

Janya, Inc.
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**Carahsoft Rider to Manufacturer End User License Agreements
(for U.S. Government End Users)**

- 1. Scope.** This Carahsoft Rider and the Janya, Inc. ('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
 - (a) Error! Unknown document property name.**

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.

END USER LICENSE AGREEMENT

This End User License Agreement ("EULA") is between Janya Inc., 1408 Sweet Home Road, Suite 1, Amherst, NY 14228 ("JANYA") and the party identified on the signing page of this EULA ("Licensee"). Licensee desires to obtain from JANYA, and JANYA desires to grant to Licensee, certain non exclusive license to use the specific software, documentation, and other JANYA intellectual property as described in this EULA. Accordingly, in consideration of the mutual promises contained herein and of other good and valuable consideration, JANYA and the Licensee agree as follows:

1.0 Definitions

"**Applicable Taxes**" shall have the meaning set out in Section 10 hereof;

"**Software Product**" means application software licensed by JANYA to Licensee which allows for accessing data using a group of functions and features;

"**Client Module(s)**" means each software client module licensed by JANYA to Licensee hereunder;

"**Concurrent Users**" means those users who are simultaneously logged on or connected to a Server Module;

"**Documentation**" means all documentation licensed by JANYA to Licensee hereunder, including such documentation as is: (a) authorized by JANYA for general release to JANYA licensees of the Software; and/or (b) provided to Licensee under an JANYA maintenance and/or support program related to the Software; whether in printed, electronic, on-line, and/or other format;

"**Server(s)**" mean a network server operated by Licensee;

"**Server Module(s)**" means each software server module licensed by JANYA to Licensee hereunder;

"**Software**" means any and all Server Modules, Client Module(s), Documentation, and other intellectual property licensed by JANYA hereunder, including each update, upgrade, and/or new version of same licensed hereunder, all source code and object code licensed hereunder, and all copies thereof made by Licensee;

"**Term**" means the term of this EULA as described in Section 16 hereof.

"**User(s)**" means an individual authorized to access and/or use the Software Product by a generic or defined user identification and associated password.

2.0 OWNERSHIP OF THE SOFTWARE

2.1 **Ownership.** The Software is protected by U.S., and international copyright laws and treaties, as well as other laws and treaties. None of the Software is being sold. Except for those non exclusive licenses granted by JANYA to Licensee in this EULA, all ownership, license, intellectual property, and other rights and interests in, and to, the Software shall remain solely with JANYA and/or JANYA's licensors.

3.0 NON EXCLUSIVE LICENSE

3.1 **SOFTWARE LICENSE.** JANYA grants to Licensee, a non-exclusive, non-assignable, and non-transferable worldwide license during the Term to: (a) use the object code version of the Software as permitted by this agreement and as purchased in accordance with Section 8.2 of this EULA and, (b) use related Documentation; for the sole purpose of Licensee conducting Licensee's internal business operations and not for any other purpose (including redistribution).

3.2 **User Restrictions.** Prior to any individual accessing and/or using the Software and/or related Documentation licensed to Licensee under this EULA, Licensee shall first purchase the appropriate License required for such access.

4.0 AUTOMATED VERIFICATION

4.1 **Automated Verification.** LICENSEE ACKNOWLEDGES THAT THE SOFTWARE CONTAINS A SOFTWARE KEY TO PREVENT UNAUTHORIZED INSTALLATION AND MAY CONTAIN DEVICES TO MONITOR COMPLIANCE WITH LICENSEE'S USER LICENSE OBLIGATIONS UNDER THIS EULA.

5.0 US GOVERNMENT END USERS-RESTRICTED RIGHTS LEGEND

5.1 **Restricted Rights Only.** If the Software is being licensed directly or indirectly on behalf of the United States ("U.S.") Government, the following shall apply. For civilian agencies and departments: the Software was developed at private expense and is "restricted computer software" submitted with restricted rights in accordance with subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause of FAR 52.227-19 and its successors, and it is unpublished and all rights are reserved under the copyright laws of the U.S. For units of the Department of Defense, the Software is "commercial computer software" and "commercial computer software documentation" under the Rights in Computer Software and Computer Software Documentation clause of DFAR 227.7202-3 (a) and its successors, and all use, duplication or disclosure is subject to the license and restrictions set forth in this EULA.

