

**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 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.

Please include a copy of your End User License Agreement.

LucidWorks End User License Agreement

Production Subscription- On Premises Per Node

This Subscription Plan incorporates by reference the On Premises Terms and Conditions described in the Order Form as Exhibit B and found at <http://www.lucidworks.com/contracts/onpremisestermsandconditions>.

I. Term. The initial Annual Term of this Subscription Plan shall commence on the Effective Date and remain in effect for a period of twelve (12) months from the Effective Date. It will then automatically renew for additional Annual Terms, unless either party notifies the other of its intent not to renew such Subscription Plan at least thirty (30) days before the expiration of the then-current term.

When Customer purchases an additional Subscription Plan after this initial Subscription Plan, such additional Subscription Plan shall have an Annual Term that is coterminous with the Annual Term of this Subscription Plan. The initial fee under the additional Subscription Plan will be prorated based upon the time remaining in the then-current Annual Term. The full year's fee will be due at the outset of the next Annual Term.

II. Fees and Expenses.

A. Fees. _____ for each Annual Term payable NET 30 from the Customer shall pay LucidWorks the sum of \$_____ Subscription Plan Effective Date.

B. Expenses. Customer will reimburse LucidWorks for approved expenses associated with the Services.

III. Software Licenses Granted: See Order Form. If any LucidWorks Product licenses are granted, they are granted only for the duration of the Annual Term and any renewal.

IV. Supported Software Version of the Supported Software: TBD

V. Authorized Nodes: See Order Form. If no quantity is specified, the number of authorized Nodes is 4. Each Node can have up to 4 cores.

VI. Authorized Projects: 1 "Project", which means a single search application running on the authorized servers within a department.

VII. Support Services

A. Services: (a) answering questions from Customer regarding the installation and operation of the Supported Software; (b) attempting to identify causes of suspected Errors occurring on the Supported Software; (c) addressing confirmed Errors in the Supported Software in accordance with Section 4.3 of the Terms and Conditions; and (d) the following additional support services described below.

B. Support and maintenance: Providing bugfixes and software updates as made available.

C. Number of Incidents included in monthly fees: Unlimited. "Incident" means a single question or issue posed by Customer with respect to the Supported Software.

D. Authorized support contacts: 4

E. Contact names: TBD

F. Support Hours: 7 days a week, 365 days a year for both phone and email support, and access to the LucidWorks Knowledge Portal.

G. Service Levels

a. Priority 1: A reported incident which has a severe commercial impact on Customer's business which either makes the system inoperable or prevents content discovery.

Action: Support will address Priority 1 issues with an initial response time of thirty (30) minutes and will provide progress updates to Customer as progress is made at each resolution milestone. Support will use commercially reasonable efforts to provide a resolution within 24 business hours of the time the issue was reported by Customer.

- b. **Priority 2:** A reported incident which has a significant commercial impact on Customer's business which either makes one or more critical areas of functionality inoperable or prevent content discovery (search and browse) to a significant of the Customer's client base and there impacts to sales, and workaround has a significant operational impacts.

Action: Support will address Priority 2 issues with an initial response time of one (1) day. Support will use commercially reasonable efforts to provide a resolution within three (3) business days of the time the issue was reported by Customer.

- c. **Priority 3:** A reported incident which has a moderate commercial impact on Customer's business which either makes one or more non-critical areas of functionality resulting in serious inconvenience to a significant number of Customer's users or workaround has a only a minor operational impact.

Action: Support will address Priority 3 issues with an initial response time of three (3) days. Support will use commercially reasonable efforts to provide a resolution within five (5) business days of the time the issue was reported by Customer.

- d. **Priority 4:** A reported incident which has no commercial impact on Customer's business or does not affect any critical areas of functionality and only results in minor inconvenience to a small number of Customer's users or workaround has a only a minor operational impact.

Action: Support will address Priority 4 issues with an initial response time of seven (7) days. Support will use commercially reasonable efforts to provide a resolution within thirty (30) days of the time the issue was reported by Customer.

