

**Xceedium, Inc.**  
**2214 Rock Hill Road**  
**Herndon, VA 20170**  
**www.xceedium.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.

**IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE ACCESSING AND/OR USING THIS PRODUCT**

**THIS IS AN ELECTRONIC LEGAL AGREEMENT BETWEEN YOU AND XCEEDIUM, INC. (“XCEEDIUM”), AND IT BECOMES BINDING ON YOU AND XCEEDIUM WHEN YOU ACCEPT THE TERMS CONTAINED HEREIN BY CLICKING ON THE “I AGREE” BUTTON BELOW. YOU MUST READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY CLICKING ON THE “I AGREE” BUTTON BELOW, YOU ACKNOWLEDGE YOUR ACCEPTANCE TO SUCH TERMS AND CONDITIONS.**

This License Agreement (the “Agreement”) is made as of the date on which you click the “I Agree” button below (“Effective Date”), and is made by and between Xceedium and you, on behalf of the company that you represent (collectively, “you”). This Agreement governs your use of the Xceedium Products.

BY CLICKING ON THE "I AGREE" BUTTON BELOW, YOU AGREE THAT YOU HAVE READ, UNDERSTAND, AND AGREE THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT OR ARE NOT AUTHORIZED TO BIND THE COMPANY THAT YOU REPRESENT, XCEEDIUM IS NOT WILLING TO SELL AND/OR LICENSE (AS APPLICABLE) THE XCEEDIUM PRODUCTS TO YOU, AND YOU MUST DISCONTINUE USE OF AND ACCESS TO THE SOFTWARE NOW BY CLICKING ON THE "I DON'T AGREE" BUTTON BELOW. YOU REPRESENT AND WARRANT THAT YOU HAVE SUFFICIENT AUTHORITY TO BIND THE COMPANY THAT YOU REPRESENT TO THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT.

THE XCEEDIUM PRODUCTS GOVERNED BY THIS AGREEMENT ARE THE PROPERTY OF XCEEDIUM AND ARE PROTECTED BY COPYRIGHT LAWS, TRADE SECRET LAWS AND INTERNATIONAL TREATIES. YOUR RIGHT TO ACCESS AND USE THE SOFTWARE IS GOVERNED IN ALL RESPECTS BY THIS AGREEMENT.

**1. Scope of Agreement; Definitions.** This Agreement governs your: (a) purchase of the Hardware components of each Xceedium Products, (b) license and permitted use of the Software, and (c) purchase of support and maintenance services (“Support”) related to the Xceedium Products. Unless defined in this Section 1, the capitalized terms used in this Agreement are defined in the context in which they are used.

**1.1.** “Appliance” means Software that is pre-loaded onto Hardware that, collectively, are licensed/sold as a separate, physical Xceedium Product.

**1.2.** “Documentation” means the user manuals made available to you by Xceedium along with the Xceedium Product.

**1.3.** “Hardware” means the computer hardware and physical equipment that is delivered as part of the Appliance and onto which Software is loaded by Xceedium.

**1.4.** “Software” means an object code version of Xceedium’s software products to which you are purchasing a license hereunder, whether or not such Software is delivered: (a) electronically to be downloaded or accessed by Customer, or (b) as part of the Appliance.

**1.5.** “Support” means Xceedium’s standard support and maintenance offering as made available to its customers from time to time as such support and maintenance offering may be identified by Xceedium as “Support,” “Maintenance,” “Maintenance and Support,” “Support and Maintenance” or any other designation understood by Xceedium, in its sole and absolute discretion, to make reference to its standard support and maintenance offering.

**1.6.** “Upgrades” means any patches, updates, upgrades, modifications and revised versions of the Software.

**1.7.** “Xceedium Products” means any and all products (or any portion thereof) marketed and sold (or licensed, as applicable) by Xceedium to its customers, including all Hardware, Software, Appliances, third party software and any Upgrades that may be provided to you by Xceedium from time to time.

