

Coalfire Systems, Inc.
361 Centennial Parkway, Suite 150
Louisville, CO 80027
www.coalfire.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.

ATTACHMENT VII - END USER LICENSE AGREEMENT



361 Centennial Parkway, Suite 150
 Louisville, Colorado 80027
 Tel: (303) 554-6333

Client:	("Client")		
Billing Address:			
Client Contact:		Client Contact Phone:	
Contact e-mail:		Client Contact FAX:	
Purchase Order No.:		Coalfire Account Mgr.:	
STANDARD TERMS AND CONDITIONS FOR SERVICES, DELIVERABLES AND/OR LICENSES			

THIS MASTER AGREEMENT ("**Master Agreement**") is made and entered into as of _____ ("**Effective Date**") by and between Coalfire Systems, Inc. ("**Coalfire**"), a Delaware corporation, and the Client named above. This Agreement sets forth the general terms and conditions pursuant to which Coalfire will provide services to Client. The parties may, from time to time, set forth the specific engagement scope and pricing of the services to be performed ("**Services**") and the deliverables to be delivered ("**Deliverables**") by Coalfire in mutually executed service orders (each a "**Service Order**"). The Master Agreement, together with all Service Orders, may be referred to collectively as the "**Agreement**." In the event of any conflict between the terms of the Master Agreement and any Service Order, the terms of the Master Agreement will govern except and to the extent that the terms of the Service Order specifically state otherwise. In exchange for adequate and valuable consideration, the receipt of which is acknowledged, the parties agree to the following:

1. TERM AND TERMINATION.

1.1 Term. The term of the Master Agreement begins on the Effective Date and continues until such time as it is terminated pursuant to this Section.

1.2 Termination. Either party may terminate the Master Agreement for any or no reason upon providing written notice to the other party setting forth a termination date at least 30 days after the date of such notice ("**Termination Date**"), provided that any Service Orders in effect as of the Termination Date will remain in effect under the terms of the Master Agreement until completion of the Services and delivery of the Deliverables, and payment for each of the same, as set forth in such Service Order. Additionally, in the event that a party is in material breach of any term of the Agreement, the non-breaching party may, upon providing to the breaching party 10 days' prior written notice describing in reasonable detail such material breach, terminate this Agreement, provided that the breaching party has not cured such breach within such 10-day period. Furthermore, if either party becomes or is declared insolvent, becomes subject to a voluntary or involuntary bankruptcy or similar proceeding (which proceeding is not dismissed within ninety (90) days of filing), or makes an assignment for the benefit of all or substantially all of its creditors, then the other party may terminate this Agreement immediately upon providing written notice of termination to the insolvent party.

1.3 Effects of Termination. Termination for material breach will not preclude the non-breaching party from pursuing any and all remedies available to it at law or equity. Upon expiration or termination of this Agreement or a Service Order for any reason: (a) Client will pay Coalfire's final invoice for all amounts due under the terms of the Agreement; (b) the provisions of Sections 4 (Indemnification), 6 (Limitations on Damages), 7 (Confidential Information), 8 (Intellectual Property Rights), 10.3 (Dispute Resolution), 10.9 (No Third Party Beneficiaries), 10.10 (Non-Solicitation of Personnel), 11.2(c) (NAVIS Ownership), and 11.2(d) (Remedy) will survive

and remain continuing obligations until fully and finally performed; and (c) except as otherwise provided under this Agreement, Coalfire will return to Client all of Client's Confidential Information upon Client's request.

2. FEES; EXPENSES; PAYMENT.

2.1 Fees. Coalfire will be paid at the billable rates and/or fees set forth in each Service Order. All fees are non-refundable. After the parties establish the start date for Services in a Service Order ("**Start Date**"), Client agrees to furnish Coalfire with at least ten (10) business days prior written notice of Client's intent to delay, reschedule, or cancel a Coalfire staffing assignment under the associated Service Order. If Client fails to provide such 10-business day notice, then Client agrees to reimburse Coalfire for any lost billable hours caused by the rescheduling or cancellation calculated as the number of such lost hours multiplied by 50% of the hourly rate specified in the project's Service Order. In the event the Service Order does not specify the hourly rate, then for the purposes of this section, the hourly rate shall be considered to be \$200. In no event, however, shall the amount be less than \$2,500. Coalfire will use reasonable efforts to mitigate any losses that would otherwise be incurred in connection with such cancellation and to apply such mitigation to any amounts charged to Client.

