

CIDEON America, Inc.
161 Washington Street
Eight Tower Bridge, Suite 420
Conshohocken, PA 19312

**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. (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.

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (this “**Agreement**”) by and between CIDEON America Inc. (“**CIDEON**”) and Client, together with the Contract Documents, sets forth the agreement between the parties with respect to the services to be provided by CIDEON to Client and shall be effective upon the date this Agreement is signed by both parties (the “**Effective Date**”). The provisions contained in this Agreement incorporate and are supplemental to CIDEON America Inc.’s Terms and Conditions, by which Client is also bound, to the extent they are not modified by this Agreement.

1. DEFINITIONS

Except as otherwise provided herein, all capitalized terms used herein shall have the meanings prescribed in the Contract Documents.

2. SOFTWARE LICENSE

- a) **Licensed not Sold.** Any Software is licensed, not sold, to Client by CIDEON for use only under the terms of this Agreement, and CIDEON reserves any rights not expressly granted to Client.

License Granted. Subject to the provisions of this Agreement, and upon payment of any and all fees, CIDEON grants Client an irrevocable, nontransferable, non-sub-licensable, and non-exclusive license to the Software in the quantity indicated in this Agreement, and to use and install each such copy of the Software on a computer or computers owned or leased by Client during the term of this Agreement (the “License”). Any rights not expressly granted herein shall be reserved for CIDEON. Suitable computer programs will be provided for Client's use in machine-readable object code form. The Software shall be used only in Client's own business, and shall be limited to reporting and maintaining Client's own management, design, and engineering information. Client shall not permit any third party to use the Software or allow access to the Software from sites outside of Client's business premises except as specifically authorized in writing by CIDEON.

Source Code Excluded. Source code or other information pertaining to the logic design of the Software is specifically excluded from the license granted hereunder.

3. SITE LICENSE

If Client licenses the Software on a “site” basis, the Software may be used by all employees of Client at facilities governed by Client as identified by the Tax ID# or other identification set forth on the Proposal (the “**Site**”). Client will use commercially reasonable efforts to restrict network or any other access to the Software by anyone outside of the Site who is not authorized to use the Software. Temporary Personnel of Client who work on-site at the Site may also use the Software in connection with the operation of the business of Client

4. TECHNICAL SUPPORT SERVICES

CIDEON may, in its sole discretion, provide updates to and/or training and installation services in support of installation of the Software (“**Support Services**”), either directly or through its assignee or Client. CIDEON is not obligated to provide any Support Services except as agreed in a separate Software Maintenance Agreement between CIDEON and Client. Except pursuant to such Software Maintenance Agreement, any and all requests for Support Services may be refused by CIDEON with or without reason, in its sole discretion. Any such discretionary Support Services which CIDEON may subsequently agree to provide to Client shall be at CIDEON’s sole discretion and once commenced, may be terminated at any time by CIDEON without notice or liability to Client.

5. PROPRIETARY RIGHTS AND RESTRICTIONS ON USE

- a) **Description of Proprietary Rights.** Client recognizes that the Software and all Updates, including but not limited to information related to installation of the Software at the offices of Client, are proprietary, and that all rights thereto, including copyright, are owned by CIDEON. Client further acknowledges being advised that the Software, including information related to installation, constitutes a trade secret of CIDEON, is protected by civil and criminal law, and by the law of copyright, is valuable and confidential to CIDEON, and that its use and disclosure must be carefully and continuously controlled.

Title. CIDEON shall at all times retain title to all the Software and all Updates furnished to Client hereunder.

Maintenance of Title. Client shall keep each and every item of Software and all Updates, free and clear of any and all claims, liens, and encumbrances attributable to the use or possession of the Software by Client. Any act of Client, whether voluntary or involuntary, purporting to create a claim or encumbrance on any such item shall be void.

Sole Use. The Software supplied by CIDEON hereunder is for the sole use of Client and in support only of computers operated by Client. Client may not install the Software on a network except to facilitate permissible installation of the Software on computers attached to the network. Client warrants and guarantees that all users of the software shall be aware of and comply with the terms of this Agreement. The Software is to be used only by Client and only for the purposes specified in this Agreement and specifically as restricted in the following three paragraphs of this Section.

