CipherCloud, Inc
99 Almaden Blvd., Suite 500
San Jose, CA 95113
www.ciphercloud.com

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.

CIPHERCLOUD CUSTOMER AGREEMENT

This **CUSTOMER AGREEMENT (the "Agreement")** is made effective as of <mark>XXX</mark> ("**Effective Date**") by and between CipherCloud, Inc., with principal place of business at **99 Almaden Boulevard - Suite 500 - San Jose CA 95113** ("**CipherCloud**") and <mark>XXX</mark> with principal place of business at <mark>XXX</mark> ("**Customer**").

1. DEFINITIONS

1.1 "User" means any user who accesses the Software.

1.2 "**Administrator User**" means a user who performs Software configuration (e.g. designate a field for encryption) via the management console included in the Software.

1.3 "**Confidential Information**" means any and all information related to a party's business (including software, source code and specifications, trade secrets, technical information, business forecasts and strategies, personnel information and proprietary information of third parties provided to the other party in confidence) that is labeled or identified as "confidential" or "proprietary"; and if disclosed orally or otherwise in intangible form, is confirmed as such in writing within 30 days of such disclosure; 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. Without limiting the foregoing, all CipherCloud Software and Documentation will be deemed the "Confidential Information" of CipherCloud.

1.4 "Documentation" means CipherCloud's published administration manuals and other documentation for the Software that are furnished to Customer by CipherCloud.

1.5 "Error" means any occurrence which causes the Software not to operate in substantial conformance with the applicable Documentation.

1.6 "Revision" means any correction, modification, maintenance release, patch, bug fix and/or update of the Software and associated Documentation that CipherCloud makes generally available to its License and Support subscribers.

1.7 "Software" means the specific quantity and part number of CipherCloud proprietary software product(s) specifically listed in Exhibit A hereto (and in any mutually agreed addenda to Exhibit A) as licensed to Customer (and as validated by the issuance of an authorized CipherCloud invoice), in object code format only, including any Documentation furnished by CipherCloud and (only if Customer has paid for its applicable subscription fees) including any Revisions made available to Customer by CipherCloud. Software also includes the Sublicensed Software as defined below.

1.8 "Sublicensed Software" means any and all third-party software that is furnished to Customer by CipherCloud as part of the Software.

1.9 "**Subscription Fee**" shall mean the annual fee for licensing the Software specified in this agreement, and for support and maintenance services for software described in Exhibit-A hereto.

1.10 "Sublicensed Software License" means terms and conditions the Sublicensed Software is subject to and as provided in Exhibit B.

2. LICENSES

2.1 License Grant. Subject to the terms and conditions of this Agreement, CipherCloud hereby grants to Customer a non-exclusive, nontransferable, non-sublicenseable license, during the Term specified in Exhibit A, to: (a) install the Software on computer hardware, in object code form only, as expressly specified in Exhibit A; (b) use, perform and display the installed copy of the Software in accordance with the Documentation, for Customer's internal purposes only, subject to the usage metrics and limitations set forth in Exhibit A (e.g., the maximum number of Users); (d) use the Sublicensed Software under the terms of the Sublicensed Software License, and (d) make one (1) backup or archival copy of the Software, in object code form only.

2.2 General Restrictions. Customer acknowledges and agrees that the Software and its structure, organization, and source code constitute valuable trade secrets and Confidential Information of CipherCloud and its suppliers, and Customer agrees to maintain all of the foregoing in strict confidence. Customer agrees not to (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) merge the Software with any other software; (c) distribute, sublicense, lease, rent, loan, or otherwise transfer the Software to any third party; (d) use the Software other than as described in the Documentation; (e) use the Software on or with any system for which it was not intended (as described in the Documentation); (f) use the Sublicensed Software with any software or application other than the CipherCloud Software; or (g) use the Software in any time-sharing, outsourcing, service bureau, hosting, application service provider or managed service provider environment. Customer will not remove, alter, or obscure in any way all proprietary rights notices (including copyright, patent, and trademark notices and symbols) of CipherCloud or its suppliers contained on or within the copies of the Software furnished by CipherCloud to Customer.

2.3 Reverse-Engineering. Customer will not disassemble, reverse engineer, analyze, decompile, modify, convert or translate the Software or apply any procedure or process to the Software in order to ascertain, derive and/or appropriate for any reason or purpose the source code for the Software or any Confidential Information, trade secret information or process or software contained in the Software, except as otherwise expressly permitted by applicable law that may not lawfully be excluded by agreement between the parties.