6.0 AUTHORIZED COPIES

- 6.1 Documentation.** Licensee shall not modify the Documentation in any manner. Licensee may make copies of the documentation provided: (a) each copy is only used for the purpose of using Software pursuant to this EULA (and not for redistribution); and (b) no such copy is distributed and/or used to conduct training for which Licensee, or any other party, receives a fee.
- 6.2 Software.** Licensee may make one complete copy of the Software for backup purposes only. Such copy of the Software (and/or Documentation) made by Licensee hereunder must contain the same copyright and other proprietary notices that appear on the original copy of same provided to Licensee hereunder.
- 7.0 RESTRICTIONS**
- 7.1 Restrictions.** Licensee shall not: (a) assign, transfer, and/or redistribute the Software to any party in whole or in part; (b) rent, time share, or operate a service bureau with respect to the Software; (c) charge a fee to any party for access to and/or use of the Software; and/or (d) install, use, and/or make available the Software for any online application service provider business, internet service provider business, or other online software rental business, unless as otherwise noted in Exhibit A. Licensee shall not publish or disclose results of any benchmark or other test run on the Software without JANYA's prior written consent. Except as authorized herein, Licensee shall not grant any sublicense to any party or parties to access and/or use the Software.
- 8.0 Ordering Software And User Licenses From JANYA**
- 8.1 JANYA Pricing.** JANYA charges license fees to license the Software. JANYA reserves the right to change its license and/or fees at any time or times. No such change shall apply to any license purchased by Licensee prior to change.
- 8.2 Written Confirmation.** JANYA and Licensee have described the licenses which Licensee has initially purchased from JANYA under this EULA in a written schedule to this EULA signed by JANYA and Licensee. All additional software which Licensee wishes to license from JANYA under this EULA, as well as additional concurrent users and/or other licenses which Licensee wishes to purchase from JANYA under this EULA, shall be subject to JANYA's prior written approval in each such case.
- 8.3 Risk of Loss.** Title to the physical media containing the Software and all risk of loss for such media and Software shall pass to Licensee upon delivery by JANYA of same to the shipping dock of the JANYA facility shipping same ("**Delivery Point**"), at which Delivery Point the Software shall be deemed to have been delivered to the Licensee and Licensee shall be deemed to have accepted same. None of the Software is being sold by JANYA, either in whole or in part.
- 9.0 JANYA SUPPORT.**
- 9.1 JANYA Support Program(s).** Licensee may purchase such standard maintenance and/or support program(s) related to the Software as JANYA generally makes available. Unless otherwise specified by JANYA in writing, all Support Software and related Documentation provided to Licensee pursuant to a JANYA maintenance and/or support program shall be licensed to Licensee under this EULA. If Licensee fails to pay any fees to JANYA when due, JANYA may suspend all maintenance and support.
- 10.0 LICENSEE FEES AND PAYMENT TO JANYA**
- 10.1 Timely Payment To JANYA.** The exercise by Licensee of each of the license granted in this EULA is conditional upon Licensee making timely and complete payment to JANYA of all license fees and other amounts due to JANYA hereunder, as well as Licensee making payment of all Applicable Taxes. Licensee shall make timely and complete payment to: (a) JANYA of all license fees and other amounts due to JANYA hereunder; and (b) the appropriate government authority of all country, federal, provincial, state, municipal, and other government excise, import, customs, sales, use, consumption, goods and services, property, value-added, internet, online, e-commerce, and other duties, levies and taxes of every kind arising out of this EULA, whether imposed on the Software or otherwise and regardless of whether any or all of same exist as at the date of execution of this EULA by JANYA and Licensee ("**Effective Date**") or are imposed thereafter, except such taxes as may be imposed on JANYA's income ("**Applicable Taxes**"). If JANYA is obligated to pay any Applicable Taxes on behalf of Licensee, Licensee shall reimburse JANYA in full for same promptly following receipt of JANYA's invoice for same.
- 10.2 Over Usage.** JANYA may, at any time or times, estimate and invoice Licensee for any and all license fees and other amounts payable by Licensee to JANYA as a result of any access and/or use of the Software by, or through, Licensee in excess of the number and/or type of licenses purchased by Licensee from JANYA under this EULA. Licensee shall make timely and complete payment to JANYA of all such license fees and other amounts invoiced by JANYA. Each invoicing and/or receipt by JANYA of such license fees and/or other amounts shall be without prejudice to any rights and/or remedies which JANYA may possess under this EULA, at law, in equity, and/or otherwise.
- 10.3 Amounts Not Included.** All Applicable Taxes, freight, insurance, and brokerage fees pertaining to Software licensed hereunder shall be in addition to each of the license fees and other amounts due to JANYA under this EULA and shall be paid by Licensee to JANYA in full. All license fees and other amounts due to JANYA under this EULA are payable to JANYA in US dollars.
- 10.4 Invoicing And Payment.** JANYA will invoice Licensee: (a) for Software licensed under this EULA upon shipment of same to the Delivery Point; and (b) from time for time for all license fees and other amounts due to JANYA under this EULA. All license fees and other amounts due to JANYA hereunder shall become payable by Licensee to JANYA upon Licensee's receipt of JANYA's invoice for same. Each license fee and/or other amount due to JANYA under this EULA which is not paid in full to JANYA within 30 days following its due date shall bear interest at a rate of 1.5% per month (18% per annum) or the maximum amount allowed by law, if less, on such unpaid portion until fully paid.