Copies and Disclosure. Client shall treat the Software and all related information including any and all updates, improvements, modifications and enhancements as confidential and proprietary, and shall protect it in the same manner that it protects the confidentiality of its own most highly confidential proprietary information and in accordance with the confidentiality provisions of the CIDEON America Inc. Terms and Conditions. While this Agreement is in effect, or while Client has custody or possession of any of the Software, Client will not: (i) copy or duplicate, or permit anyone else to copy or duplicate, any of the Software, whether such Software is in written, magnetic or any other form, except pursuant to reasonable backup procedures, or for use in sites or applications pursuant to this Agreement, nor; (ii) provide or make the Software available to any person or entity other than employees or agents of Client who have a need to know consistent with Client’s use thereof under this Agreement, nor; (iii) create or attempt to create, or permit others to

create or attempt to create, by disassembling, reverse engineering or otherwise, the source programs or any part thereof from the object program or from other information (whether oral, written, tangible or intangible) made available to Client under this Agreement, nor; (iv) copy for its own use or the use of others operator manuals, system reference guides, training materials and other user-oriented materials without the prior written consent of CIDEON. In order to protect CIDEON's trade secrets and copyrights in the Software, Client agrees to reproduce and incorporate CIDEON's trade secrets or copyright notice in any copies, modifications or partial copies.

Unauthorized Use. Client agrees to immediately notify CIDEON if it obtains information as to any unauthorized possession, use or disclosure of any item of Software by any person or entity, and further agrees to cooperate with CIDEON at CIDEON's expense in protecting CIDEON's proprietary rights.

Injunctive Relief. In addition to other remedies available to CIDEON, Client agrees that CIDEON shall be entitled to injunctive relief in the event Client breaches this Agreement.

6. IMPROVEMENTS AND ENHANCEMENTS

a) **Ownership of Improvements.** CIDEON is, and shall be, the sole owner of all inventions, discoveries, Updates, improvements, modifications and enhancements relating to the Software, whether in written or unwritten form and whether developed by CIDEON or Client. CIDEON shall retain the exclusive right to reproduce, publish, patent, copyright, sell, license or otherwise make use of such inventions, discoveries, Updates, improvements, modifications or enhancements.

Updates. If an Update to the Software completely replaces a previous version of the Software, Client may not use both versions of the Software independently nor may Client transfer them separately.

7. FEES

Licensing fees for the Software provided under this Agreement are as set forth in the Proposal.

8. NO WARRANTY

The Software is being delivered to Client "**AS IS**" and CIDEON makes no warranty as to its use or performance. **CIDEON DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS CLIENT MAY OBTAIN BY USING THE SOFTWARE. EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO CLIENT IN CLIENTS JURISDICTION, CIDEON MAKES NO WARRANTIES CONDITIONS, REPRESENTATIONS, OR TERMS (EXPRESS OR IMPLIED WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING WITHOUT LIMITATION MERCHANTABILITY, INTEGRATION, SATISFACTORY QUALITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.**

9. TERM AND TERMINATION

Notwithstanding any other provision in the Contract Documents to the contrary, any and all licenses granted under this Agreement shall terminate automatically and CIDEON shall be

permitted to seek injunctive relief, to the extent permitted by applicable law, in the event of Client's material breach of this Agreement, or upon any act which shall terminate or otherwise give rise to CIDEON's right to terminate this Agreement, or upon the expiration of the license for Software which is subject to a limited-duration license, and Client will remove, erase or destroy the Software and all copies thereof, wherever located, without demand or notice.

10. EXPORT RULES

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

CIDEON America Inc. Terms and Conditions

The following terms and conditions shall apply to all sales by Cideon America Inc. ("**Cideon**") to Client of any and all software or services under the attached proposal. Any different or additional terms and conditions contained in any document other than the Contract Documents are hereby rejected. Neither Cideon's commencement of performance or shipment or delivery of Software shall be deemed or construed as acceptance of any additional or different terms and conditions.

