

LANDesk Software, Inc. d/b/a Shavlik

LANDesk Software, Inc. d/b/a Shavlik
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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 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 2000) (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. (JUN2010). 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.

- (b) **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.

U) 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.

- (I) Renewals.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. II) 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.

END USER LICENSE, MAINTENANCE, AND SUPPORT SERVICES AGREEMENT

This End User License, Maintenance, and Support Services Agreement (“EULA”), is a legal agreement between Licensee and LANDesk (as such terms are defined below). This EULA describes the terms and conditions upon which LANDesk is willing to license its products and provide Maintenance and Support Services to Licensee.

IF LICENSEE DOES NOT AGREE TO ANY TERM OR CONDITION OF THIS EULA, LICENSEE SHOULD STOP INSTALLATION OR USE AND PROMPTLY RETURN THE LICENSED SOFTWARE IT PHYSICALLY POSSESSES, IF ANY, AND ANY ACCOMPANYING MATERIALS IN AN UNDAMAGED CONDITION TO THE VENDOR FROM WHICH IT WAS ACQUIRED.

1. DEFINITIONS.

“Concurrent Users” means the maximum number of users that may concurrently use or access the Licensed Software.

“Documentation” means the user documentation LANDesk provides with the Licensed Software.

“LANDesk” means:

- LANDesk International Limited, an Irish company, if Licensee has its primary office located outside of North America, Central America, South America (excluding Brazil), (collectively, the “Americas”), Japan or the People’s Republic of China.
- LANDesk Software, Inc., a Delaware corporation, if Licensee has its primary office located in the Americas.
- LANDesk Comércio de Software Brasil Ltda, a Brazilian company, if Licensee has its primary office located in Brazil.
- LANDesk Software K.K., a Japanese company, if Licensee has its primary office located in Japan.
- LANDesk (Beijing) Information Technology Co., Ltd., a Chinese company, if Licensee has its primary office located in the People’s Republic of China.

“Licensed Software” means the software, in object code form, and any Documentation accompanying this EULA or the software.

“Licensee” means the person or entity licensing the Licensed Software from LANDesk pursuant to this EULA.

“Maintenance” means LANDesk’s provision of Updates and Upgrades to the applicable Licensed Software.

“Node” means each electronic device using the Licensed Software including without limitation (a) a physical device such as a computer, handheld device, workstation, console, Seat, server, or any other electronic device; (b) a virtual machine, such as an operating environment that may be running concurrently with another operating environment on a single physical device; or (c) for the LANDesk Antivirus for Mail Servers product, an electronic or virtual mailbox (e.g., a mailbox for email).

“Node Count Data” means information periodically generated by the Licensed Software about (a) the quantity and type of current usage of the Licensed Software on a server, and (b) the non-personal, encrypted hardware configuration of that server.

“Seat” means the number of Concurrent Users authorized to use the Licensed Software.

“Support Services” means the services regarding installation, configuration and usage detailed at <http://www.landesk.com/support/> (provided for informational purposes only) and available to Licensee for purchase.

“Update” means content used to update the License Software and includes bug fixes, minor enhancements and patches, but does not include Upgrades.

“Upgrade” means a new version of Licensed Software that replaces a pre-existing version of such Licensed Software.

“User” means a natural person employed by or who otherwise provides services (whether as an independent contractor or otherwise) to Licensee who is supported with or uses the Licensed Software.

2. LICENSES. The licenses that are available from LANDesk include, without limitation, the following:

(A) TRIAL USE LICENSE: A “Trial Use License” is a nonexclusive, non-transferable, restricted, forty-five (45) day limited license that allows Licensee to evaluate the Licensed Software before purchasing a Full-Use License for the Licensed Software. At the end of the forty-five (45) day evaluation period, Licensee agrees to promptly discontinue use and delete the Licensed Software from Licensee’s systems. It is the sole responsibility of Licensee to back-up its system and perform all other measures to prevent any loss of files or data. Use of the Licensed Software under a Trial Use License is entirely at Licensee’s own risk.

(B) FULL-USE LICENSE: A “Full-Use License” is a non-exclusive, non-transferable, perpetual, and limited license to copy, install and use the Licensed Software within Licensee’s organization on the total number of Nodes for which Licensee has paid the required license fee. A Full-Use License does not include Maintenance or Support Services. Maintenance and Support Services must be purchased in addition to the Full-Use License.

(C) **SUBSCRIPTION LICENSE:** A "Subscription License" is a non-exclusive, non-transferable, time-limited license to copy, install and use certain Licensed Software within Licensee's organization on the total number of Nodes for which Licensee has paid the required subscription license fee. Unless a different term is specified in the purchase order to LANDesk, the term of Subscription License or renewal thereof is one (1) year. During the term of the time-limited subscription, Licensee is entitled to receive Maintenance for the Licensed Software (additional Support Services also may be available for purchase by Licensee).