11.0 BOOKS, RECORDS, AND AUDITS

- 11.1 Audit.** Licensee shall furnish to JANYA from time to time, upon JANYA's request, a signed statement verifying that the Software is being used pursuant to this EULA and listing the location, type, and machine number of any and all Servers on which the Programs are used. JANYA may from time to time, audit Licensee's records and computer systems to ensure Licensee has complied with its obligations to JANYA hereunder.
- 11.2 Conduct.** Each audit shall be conducted during regular business hours at Licensee's facilities and shall not interfere unreasonably with Licensee's business. JANYA shall provide Licensee with prior notice of each audit. Licensee shall cooperate with JANYA's audit team, provide access to Licensee records, and allow JANYA to make and remove copies of Licensee records for the above purposes.
- 11.3 Noncompliance.** If any audit reveals that Licensee has failed to comply with any provision in this EULA, Licensee shall promptly: (a) remedy such noncompliance; and (b) make payment to JANYA of all audit and other costs incurred by JANYA in performing such audit.

12.0 NORTH AMERICA

- 12.1 Canada And the US.** THIS EULA IS APPLICABLE TO LICENSEES LOCATED IN CANADA OR THE UNITED STATES ("U.S."). IF LICENSEE IS LOCATED IN A COUNTRY OTHER THAN CANADA OR THE U.S., PLEASE CONTACT JANYA TO OBTAIN THE JANYA EULA APPLICABLE TO YOUR SPECIFIC TERRITORY.