VIII. **Best Practices Advisory Support Subscription**

If specified on the Order Form, LucidWorks will provide remote best practices advisory support on the design and optimization of applications built on LucidWorks Products. LucidWorks will provide these services over the Annual term of the Subscription Plan.

- i. Architecture solutions.
- ii. Designs and implementation.
- iii. Development.
- iv. Deployment.
- v. Best practices.
- vi. Application Scalability and Index/Query optimization
- vii. System Health Check

Log files Review: Look for errors which might indicate problems with LucidWorks Products, and get an idea of the types of queries, the query rate, and response times. Discuss upcoming application changes.

Configuration files: We will assess how effectively the LucidWorks Products deployment described in them implements an effective solution to the customer's business problem, and conforms to best practices.

Queries: Queries review, and if applicable, LucidWorks will suggest ways in which they could be revised for better performance (e.g.: better use of caches)

Each party has executed this Agreement by its duly authorized representative.



Customer

LucidWorks, Inc.

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

LucidWorks

ON PREMISES TERMS AND CONDITIONS

These Terms and Conditions are legally binding between the customer entity ("Customer") identified on the order form which references this Exhibit B ("Order Form") and LucidWorks, Inc. ("LucidWorks").

1. Definitions

Capitalized terms used in this Agreement are defined in this Section 1 or the Section in which they are first used:

- 1.1 "Annual Term" means each successive twelve (12) month period during which a Subscription Plan remains effective. The initial Annual Term for the first Subscription Plan begins on the Effective Date of this Agreement unless otherwise stated in the applicable Subscription Plan.
- 1.2 "Deliverables" means all deliverables created or provided by LucidWorks to Customer under this Agreement, including without limitation any Error Corrections, Workarounds, Documentation and/or training materials.
- 1.3 "Documentation" means, with respect to a particular Supported Software, the standard end-user technical documentation and specifications that are supplied with such Supported Software.
- 1.4 "Error" means a reproducible failure of Supported Software to perform in substantial conformity with its Documentation, if any.
- 1.5 "Error Correction" means a bug fix or maintenance correction that LucidWorks provides to Customer for the Supported Software in accordance with Section 4.
- 1.6 "Incident" means a single question or issue posed by Customer with respect to the Supported Software; the number of Incidents purchased are specified in a Subscription Plan.
- 1.7 "LucidWorks Products" means the LucidWorks proprietary software application(s) identified in the applicable Order Form.
- 1.8 "Project" is as defined in the Subscription Plan.
- 1.9 "Services" has the meaning set forth in Section 2.
- 1.10 "Subscription Plan" means a plan setting forth the LucidWorks Products and Services to be provided by LucidWorks. The first Subscription Plan under this Agreement is set forth as Exhibit A to the Order Form and subsequent Subscription Plans will be incorporated by attaching them to a subsequent Order Form.
- 1.11 "Support Coordinators" has the meaning set forth in Section 4.2.
- 1.12 "Supported Software" means the version(s) of the LucidWorks Products that are specifically identified in a Subscription Plan as "Supported Software"; and includes any subsequent Error Corrections or Workarounds to such software that LucidWorks provides to Customer.
- 1.13 "Open Source Software" means any software that is licensed under any open source, freeware, shareware, or similar licensing or distribution models. Without limiting the generality of the foregoing, Apache Solr and Apache Lucene are Open Source Software.
- 1.14 "Workaround" means a set of procedures to mitigate an Error and allow the Supported Software to substantially achieve the functionality set forth in the Documentation, if any.
2. Subscription Plans. Customer may purchase consulting, advisory, training, support and/or maintenance services by entering into a Subscription Plan with LucidWorks. The specific services purchased by Customer will be deemed the "Services".
3. Consulting, Advisory and/or Training Services. If consulting, advisory and/or training services are specified in the Subscription Plan, LucidWorks will provide such Services to Customer for the fees specified in the Subscription Plan. Unless otherwise specified in a Subscription Plan, such Services will be delivered either at Customer's facilities or in a remote fashion, as determined by LucidWorks, and conducted in English and made available to Customer in class sizes as described in the applicable Subscription Plan.
4. Support and Maintenance
- 4.1 Support Services. If specified in the Subscription Plan, LucidWorks will provide support services to Customer for the specific supported platforms designated in the Subscription Plan. Support services consist of: (a) answering questions regarding the installation and operation of the Supported Software; (b) attempting to identify causes of suspected Errors occurring on the Supported Software; (c) addressing confirmed Errors in the Supported Software in accordance with Section 4.3; and (d) any additional support services that may be specified in the applicable Subscription Plan. Unless otherwise mutually agreed in writing, LucidWorks will have no obligation to provide on-site support services at Customer's location.
- 4.2 Support Coordinators. Each Subscription Plan will designate specific Customer personnel (the "Support Coordinators") for requesting and receiving support services from LucidWorks, and LucidWorks will provide support services only to those designated Support Coordinators. Customer may re-designate Support Coordinators up to three (3) times during any Annual Term.
- 4.3 Service Levels and Procedures. When Support Coordinators notify LucidWorks of a suspected Error in the Supported Software, LucidWorks will use commercially reasonable efforts to reproduce such suspected Error. If LucidWorks identifies an Error, it will use commercially reasonable efforts to correct the Error in accordance with the service level commitments and procedures, if any, set forth in the Subscription Plan. If LucidWorks cannot meet the service levels specified in a Subscription Plan (or, in the absence of any specified service levels, correct the Error within a reasonable time), Customer may as its exclusive remedy terminate the applicable Subscription Plan by giving thirty (30) days written notice to LucidWorks, whereupon LucidWorks will promptly refund to Customer that portion of the fees paid under that Subscription Plan for the then-current Annual Term that is attributable to the Supported Software on which the uncorrected Error resides. THIS SECTION 4.3 SETS FORTH LUCIDWORKS' ENTIRE LIABILITY TO CUSTOMER AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY ERROR.
- 4.4 Exclusions. LucidWorks will have no obligation to correct Errors caused by: (a) improper installation of the Supported Software; (b) any release, error correction or modification of the Supported Software not made by LucidWorks unless it is pre-approved in writing by LucidWorks; (c) any version of the Supported Software that is more than eighteen (18) months old; or (d) any version of the

