment. Neither Customer nor Liquidware may assign an Order, this Agreement or the rights and obligations thereunder to any other person or entity without the prior written consent of the other party; provided, however, Customer or Liquidware may assign its rights and obligations under an Order and this Agreement to any entity acquiring all or substantially all of the assets or voting stock of the assigning party. Except as provided in this paragraph, the License may not be assigned to any person or entity.

4.15 Entire Agreement. The Agreement sets forth the entire agreement and understanding between Liquidware and Customer with respect to the subject matter thereof and, except as specifically provided herein or in an Addendum, supersedes and merges all prior oral and written agreements, discussions and understandings between Liquidware and Customer with respect to the subject matter hereof, and neither Liquidware nor Customer shall be bound by any conditions, inducements or representations other than as expressly provided for herein. Notwithstanding the foregoing, the Agreement will not supersede the terms of any non-disclosure agreement entered into between Liquidware and Customer unless an Addendum refers to the specific non-disclosure agreement that the Agreement supersedes.

4.16 Miscellaneous. Each Order and this Agreement will be binding upon and inure to the benefit of the parties, their legal representatives, permitted transferees, successors, and assigns as permitted by this Agreement. If any provision hereof is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will be valid and enforceable to the fullest extent permitted by applicable law. This Agreement will be exclusively construed, governed and enforced in all respects in accordance with the internal laws (excluding all conflict of law rules) of the State of Georgia and any applicable federal laws of the United States of America, as from time to time amended and in effect. Each party agrees that any claim or cause of action whether in law or equity, arising under or relating to the Agreement may be brought in a court of appropriate jurisdiction in the State of Georgia. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply in any respect to an Order or the parties thereto.

IN WITNESS WHEREOF, the parties have duly executed this Agreement

LIQUIDWARE LABS, INC.

By: _____

Dated: _____

Printed Name

Title

CUSTOMER: _____

By: _____

Dated: _____

Printed Name

Title