1) DEFINITIONS

- a) **Affiliate** shall mean any person, firm, corporation, partnership, limited liability company, joint venture, business trust, association or other entity that now or in the future, directly or indirectly, controls, is controlled with or by or is under common control with a party. For purposes of the foregoing, "control" shall mean the direct or indirect control of fifty percent (50%) or more of the voting power to elect directors thereof, or for any other entity, the power to direct the management of such entity.
- b) The **Contract Documents** include the Proposal and any exhibits thereto, the Agreement, and these terms and conditions. No other documents shall be considered part of the Contract Documents unless expressly agreed to in writing signed by authorized representatives of both or all parties involved.
- c) The **Deliverables** shall include all work product, including but not limited to the Software, if any, delivered to Client pursuant to the Proposal.
- d) **Documentation** shall include any explanatory written materials or files which accompany or are otherwise related to the Software.
- e) The term **Personnel** shall refer to a party's employees and consultants, and shall include the employees and consultants of Affiliates.
- f) The **Project** shall refer to the Project set forth in the Proposal.
- g) The **Proposal** shall refer to the proposal prepared by CIDEON and attached hereto as executed by the parties.
- h) **Services** shall mean the services provided by Cideon at any given time, in conjunction with the Contract Documents and as outlined in the Proposal, including but not limited to software installation, configuration, customization, and any associated support services.
- i) **Software** shall mean the proprietary computer software developed by Cideon and licensed to Client, if any, and all of the contents of the files, disk(s), or other media provided to client under these Contract Documents, including but not limited to the Documentation, and Updates, if any.
- j) **Updates** shall mean improvements, modifications, enhancements, upgrades, modified versions, updates, additions, and copies of the Software, if any, licensed to Client by Cideon.

2) FEES, INVOICES, AND PAYMENT

- a) For the Services and/or Software provided hereunder Client shall pay Cideon the amounts set forth and at such times as provided in the Proposal.
- b) Client shall pay all taxes, duties and levies of any governmental entity related to the Contract Documents, exclusive of taxes on Cideon's net income.
- c) Client agrees that any unpaid amounts due shall accrue interest at one and one half percent (1.5%) per month. Client shall pay all costs of collection, including reasonable attorneys' fees and expenses.

3) CONFIDENTIALITY

- a) Confidentiality Obligations. The term "**Confidential Information**" shall mean all information in the broadest sense in whatever form or medium that relates to past, present, or future research, development, and business activities of a party hereto or its Affiliates, including systems, procedures, algorithms, and data (including, without limitation, those contained in databases) which are related to such activities, information related to the operations, planning, control, and marketing of the business interests and products of such party or its Affiliates, any information which affects publicly held securities, and any other information about its business affairs and the business affairs of its Affiliates which such party deems to be confidential and/or proprietary, which the other party or its Personnel may acquire possession of or access to by reason of the Contract Documents.

- b) The parties acknowledge the confidential nature of the Confidential Information and each party's valuable proprietary interest in its own Confidential Information. Each party and its Personnel shall treat all Confidential Information of the other party as confidential and proprietary and shall limit access to said Confidential Information to those employees with a legitimate need to know. In the case of Cideon, Cideon shall limit access to Client's Confidential Information to those Personnel assigned to perform Services hereunder and shall not use, copy, or remove any Confidential Information from Client's premises except to the extent necessary to carry out the purposes of the Proposal, without the prior written consent of Client. Upon completion or termination of each engagement hereunder, each party shall promptly return to the other party all documents or other materials in whatever form that contain such other party's Confidential Information and/or shall destroy all copies thereof, as directed by such other party.
- c) Confidential Information shall not include, and these confidentiality obligations shall not operate as a restriction on the other party's right to use, disclose, or otherwise deal with information which:
 - i) is or becomes generally available to the public through no wrongful act of the other party or its Personnel;
 - ii) was in the other party's possession prior to the time it was acquired from the party and which was not directly or indirectly acquired from the party or its Affiliates;
 - iii) is required to be disclosed by court order or operation of law, provided the party is notified immediately in order to contest such disclosure and the other party takes reasonable steps to assist in contesting such request;
 - iv) is independently made available as a matter of right to the other party by a third party without access to the Confidential Information; or
 - v) is independently developed by or for the other party by persons not having access or exposure to the party's Confidential Information.