Supported Software running on any platform that is not supported by LucidWorks. No support services will be provided for the Supported Software if Customer ceases payment hereunder.

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4.5 Maintenance Services. If specified in the Subscription Plan, LucidWorks will provide maintenance services for the Supported Software. Maintenance services consist of LucidWorks providing Customer with Error Corrections, bug fixes and updates as are made available to the Supported Software during the period in which Customer has purchased maintenance services under that Subscription Plan. LucidWorks does not promise or warrant that any minimum number of Error Corrections, bug fixes or updates will be made available during a particular time period. Maintenance services do not include provision of Error Corrections of software products provided by third parties, other than those expressly specified in the Subscription Plan.

4.6 Additional Charge Services. Should Customer request that LucidWorks provide services in connection with problems (a) caused by the factors listed in Section 4.4, or (b) that are otherwise beyond the scope of this Agreement (including, for example, providing assistance or other services in connection with a non-conformity that does not constitute an Error), Customer will pay for such services that LucidWorks agrees to perform on a time-and-materials basis at LucidWorks' then-current rates.

4.7 Customer Obligations. As a condition to LucidWorks' support and/or maintenance obligations under this Agreement, Customer must: (a) assist LucidWorks in identifying and correcting Errors; (b) execute reasonable diagnostic routines in accordance with instructions provided by LucidWorks (and inform LucidWorks of the results of such tests); (c) ensure that its designated Support Coordinators are sufficiently qualified and familiar with the Supported Software and Customer systems so as to provide LucidWorks with reasonable assistance in diagnosing and addressing Errors.