(D) **USER-BASED LICENSE:** A "User-Based License" is a non-exclusive, non-transferable, perpetual, and limited license to copy, install and use the Licensed Software within Licensee's organization to support the total number of Users for which Licensee has paid the required license fee. A User-Based License does not include Maintenance or Support Services. Maintenance and Support Services must be purchased in addition to the User-Based License.

3. **LICENSE GRANT.** Subject to Licensee's compliance with all terms and conditions of this EULA, LANDesk hereby grants Licensee a non-exclusive, non-transferable, restricted, license to use the Licensed Software in accordance with the type of license and subject to the quantity of Nodes paid for by Licensee. Licensee may make a copy of the Licensed Software only as needed for archival and backup purposes. Licensee may permit third party consultants and contractors (such as third-party supplier(s) of information services) to use the Licensed Software on Licensee's behalf provided that (a) all such use is in accordance with the terms and conditions of this EULA, and (b) Licensee assumes full responsibility for any use of the Licensed Software by such third parties in any violation of this EULA, including without limitation use in excess of the licensed number of Nodes. Licensee agrees not to override or bypass the activation process or any security feature, authorization, activation, or reactivation of the Licensed Software or to assist others in doing the same.

4. **NODE COUNT VERIFICATION AND AUDIT.** Licensee agrees that LANDesk may periodically verify that Licensee's usage of the Licensed Software does not exceed the quantity of Nodes or User-Based Licenses purchased. Periodically, the Licensed Software on each server will generate Node Count Data. Each time the Licensed Software generates Node Count Data on a server, Licensee agrees to send, within thirty (30) days of generation, the Node Count Data to LANDesk either automatically by the Internet or manually by email. If the node count verification process shows that Licensee, including its third party consultants or contractors using the Licensed Software for Licensee, is using more than the number of Nodes or other Licensed Software for which licenses have been purchased, LANDesk shall invoice Licensee for such additional Nodes and/or Licensed Software, with such fees being the license fees as per LANDesk's then-current order price list. Licensee agrees not to override or bypass this node count verification process or assist others to do the same. With respect to User-Based Licenses, Licensee agrees to provide LANDesk with documentation evidencing the total number of Users within thirty (30) days of LANDesk's request. Licensee shall permit LANDesk to conduct audits to verify Licensee's compliance with this EULA as long as LANDesk complies with all of Licensee's security requirements. Such audits shall be conducted during normal business hours and after reasonable advance notice to Licensee by LANDesk. The cost of such audits will be borne by LANDesk.

5. **USE RESTRICTIONS.** LANDesk reserves all rights not expressly granted to Licensee herein. Without limiting the generality of the foregoing, Licensee shall not and shall not allow others to: (a) copy, modify, adapt, rent, lease, sell, distribute, export, re-export, assign, sublicense, translate, transfer, or reprogram the Licensed Software or any portion thereof except as provided in this EULA; (b) use the Licensed Software in a service bureau, facility management, service provider, timeshare, or other similar type of environment, (c) reverse engineer, decompile, translate, merge, or disassemble the Licensed Software; (d) create derivative works based upon the Licensed Software; (e) use the Licensed Software to perform any activity which is or may be, directly or indirectly, unlawful, harmful, threatening, abusive, harassing, tortious, or defamatory, or to perform any activity which breaches the rights of any third party; (f) take any actions that would cause the Licensed Software to become subject to any open source or quasi-open source license agreement not otherwise applicable; or (g) transfer any Licensed Software or Licensee's license rights under this EULA, in whole or in part without LANDesk's prior written consent, which consent shall not be unreasonably withheld or denied.

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8. **MAINTENANCE AND SUPPORT SERVICES.** Nothing in this Agreement entitles Licensee to any Support Services and/or Maintenance of the Licensed Software without the required payment for such Support Services and/or Maintenance.

(A) MAINTENANCE: During the term for which Licensee has paid the applicable Maintenance or subscription fees for the Licensed Software, Licensee is entitled to Updates and Upgrades as and when they are made generally available to LANDesk's end users.

(B) SUPPORT SERVICES: During the term for which Licensee has paid the applicable support fees, Licensee is entitled to support in accordance with LANDesk's points-based support programs. Points expire at the end of each Support Services period and new points are calculated each renewal period. Support levels may be adjusted any time Licensee purchases additional Support Services. For more information on the LANDesk support programs, see the LANDesk service portal at <http://www.landesk.com/support/terms/> (provided for informational purposes only).

(C) NO OBLIGATION. LANDesk shall be under no obligation to furnish Maintenance and/or Support Services for the Licensed Software to the extent that such Maintenance and/or Support Services are necessary or desired as a result of: (i) the operation of the Licensed Software in environmental conditions or configurations outside those prescribed in the Documentation; (ii) Licensee's failure to upgrade and update the Licensed Software to the currently supported versions of the Licensed Software or to maintain the Licensed Software in accordance with the standards of Maintenance prescribed in the Documentation or as specified in Maintenance or Support Services received by Licensee from LANDesk; (iii) actions of any third party other than LANDesk or a third party authorized by LANDesk; and (iv) causes unrelated to the Licensed Software as delivered to Licensee by LANDesk, including without limitation, modifications to the Licensed Software made by Licensee or on Licensee's behalf.

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10. LIMITED WARRANTY. LANDESK WARRANTS THAT FOR A PERIOD OF NINETY (90) DAYS FROM LICENSEE'S INITIAL ACQUISITION OF A LICENSE TO USE THE LICENSED SOFTWARE, THE LICENSED SOFTWARE WILL FUNCTION SUBSTANTIALLY IN CONFORMANCE WITH THE DOCUMENTATION ACCOMPANYING SUCH LICENSED SOFTWARE WHEN USED IN ACCORDANCE WITH THE ACCOMPANYING DOCUMENTATION. LICENSEE'S SOLE REMEDY FOR A BREACH OF THIS WARRANTY SHALL BE THAT LANDESK, IN ITS REASONABLE DISCRETION, WILL EITHER: (i) RESOLVE THE NONCONFORMITY, (ii) REPLACE THE LICENSED SOFTWARE WITH SOFTWARE OF SUBSTANTIALLY THE SAME FUNCTIONALITY, OR (iii) REFUND THE LICENSE FEES PAID BY LICENSEE FOR THE APPLICABLE LICENSED SOFTWARE. THIS LIMITED WARRANTY SHALL NOT APPLY TO UPDATES AND UPGRADES (IF ANY) TO THE LICENSED SOFTWARE OR IF LICENSEE HAS OBTAINED A TRIAL-USE LICENSE.

11. NO OTHER WARRANTIES. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, THE LICENSED SOFTWARE, MAINTENANCE AND SUPPORT SERVICES ARE PROVIDED "AS IS", WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. ANY EXPRESS WARRANTY MADE OUTSIDE OF THIS EULA IS EXCLUDED AND SUPERSEDED. NEITHER LANDESK NOR ITS LICENSORS REPRESENT OR WARRANT THAT THE LICENSED SOFTWARE WILL SATISFY LICENSEE'S REQUIREMENTS OR THAT THE LICENSED SOFTWARE IS WITHOUT DEFECT OR ERROR OR THAT OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE. LICENSEE MAY HAVE OTHER WARRANTY RIGHTS PROVIDED BY LOCAL LAW.

12. LIMITATION OF LIABILITY AND DIRECT DAMAGES. IN NO EVENT SHALL LANDESK OR ITS LICENSORS, VENDORS, AFFILIATES, SUBSIDIARIES, PARENTS, EMPLOYEES AND/OR SUPPLIERS BE LIABLE UNDER THIS EULA OR IN CONNECTION WITH THE LICENSED SOFTWARE, MAINTENANCE, OR SUPPORT SERVICES FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, OR FOR ANY LOSS OF PROFITS OR REVENUES, BUSINESS INTERRUPTION, LOSS OF INFORMATION, LOSS OF COMPUTER PROGRAMS, OR INFRINGEMENT OF ANY PARTY'S INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF THIS EULA OR THE USE OF OR INABILITY TO USE THE LICENSED SOFTWARE (REGARDLESS OF THE FORM OF ACTION OR CLAIM), EVEN IF LANDESK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LANDESK'S ENTIRE LIABILITY UNDER THIS EULA SHALL BE LIMITED TO DIRECT, OBJECTIVELY MEASURABLE DAMAGES AND THE AGGREGATE LIABILITY OF LANDESK ARISING FROM OR RELATING TO THIS EULA, THE USE OF THE LICENSED SOFTWARE, MAINTENANCE, AND SUPPORT SERVICES SHALL NOT EXCEED THE AMOUNT OF THE LICENSE FEES RECEIVED BY LANDESK FROM LICENSEE UNDER THIS EULA FOR THE LICENSED SOFTWARE OUT OF WHICH SUCH LIABILITY AROSE. SOME JURISDICTIONS DO NOT ALLOW CERTAIN DISCLAIMERS OR LIMITATIONS OF WARRANTIES, SO SOME OF THESE PROVISIONS MAY NOT APPLY TO LICENSEE. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from

LANDesk's negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract.

13. **PAYMENT AND TAXES.** In the event that Licensee is purchasing directly from LANDesk and payment is required from Licensee directly to LANDesk (as opposed to purchase through or payment to an authorized LANDesk reseller or distributor), Licensee shall pay LANDesk all amounts due in U.S. Dollars no later than thirty (30) days following Licensee's receipt of an invoice from LANDesk. For the purchase of any annual renewal of the then-current annual Subscription Fee and annual Support Services Fees (if any), Licensee shall make payment to LANDesk within thirty (30) days of invoice for such annual renewal

14. **TERMINATION OF THIS EULA.** If Licensee is using the Licensed Software under any time-limited license, including without limitation a Trial-Use License or Subscription License, this EULA shall terminate with regard to such Licensed Software without notice to Licensee on the last day of the specified time period. Upon expiration or termination of this EULA, Licensee shall immediately cease all use of the Licensed Software and uninstall and delete all of the Licensed Software. The foregoing shall not limit or affect any remedy available to LANDesk as a result of any breach of this EULA by Licensee.

15. **EXPORT COMPLIANCE.** Licensee acknowledges that the Licensed Software, and any product or technical information provided by LANDesk, are subject to applicable import and export regulations of the United States and/or other countries. Licensee agrees to comply with all applicable import and export regulations as they may be amended from time to time. Regardless of any disclosure made by Licensee to LANDesk of an ultimate destination of the Licensed Software or any product or technical information, Licensee agrees that it will not export, re-export or disclose (directly or indirectly) any of the Licensed Software, any product or technical information provided by LANDesk, or any portion thereof, to any country, entity or person in violation of U.S. export laws or regulations or any other law, regulation, or government order. Note that Licensed Software containing encryption may be subject to additional restrictions with which Licensee also agrees to comply.

17. **GOVERNING LAW.** If Licensee has its primary office in North America, Central America, South America, or any other area not expressly identified below in this section, this EULA is governed by the Federal laws of the United States of America. Such governing laws are effective without regard to the principles of conflict or choice of law and are exclusive of any provisions of the United Nations Convention on Contracts for Sale of Goods. In any action or suit to enforce any right or remedy under this EULA, the prevailing party will be entitled to recover its fees and costs, including reasonable attorney's fees.

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19. **SEVERABILITY.** If any provision in this EULA shall be found or be held to be invalid, unenforceable, or in conflict with applicable law in any jurisdiction in which this EULA is being performed, such provision shall be construed, limited, or altered, as necessary, to eliminate the invalidity, unenforceability, or conflict, and all other provisions of this EULA shall remain unaffected.

20. **FORCE MAJEURE.** LANDesk shall not be liable for its failure to perform due to unforeseen circumstances or any causes beyond LANDesk's reasonable control ("Force Majeure"). In the event of Force Majeure, LANDesk's performance will be extended for a period equal to the duration of the delay caused thereby.

21. **WAIVER.** No action taken pursuant to this EULA, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by such party of any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this EULA or failure to perform by the other party shall not operate or be construed as a further or continuing waiver of such breach or failure to perform or as a waiver of any other or subsequent breach or failure to perform. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable law.

22. **ASSIGNMENT; SUB-LICENSE.** Licensee may not assign, sublicense, or transfer this EULA, the Licensed Software, any right to Support Services, or any rights or obligations hereunder without prior written consent of LANDesk. 23. **NOTICES.** All notices required or permitted to be given hereunder shall be in writing, shall make reference to this EULA, and shall be delivered by hand, or dispatched by prepaid courier or by registered or certified mail, postage prepaid. Notices to LANDesk shall be sent to the following address:

LANDesk Software, Inc.
698 West 10000 South, Suite 500

South Jordan, Utah 84095
Attn: Legal Dept.

Notices shall be deemed served when received by addressee or, if delivery fails by reason of some fault or action of the addressee, when tendered for delivery.

24. ENTIRE AGREEMENT; AMENDMENT. This EULA, together with the underlying GSA Schedule Contract and the resulting negotiated order, sets forth the entire understanding and agreement between Licensee and LANDesk relating to the subject matter herein. This EULA may be amended only in a writing signed by authorized representatives of both parties. No vendor, distributor, dealer, retailer, reseller, salesperson, employee or any other person is authorized to modify this EULA or to make any representations different from, or in addition to, the terms of this EULA and Licensee hereby confirms that it has not entered into this EULA in reliance on any statement or representation not expressly set forth herein. Any terms and conditions of any purchase order or other document that is submitted by Licensee in connection with the LANDesk Licensed Software that are different from or in addition to the terms and conditions of this EULA are not binding on LANDesk and are ineffective.

EULA – Version: May 2012