**2. Non-Production Trial Use.** To the extent that you are authorized by Xceedium to access and use any Xceedium Products for evaluation purposes during a free trial period (the “Trial Period”), you hereby acknowledge and agree that all such access and use during the Trial Period will be subject to the terms of this Agreement, and that

the Trial Period will expire on the earlier of the following: (i) the end of the Trial Period for which you are granted access and use, as determined by Xceedium; or (ii) the start date of any license purchased by you pursuant to this Agreement. Your use of the Xceedium Products during the Trial Period may be subject to additional terms and conditions as made known to you by Xceedium, and any such additional terms and conditions are incorporated into this Agreement by this reference and are legally binding. ANY DATA THAT YOU ENTER INTO THE XCEEDIUM PRODUCTS DURING THE TRIAL PERIOD WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A LICENSE TO USE THE SAME SOFTWARE AS COVERED BY THE TRIAL PERIOD. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, INCLUDING SECTION 8 (LIMITED WARRANTY AND DISCLAIMER), THE XCEEDIUM PRODUCTS ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY DURING THE TRIAL PERIOD.

**3. License Grant.** Subject to your strict compliance with the terms of this Agreement, Xceedium hereby grants you a non-exclusive, non-transferable, non-sublicensable, perpetual right and license to use the Software solely for your internal business operations. Your right to use the Software is strictly limited to the quantities licensed to you by Xceedium. Xceedium hereby reserves and retains, as further set forth in Section 4.2 below, all right, title and interest in, and ownership of, the Software. You are responsible for all use of the Software licensed to you by Xceedium hereunder.

**4. Software License Restrictions; Audit.**

**4.1. Restrictions.** You are hereby restricted from: (a) directly or indirectly selling, leasing, renting, redistributing, assigning (except as expressly permitted in this Agreement) or transferring the Xceedium Products, or any rights therein, to any third party; (b) modifying, translating, reverse engineering, decompiling, disassembling, creating derivative works of, copying, sublicensing or distributing the Xceedium Products; (c) using the Xceedium Products for the benefit of any third party (*e.g.*, in an ASP, outsourcing or service bureau relationship) or in any way other than in its intended manner; (d) removing, altering or obscuring any proprietary notice, labels or marks on the Xceedium Products; (e) disabling or circumventing any access control or related device, process or procedure present within the Xceedium Products; (f) using the Xceedium Products in quantities in excess of those for which you have purchased a license; and/or (g) to the extent that the Software is licensed as part of an Appliance, using the Software independent of the Appliance or in any manner except as embedded within the Appliance. The rights granted to you in Sections 2 and 3 are subject to and contingent on your compliance with the restrictions set forth in this Section 4.1.

**4.2. Intellectual Property.** Xceedium, for itself and on behalf of its licensors, reserves all rights in and to the Xceedium Products that are not expressly granted to you in this Agreement, and you acknowledge and agree that, as between the parties, Xceedium owns all rights, title and interest in and to the Xceedium Products and all intellectual property rights therein. You agree not to challenge the right, title, and interest of Xceedium in and to the Xceedium Products, and further agree not to register, apply for registration, or attempt to acquire any legal protection for any of the Software, or any proprietary rights therein.

**4.3. Audit.** With reasonable notice and not more frequently than once per calendar year (unless deficiencies are found, in which case as frequently as is required to ensure that deficiencies are eliminated), Xceedium may periodically carry out an audit of your facilities and systems to ensure your compliance with the terms of this Agreement. You will reasonably cooperate with Xceedium in such an exercise and provide Xceedium with reasonable access to your personnel, facilities and systems to enable Xceedium’s audit. Xceedium shall reasonably endeavor not to disrupt your normal business activities and shall perform the audit in a professional manner. You agree to promptly remedy all discrepancies. Xceedium shall bear the cost of the audit except where a material discrepancy with a value of more than US\$10,000 is discovered, whereupon you will bear the cost of the audit.

**5. Support.** Subject to your payment of all applicable fees due to Xceedium, Xceedium will, for one twelve (12) month term commencing on the date on which Xceedium delivers the Xceedium Product to you, provide to you: (i) reasonable technical consultation with Xceedium’s technical support staff on the use of the Xceedium Products, and (ii) all Upgrades to the Software, provided such Upgrades are generally made available to licensees of the Software that subscribe to Support. The Support term will automatically renew for additional twelve (12) month terms unless you provide Xceedium with no less than sixty (60) days prior with written notice of your intent not to renew for the following term. If you opt not to renew Support, then subsequently elect to renew Support, you must pay the Support fees that would have been due for the period during which Support was not provided. The Support fee shall not increase by more than the published Consumer Price Index during the first renewal of Support; thereafter it may not increase by more than fifteen percent (15%) per year.