5. Payment. Customer will pay at the outset of each Annual Term or renewal Annual Term, the annual fees specified in each Subscription Plan. Customer will be responsible for all taxes resulting from the Subscription Plans other than taxes on LucidWorks' net income. LucidWorks may change the annual fees specified in a Subscription Plan, on a going-forward basis and will provide Customer notification of such change. LucidWorks shall invoice Customer for expenses incurred as a result of performing services in accordance with the Subscription Plan. The fees, charges and/or expenses invoiced in accordance with this Section 5 shall be payable by Customer within thirty (30) days of the invoice date of each invoice.

6. Term and Termination

6.1 Agreement Term and Subscription Plans. The term of this Agreement will commence on the Effective Date and continue until terminated under this Section 6. Unless otherwise specified therein, a Subscription Plan is effective as of the date it is executed by both parties, and will remain in effect for the duration of its then-current Annual Term. Each Subscription Plan will automatically renew for additional Annual Terms, unless either party notifies the other of its intent not to renew such Subscription Plan at least thirty (30) days before the expiration of the then-current term. LucidWorks will have no obligation to provide services under a particular Subscription Plan once it has expired or is terminated.

6.2 Termination. Either party may terminate this Agreement at any time (upon five (5) days written notice to the other party) if no Subscription Plans are then in effect. If either party breaches this Agreement and does not cure the breach within thirty (30) days of the other party's written notice specifying the breach, the other party may, at its election, terminate for cause (a) this Agreement, including all Subscription Plans or (b) only the specific Subscription Plan giving rise to the breach. Either party may terminate this Agreement (including all Subscription Plans) at any time for cause if the other party files a petition or seeks relief under the bankruptcy or insolvency laws of any state or the United States.

6.3 Effect of Termination. Upon termination of this Agreement: (a) each party will return to the other party the Confidential Information of the other party; (b) all Subscription Plans will terminate; (c) LucidWorks will have no further obligation to provide services or Deliverables to Customer; and (d) Customer will immediately pay to LucidWorks any fees or expenses incurred prior to the effective date of termination. Sections 1 and 8 through 11 will survive expiration or termination of this Agreement or any Subscription Plan hereunder.

7. Licenses

7.1 Open Source Licenses. The parties agree that, as between the parties, LucidWorks owns all of the Deliverables and Supported Software, other than third party Open Source Software. All Open Source Software is distributed to Customer under the terms of the open source license agreements referenced in the applicable distribution. LucidWorks may, in its sole discretion, make some or all of the Deliverables available to the open source community.

7.2 LucidWorks Development License. LucidWorks grants to Customer a nonexclusive, nontransferable, limited license to use the LucidWorks Products only for the purpose of prototyping, developing, and testing the Project as identified in the Order Form, and not for any other purpose.

7.3 LucidWorks Production License. Only if specified in the Order Form, LucidWorks grants to Customer a nonexclusive production license, for the Annual Term and any renewal thereof, to reproduce, distribute internally, and use the executable portions of the LucidWorks Products as embedded within the Project on no more than the number of Authorized CPUs for Customer's internal business purposes. Customer shall have the limited right to sublicense the LucidWorks Products to its outsourcers and consultants who provide services to Customer under its direction and control and for its own internal business purposes. The Open Source Software portions of the LucidWorks Products are distributed to Customer under the terms of the open source license agreements referenced in the applicable distribution.

7.4 Other Deliverables. For all other Deliverables (that are not Open Source Software or LucidWorks Products), for example consulting or advisory reports and training materials, LucidWorks hereby grants to Customer a non-exclusive, perpetual license to use, reproduce, modify, display and perform such Deliverables for Customer's internal business purposes within Customer's organization.