4) PROPRIETARY RIGHTS

- a) Ownership and License of Work Product. CIDEON shall retain all rights, title, and interest, including all copyright rights and the right to prepare and exploit derivative works, in and to the work product created under the Contract Documents, in whatever form or medium captured, and in and to all physical and electronic materials, including, but not limited to, domain names, software, drawings, videos, manuals, charts, photographs, designs, papers, documents, and copies, abstracts, and summaries thereof, hereinafter referred to as "**Work Product.**" Effective upon completion of the Project and payment in full, CIDEON grants to Customer and its Affiliates a perpetual right to use, reproduce, and modify the Work Product for the internal business purposes of Customer. Such license shall not include the right to sell or sublicense the Work Product, or to use the Work Product for any use other than in connection with the functionality provided under these Contract Documents. Such license shall survive any completion of the Proposal or termination of these Contract Documents, except for termination for Customer's breach, in which case such license shall automatically be revoked. The Software is specifically excluded from any license granted under this paragraph.
- b) Third Party Software. CIDEON may or install or provide certain third-party software (the "**Third Party Software**") to Customer in connection with these Contract Documents. The installation and use of Third Party Software is governed by the providers of such Third Party Software. The installation and use of the CIDEON Software is governed by a separate Software License Agreement. **THE PROVISION OR INSTALLATION OF THIRD PARTY SOFTWARE BY CIDEON DOES NOT CONSTITUTE AN ENDORSEMENT OF THE THIRD PARTY SOFTWARE, NOR CAN CIDEON MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE USE AND FUNCTIONALITY OF SUCH THIRD PARTY SOFTWARE.**

5) LIMITED WARRANTY

EXCEPT AS EXPRESSLY STATED IN THE CONTRACT DOCUMENTS, CIDEON DISCLAIMS ANY AND ALL WARRANTIES TO CLIENT, EITHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (WHETHER

CIDEON KNOWS OR HAS REASON TO KNOW OF SUCH PURPOSE).

6) LIMITATION OF LIABILITY

NO ACTION UNDER THE CONTRACT DOCUMENTS MAY BE BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION ARISES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THESE CONTRACT DOCUMENTS AND/OR ITS SUBJECT MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CIDEON'S TOTAL LIABILITY FOR DAMAGES SHALL BE LIMITED TO THE TOTAL FEES PAID BY CLIENT TO CIDEON HEREUNDER.

7) INDEMNIFICATION

- a) Client agrees to indemnify, hold harmless and defend Cideon, its Affiliates, and their respective directors, officers, employees and agents from and against any action, claim, demand or liability, including reasonable attorneys' fees and costs, arising from or relating to: (i) Client's breach of these Contract Documents; (ii) the negligence or willful misconduct of Client; or (iii) any allegation that any documents, information, software, or other materials provided by Client infringes a third person's copyright or trademark right, or misappropriates a third person's trade secret. Client agrees that Cideon shall have the right to participate in and control the defense of any such claim through counsel of its own choosing.
- b) Cideon agrees to indemnify, hold harmless and defend Client and its directors, officers, employees and agents from and against any action, claim, demand or liability, including reasonable attorneys' fees and costs, arising from or relating to any allegation that the Software or the Deliverables infringe a third person's copyright or trademark right, or misappropriates a third person's trade secrets.
- c) If the Software or Deliverables become, or in CIDEON's opinion are likely to become, the subject of an infringement or misappropriation claim, CIDEON may, at its option and expense, either (a) procure for Client the right to continue using the Software or Deliverables, (b) replace or modify the Software or Deliverables so that it becomes non-infringing, or (c) terminate Client's right to use the Software and give Client a refund or credit for the license fees actually paid by Client for the infringing components of the Software less a reasonable allowance for the period of time Client has used the Software.
- d) Exclusions. Notwithstanding the foregoing, CIDEON will have no obligation with respect to any infringement or misappropriation claim based upon (i) any use of the Software or Deliverables not in accordance with the Agreement or for purposes not intended by CIDEON; (ii) any use of the Software or Deliverables in combination with other products, equipment, software, or data not supplied or otherwise approved by CIDEON; or (iii) any modification of the Software or Deliverables made by any person other than CIDEON.

8) TERM AND TERMINATION

- a) These Contract Documents and any related License granted hereunder will continue in force until the Project is complete, unless sooner terminated as provided herein or elsewhere in these Contract Documents.
- b) If either party commits a material breach of these Contract Documents, the non-defaulting party may terminate these Contract Documents and any related License granted hereunder by giving the defaulting party ten (10) days' notice thereof and of its intention to terminate. If, within such 10-day time, (a) the defaulting party has cured the default or, (b) in circumstances other than non-payment where a cure cannot reasonably be effected within 10 days, the defaulting party has commenced and continues to progress with efforts to cure within a reasonable and set period of time, the termination will not take effect. However, if neither (a) nor (b) has occurred, the non-defaulting party may issue a second written notice of termination after said time period has lapsed, which shall take effect immediately, without further notice or opportunity to cure. Notwithstanding the foregoing, Cideon may suspend performance of Ser-

- vices or delivery of Software under these Contract Documents upon material breach by Client until such default is cured.
- c) Other than with respect to any Software Maintenance Agreement entered into by the parties, either party may terminate these Contract Documents without cause by providing no less than thirty (30) days' prior written notice to the other party.
- d) The parties may terminate these Contract Documents at any time by mutual written agreement.
- e) Upon termination, all amounts remaining unpaid for Services performed, Software delivered, or reimbursable expenses shall be immediately due and payable.