**6. Payment.** You agree to pay Xceedium all fees in U.S. Dollars that are due and owing for the Xceedium Products and Support. If any authority imposes a duty, tax or similar levy (other than taxes based on Xceedium's income), you agree to pay, or to promptly reimburse Xceedium for, all such amounts. All Xceedium invoices are payable no later than thirty (30) days from the date of the invoice. All fees payable under this Agreement are non-refundable and non-cancelable and shall be made without recoupment or set-off. Any payment due or portion thereof not received by Xceedium as set forth in this Section 6 will bear an additional charge of one and one-half percent (1½) per month from the date due until actually received, less the sum, if any, in excess of applicable state law. In addition to its right to terminate this Agreement as set forth in Section 11, Xceedium may, at its sole discretion, delay delivery of the Xceedium Products, suspend your access to and use of the Software, and/or suspend Support in the event you fail to timely pay all outstanding and past due invoices.

**7. Confidentiality.** "Confidential Information" is hereby defined as the Xceedium Products, Documentation and other non-public information relating thereto. You will maintain in confidence all Confidential Information, will not use the Confidential Information except as expressly permitted herein, and will take the same measures to maintain and protect the Confidential Information as you use to protect your own Confidential Information; provided that, in no event will such measures be less than all commercially reasonable measures. You will only disclose the Confidential Information to your employees who have a bona fide need to access such Confidential Information in order to exercise your rights and obligations under this Agreement; provided that you will remain fully liable for the acts and omissions of each such employee. Notwithstanding any other provision of this Agreement, the obligations set forth in this Section 7 shall continue perpetually and irrevocably. You understand and agree that Xceedium will suffer irreparable harm in the event that you breach any of your obligations under this Section 7 and that monetary damages will be inadequate to compensate Xceedium. In the event of a breach or threatened breach of this Section 7, in addition to and not in limitation of any other rights, remedies or damages available to Xceedium at law or in equity, Xceedium shall be entitled to seek a temporary restraining order, preliminary injunction and/or permanent injunction in order to prevent or to restrain any such breach by you.

**8. Limited Warranty and Disclaimer.** Xceedium warrants that, for a period of ninety (90) days from the date of initial shipment by Xceedium of the Xceedium Product (the "Warranty Period"), the unmodified Software (excluding any Upgrades provided by Xceedium as part of Support) will, under normal use, substantially perform the functions described in the Documentation. With regard to Appliances only, Xceedium additionally warrants that for a period of one (1) year from shipment (the "Hardware Warranty Period") the unmodified hardware portions of the Appliance will, under normal use, be free of substantial defects in materials and workmanship. Xceedium's sole obligation and liability, and your sole and exclusive remedy, under the warranty set forth in this Section 8 shall be for Xceedium to use commercially reasonable efforts to remedy the problem or to replace the defective Xceedium Products, provided that Xceedium is notified in writing of all warranty claims during the applicable Warranty Period. Xceedium will have no obligation regarding non-conformities that result from: (a) improper or unauthorized use of the Xceedium Products or use in a manner for which it was not designed; (b) causes external to the Xceedium Products such as, but not limited to, power failure, electric power surges or unavailability of the Internet; or (c) use of the Xceedium Products in combination with equipment or software not supplied by Xceedium. THE FOREGOING EXPRESSED WARRANTIES ARE IN LIEU OF, AND XCEEDIUM HEREBY DISCLAIMS, ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. XCEEDIUM MAKES NO WARRANTY THAT THE XCEEDIUM PRODUCTS WILL OPERATE ERROR-FREE, FREE OF ANY SECURITY DEFECTS OR IN AN UNINTERRUPTED MANNER. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, THE XCEEDIUM MATERIALS ARE DISTRIBUTED "AS IS."