2.4 Ownership. Notwithstanding the use of the terms "purchase," "sale", or any similar terminology in connection with the transaction contemplated by this Agreement, the Software is licensed, not sold. As between Customer and CipherCloud, except for the nonexclusive licenses expressly granted to Customer in this section, CipherCloud and its licensors and suppliers retain all right, title and interest in and to the Software and all modifications,

enhancements, customizations, updates, revisions or derivative works thereof. There are no implied licenses under this Agreement, and all rights not expressly granted hereunder are reserved to CipherCloud and its suppliers.

2.5 Technological Controls. Customer acknowledges that the Software may contain license keys to activate the Software and to limit the uses of the Software as described in Exhibit A (e.g., enforcement of the maximum number of Users).

3. DELIVERY

3.1 Delivery. CipherCloud will deliver to Customer the Software substantially in accordance with the schedule in Exhibit A. The Software will be deemed to be accepted upon receipt by Customer.

3.2 Professional Services. Customer will be solely responsible for installing, configuring, and testing the Software for use in conjunction with Customer's environment. However, to the extent that Customer purchases Professional Services as described in Exhibit A, CipherCloud will provide such services in accordance with CipherCloud's separate Professional Services Agreement. Customer is responsible for all reasonable travel and accommodation expenses of CipherCloud personnel providing Professional Services. Customer shall be responsible for payment in full for authorized Professional Services that Customer does not utilize within six months of the Effective Date. Customer agrees to pay CipherCloud a cancellation fee of $2,000 plus reimbursement of any nonrefundable associated travel charges for Customer's cancellation of a Professional Services engagement less than a week prior to the agreed work start date. CipherCloud solely owns all intellectual property rights in any work product created or delivered by CipherCloud in the course of providing Professional Services.

3.3 Maintenance and Support Services. Provided Customer pays the applicable annual Subscription Fees, CipherCloud agrees to provide annual Maintenance and Support Services from the Effective Date of this Agreement as follows:

3.3.1 Maintenance and Support. CipherCloud will provide all commercially reasonable assistance necessary to ensure that the Software continues to perform in substantial conformance with the Documentation. During the subscription period, CipherCloud shall make available to Customer any Revisions of the Software or Documentation at no extra charge, provided that the Customer has fully paid its subscription fee obligations for that period. CipherCloud will make such Revisions of the Software available to Customer when CipherCloud makes such Revisions generally available to its other subscribers.

3.3.2 E-Support. During Customer's Subscription, CipherCloud will provide support through e-mail, knowledge base and web portal to answer questions Customer may have regarding use of the Software and to reasonably assist Customer in use of the Software. CipherCloud shall have no responsibility for (i) correcting Errors in any Software modified or altered by any third party; (ii) Errors in the Software due to failure by computer hardware, equipment or software not provided by CipherCloud; (iii) Errors in the Software due to accident, neglect, misuse or improper use; or (iv) providing on-site technical support. If CipherCloud establishes, in its

reasonable discretion, that (a) no Error existed or (b) the Error resulted from any of the excluded circumstances listed in the immediately preceding sentence, then CipherCloud shall invoice Customer for its reasonable services in investigating and/or correcting the Error at CipherCloud's then-current rates for Professional Services.

3.3.3 Basic and Premier Support. Customer may elect to purchase either a 8 AM to 5 PM Pacific time (Basic) or 24x7x365 (Premier) telephone toll-free hot-line support from CipherCloud, added to the Subscription, at the then-current Basic and Premier Support price set by CipherCloud. The above E-Support terms are otherwise included.

3.3.4 Renewal and Cancellation. The Subscription will automatically renew each year at the anniversary of the Effective Date ("Renewal Date") at the then current Subscription fees unless either party provides written notification of cancellation to the other party at least thirty (30) days prior to the Renewal Date. CipherCloud reserves the right to cancel Subscription at any time if it does not receive Customer's subscription payment within thirty (30) days after the Renewal Date or invoice date (whichever is later) or if Customer is in breach of this Agreement. In the event Customer allows its Subscription contract to lapse, Customer may renew only at CipherCloud's discretion and upon payment of all back Subscription fees multiplied by 1.5, plus the then-current Subscription fees.