13.0 LIMITED WARRANTIES

- 13.1 Limited Media Warranty.** JANYA warrants to Licensee that the media on which the Software is delivered to Licensee will be free from defects in materials and workmanship under normal use for sixty (60) days from the date of first delivery of same to Licensee under this EULA. JANYA's entire liability to Licensee, and Licensee's sole remedy against JANYA, for each breach of the warranty contained in this Section 13.1 is limited to requiring JANYA to replace the defective media without charge.
- 13.2 Limited Software Warranty.** JANYA warrants to Licensee that the Software delivered to Licensee under this EULA: (a) will be free of viruses at the time of first delivery of same to Licensee under this EULA; and (b) will perform substantially in accordance with its accompanying user Documentation for sixty (60) days from the date of first delivery of same to Licensee under this EULA. JANYA's entire liability, and Licensee's sole remedy against JANYA, for each breach by JANYA of the warranty contained in: (i) Section 13.2 (a) above shall be limited to requiring JANYA to deliver a replacement copy of the relevant Software to Licensee free of viruses; and/or (ii) Section 13.2 (b) above shall be limited to requiring JANYA, at JANYA's option, to either: (1) correct the error giving rise to such breach ("**Error**"); or (2) help the Licensee work around the Error, the type and extent of such help to be in JANYA's sole discretion; or (3) subject to Section 15 hereof, refund all license fees paid to JANYA by Licensee hereunder for the defective portion of the Software.
- 13.3 Warranty Exclusions.** The JANYA warranty in Section 13.2 shall not apply to any breach and/or Error caused by: (a) any change to the Software made by any party other than JANYA; (b) accident, neglect, or misuse by any party other than JANYA; (c) Licensee's failure to provide a suitable installation and/or operating environment for the Software; (d) use of the Software on a software and/or hardware platform not approved by JANYA in writing; (e) software, hardware, firmware, data, and/or technology not licensed or approved by JANYA in writing; (f) any telecommunications medium used by Licensee; (g) Licensee's own computer system; and/or (h) failure of Licensee and/or user to comply with the Documentation.
- 13.4** JANYA DOES NOT WARRANT THAT THE MEDIA AND/OR SOFTWARE LICENSED UNDER THIS EULA WILL BE ERROR FREE, THAT EACH ERROR IN SAME WILL BE CORRECTED BY JANYA AND/OR JANYA'S LICENSORS, THAT THE SOFTWARE WILL OPERATE ON ANY AND ALL HARDWARE AND/OR SOFTWARE PLATFORMS, OR THAT THE SOFTWARE WILL IDENTIFY ALL KNOWN VIRUSES.
- 13.5** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED BY JANYA IN SECTIONS 13.1 AND 13.2 ABOVE, ALL MEDIA AND SOFTWARE PROVIDED TO LICENSEE UNDER THIS EULA SHALL BE PROVIDED BY JANYA ON AN "AS IS BASIS".
- 13.6** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED BY JANYA IN SECTIONS 13.1 AND 13.2 ABOVE, JANYA AND JANYA'S LICENSORS DISCLAIM ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES AND CONDITIONS OF EVERY KIND PERTAINING IN ANY WAY TO THE MEDIA AND/OR SOFTWARE LICENSED BY JANYA UNDER THIS EULA, INCLUDING WITHOUT LIMITATION, EACH WARRANTY AND/OR CONDITION OF QUALITY, MERCHANTABILITY, DESCRIPTION, OPERATION, ADEQUACY, SUITABILITY, FITNESS FOR PARTICULAR PURPOSE, TITLE, INTERFERENCE WITH USE OR ENJOYMENT, AND/OR NON INFRINGEMENT, WHETHER EXPRESS OR IMPLIED BY STATUTE, COMMON LAW, USAGE OF TRADE, COURSE OF DEALING, CUSTOM, OR OTHERWISE. NEITHER JANYA, OR JANYA'S LICENSORS, MAKE ANY REPRESENTATION, NOR PROVIDE ANY WARRANTY AND/OR CONDITION, REGARDING THE ADEQUACY OF THE MEDIA AND/OR SOFTWARE FOR ANY PARTICULAR PURPOSE, OR THE ADEQUACY OF THE MEDIA AND/OR SOFTWARE TO PRODUCE ANY PARTICULAR RESULT.
- 13.7** SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES, LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, OR THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES. IF ANY JURISDICTION HAVING APPLICABILITY TO THIS EULA DOES NOT PERMIT ANY SUCH EXCLUSION AND/OR LIMITATION: (A) EACH WARRANTY WHICH CANNOT BE EXCLUDED SHALL BE LIMITED IN TIME TO THE SIXTY (60) DAY PERIOD SET OUT IN SECTION 13.2 ABOVE; AND (B) JANYA'S TOTAL LIABILITY TO LICENSEE FOR BREACH OF ANY AND/OR ALL SUCH WARRANTIES SHALL BE LIMITED TO THE AMOUNT STATED IN SECTION 15.3 OF THIS EULA.