7.5 Restrictions. All licenses granted are subject to the conditions that Customer will not: (a) modify, adapt, alter, translate, or create derivative works from the LucidWorks Products; (b) reverse-engineer, decompile, disassemble, or attempt to derive the source code for the LucidWorks Products; (c) distribute, sublicense, lease, rent, loan, or otherwise transfer the LucidWorks Products to any third party; (d) remove, alter, or obscure in any way the proprietary rights notices (including copyright, patent, and trademark notices and symbols) of LucidWorks or its suppliers contained on or within any copies of the LucidWorks Products; (e) merge or use the LucidWorks Products with any software or hardware for which they were not intended (as described in the Documentation); (f) use the LucidWorks Products in any time-sharing, outsourcing, service bureau, hosting, application service provider environments; (g) use the

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LucidWorks Products for the purpose of third party training; (h) disclose the results of any benchmark tests on the LucidWorks Products

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without LucidWorks' prior written consent: or (i) use the LucidWorks Products other than as described in the Documentation, or for any unlawful purpose. LucidWorks may audit and monitor Customer's use of the LucidWorks Products.

8. Confidential Information. "Confidential Information" means any and all information related to a party's business that is labeled or identified as "confidential" or "proprietary"; or otherwise is of such a type or disclosed in such a way that a reasonable person would understand that the information disclosed is confidential or proprietary, including without limitation software, source code and specifications, trade secrets, development plans, technical information, business forecasts and strategies, and information regarding personnel, customers and suppliers. Without limiting the foregoing, The Deliverables will be deemed to be LucidWorks' Confidential Information, whether or not so marked. Each party agrees (i) to hold the other party's Confidential Information in strict confidence, (ii) not to disclose such Confidential Information to any third parties, except as described below and (iii) not to use any Confidential Information except for the purposes of this Agreement. Each party may disclose the other party's Confidential Information to its responsible employees and contractors with a bona fide need to know, but only to the extent necessary to carry out the purposes of this Agreement, and only if such employees and contractors are subject to a nondisclosure agreement sufficient to protect the other party's Confidential Information hereunder. The restrictions set forth in this section will not apply to any Confidential Information that the receiving party can demonstrate (a) was known to it prior to its disclosure by the disclosing party; (b) is or becomes publicly known through no wrongful act of the receiving party; (c) has been rightfully received from a third party authorized to make such disclosure without restriction; (d) is independently developed by the receiving party without reference to the disclosing party's Confidential Information. The parties agree that a breach of this section may cause irreparable damage which money cannot satisfactorily remedy and therefore, the parties agree that in addition to any other remedies available at law or hereunder, the disclosing party will be entitled to seek injunctive relief for any threatened or actual disclosure by the receiving party. If there is any conflict between this Section 8 and any separate non-disclosure agreement signed by authorized representatives of both parties, the separate non-disclosure agreement shall control.

9. Warranty; Disclaimer.

9.1 Warranty. LucidWorks represents and warrants, for a period of ninety (90) days after delivery, that the Services will be performed in a good and workmanlike manner and the Deliverables (excluding Open Source Software) will substantially conform to the description in the Order Form. In the event of a breach of this warranty, LucidWorks will re-perform the applicable Services within a reasonable time provided that Customer notifies LucidWorks within thirty (30) days (for Services in general) or ten (10) days (for training services) following the date of completion of the Services. The foregoing will be Customer's sole and exclusive remedy, and LucidWorks' sole and exclusive obligation, for a breach of the warranty under this Agreement.

9.2 EXCEPT AS EXPRESSLY PROVIDED FOR IN SECTION 9.1, LUCIDWORKS DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED, WITH RESPECT TO THE LUCIDWORKS PRODUCTS, SERVICES AND DELIVERABLES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. THE LUCIDWORKS PRODUCTS, SERVICES AND DELIVERABLES ARE NOT DESIGNED, INTENDED OR WARRANTED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS.