4. FEES AND PAYMENTS

4.1 Payment Terms. Based on the terms of this Agreement, Customer will have an irrevocable obligation to make the payments specified in Exhibit A. All fees payable by Customer to CipherCloud shall be paid within 30 days of the invoice date and are nonrefundable. All payments will be made in U.S. dollars (unless another currency is explicitly specified in Exhibit A) by wire transfer of immediately available funds. Late payments will be subject to a late fee equal to the lesser of (a) one and one-half percent (1½%) per month, or (b) the highest rate allowable under applicable law, calculated on the outstanding balance from the due date until the date of full payment. CipherCloud will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive if any legal action is brought by CipherCloud to collect subscription fees owed but not paid by Customer.

4.2 Taxes. Customer will be responsible for, and will indemnify and hold CipherCloud harmless from, payment of all taxes (other than taxes based on CipherCloud's income), fees, duties, and other governmental charges, and any related penalties and interest, arising from any payments due to CipherCloud under this Agreement or the delivery of the Software to, license of the Software to, or performance of any services for, Customer. CipherCloud will invoice Customer for all such fees, duties, and charges. Customer will make all payments to CipherCloud free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments to CipherCloud will be Customer's sole responsibility, and Customer will provide CipherCloud with official receipts issued by the appropriate taxing authority, or such other documentary evidence that CipherCloud may reasonably request, to establish that such taxes have been paid.

4.3 Audit. During the term of this Agreement and for a period of three (3) years thereafter, (a) Customer will maintain complete and accurate written records of its activities conducted under this Agreement, including without limitation recording, as applicable, the total number of Users at any time; and (b) CipherCloud will have the right, no more than once per calendar quarter, during normal business hours and upon at least ten (10) business days' prior written notice, to inspect Customer's facilities and audit Customer's records relating to Customer's activities pursuant to this Agreement in order to verify that Customer has paid to CipherCloud the correct amounts owed under this Agreement, complied with the usage metrics and limitations in Exhibit A, and otherwise complied with the terms of this Agreement. In the course of conducting the audit, CipherCloud will abide by Customer's reasonable standard site access rules and regulations, and will take steps to minimize any disruption to the normal conduct of Customer's business. The audit will be conducted at CipherCloud's expense; however, Customer will reimburse CipherCloud for all reasonable costs and expenses incurred by CipherCloud in connection with such audit if: (i) the audit reveals a breach of a material term of the Agreement, or (ii) the audit reveals that Customer has underpaid the amounts owed to CipherCloud by five percent (5%) or more in any billing period. If the audit reveals that any amounts are owing for any billing period, Customer will promptly pay such amounts, plus the applicable late fees. For example, if the fees paid for the then-current period do not match the amount of fees that should have been paid for such period (e.g., based on the number of Users for that period), Customer will pay the difference between the amounts that were paid and the amounts that should have been paid.

5. TERM AND TERMINATION

5.1 Term. This Agreement will enter into effect upon the Effective Date and continue in full force and effect for the Term identified in Exhibit A, or until earlier terminated by either party as expressly permitted by this Agreement.

5.2 Termination for Breach. Each party will have the right to terminate this Agreement immediately upon written notice if the other party breaches a material term of this Agreement (including the obligation to make payments when due) and fails to cure such breach within thirty (30) days after written notice of breach by the non-breaching party. Notwithstanding the foregoing, CipherCloud will have the right to terminate this Agreement immediately upon written notice if Customer breaches Section 2 (Software License).

5.3 Effect of Termination. Upon the expiration or any termination of this Agreement, all licenses granted hereunder will immediately terminate and Customer will return or destroy all copies of all licensed materials and CipherCloud Confidential Information. Section 1 (Definitions), 2.2 (General Restrictions), 2.3 (Reverse Engineering), 2.4 (Ownership), 4 (Fees and Payments), 5.3 (Effect of Termination), 6.3 (Disclaimer), 8 (Limitation of Liability), 9 (General), and any payment obligations that accrued prior to termination of this Agreement, will survive any such termination.

6. REPRESENTATIONS AND WARRANTIES

6.1 Performance Warranty. For a period of ninety (90) days after initial delivery of the Software, CipherCloud warrants that the Software, when used as permitted under this Agreement and in accordance with the Documentation, will operate substantially as described in the Documentation. If the Software fails to conform to the foregoing warranty, CipherCloud will, at its own expense and as its sole obligation, and Customer's sole and exclusive remedy, for breach of this warranty, correct any reproducible nonconformity in the Software reported in writing to CipherCloud by Customer during the Warranty Period. The provision of any bug fix, patch, or error correction by CipherCloud to Customer in performance of the warranty obligations in this section will not operate to extend the original Warranty Period.