**9. Intellectual Property Indemnity.** Xceedium will indemnify, defend and hold you harmless from and against any and all legal claims, actions or demands brought by a third party against you (each a "Claim") to the extent that the Claim is proximately caused by an allegation that the Software, as delivered by Xceedium to you under this Agreement, infringes any existing U.S. patent or copyright, and Xceedium agrees to pay any costs, damages and reasonable attorneys' fees attributable to such Claim finally awarded against you in such action. Xceedium's obligations under this Section 9 are contingent upon your (a) providing prompt written notice to Xceedium of any such Claim; (b) giving Xceedium control of the defense and any related settlement of any such Claim; and (c) furnishing Xceedium with reasonable assistance in the defense of any such Claim, so long as Xceedium pays your reasonable out-of-pocket expenses. Xceedium shall have no liability under this Agreement with respect to any

Claim based upon: (i) combination or use of the Xceedium Products with equipment, products, systems, software, materials or processes not furnished by Xceedium if, absent such combination, no infringement would exist; (ii) modifications to the Xceedium Products made other than by Xceedium; (iii) use of the Xceedium Products in a manner inconsistent with its Documentation; (iv) your failure to use updated or modified versions of the Xceedium Products provided by Xceedium to avoid a claim of infringement or misappropriation; or (v) use of the Xceedium Products which use breaches this Agreement. If your use of the Xceedium Products hereunder is, or in Xceedium's opinion is likely to be, enjoined due to the type of Claim specified in this Section, then Xceedium may: (i) procure for you the right to continue using such Xceedium Products under the terms of this Agreement; (ii) replace or modify the Xceedium Products so that it is non-infringing and substantially equivalent in function to the enjoined Xceedium Products; or (iii) terminate your license and right to use the Xceedium Products and refund the applicable fee paid by you for the infringing Xceedium Products, depreciated on a straight-line basis over a five (5) year period. THE PROVISIONS OF THIS SECTION 9 SET FORTH XCEEDIUM'S SOLE AND EXCLUSIVE OBLIGATIONS, AND YOUR SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

**10. Limitation of Liability.** EXCEPT FOR DAMAGES THAT RESULT FROM A BREACH OF SECTION 7 OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH ANY CLAIM THAT ARISES FROM OR RELATES IN ANY WAY TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION ALLEGED, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY OF ANY KIND. IN NO EVENT WILL YOU BE ENTITLED TO ANY MONETARY DAMAGES AGAINST XCEEDIUM, REGARDLESS OF THE FORM OF ACTION ALLEGED, IN EXCESS OF THE FEES PAID BY YOU TO XCEEDIUM HEREUNDER FOR THE XCEEDIUM PRODUCT TO WHICH YOUR CLAIM RELATES.

**11. Termination.** (a) **Breach.** Xceedium may terminate this Agreement if you fail to cure any breach of this Agreement within thirty (30) days of receipt of written notice thereof. (b) **Insolvency.** Xceedium will have the right to terminate this Agreement immediately upon written notice if you become insolvent, become subject to a petition in bankruptcy filed by or against you that is not dismissed within thirty (30) days, are placed under the control of a receiver, liquidator or committee of creditors, or cease to function as a going concern or to conduct your business in the normal course. (c) **Effect of Termination.** Upon the expiration or termination of this Agreement, you will immediately return to Xceedium all Confidential Information.

## **12. Miscellaneous.**

**12.1 Legal Compliance; Restricted Rights.** Each Party agrees to comply with all applicable laws. Without limiting the foregoing, you agree to comply with all U.S. export laws and applicable import laws of your locality (if you are not located in the United States), and you agree not to export any Xceedium Products without first obtaining all required authorizations or licenses. If any Software is being licensed under the terms of a proposal or agreement with the U.S. Government or on the U.S. Government's behalf, the Software is commercial computer software and both the Software and the Documentation are developed exclusively at private expense, and (a) if acquired by or on behalf of a civilian agency, shall be subject to the commercial computer software license terms set forth in this Agreement as specified in 48 C.F.R 12.212 of the Federal Acquisition Regulation and its successors; or (b) if acquired by or on behalf of units of the Department of Defense ("DOD"), shall be subject to the commercial computer software license terms set forth in this Agreement as specified in 48 C.F.R 227.7202, Defense Federal Acquisition Regulation Supplement and its successors.

**12.2 Governing Law; Severability.** This Agreement shall be governed by the laws of the Commonwealth of Virginia, without regard to choice-of-law provisions. Each party hereby agrees that any and all causes of action between the parties arising from or in relation to this Agreement shall be brought exclusively in the state and federal courts located within the Commonwealth of Virginia. If any provision of this Agreement is held to be illegal or unenforceable for any reason, then such provision shall be deemed to be restated so as to be enforceable to the maximum extent permissible under law, and the remainder of this Agreement shall remain in full force and effect. You and Xceedium agree that this Agreement is not governed by the U.N. Convention on Contracts for the International Sale of Goods.