10. Limitation of Liability. EXCEPT FOR A BREACH OF SECTION 7.5 (RESTRICTIONS) or 8 (CONFIDENTIAL INFORMATION):

(A) NEITHER PARTY WILL BE LIABLE TO ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL THEORY, INCLUDING BUT NOT LIMITED TO (I) LOST PROFITS, LOST DATA, OR BUSINESS INTERRUPTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF, KNOWS OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER INACCURACIES IN OR DESTRUCTIVE PROPERTIES OF THE DELIVERABLES OR SERVICES; AND (B) REGARDLESS OF THE CAUSE OF ACTION OR THE FORM OF ACTION, LUCIDWORKS'S TOTAL CUMULATIVE LIABILITY FOR ACTUAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER FOR SERVICES GIVING RISE TO SUCH LIABILITY DURING THE THEN-CURRENT TERM IN WHICH SUCH WERE PROVIDED. THE PARTIES ACKNOWLEDGE THAT THE FEES PAID PURSUANT TO THIS AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT, AND THAT NEITHER PARTY WOULD ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

11. General.

11.1 Neither party shall be liable for delay in performance hereunder due to causes beyond its control, including but not limited to acts of God, fires, strikes, acts of war, or intervention by governmental authority. Either party may assign this Agreement in its entirety to (i) any entity under the common control of such party; or (ii) any successor in interest to such party by way of merger or consolidation; or (iii) a purchaser of all or substantially all of the assets of such party, provided that the assignee agrees in writing to be bound by all of the terms and conditions of this Agreement. Each party is acting in performance of this Agreement as an independent contractor. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. Any notices or communication under this Agreement shall be in writing and shall be hand delivered or sent by registered mail return receipt requested at the address set forth on the Order Form, or such other address as either party may in the future specify to the other party. This Agreement will be governed by the laws of the State of California in the United States of America. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought in the courts in San Mateo County, California. The parties agree that this Agreement is written and construed in the English language. A failure of either party to exercise any right provided for herein, shall not be deemed to be a waiver of any right hereunder. This Agreement and the Subscription Plans set forth the entire understanding of the parties as to the subject matter therein and may not be modified except in a writing executed by both parties. Any contractual terms contained in any Customer purchase orders will not be applicable to any transaction between the parties unless contained in a written document signed by both parties and such terms are hereby rejected by LucidWorks. In the event of a conflict between this Agreement

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and the Subscription Plan, the terms of such Subscription Plan shall control with respect to the maintenance services provided pursuant



to such Subscription Plan. In the event any one or more of the provisions of this Agreement or of any Subscription Plan is invalid or otherwise unenforceable, the enforceability of remaining provisions shall be unimpaired. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same Agreement.

11.2 Customer understands that the Deliverables contains encryption technology and other software programs that may require an export license from the U.S. State Department and that export or re-export of the Deliverables to certain entities (such as a foreign government and its subdivisions) and certain countries is prohibited. Customer acknowledges that it will comply with all applicable export and import control laws and regulations of the United States and the foreign jurisdiction in which the Deliverables is used and, in particular, Customer will not export or re-export the Deliverables without all required United States and foreign government licenses. Customer will defend, indemnify, and hold harmless LucidWorks from and against any violation of such laws or regulations by Customer or any of its agents, officers, directors or employees.

11.3 The Deliverables and any other software covered under this Agreement are "commercial items" as that term is defined at 48 C.F.R.2.101; consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Deliverables and any other software and documentation covered under this Agreement with only those rights set forth therein. Customer agrees that LucidWorks may from time to time identify Customer as a LucidWorks customer in the LucidWorks Web site, sales and marketing materials and press releases. Customer grants LucidWorks a non-transferable, non-exclusive, royalty-free license to use Customer trademarks and logos (to be provided by Customer) on LucidWorks' Web site, press releases, advertisements and sales and marketing materials for the term of this Agreement for the limited purpose of indicating that Customer is a customer of LucidWorks. Any other use of such trademark or logo will require Customer's prior written permission.