6.2 Viruses. The term "Virus" means any computer code intentionally designed to (a) disrupt, disable, harm, or otherwise impede the proper operation of a computer program or computer system or (b) damage or destroy any data files residing on a computer system without the user's consent. Prior to delivery, CipherCloud will use commercially reasonable efforts to scan the Software with a commercially-available antivirus program before delivery to reduce the possibility of the existence of a Virus. If, within 10 days of delivery, Customer demonstrates that the Software, as supplied by CipherCloud contains a Virus, CipherCloud's sole obligations will be to (i) use commercially reasonable efforts to promptly provide Customer with such pertinent information as may be in CipherCloud's possession about the infection of the Software by the Virus, in order to help mitigate the detrimental effects of the Virus; and (ii) deliver a new copy or copies of the Software free of the identified Virus, at no charge to Customer. Customer acknowledges that not all Viruses can be detected by such antivirus programs and, therefore, CipherCloud does not represent or warrant that the Software or the Third-Party Software will be free of Viruses.

6.3 DISCLAIMER. EXCEPT TO THE EXTENT EXPRESSLY SET FORTH ABOVE IN THIS SECTION 6, CipherCloud EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES AND CONDITIONS WITH RESPECT TO THE SOFTWARE AND ALL MATERIALS OR SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER IMPLIED, EXPRESS, OR STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT OF THIRD-PARTY RIGHTS, QUIET ENJOYMENT, AND ACCURACY. CipherCloud DOES NOT WARRANT THAT THE SOFTWARE WILL IN EVERY CASE PROCESS ALL DATA CORRECTLY, OR THAT OPERATION OF SAME WILL BE SECURE, ERROR-FREE, OR UNINTERRUPTED. CipherCloud DISCLAIMS THE ACCURACY OF ANY SCORES OR METRICS PROVIDED BY THE SOFTWARE.

7. INDEMNIFICATION

7.1 Indemnity. CipherCloud will (a) defend Customer from any third-party claim, suit, or proceeding alleging that the Software, unmodified and as originally delivered, when used as permitted under this Agreement and in accordance with the Documentation and the licenses granted hereunder, infringes or misappropriates any (i) third-party U.S. patent issued as of the Effective Date, or (ii) any

copyright or trade secret that arises under the laws of the United States (a "Claim"), and (b) pay all settlement amounts agreed to by the litigants or damages finally awarded by a court of competent jurisdiction, up to the aggregate amount of subscription fees paid to CipherCloud by Customer.

7.2 Exclusions. CipherCloud will have no obligations under this section with respect to any Claims that arise from or relate to (a) any modifications to the Software created by any person other than CipherCloud; (b) any combination of the Software with any third-party hardware, software, or other materials where such combination is the object of the claim; or (c) the use of any version of the Software other than the latest version made available to Customer by CipherCloud.

7.3 Mitigation. If any element of the Software has become, or if CipherCloud reasonably believes is about to become, the subject of a Claim, CipherCloud may, at its sole option, (a) obtain a license to permit Customer to use the Software in accordance with this Agreement; (b) modify the Software in a manner such that it is no longer infringing but maintains substantially the same functionality; or (c) terminate Customer's license to use all or part of the Software in exchange for a refund of fees paid, less a prorated deduction to reflect past beneficial use calculated on a straight-line basis assuming a useful life of three (3) years.

7.4 Procedures. As a condition precedent to CipherCloud's obligation to indemnify Customer under this Section 7, Customer must: (a) promptly notify CipherCloud in writing of any Claim; (b) tender control of the defense and settlement of such Claim to CipherCloud, provided that CipherCloud may not enter into any settlement adversely affecting Customer's interests without Customer's prior written consent; and (c) reasonably cooperate with CipherCloud in such defense at CipherCloud's expense. Customer will have the right to participate in the defense at its own expense with counsel of its choice. The indemnity in this Section 7 states Customer's sole and exclusive remedy, and CipherCloud's entire liability, for infringement of third-party intellectual property rights arising from or related to this Agreement