**12.3 Assignment.** You may not assign or otherwise transfer this Agreement to any third party without Xceedium's prior written consent. This Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns.

12.4 Force Majeure. Xceedium will not be liable for any delay or failure due to acts of God, earthquakes, shortage of supplies, transportation difficulties, labor disputes, riots, war, fire, epidemics, and other causes beyond Xceedium's reasonable control.

12.5 Publicity. You agree that Xceedium may disclose its relationship with you as part of its quarterly earnings announcements and include your name in a representative customer list. You further agree that Xceedium may use your corporate name and logo in its marketing materials, including identification on the Xceedium website and, subject to your review, issue a press release indicating that you have elected to use the Software.

12.6 General. You hereby acknowledge and agree that any terms or conditions contained in any purchase order or similar ordering document submitted by you to Xceedium are void and have no effect on this Agreement. Sections 4, 6, 7, 10 and 12, and all warranty disclaimers, use restrictions and provisions relating to Xceedium's intellectual property ownership, shall survive the termination or expiration of this Agreement. This Agreement constitutes the entire agreement between you and Xceedium regarding the subject hereof and supersedes all prior and all contemporaneous agreements, understandings, marketing materials, and communications, whether written or oral. Any modification or amendment of any provision of this Agreement must be in writing and signed by an authorized representative of each party.

IF YOU HAVE ANY QUESTIONS CONCERNING THIS AGREEMENT, CONTACT XCEEDIUM AT [support@xceedium.com](mailto:support@xceedium.com).

**I AGREE**: I ACCEPT THE TERMS OF THIS AGREEMENT

**I DON'T AGREE**: I DO NOT ACCEPT THE TERMS OF THIS AGREEMENT AND I UNDERSTAND THAT I HAVE NO RIGHTS TO USE THE LICENSED MATERIALS

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**1. Scope of Agreement; Definitions.** This Agreement governs your license and permitted use of and access to the Software, and (c) purchase of support and maintenance services (“Support”) related to the Xceedium Products. Unless defined in this Section 1, the capitalized terms used in this Agreement are defined in the context in which they are used.

**1.1.** “Documentation” means the user manuals made available to you by Xceedium along with the Xceedium Product. “Software” means an object code version of Xceedium’s software products to which you are purchasing a license hereunder.

**1.2.** “Support” means Xceedium’s standard support and maintenance offering as made available to its customers from time to time as such support and maintenance offering may be identified by Xceedium as “Support,” “Maintenance,” “Maintenance and Support,” “Support and Maintenance” or any other designation understood by Xceedium, in its sole and absolute discretion, to make reference to its standard support and maintenance offering.

**1.3.** “Upgrades” means any patches, updates, upgrades, modifications and revised versions of the Software.

**1.4.** “Xceedium Products” means any and all products (or any portion thereof) marketed and sold (or licensed, as applicable) by Xceedium to its customers, including all Software, third party software and any Upgrades that may be provided to you by Xceedium from time to time.

**2. Non-Production Trial Use.** To the extent that you are authorized by Xceedium to access and use any Xceedium Products for evaluation purposes during a free trial period (the “Trial Period”), you hereby acknowledge and agree that all such access and use during the Trial Period will be subject to the terms of this Agreement, and that the Trial Period will expire on the earlier of the following: (i) the end of the Trial Period for which you are granted access and use, as determined by Xceedium; or (ii) the start date of any license purchased by you pursuant to this Agreement. Your use of the Xceedium Products during the Trial Period may be subject to additional terms and conditions as made known to you by Xceedium, and any such additional terms and conditions are incorporated into this Agreement by this reference and are legally binding. ANY DATA THAT YOU ENTER INTO THE XCEEDIUM PRODUCTS DURING THE TRIAL PERIOD WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A LICENSE TO USE THE SAME SOFTWARE AS COVERED BY THE TRIAL PERIOD. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, INCLUDING SECTION 8

(LIMITED WARRANTY AND DISCLAIMER), THE XCEEDIUM PRODUCTS ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY DURING THE TRIAL PERIOD.

**3. License Grant.** Subject to your strict compliance with the terms of this Agreement, Xceedium hereby grants you a non-exclusive, non-transferable, non-sublicensable right and license to use the Software, solely for your internal business operations, during the term for which you have purchased a license to access and use the Software (the “License Term”). Your right to use the Software is strictly limited to the quantities licensed to you by Xceedium. Xceedium hereby reserves and retains, as further set forth in Section 4.2 below, all right, title and interest in, and ownership of, the Software. You are responsible for all use of the Software licensed to you by Xceedium hereunder.

**4. Software License Restrictions; Audit.**

**4.1. Restrictions.** You are hereby restricted from: (a) directly or indirectly selling, leasing, renting, redistributing, assigning (except as expressly permitted in this Agreement) or transferring the Xceedium Products, or any rights therein, to any third party; (b) modifying, translating, reverse engineering, decompiling, disassembling, creating derivative works of, copying, sublicensing or distributing the Xceedium Products; (c) using the Xceedium Products for the benefit of any third party (*e.g.*, in an ASP, outsourcing or service bureau relationship) or in any way other than in its intended manner; (d) removing, altering or obscuring any proprietary notice, labels or marks on the Xceedium Products; (e) disabling or circumventing any access control or related device, process or procedure present within the Xceedium Products; and/or (f) using the Xceedium Products in quantities in excess of those for which you have purchased a license. The rights granted to you in Sections 2 and 3 are subject to and contingent on your compliance with the restrictions set forth in this Section 4.1.

**4.2. Intellectual Property.** Xceedium, for itself and on behalf of its licensors, reserves all rights in and to the Xceedium Products that are not expressly granted to you in this Agreement, and you acknowledge and agree that, as between the parties, Xceedium owns all rights, title and interest in and to the Xceedium Products and all intellectual property rights therein. You agree not to challenge the right, title, and interest of Xceedium in and to the Xceedium Products, and further agree not to register, apply for registration, or attempt to acquire any legal protection for any of the Software, or any proprietary rights therein.

**4.3. Audit.** With reasonable notice and not more frequently than once per calendar year (unless deficiencies are found, in which case as frequently as is required to ensure that deficiencies are eliminated), Xceedium may periodically carry out an audit of your facilities and systems to ensure your compliance with the terms of this Agreement. You will reasonably cooperate with Xceedium in such an exercise and provide Xceedium with reasonable access to your personnel, facilities and systems to enable Xceedium’s audit. Xceedium shall reasonably endeavor not to disrupt your normal business activities and shall perform the audit in a professional manner. You agree to promptly remedy all discrepancies. Xceedium shall bear the cost of the audit except where a material discrepancy with a value of more than US\$10,000 is discovered, whereupon you will bear the cost of the audit.

**5. Support.** Subject to your payment of all applicable fees due to Xceedium, Xceedium will, during the License Term, provide to you: (i) reasonable technical consultation with Xceedium’s technical support staff on the use of the Xceedium Products, and (ii) all Upgrades to the Software, provided such Upgrades are generally made available to licensees of the Software that subscribe to Support.

**6. Payment.** You agree to pay Xceedium all fees in U.S. Dollars that are due and owing for the Xceedium Products. If any authority imposes a duty, tax or similar levy (other than taxes based on Xceedium’s income), you agree to pay, or to promptly reimburse Xceedium for, all such amounts. All Xceedium invoices are payable no later than thirty (30) days from the date of the invoice. All fees payable under this Agreement are non-refundable and non-cancelable and shall be made without recoupment or set-off. Any payment due or portion thereof not received by Xceedium as set forth in this Section 6 will bear an additional charge of one and one-half percent (1½) per month from the date due until actually received, less the sum, if any, in excess of applicable state law. In addition to its right to terminate this Agreement as set forth in Section 11, Xceedium may, at its sole discretion, delay delivery of the Xceedium Products, suspend your access to and use of the Software, and/or suspend Support in the event you fail to timely pay all outstanding and past due invoices.

**7. Confidentiality.** “Confidential Information” is hereby defined as the Xceedium Products, Documentation and other non-public information relating thereto. You will maintain in confidence all Confidential Information, will not use the Confidential Information except as expressly permitted herein, and will take the same measures to maintain

and protect the Confidential Information as you use to protect your own Confidential Information; provided that, in no event will such measures be less than all commercially reasonable measures. You will only disclose the Confidential Information to your employees who have a bona fide need to access such Confidential Information in order to exercise your rights and obligations under this Agreement; provided that you will remain fully liable for the acts and omissions of each such employee. Notwithstanding any other provision of this Agreement, the obligations set forth in this Section 7 shall continue perpetually and irrevocably. You understand and agree that Xceedium will suffer irreparable harm in the event that you breach any of your obligations under this Section 7 and that monetary damages will be inadequate to compensate Xceedium. In the event of a breach or threatened breach of this Section 7, in addition to and not in limitation of any other rights, remedies or damages available to Xceedium at law or in equity, Xceedium shall be entitled to seek a temporary restraining order, preliminary injunction and/or permanent injunction in order to prevent or to restrain any such breach by you.

**8. Limited Warranty and Disclaimer.** Xceedium warrants that, for a period of ninety (90) days from the date on which Xceedium grants you access of the Software (the "Warranty Period"), the unmodified Software (excluding any Upgrades provided by Xceedium as part of Support) will, under normal use, substantially perform the functions described in the Documentation. Xceedium's sole obligation and liability, and your sole and exclusive remedy, under the warranty set forth in this Section 8 shall be for Xceedium to use commercially reasonable efforts to remedy the problem or to replace the defective Xceedium Products, provided that Xceedium is notified in writing of all warranty claims during the Warranty Period. Xceedium will have no obligation regarding non-conformities that result from: (a) improper or unauthorized use of the Xceedium Products or use in a manner for which it was not designed; (b) causes external to the Xceedium Products such as, but not limited to, power failure, electric power surges or unavailability of the Internet; or (c) use of the Xceedium Products in combination with equipment or software not supplied by Xceedium. THE FOREGOING EXPRESSED WARRANTIES ARE IN LIEU OF, AND XCEEDIUM HEREBY DISCLAIMS, ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. XCEEDIUM MAKES NO WARRANTY THAT THE XCEEDIUM PRODUCTS WILL OPERATE ERROR-FREE, FREE OF ANY SECURITY DEFECTS OR IN AN UNINTERRUPTED MANNER. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, THE XCEEDIUM MATERIALS ARE DISTRIBUTED "AS IS."

**9. Intellectual Property Indemnity.** Xceedium will indemnify, defend and hold you harmless from and against any and all legal claims, actions or demands brought by a third party against you (each a "Claim") to the extent that the Claim is proximately caused by an allegation that the Software, as delivered by Xceedium to you under this Agreement, infringes any existing U.S. patent or copyright, and Xceedium agrees to pay any costs, damages and reasonable attorneys' fees attributable to such Claim finally awarded against you in such action. Xceedium's obligations under this Section 9 are contingent upon your (a) providing prompt written notice to Xceedium of any such Claim; (b) giving Xceedium control of the defense and any related settlement of any such Claim; and (c) furnishing Xceedium with reasonable assistance in the defense of any such Claim, so long as Xceedium pays your reasonable out-of-pocket expenses. Xceedium shall have no liability under this Agreement with respect to any Claim based upon: (i) combination or use of the Xceedium Products with equipment, products, systems, software, materials or processes not furnished by Xceedium if, absent such combination, no infringement would exist; (ii) modifications to the Xceedium Products made other than by Xceedium; (iii) use of the Xceedium Products in a manner inconsistent with its Documentation; (iv) your failure to use updated or modified versions of the Xceedium Products provided by Xceedium to avoid a claim of infringement or misappropriation; or (v) use of the Xceedium Products which use breaches this Agreement. If your use of the Xceedium Products hereunder is, or in Xceedium's opinion is likely to be, enjoined due to the type of Claim specified in this Section, then Xceedium may: (i) procure for you the right to continue using such Xceedium Products under the terms of this Agreement; (ii) replace or modify the Xceedium Products so that it is non-infringing and substantially equivalent in function to the enjoined Xceedium Products; or (iii) terminate your license and right to use the Xceedium Products and refund the applicable fee paid by you for the infringing Xceedium Products, depreciated on a straight-line basis over a five (5) year period. THE PROVISIONS OF THIS SECTION 9 SET FORTH XCEEDIUM'S SOLE AND EXCLUSIVE OBLIGATIONS, AND YOUR SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

**10. Limitation of Liability.** EXCEPT FOR DAMAGES THAT RESULT FROM A BREACH OF SECTION 7 OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL,

PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH ANY CLAIM THAT ARISES FROM OR RELATES IN ANY WAY TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION ALLEGED, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY OF ANY KIND. IN NO EVENT WILL YOU BE ENTITLED TO ANY MONETARY DAMAGES AGAINST XCEEDIUM, REGARDLESS OF THE FORM OF ACTION ALLEGED, IN EXCESS OF THE FEES PAID BY YOU TO XCEEDIUM HEREUNDER FOR THE XCEEDIUM PRODUCT TO WHICH YOUR CLAIM RELATES.

**11. Termination.** (a) **Breach.** Xceedium may terminate this Agreement if you fail to cure any breach of this Agreement within thirty (30) days of receipt of written notice thereof. (b) **Insolvency.** Xceedium will have the right to terminate this Agreement immediately upon written notice if you become insolvent, become subject to a petition in bankruptcy filed by or against you that is not dismissed within thirty (30) days, are placed under the control of a receiver, liquidator or committee of creditors, or cease to function as a going concern or to conduct your business in the normal course. (c) **Effect of Termination.** Upon the expiration or termination of this Agreement, you will immediately return to Xceedium all Confidential Information.

## **12. Miscellaneous.**

**12.1 Legal Compliance; Restricted Rights.** Each Party agrees to comply with all applicable laws. Without limiting the foregoing, you agree to comply with all U.S. export laws and applicable import laws of your locality (if you are not located in the United States), and you agree not to export any Xceedium Products without first obtaining all required authorizations or licenses. If any Software is being licensed under the terms of a proposal or agreement with the U.S. Government or on the U.S. Government's behalf, the Software is commercial computer software and both the Software and the Documentation are developed exclusively at private expense, and (a) if acquired by or on behalf of a civilian agency, shall be subject to the commercial computer software license terms set forth in this Agreement as specified in 48 C.F.R 12.212 of the Federal Acquisition Regulation and its successors; or (b) if acquired by or on behalf of units of the Department of Defense ("DOD"), shall be subject to the commercial computer software license terms set forth in this Agreement as specified in 48 C.F.R 227.7202, Defense Federal Acquisition Regulation Supplement and its successors.

**12.2 Governing Law; Severability.** This Agreement shall be governed by the laws of the Commonwealth of Virginia, without regard to choice-of-law provisions. Each party hereby agrees that any and all causes of action between the parties arising from or in relation to this Agreement shall be brought exclusively in the state and federal courts located within the Commonwealth of Virginia. If any provision of this Agreement is held to be illegal or unenforceable for any reason, then such provision shall be deemed to be restated so as to be enforceable to the maximum extent permissible under law, and the remainder of this Agreement shall remain in full force and effect. You and Xceedium agree that this Agreement is not governed by the U.N. Convention on Contracts for the International Sale of Goods.

**12.3 Assignment.** You may not assign or otherwise transfer this Agreement to any third party without Xceedium's prior written consent. This Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns.

**12.4 Force Majeure.** Xceedium will not be liable for any delay or failure due to acts of God, earthquakes, shortage of supplies, transportation difficulties, labor disputes, riots, war, fire, epidemics, and other causes beyond Xceedium's reasonable control.

**12.5 Publicity.** You agree that Xceedium may disclose its relationship with you as part of its quarterly earnings announcements and include your name in a representative customer list. You further agree that Xceedium may use your corporate name and logo in its marketing materials, including identification on the Xceedium website and, subject to your review, issue a press release indicating that you have elected to use the Software.

**12.6 General.** You hereby acknowledge and agree that any terms or conditions contained in any purchase order or similar ordering document submitted by you to Xceedium are void and have no effect on this Agreement. Sections 4, 6, 7, 10 and 12, and all warranty disclaimers, use restrictions and provisions relating to Xceedium's intellectual property ownership, shall survive the termination or expiration of this Agreement. This Agreement constitutes the entire agreement between you and Xceedium regarding the subject hereof and supersedes all prior and all contemporaneous agreements, understandings, marketing materials, and communications, whether written or oral. Any modification or amendment of any provision of this Agreement must be in writing and signed by an authorized representative of each party.

IF YOU HAVE ANY QUESTIONS CONCERNING THIS AGREEMENT, CONTACT XCEEDIUM AT [support@xceedium.com](mailto:support@xceedium.com).

**[I AGREE]**: I ACCEPT THE TERMS OF THIS AGREEMENT

**[I DON'T AGREE]**: I DO NOT ACCEPT THE TERMS OF THIS AGREEMENT AND I UNDERSTAND THAT I HAVE NO RIGHTS TO USE THE LICENSED MATERIALS