14.0 JANYA Infringement Indemnity

- 14.1 Indemnity Against Claims.** JANYA shall indemnify and save harmless Licensee from all claims, suits, actions, proceedings, judgments, damages, costs, fees (including legal fees), and liabilities suffered or incurred by Licensee as a result of any alleged and/or actual infringement of any United States and/or Canadian patent, copyright, or trade secret right of any third party caused solely by Licensee's use of the Software within Canada or the United States in accordance with the provisions of this EULA and applicable Documentation provided: (a) the alleged and/or actual infringement has not been caused by the use of a superseded version of the Software if the infringement would have been avoided by the use

of a then current unaltered release of the Software, or by the modification of the Software by any party other than JANYA, or by the combination and/or use of the Software with software, hardware, firmware, data, and/or technology not licensed to Licensee by JANYA or approved by JANYA in writing; and (b) Licensee promptly notifies JANYA in writing within ten (10) days of Licensee first becoming aware of each such claim; and (c) Licensee does not make any admission against JANYA's interests and Licensee does not agree to any settlement of any such claim without the prior written consent of JANYA; and (d) Licensee, at the request of JANYA, provides all reasonable assistance to JANYA in connection with the defence, litigation, and/or settlement by JANYA of each such claim; and (e) JANYA has sole control over the selection and retainer of legal counsel, as well as over the litigation and/or the settlement of each claim.

14.2 Licensee's Continued Use. If the Software or its intended use become, or in JANYA's opinion be likely to become, the subject of a claim covered by the indemnity in Section 14.1 above, JANYA shall obtain for Licensee a nonexclusive license to continue using the infringing portion of the Software pursuant hereto or shall replace or modify the infringing portion of the Software without reasonable degradation in functionality in order to make it non-infringing. If neither of these solutions is reasonably available as determined by JANYA in JANYA's absolute discretion, JANYA shall refund the unamortized portion of the license fees received by JANYA from Licensee under this EULA for the infringing portion of the Software, based on a three (3) year straight line amortization commencing on the date of first delivery of the Software to the Licensee under this EULA.

14.3 JANYA Liability. JANYA's total liability to Licensee for any and all infringement claims related to the Software shall be strictly limited to the obligations set out in this Section 14 and shall be subject to all of the limitation of liability provisions set out in Section 15 of this EULA.

15.0 LIMITATION OF OVERALL JANYA LIABILITY

15.1 NOTWITHSTANDING ANY PROVISION IN THIS EULA, ANY AND ALL BREACHES BY JANYA OF THIS EULA (INCLUDING FUNDAMENTAL BREACH), THE TERMINATION BY JANYA OF THIS EULA, AND/OR ANY OBLIGATION THAT JANYA MAY HAVE IN CONTRACT, TORT, EQUITY, AT LAW, AND/OR OTHERWISE, IN NO EVENT SHALL JANYA BE LIABLE TO LICENSEE, TO ANY USER OF THE SOFTWARE, AND/OR TO ANY OTHER PARTY OR PARTIES FOR: (A) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AGGRAVATED, EXEMPLARY, AND/OR PUNITIVE DAMAGES; NOR (B) ANY LOST SALES, LOST REVENUE, LOST PROFITS, LOST DATA, OR REPROCUREMENT AMOUNT; HOWSOEVER ARISING, EVEN IF JANYA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND/OR LOSSES ARISING AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY CONTAINED HEREIN.

15.2 EXCEPT FOR DIRECT DAMAGE CLAIMS ASSERTED BY LICENSEE AGAINST JANYA FOR BREACH OF ANY OF JANYA'S OBLIGATIONS UNDER SECTION 13 AND/OR 14 ABOVE, JANYA SHALL NOT BE LIABLE TO LICENSEE, TO ANY USER OF THE SOFTWARE, AND/OR TO ANY OTHER PARTY OR PARTIES, FOR ANY DIRECT DAMAGES, COMPENSATORY DAMAGES, AND/OR OTHER DAMAGES OF ANY KIND, NOR FOR ANY LOSSES, EXPENSES, LIABILITIES, AND/OR OTHER AMOUNTS, ARISING OUT OF AND/OR RELATED IN ANY WAY TO THIS EULA, INCLUDING WITHOUT LIMITATION, THOSE ARISING OUT OF: (A) THE DELIVERY, INSTALLATION, USE, AND/OR PERFORMANCE OF THE MEDIA AND/OR SOFTWARE; (B) ANY ERROR, DEFECT, INADEQUACY, OMISSION, NON PERFORMANCE, AND/OR MALFUNCTION IN ANY AND/OR ALL OF THE MEDIA AND/OR SOFTWARE; AND/OR (C) ANY AND ALL BREACHES BY JANYA (INCLUDING FUNDAMENTAL BREACH) OF THIS EULA, WHETHER SUCH LIABILITY IS BASED IN CONTRACT, TORT, EQUITY, AT LAW, AND/OR ON ANY OTHER THEORY OF LIABILITY, HOWSOEVER ARISING, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY CONTAINED HEREIN.