8. LIMITATION OF LIABILITY

8.1 CONSEQUENTIAL DAMAGES. EXCEPT FOR ANY INFRINGEMENTS OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS (INCLUDING ANY BREACH OF SECTION 2 (LICENSES)), IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOST DATA, LOST PROFITS, SECURITY BREACH OR GOVERNMENTAL FINE DUE TO RELIANCE ON THE SOFTWARE, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, ARISING FROM OR RELATING TO THIS AGREEMENT, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 DAMAGE CAP. IN NO EVENT SHALL CIPHERCLOUD'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, EXCEED A SUM EQUAL TO THE TOTAL OF ALL FEES PAID BY CUSTOMER TO CIPHERCLOUD PURSUANT TO SECTION 4.1 (PAYMENT TERMS) DURING THE

TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FIRST GIVING RISE TO LIABILITY. THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM.

8.3 EXCLUDED USES. THE SOFTWARE IS NOT INTENDED FOR USE IN CONNECTION WITH ANY NUCLEAR, AVIATION, MASS TRANSIT, OR MEDICAL APPLICATION OR ANY OTHER INHERENTLY DANGEROUS APPLICATION THAT COULD RESULT IN DEATH, PERSONAL INJURY, CATASTROPHIC DAMAGE, OR MASS DESTRUCTION, AND CUSTOMER AGREES THAT CIPHERCLOUD WILL HAVE NO LIABILITY OF ANY NATURE AS A RESULT OF ANY SUCH USE OF THE SOFTWARE.

8.4 ACKNOWLEDGEMENT. THE PARTIES ACKNOWLEDGE THAT THE TERMS OF THIS SECTION 8 (LIMITATION OF LIABILITY): (A) REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY; AND (B) WILL APPLY EVEN IF ANY EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT WILL APPLY ONLY TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AND NOTHING IN THIS AGREEMENT PURPORTS TO LIMIT EITHER PARTY'S LIABILITY IN A MANNER THAT WOULD BE UNENFORCEABLE OR VOID AS AGAINST PUBLIC POLICY IN THE APPLICABLE JURISDICTION. CIPHERCLOUD'S LICENSORS AND SUPPLIERS WILL HAVE NO LIABILITY WHATSOEVER UNDER THIS AGREEMENT.

9. GENERAL

9.1 Independent Contractors. The parties are and at all times will be and remain independent contractors as to each other, and at no time will either party be deemed to be the agent or employee of the other. No joint venture, partnership, agency, or other relationship will be created or implied as a result of this Agreement. Except as expressly set forth in this Agreement, each party will bear full and sole responsibility for its own expenses, liabilities, and costs of operation, and each party will be solely responsible for payment of all compensation owed to its staff assigned to perform work under this Agreement, including payment (if any) of employment-related taxes and workers' compensation insurance. Furthermore, neither party will have the authority to, and will not purport to, enter into any contract or commitment on behalf of the other party.

9.2 Governing Law. This Agreement, and any and all actions arising from or in any manner affecting the interpretation of this Agreement, will be governed by, and construed solely in accordance with, the laws of the State of California, without giving effect to any conflicts of laws principles that would require the application of the laws of a different jurisdiction. Any action or proceeding against CipherCloud arising from or relating to this Agreement must be brought exclusively in a state or federal court located in Santa Clara County, California. Each party irrevocably submits to the exclusive jurisdiction and venue of any such court in any action or proceeding relating to this

Agreement; *provided, however*, that CipherCloud may seek injunctive relief for the purpose of protecting its intellectual property rights in any court of competent jurisdiction, wherever located. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Commercial Code will not apply to this Agreement.

9.3 Assignment. Customer may not assign this Agreement (whether expressly, by implication, or by operation of law, including in connection with any merger or sale of assets or business), or delegate its performance under this Agreement (either in whole or in part), to any third party without obtaining CipherCloud's prior written consent. CipherCloud may assign this Agreement or any rights granted herein. Any purported transfer, assignment, or delegation in violation of this Section 9.3 will be null and void when attempted and of no force or effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of the successors and permitted assigns of CipherCloud and Customer.

9.4 Confidentiality. 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; (e) has been approved for release by the disclosing party's prior written authorization; or (f) has been disclosed by court order or as otherwise required by law, provided that the party required to disclose the information provides prompt advance notice thereof, to the extent practicable, to enable the disclosing party to seek a protective order or otherwise prevent such disclosure. 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.