9) INDEPENDENT CONTRACTOR.

Each party understands and agrees that it is not an agent or employee of the other party, and that it is an independent contractor for all purposes and at all times. Neither party shall enter into any agreements or make any promises or commitments on behalf of the other party.

10) HIRING.

Each party agrees not to hire or otherwise engage any Personnel of the other with whom such party has contact pursuant to these Contract Documents without the prior written permission of the other party during the term of the engagement and continuing for a period of six (6) months thereafter.

11) ASSIGNMENT

Neither party may assign these Contract Documents or any of its rights and obligations hereunder without the prior written consent of the other party. These Contract Documents shall be binding upon the parties' respective successors and assigns.

12) JURISDICTION AND VENUE

- a) These Contract Documents shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Any and all disputes that cannot be resolved between the parties shall be resolved exclusively by binding arbitration pursuant to the Commercial Arbitration Rules of the Judicial Arbitration and Mediation Services. Each party shall pay its own costs and fees. The arbitration shall be held in Philadelphia, Pennsylvania unless otherwise agreed by the parties, and shall be final and binding on them both. Judgment may be entered on any award by any court of competent jurisdiction. In any dispute, the prevailing or substantially prevailing party shall be entitled to collect its reasonable attorneys' fees, costs, and other expenses, including without limitation costs of collection efforts.
- b) The parties expressly affirm that, in electing arbitration as the means of resolving disputes covered herein, they have waived the right to trial by jury with respect to those disputes. A party that resorts to litigation in derogation of the arbitration agreement shall be liable to the other party for court costs and attorneys' fees to obtain a stay of the litigation, its dismissal, or an order compelling arbitration. Nothing herein shall prevent either party from seeking an injunction in any court of competent jurisdiction located in Philadelphia, Pennsylvania in response to a breach or threat of breach by the other party of the confidentiality provisions of these Contract Documents or any other provision of the Contract Documents that authorizes injunctive relief. In any action to enforce the arbitration clause, the party bringing such action shall be entitled to reimbursement of its costs and expenses (including reasonable attorneys fees) related to such enforcement action, regardless of the merits or outcome of the underlying claim.

13) GENERAL PROVISIONS

- a) All notices and other communications required or permitted hereunder shall be in writing and shall be deemed effective when delivered by hand, by email or by facsimile transmission, or upon receipt when mailed by registered or certified mail (return receipt requested), postage prepaid, to the respective parties at the addresses listed in the beginning of these Contract Documents or at such other address of which such party may have notified the other party in accordance with this notice provision.
- b) If either party hereto waives any right it may have under these Contract Documents, such action will not void, waive, or change any other term or condition, nor will the waiver by one party of any default hereunder by the other constitute the present or future waiver of any other default hereunder.

- c) If any part of these Contract Documents, for any reason, is declared to be invalid, it shall be deemed omitted, and the remainder of these Contract Documents shall continue in effect as if the Agreement had been entered into without the invalid portion.
- d) These Contract Documents set forth the entire agreement and understanding between the parties with respect to the subject matter hereof and may only be changed in a writing signed by authorized representatives of each party.
- e) Except as otherwise set forth herein, the rights and remedies of the parties set forth herein are in addition to, and not in lieu of, any rights or remedies available to the parties at law or in equity.
- f) These Contract Documents do not grant either party an exclusive right to receive or provide services to or from the other party, and that either party is free to contract with other parties to obtain or provide services similar to those contemplated under these Contract Documents.
- g) Except with respect to Client's payment obligation, neither party shall be liable to the other party for failure to meet its obligations due to an act of nature, strike, war, terrorist attack, fire, flood, unavailability of equipment, or any other cause, whether or not specifically enumerated herein, which is not reasonably within the control of such party.