15.3 NOTWITHSTANDING SECTION 15.2 ABOVE AND/OR ANY OTHER PROVISION OF THIS EULA, JANYA'S TOTAL, CUMULATIVE, AND AGGREGATE LIABILITY TO LICENSEE: (A) ARISING UNDER THE PROVISIONS OF THIS EULA; (B) FOR ANY AND ALL BREACHES BY JANYA OF THIS EULA (INCLUDING FUNDAMENTAL BREACH) AND/OR THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY CONTAINED HEREIN; (C) FOR ANY TERMINATION BY JANYA OF THIS EULA; AND/OR (D) FOR ANY OTHER ACT, OMISSION, OR EVENT RELATED IN ANY WAY TO THIS EULA; SHALL NOT EXCEED THE TOTAL AMOUNT OF LICENSE FEES RECEIVED BY JANYA FROM LICENSEE UNDER THIS EULA, WHETHER JANYA'S LIABILITY IS BASED IN CONTRACT, TORT, EQUITY, AT LAW, AND/OR UPON ANY OTHER THEORY OF LIABILITY, HOWSOEVER ARISING. LICENSEE AGREES THAT JANYA WOULD NOT HAVE ENTERED INTO THIS EULA WITHOUT THIS SECTION 15 BEING INCLUDED HEREIN.

16.0 Term And TERMINATION

16.1 Term. The term of this EULA ("**Term**") shall begin on the Effective Date and shall continue in full force until terminated pursuant to this Section 16.

16.2 Termination For Default. JANYA may terminate this EULA for default if Licensee: (a) becomes insolvent; (b) files any proceeding in bankruptcy or acquires the status of a bankrupt; (c) has a receiver or receiver manager appointed with respect to it or any of its assets; (d) seeks the benefit of any statute providing protection from creditors. JANYA may also terminate this EULA for default if Licensee breaches any provision of this EULA provided: (i) JANYA provides Licensee with written notice of breach and a ten (10) day period within which to cure such breach ("**Cure Period**"); and (ii) Licensee fails to cure each such breach by the expiry of the Cure Period. Any termination of this EULA shall be without prejudice to each right and/or remedy which JANYA may possess against Licensee under this EULA, at law, in equity, and/or otherwise.

16.3 Effect Of Termination. Upon any termination of this EULA: (a) all licenses granted by JANYA herein shall immediately terminate; and (b) Licensee shall immediately cease all use of the Software and return all of the Software (including all copies thereof made by, or for, Licensee) to JANYA. Sections 1, 2.1, 7, and 8, together with Sections 10 through 18 inclusive, of this EULA shall survive any expiry or termination of this EULA and shall continue in full force.

17.0 Miscellaneous Provisions

17.1 Confidentiality. Licensee shall: (a) receive and maintain the Software in confidence; (b) use the same degree of care with respect to the Software as Licensee employs to protect Licensee's own confidential and/or trade secret information from unauthorized use, duplication and/or disclosure, being, in any event, a high degree of care; and (c) use, duplicate, and disclose the Software solely in accordance with the provisions of this EULA. Licensee shall not modify any of the Software except as authorized herein, nor adapt, translate, reverse engineer, decompile, disassemble, and/or otherwise attempt to

discover the source code of the Software, nor take any other steps to discover the confidential information and/or trade secrets contained in the Software.