9.5 Export Control. Customer will comply with all applicable export control laws, rules, and regulations, including the Export Administration Regulations promulgated by the U.S. Department of Commerce. Without limiting the foregoing, Customer will not export or re-export any Software without first making any filings or obtaining any licenses required under applicable export law.

9.6 Equitable Relief. Customer acknowledges that CipherCloud would suffer immediate and irreparable harm for which monetary damages would be an inadequate remedy if Customer were to breach its obligations under Section 2 (Licenses) or otherwise exceed the scope of a license granted herein. Customer therefore expressly agrees that CipherCloud will be entitled to obtain equitable relief, including injunctive relief, from any court having jurisdiction, in order to protect rights and interests in connection with Section 2 of this Agreement or in connection with any license restriction contained herein. Such remedy shall be in addition to such other remedies as may be available at law or in equity.

9.7 Notices. All notices permitted or required under this Agreement will be in writing and will be delivered by personal delivery, national express courier with a tracking system, or by certified or registered mail, return receipt requested, and shall be deemed given, respectively, on the date of personal delivery, five (5) days after deposit in the mail, or on the date of delivery by courier. Notices shall be addressed to "General Counsel" and sent to the addresses set forth at the beginning of this agreement. Either party may amend its address for notice upon written notice to the other.

9.8 Waivers; Amendment. No waiver of any terms or conditions of this Agreement will be valid or binding on a party unless such party makes the waiver in hardcopy writing signed by an authorized representative of that party. The failure of one party to enforce any of the provisions of this Agreement, or the failure to require at any time the performance of the other party of any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of a party to enforce each and every provision thereafter. This Agreement may not be altered, amended, modified, or otherwise changed in any way except by a hardcopy written instrument signed by the authorized representatives of each party.

9.9 Severability. If any provision of this Agreement is found or held to be invalid or unenforceable by any tribunal of competent jurisdiction, then the meaning of such provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement, which will remain in full force and effect.

9.10 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of: (a) any provision of any present or future law or regulation of the United States or any applicable law that applies to the subject matter hereof; or (b) strikes, shortages, riots, insurrection, fires, flood, storms, explosions, acts of God, war, government action, acts of terrorism, earthquakes, power outages or any other cause that is beyond the reasonable control of such party.

9.11 Construction. The headings of sections of this Agreement are included solely for convenience of reference and are not to be used to interpret, construe, define, or describe the scope of any aspect of this Agreement. As used in this Agreement, the word "including" means "including but not limited to." Each party represents that it has had the opportunity to participate in the preparation of this Agreement, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in

connection with the construction or interpretation of this Agreement. Unless otherwise expressly stated to the contrary herein, all remedies are cumulative, and the exercise of any express remedy by either party herein does not by itself waive such party's right to exercise its other rights and remedies available at law or in equity.

9.12 Government Use. The Software is comprised of "commercial items", "commercial computer software", and "commercial computer software documentation" as such terms are as defined in FAR 2.101 and DFARS 252.227-7014(a)(1). The Software is provided to any federal, state or local government agency only subject to the terms and conditions of this Agreement and such additional terms as are agreed by the parties in a properly executed writing and that are consistent with (a) the policies set forth in 48 C.F.R. 12.212 (for civilian agencies); or (b) the policies set forth in 48 C.F.R. 227.7202-1 and 22.7202-3 (for units of the Department of Defense).

9.13 Non-Solicitation. During the term of this Agreement, Customer (including any agents acting on behalf of Customer) will not solicit any employee or contractor of CipherCloud for employment or independent contractor services.

9.14 Entire Agreement. This Agreement may be executed in counterparts. Each party represents and warrants that the person signing this Agreement on such party's behalf has been duly authorized and empowered to enter into this Agreement. This Agreement (including any and all attached Exhibits) constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement will take precedence over any conflicting or inconsistent terms and conditions accompanying any purchase order or similar document submitted by Customer to CipherCloud.

IN WITNESS WHEREOF, the undersigned do hereby execute this Agreement by duly authorized officials as of the Effective Date.

THIS AGREEMENT IS NOT EFFECTIVE UNLESS A COMPLETE EXHIBIT A IS ATTACHED THAT SPECIFIES THE TERM OF THIS AGREEMENT, THE PRODUCTS AND SERVICES THAT CUSTOMER IS BUYING, AND THE LICENSING MODELS, PRICES AND METRICS THAT APPLY.

"Customer"

By:

Name:

Title:

Date:

CipherCloud, Inc.

By:

Name:

Title:

Date: