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 (www.wpiservices.com/us.html) are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41. U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's EULA are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft' s contract #GS-35F-0119Y, including, but not limited to the following:

    (a) **Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

    (b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.

    (c) **Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

    (d) **Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering

Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.

(e) **Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

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

(f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

(g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

(h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.

(i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.

(j) **Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.

(k) **Contractor Indemnities.** All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

(l) Renewals. All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.

(m) Future Fees or Penalties. All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

(n) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.

(o) Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.

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

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

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

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

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

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

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

OPUS Suite License Agreement

This software license agreement ("Agreement") shall be effective upon signature by the below defined Licensee.

Parties:

WPI Services, LLC, DUNS 969075907, a US corporation with its principal place of business at 14255 US Highway One, Suite 228, Juno Beach, FL 33406 ("WPI") and;

For [insert full name of Licensee]

Date: _____

Place: _____

By (signature): _____

Print name: _____

Title: _____

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1. **License Grant**

    1.1. <u>OPUS Suite Software</u>. WPI hereby grants to Licensee a non-exclusive, non-transferable, revocable subject to section 6 below, license to install and use the software application(s) licensed from WPI or a WPI distributor or reseller, ("OPUS Suite Software"), in object code form only, and solely for internal use within Licensee's own business in the agreed site and solely for the scope, functionality and amount of users for which Licensee has registered and paid the applicable license fee.

    1.2. <u>Back-Up</u>. Licensee may make a reasonable number of back-up copies of the OPUS Suite Software in machine-readable form, provided such copy is used for back-up only and provided all copyright information contained on the original is included in the copy.

    1.3. <u>Documentation</u>. WPI further grants to Licensee a right to print and use the documentation for and provided by WPI for such OPUS Suite Software ("Documentation") solely for internal use within Licensee's own business.

2. **Ownership, Restrictions on Use**

    2.1. <u>Restrictions</u>. The use of the OPUS Suite Software is subject to payment of the license fee and the fulfillment of all requirements stipulated in this Agreement. Except as expressly permitted by mandatory applicable law and this Agreement, Licensee agrees not to, either by itself or through any parent, subsidiary, affiliate, agent or other third party, copy, modify, decompile, reverse engineer, create derivative works from, disassemble, or otherwise discover or attempt to reconstruct, identify any source code or underlying ideas of the OPUS Suite Software by any means, or to sell, distribute, rent, lease, or loan the OPUS Suite Software, whole or part, or to distribute the functionality of the OPUS Suite Software as a packaged service, or knowingly take any action that would cause the OPUS Suite Software to be placed in the public domain.

    2.2. <u>Ownership</u>. WPI and its licensors, reserves and holds all right, title, and interest in and to the OPUS Suite Software and related documentation not explicitly licensed herein, including without limitation all copyright and other intellectual

property rights, howsoever arising, and in whatever media, whether or not registered, including patents, trademarks, service marks, database rights, trade names, registered, designs and any applications for the protection or registration of these rights and all renewals and extensions thereof throughout the world.

2.3. <u>Notices</u>. All copies of the OPUS Suite Software contain copyright and proprietary notices describing WPI's or its licensor's proprietary rights thereto. Licensee undertakes not to alter or remove any notices of copyright or proprietary rights or identification, which indicates WPI's or its licensor's proprietary rights in the OPUS Suite Software.

2.4. <u>Audit Rights.</u> WPI reserves the right to conduct audits of Licensee's premises and computer equipment to ascertain whether the Licensee's use of the OPUS Suite Software is in accordance with the provisions of this Agreement and the Licensee shall be obliged to assist WPI in the preparation of such audit and shall grant WPI access to the requisite premises and areas as well as to the computer equipment. Such audit shall be conducted by personnel having executed customary non-disclosure agreements.

3. Limited Warranty

3.1. <u>Warranty and Warranty Term</u>. WPI warrants that the OPUS Suite Software hereunder will perform in substantial conformance to the Documentation during the warranty period. The warranty period applicable to the OPUS Suite Software is one (1) year, commencing on the date the OPUS Suite Software is delivered to the Licensee.

3.2. <u>Remedies</u>. WPI's sole obligation hereunder shall be in WPI's discretion, to refund any license fee paid by Licensee to WPI for any defective OPUS Suite Software, or to replace any defective OPUS Suite Software with OPUS Suite Software which substantially conforms to the Documentation.

3.3. <u>Exceptions</u>. WPI shall not be liable under this warranty if its testing and examination disclose that the alleged defect in the OPUS Suite Software does not exist or was caused by Licensee's or user's or any third person's misuse, negligence, improper installation or testing, unauthorized attempts to support, or any other cause beyond the range of the intended use.

3.4. <u>Exclusive Remedy</u>. **THE FOREGOING REMEDY CONSTITUTES LICENSEE'S SOLE AND EXCLUSIVE REMEDY RELATED TO ANY BREACH OF ANY WARRANTY RELATED TO THE OPUS SUITE SOFTWARE. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SATISFACTORY QUALITY, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. WPI'S WARRANTIES HEREIN RUN ONLY TO LICENSEE, AND ARE NOT EXTENDED TO ANY THIRD PARTIES WHICH, FOR THE AVOIDANCE OF DOUBT, INCLUDES ANY AGENTS OF LICENSEE OR END USERS. WPI NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE LICENSING, SUPPORT OR USE OF THE OPUS SUITE SOFTWARE, AND WPI MAKES NO WARRANTIES OR CONDITIONS WHATSOEVER FOR ANY NON-STANDARD SOFTWARE SUPPLIED BY IT HEREUNDER.**

4. Software Provided under Support and Maintenance Offerings

4.1. <u>No Support</u>. No support or maintenance is provided under this Agreement. Licensee may subscribe for WPI's or WPI's distributors' or resellers' support and maintenance offerings in effect from time to time. Any updates, upgrades and/or new versions provided pursuant to such support and/or maintenance offerings shall be governed by this Agreement.

4.2. <u>No Warranty for Support and Maintenance Offerings</u>. This Agreement does not cover new products which are provided for a separate licensee fee and under separate license agreements. Further, the warranty provision in section 3 does not

cover updates and upgrades/new versions distributed under any support and/or maintenance offerings, such software is provided AS IS without any warranty.

5.   Fees and Payment Terms

5.1. <u>Licensee Fee</u>. Licensee shall pay the license fee for the OPUS Suite Software stipulated, or if the OPUS Suite Software is distributed through a WPI distributor or reseller, the fee stipulated by such distributor or reseller.

5.2. <u>Payment Terms</u>. Any payment by Licensee pursuant to this Agreement shall be made according to WPI's reasonable payment instruction in effect from time to time, or if applicable WPI's distributor's or reseller's reasonable payment instruction.

5.3. <u>Taxes</u>. All amounts payable under this Agreement are exclusive of all taxes and charges. Licensee shall be responsible for the payment of any taxes payable with respect to this Agreement, including but not limited to V.A.T. or any import charges (if applicable), other than taxes based on WPI's net income. Should Licensee fail to pay any amount when due, WPI or as the case may be WPI's distributors or resellers, shall in addition to any other remedy available, be entitled to receive all costs of collection plus interest on all unpaid amounts (before and after judgment until fully paid), calculated at the lesser of 18% per annum or the maximum allowed by law.

6.   Term and Termination

6.1. <u>Term.</u> This Agreement is for an indefinite duration unless expressly agreed otherwise in writing, subject to the proper payment of the license fees stipulated in section 5 and the rightful performance of all Licensee's obligations stipulated by this Agreement.

6.2. <u>Termination by Licensee.</u> This Agreement can be terminated by Licensee at any time unless Licensee and WPI or WPI's Partner has agreed for a minimum term.

6.3. <u>Termination by WPI.</u> WPI may terminate this Agreement at any time with immediate effect and without judicial intervention, by written notice to Licensee upon any breach of this Agreement by Licensee which is capable of complete remedy but which is not completely remedied within ten (10) days after written notice from WPI specifying the breach and requiring it to be remedied or upon any breach of this Agreement by Licensee which is not capable of complete remedy within ten (10) days.

6.4. <u>Immediate Termination.</u> This Agreement shall terminate, without notice, (i) upon the institution by or against Licensee of insolvency, receivership or bankruptcy proceedings (ii) upon Licensee's making an assignment for the benefit of creditors, or (iii) upon initiation of dissolution proceedings of Licensee.

6.5. <u>Effect of Termination.</u> Upon termination, Licensee shall return any hardware license keys and destroy all copies of the OPUS Suite Software and Documentation in Licensee's possession, and all rights and obligations of the parties shall terminate forthwith except Licensee's liability for amounts owed to WPI. No repayment of license fees paid in advance will be made.

7.   Patent and Copyright Indemnity

7.1. <u>Indemnity</u>. WPI shall, at its own expense, defend or settle any suit or proceeding that is instituted against Licensee to the extent such suit or proceeding alleges that any OPUS Suite Software licensed hereunder. infringes any rightful patent right or copyright of a third party, and shall pay all damages awarded therein against Licensee or agreed upon in settlement by WPI; provided that Licensee (i) gives WPI immediate notice in writing of any such suit, proceeding or threat thereof; (ii) permits WPI sole control, through counsel of WPI's choice, to answer the charge of infringement and

defend and/or settle such suit; and (iii) gives WPI all the needed information, reasonable assistance and authority, at WPI's expense, to enable WPI to defend or settle such suit.

7.2. <u>Proviso</u>. The above provision shall not apply to, and WPI shall have no liability or obligation for, any infringement arising from the following: (i) any modification, servicing or addition made to the OPUS Suite Software by anyone other than WPI; (ii) the use of such a OPUS Suite Software as a part of or in combination with any devices, parts or software not provided by WPI; (iii) compliance with Licensee's design requirements or specifications; (iv) the use of other than a current unaltered release of the OPUS Suite Software available from WPI; or (v) the use of such OPUS Suite Software to practice any method or process which does not occur wholly within the OPUS Suite Software or (vi) any use of the OPUS Suite Software outside the scope of the license granted in section 1. This exclusion applies to the extent that the infringement would have been avoided but for such modification, combination, compliance with specifications, use of other than the current release, or practice of such method or process.

7.3. <u>Right to Mitigate Damage</u>. In the event the use of any OPUS Suite Software licensed hereunder shall be enjoined, or if WPI believes the OPUS Suite Software infringes or is likely to infringe any third party rights, or in the event WPI wishes to minimize its potential liability hereunder, WPI may, at its sole option and expense and without any cost or harm to Licensee: (i) procure for Licensee the right to use such OPUS Suite Software; (ii) substitute a functionally equivalent, non-infringing unit of the OPUS Suite Software; (iii) modify such OPUS Suite Software so that it no longer infringes but remains functionally equivalent; or (iv) if none of the foregoing are commercially feasible, take back such OPUS Suite Software and refund the purchase price paid by Licensee for such OPUS Suite Software, depreciated over a five (5) year period using the straight line method.

8. Limitation of Liability

8.1. <u>No Liability</u>. **IN NO EVENT SHALL WPI BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, OF ANY KIND WHATSOEVER OR FOR LOSS OF BUSINESS PROFIT OR RECOVERY OF DATA, OR ANY COSTS OF REPROGRAMMING OR REPRODUCING ANY PROGRAM, ANY DAMAGES CAUSED BY CORRUPT OR INADEQUATE DATA, OR FOR ANY DAMAGE CAUSED BY THE DATA OR RESULT FROM THE USE OF THE OPUS SUITE SOFTWARE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

8.2. <u>Limitation of Liability</u>. **IN ADDITION, WPI'S AGGREGATE AND TOTAL LIABILITY UNDER THE AGREEMENT IN RESPECT OF ONE OR MORE EVENTS OR SERIES OF EVENTS (WHETHER CONNECTED OR UNCONNECTED) SHALL BE LIMITED TO A MAXIMUM TOTAL AMOUNT EQUAL TO TWENTY FIVE (25%) PER CENT OF THE LICENSE FEE PAID FOR THE OPUS SUITE SOFTWARE CAUSING THE DAMAGE. LICENSEE RELEASES WPI FROM ALL OBLIGATIONS, LIABILITY, CLAIMS OR DEMANDS IN EXCESS OF THE LIMITATION. THIS LIMITATION SHALL SURVIVE AND APPLY EVEN IF ANY LIMITED WARRANTY OR REMEDY HEREUNDER IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.**

9. Confidentiality

9.1. <u>Definition of Confidential Information</u>. As used herein, "Confidential Information" means all non-public information, whether in oral, written or other tangible form that the party disclosing the information (the "Disclosing Party") designates as being confidential or which, under the circumstances surrounding disclosure, the receiving party (the "Recipient") knows or has reason to know should be treated as confidential, including without limitation, the terms and conditions of this Agreement. Notwithstanding the foregoing, Confidential Information does not include information that: (a) is or becomes generally available to the public other than (i) as a result of a disclosure by Recipient or its employees or any other person who directly or indirectly receives such information from Recipient or its employees or (ii) in violation of a confidentiality obligation to Disclosing Party known to Recipient; (b) is or becomes available to Recipient on a non-confidential basis from a source which is entitled to disclose it to Recipient; (c) was developed by

employees or agents of the Recipient independently of and without reference to any information communicated to Recipient by the Disclosing Party; or (d) is required by law to be disclosed by the Recipient. A disclosure of Confidential Information which is (x) in response to a valid order by a court or other governmental body, (y) otherwise required by law, or (z) necessary to establish the rights of either party under this Agreement, shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided however, that the party disclosing such information shall provide prompt written notice thereof to the other party to enable it to seek a protective order or otherwise prevent such disclosure.

9.2. <u>Secrecy</u>. Recipient shall hold the Confidential Information in confidence, disclosing the Confidential Information only to such of Recipient's employees, contractors and advisors who have a need to know for the purpose of fulfilling Recipient's obligations under this Agreement. Recipient shall advise any such individuals that the Confidential Information is confidential and that by receiving such information such individuals are agreeing to be bound by terms substantially similar to and no less restrictive than the terms of this Section 9, and to not use such information for any purpose other than authorized herein. Without the Disclosing Party's prior written consent, Recipient shall not, and shall direct such individuals not to, disclose the Confidential Information in whole or in part, except to the extent compelled by law (subject to the above provisions). Recipient shall employ all reasonable steps to protect the Confidential Information from unauthorized or inadvertent disclosure or use, including, without limitation, all steps that it takes to protect its own information that it considers a trade secret. Recipient agrees that the wrongful disclosure of Confidential Information will cause Discloser irreparable injury that is inadequately compensable in monetary damages; accordingly, Discloser shall be entitled to injunctive relief in any court of competent jurisdiction for the breach or threatened breach of this Section, in addition to any other remedies at law or equity. Recipient's duty to protect Discloser's Confidential Information expires three (3) years from the date of termination of this Agreement.

10. General Provisions

10.1. <u>Injunctive Relief</u>. Licensee acknowledges that, due to the nature of the OPUS Suite Software and the inherent difficulty of adequately protecting the proprietary rights of WPI in the licensed OPUS Suite Software, a breach of this Agreement will cause WPI irreparable harm for which money damages would be inadequate. Therefore, Licensee agrees that WPI is entitled to seek injunctive relief to protect its rights under this Agreement, in addition to any and all remedies available at law.

10.2. <u>Export Compliance</u>. Licensee will be responsible for compliance with applicable export control rules, regulations, directives or laws with respect to its use or disposition of the OPUS Suite Software and any related technical data, and will not export or re-export OPUS Suite Software or any related technical data without first obtaining a license from applicable export or regulatory agency as required by law.

10.3. <u>Relationship of the Parties</u>. Nothing stated in this Agreement will be construed as creating the relationships of joint ventures, partners, employer and employee, franchisor and franchisee, master and servant, or principal and agent. This Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit or be enforceable by anyone else. A person who is not a party to this License has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this License, but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

10.4. <u>Assignment</u>. Licensee shall not assign this Agreement or delegate any of its rights, duties or obligations hereunder without the prior written consent of WPI. Any attempt to do so without such consent is void. WPI may assign this Agreement or its rights, interests and obligations under this Agreement to another party in connection with a merger with or acquisition by or sale of all of its assets, or to an affiliated company.

10.5. <u>Waivers</u>. No waiver of any default shall be effective unless it is expressly evidenced in written form signed by WPI and Licensee. The waiver of any one default shall not waive subsequent defaults of the same or different kind or continuing defaults after demand for strict compliance.

10.6. <u>Severability</u>. In the event that any provision of this Agreement shall be held by a court of competent jurisdiction or an administrative authority of either international or national jurisdiction to be invalid or unenforceable, the remaining portions of this Agreement shall remain in full force and effect and be construed so as to best effectuate the intention of the parties in executing it.

10.7. <u>Entire Agreement</u>. This Agreement constitutes the entire agreement between the two parties hereto with respect to its subject matter and any and all written or oral agreements heretofore existing between the parties hereto with respect to its subject matter are expressly cancelled. Any modifications of this Agreement must be in writing and signed by both parties hereto. Each party acknowledges and agrees that in entering into this agreement it has not relied on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in this Agreement.

10.8. <u>Governing Law</u>. This License Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York without regard to its conflicts of law provisions. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

10.9. <u>Dispute Resolution</u>. All claims, disputes, controversies, differences or misunderstandings of any king between the parties hereto arising under, out of, or in connection with this Agreement, including the existence or continued existence of this Agreement and the arbitrability of a particular issue, which cannot be amicably settled and resolved by the parties hereto, shall be submitted to arbitration, in accordance with the rules of the Arbitration Institute of the International Chamber of Commerce. The arbitral tribunal shall be composed of one (1) arbitrator, the place of arbitration shall be the City of New York and the language to be used in the arbitral proceedings English.

10.10.   <u>Notices</u>. All notices and demands of any kind which either WPI or Licensee may be required or wish to serve upon the other under the terms of this Agreement shall be in writing and shall be served by personal service, by fax, by recorded delivery mail or by e-mail at the address of the receiving party set forth in this Agreement (or at such different addresses as may be designated for such purpose by such party by written notice to the other party); all notices or demands given by personal service shall be effective upon receipt, all notices or demands given by fax or post shall be deemed given upon sending provided the party sending can show a receipt that the fax has reached the addressee's fax machine, and all notices or demands sent by e-mail upon receipt where the e-mail is received at the addressee's e-mail address, provided that the party sending the e-mail has also sent the message by fax or letter the same day. All notices should be in English.

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