- 17.2 Independent Contractors.** JANYA and Licensee shall remain independent contractors at all times. Neither JANYA, or Licensee, shall have any authority to bind the other in any manner.
- 17.3 Waiver, Amendment, Assignment.** No waiver of any provision herein shall be binding upon JANYA or Licensee unless set out in a written waiver signed by both parties. This EULA shall only be amended by a written document signed by JANYA and Licensee stating such document is an amendment or an addendum hereto. This EULA shall not be assigned by Licensee, in whole or in part, without JANYA's prior written consent. Each reference herein to "days" means calendar days.
- 17.4 Licensee Terms.** All preprinted terms contained in any document used by Licensee to order software and/or user licenses from JANYA are hereby fully rejected by JANYA and shall have no legal effect.
- 17.5 New EULA.** This EULA shall apply to all Software accompanying this EULA, or authorized by JANYA in writing for use by Licensee pursuant hereto. JANYA reserves the right to require Licensee to enter into a new license agreement and/or a substantially amended version of this EULA if Licensee wishes to license any further or other software and/or documentation from JANYA at any time or times.
- 17.6 Vienna Convention.** All provisions of the United Nations Convention On Contracts For The International Sale of Goods are hereby rejected by the parties and excluded from this EULA in their entirety.
- 17.7 Governing Law.** This EULA shall be governed by the laws of the **State of New York** excluding its conflicts and/or choice of law rules. Except for injunctive relief required by JANYA to protect its intellectual property, all litigation related hereto shall occur in the courts located in such jurisdiction. If Licensee or JANYA commence any litigation and/or proceeding against the other related to this EULA, the prevailing party shall be entitled to an award of its reasonable attorneys fees and court costs from the other party.
- 17.8 Force Majeure.** JANYA shall not be responsible for any reasonable delay and/or failure in performance by JANYA of any and/or all of JANYA's obligations under this EULA caused by any act, omission, and/or event beyond JANYA's reasonable control.
- 17.9 Severability.** Should any provision of this EULA be deemed contrary to applicable law and/or unenforceable by any court of competent jurisdiction, such provision shall be considered severed from this EULA but all remaining provisions shall continue in full force.
- 17.10 Export Laws.** The Software cannot be exported or re-exported into (or to a national or resident of): (a) Taliban controlled Afganistan, Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, or any other country to which Canada and/or the U.S. has embargoed goods; and/or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals, the U.S. Commerce Department's Entity List, or the U.S. Commerce Department's Denied Parties list. Licensee warrants to JANYA that Licensee is not located in, under the control of, or a national or resident of any country described above, nor a party named on any list described above. Additional Canadian and/or U.S. export restrictions may apply to portions of the Software. Licensee shall comply with all applicable Canadian and/or U.S. laws and/or regulations pertaining to the Software, including all export laws, regulations, and/or directives, and comply with all laws and regulations in Licensee's jurisdiction and any other location related to the import, export, transfer, shipping, and/or use of the Software.
- 17.11 Third Party Software.** The Software includes software and/or documentation licensed by JANYA from third parties. All trademarks relating to the Software shall remain the property of JANYA, JANYA's licensors, and/or their respective owners. If any such third party software is to be licensed by JANYA to Licensee pursuant to this EULA on license terms different than that contained in this EULA, Licensee and JANYA shall enter into a written amendment to this EULA setting forth such different license terms. Licensee acknowledges that each breach by Licensee of any provision of this EULA may result in any and/or all of JANYA's licensors suffering loss or damage.
- 17.12 Press Release.** Licensee agrees JANYA may use and disclose Licensee's name and the nature of this EULA in an JANYA public press release
- 17.13 No Enterprise License.** This EULA is not an enterprise license agreement. The Software shall not be installed, stored or executed on any server, desktop, or other computer operated by any of Licensee's parent, subsidiary, and/or affiliated companies or by any other party.
- 17.14 UCITA Not Applicable.** License and JANYA agree that the Uniform Computer Information Transactions Act, or any version thereof, adopted by any state located in the United States, in any form ("UCITA") shall not apply to this Agreement. To the extent that UCITA is applicable, the parties agree to opt out of the applicability of UCITA pursuant to the opt-out provisions contained therein.
- 18.0 ENTIRE EULA.**
- 18.1 Entire License Agreement.** This EULA, together with each written schedule, written amendment, and/or written addendum to this EULA signed by JANYA and Licensee, sets forth the entire agreement between JANYA and Licensee with respect to the subject matter hereof, and supersedes all prior oral and written agreements and understandings between the parties relating thereto. Neither party shall be bound by or be liable for any alleged representation, promise, or inducement not expressly stated herein.