2.2 Expenses. Client further agrees to reimburse Coalfire for reasonable travel and living expenses incurred by Coalfire in connection with the performance of Services. Unless otherwise set forth in a Service Order, expenses will be billed in accordance with Coalfire's Travel and Expense Policy, a copy of which is available upon request.

2.3 Payment and Invoicing. Unless otherwise agreed, Coalfire will invoice Client on a monthly basis; terms will be net 30 days. All objections by Client to an invoice must be made in writing to Coalfire within 15 days after receiving the invoice. If no objections are received by Coalfire within such 15-day period, then the invoice will be deemed accepted by Client. If payment has not been received as set forth herein, Coalfire reserves the right, in addition to any other rights it may have, to (a) suspend the Services

until such payment is made in full, (b) charge interest on the amount past due at the lesser of 1.0% per month or the maximum allowed by law and (c) invoice Client for all costs of collection including reasonable attorney's fees.

2.4 Taxes. Excluding Coalfire's own payroll and income taxes, Client will be responsible for payment of all taxes, including state, local or municipal sales taxes, if any, levied upon the Services provided under this Agreement. If Client is claiming tax-exempt status, Client will provide Coalfire with tax-exemption certificates prior to the start of any work. Client shall be solely responsible for obtaining and paying for any licenses and fees related to the receipt of the Services and the use of the Deliverables.

3. INSURANCE. Coalfire will maintain insurance with financially sound and reputable insurance companies in such amounts and covering such risks as is usually carried by companies engaged in the business of professional services, which includes: (a) worker's compensation insurance covering all Coalfire's employees; (b) employer's liability insurance; (c) comprehensive automobile liability insurance for combined bodily injury and property damage; (d) comprehensive general liability insurance for combined bodily injury and property damage; and (e) professional liability insurance. Furthermore, to the extent that Coalfire is engaged as a Qualified Security Assessor (QSA) certified by the Payment Card Industry (PCI) Security Standards Council (SSC), Coalfire will maintain all types and amounts of insurance in accordance with QSA obligations published by the PCI SSC. Coalfire agrees to provide Client with specimen certificates of insurance upon request.

4. INDEMNIFICATION.

4.1 Mutual. Each party will defend, indemnify, reimburse and hold harmless the other party from and against all losses, causes of action, claims, allegations, liabilities, costs, damages and expenses whatsoever, including without limitation reasonable attorneys' fees, regardless of the form of action ("**Claim**"), arising as a result of any injuries to persons or tangible property caused by the gross negligence or willful misconduct of its own employees in connection with the performance or receipt of Services under this Agreement.

4.2 By Coalfire. Coalfire will defend, indemnify, reimburse and hold harmless Client from and against all Claims to the extent attributable to the Services or Deliverables infringing or misappropriating a third party intellectual property right ("**Claim of Infringement**"). If, in Coalfire's opinion, any Service or Deliverable infringes or misappropriates any intellectual property right of a third party, then Coalfire may procure the right for Client to continue to use the results of the Service or Deliverable, or may re-perform the Service or replace the Deliverable so that it is non-infringing and meets the original specifications in all material respects. If the preceding remedies are not reasonably available, as determined by Coalfire, then Coalfire may terminate this Agreement or the applicable Service Order and refund the price paid for the infringing portion of the Services or the Deliverables. The foregoing is the sole and exclusive remedy of Client and states the entire liability of Coalfire with respect to infringement or misappropriation of any proprietary rights by the Services or Deliverables.

4.3 By Client. Client will defend, indemnify, reimburse and hold harmless Coalfire from and against all Claims to the extent attributable to Client's having furnished any Deliverable or any portion thereof to any third party, or any third party's reliance on such Deliverable or portion thereof or arising as a result of Coalfire's use and/or reliance on information or data provided to it by Client. Client understands that its management is solely responsible for the scope, goals and overall direction of the Services, as well as the implementation of any course of action based on such Services.

5. REPRESENTATION AND WARRANTY; ACKNOWLEDGEMENTS.

5.1 By Coalfire: Coalfire represents that the Services will be performed in a workmanlike and professional manner by individuals who have skill and experience commensurate with the requirements of the Services. Coalfire will not be responsible for nonconformities arising from

inaccurate, inauthentic or incomplete data or information provided by Client, or for failures or delays arising from lack of cooperation of Client.

5.2 By Client: Client takes full and sole responsibility for the accuracy and completeness of the information provided to Coalfire for completing each Service Order and for any errors in workpapers or Deliverables resulting from Coalfire's reliance on such inaccurate or incomplete information. Client further acknowledges and agrees that (a) any outcome of the Services involving security assessment is limited to a point-in-time examination of Client's security status with the applicable standards or industry best practices set forth in the Service Order, (b) the outcome of any audits, assessments or testing by, and the opinions, advice, recommendations and/or certification of, Coalfire do not constitute any form of representation, warranty or guarantee that Client's systems are secure from every form of attack, even if fully implemented and (c) in examining Client's compliance or non-compliance status, Coalfire relies upon accurate, authentic and complete information provided by Client as well as use of certain sampling techniques.

5.3 No Implied Warranties. Other than those expressly contained in this Section, neither party makes any other representations or warranties, implied, statutory or otherwise, with respect to the Services or Deliverables. Coalfire EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. LIMITATIONS ON DAMAGES. Neither Client and its employees, officers and directors, on the one hand, nor Coalfire and its employees, officers and directors and licensors (including without limitation the PCI SSC), on the other hand, will be liable to the other under the Agreement for consequential, incidental, indirect, punitive or special damages, including commercial loss and lost profits, or any other similar damages under any theory of liability whether in contract, tort or strict liability, however caused and regardless of legal theory or foreseeability, directly or indirectly, arising under this Agreement, even if such party has been apprised of the possibility of such damages. In no event shall liability under this Agreement of Coalfire exceed those fees paid to Coalfire by Client under the applicable Service Order.

7. CONFIDENTIAL INFORMATION. Each party agrees to comply with the terms of any nondisclosure agreement between Coalfire and Client ("**NDA**"). If no such agreement exists, each party agrees that, during and after the term of this Agreement, it will keep confidential and will not, without the other party's prior written consent, use or disclose to any third party any confidential or proprietary information relating to the business of the other party or that party's customers learned by such party or disclosed to such party in connection with this Agreement. The restrictions of this Section 7 will not apply to any information that (i) is or becomes generally available to the public other than as a result of a breach of this Section 7 by the receiving party, (ii) was available to the receiving party on a non-confidential basis prior to its disclosure under this Agreement, (iii) becomes available to the receiving party on a non-confidential basis from a third party which was not itself bound by a confidentiality obligation and was free to disclose the information or (iv) is required by law to be disclosed pursuant to a valid order or request. Coalfire, as an auditor, may retain and access one complete copy of work papers and related audit documentation for a period of at least five (5) years from the applicable Service Order completion date or such longer period of time required to satisfy any applicable legal or regulatory requirements. All such information shall be held confidential in accordance with this Agreement. Coalfire has no liability for actions by Visa U.S.A., PCI or PCI's member organizations, their employees, officers, consultants, subcontractors or affiliates with respect to Client's Confidential Information contained in the any formal compliance attestation report subject to standards published by the PCI SSC (including, but not limited to, Report on Compliance, Report on Validation, ASV Vulnerability Scan Report, and other developed materials).

8. INTELLECTUAL PROPERTY RIGHTS.

8.1 Client understands that Coalfire is engaged to use its existing knowledge, training, experience and proprietary methodologies (“**Coalfire Methodologies**”) to assess Client’s information technology system and certain security aspects thereof and to provide a written report regarding such security aspects to Client. The Deliverables, as described in the applicable Service Order, will be owned by Client and, subject to Section 8.2 below, Coalfire will assign to Client all right, title and interest therein.

8.2 Notwithstanding anything in the Agreement to the contrary, Client will not acquire, and Coalfire will not assign, any right, title or interest in or to the Coalfire Methodologies or any text, data or other materials that were owned by, or licensed to, Coalfire prior to Coalfire’s performance of Services under the applicable Service Order (“Pre-existing Intellectual Property”). As between Coalfire and Client, Coalfire is and will remain the owner of all Pre-existing Intellectual Property and all processes, know-how, methodologies and technology used in connection with providing the Services. If any Deliverable, as described in the applicable Service Order, includes any Pre-existing Intellectual Property, Coalfire hereby grants to Client a perpetual, non-exclusive, royalty-free license to make a reasonable number of copies of such Deliverables (with the Pre-existing Intellectual Property therein) solely for Client’s internal business purposes and to the extent that such license is required to enable Client to make use of Coalfire’s Services hereunder. Client acknowledges that all such Deliverables and reports, workpapers, programs and other materials provided by Coalfire under this Agreement are solely for the specified internal use of Client, Client’s audit committee, its board of directors and its external auditors, and may not be used or relied upon for any other purpose. Client further acknowledges that Client’s management is solely responsible for the design and implementation of an effective control system and environment. Client hereby grants to Coalfire a perpetual, non-exclusive, royalty-free license to use any new knowledge, techniques and methodologies developed by Coalfire in the performance of the Services and the creation of the Deliverables.

9. PUBLICITY. As an independent assessor, Coalfire may from time to time be requested to acknowledge that Coalfire is Client’s assessor and such facts may be independently published by third parties, such as the PCI SSC, credit card brands or others. For the avoidance of doubt, Coalfire or Client may acknowledge that Coalfire serves as Client’s assessor or governance, risk management and compliance (“IT-GRC”) service provider, provided that Coalfire does not disclose the results of any project. Unless otherwise advised, Coalfire may use Client’s name as a reference for IT-GRC projects performed by Coalfire.

10. GENERAL TERMS.

10.1 Amendments. No amendments or other variation to this Agreement will be effective unless in writing and signed by an authorized person on behalf of each party.

10.2 Assignment. Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement to any third party without the express written consent of the other party, such consent not to be unreasonably delayed, conditioned or withheld. Any attempted assignment or transfer in violation of the foregoing will be void. This Agreement will be binding upon, and will inure to the benefit of, the parties hereto and their respective permitted successors and assigns. For the purposes of this Agreement, a change of control will not be considered an assignment, subcontract or transfer of rights hereunder.

10.3 Dispute Resolution. No action arising out of this Agreement, regardless of the form, may be brought by either party more than one year after the cause of action has accrued, except that an action for non-payment may be brought within one year after the date on which the last payment was due. Any material dispute between the Parties arising out of or relating to this Agreement, including with respect to the interpretation of any provision of this Agreement or with respect to performance or non-performance under this Agreement, will be resolved as provided in this Section. This Agreement will be interpreted and construed in accordance

with the substantive laws of Delaware and the United States generally applicable therein, without regard to any provisions of its choice of law rules that would result in a different outcome. This Agreement will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is expressly excluded. For any litigation arising out of or relating to this Agreement, regardless of the form of action or the party that initiates it, the parties irrevocably and unconditionally submit to the exclusive jurisdiction of and venue in the United States District Court for the District of Colorado or, if that court does not have jurisdiction, in the Superior Court of Boulder, Boulder County, State of Colorado. The parties expressly and unconditionally waive the jurisdiction of any foreign court or tribunal and additionally waive any trial by jury in any action. The parties irrevocably and unconditionally waive any objection to the laying of venue of any proceeding arising out of or relating to this Agreement in such courts. The parties further consent to the jurisdiction of any state or federal court with subject matter jurisdiction located within a district that encompasses assets of a party against whom a judgment (or award) has been rendered for the sole purpose of the enforcement of the judgment (or award) against the assets of such party. In the event Coalfire is required to comply or respond with an order, subpoena or requirement of a court, administrative agency, governmental body or dispute resolution organization in any legal action involving Client, Client will pay the attorneys’ fees of Coalfire and the regular hourly fees of Coalfire personnel in complying or responding with such order, subpoena or requirement.

10.4 Entire Agreement. This Agreement, which includes the Service Orders as well as any written amendments, constitutes the entire agreement between the parties and supersedes all previous communications, representations, understandings, concurrent or subsequent purchase orders, and agreements, whether oral or written, between the parties or any officer or representative of the parties. Any purchase order or other document issued by Client will be effective only to confirm mutually agreed upon Services, Deliverables, fees and timeframes. Any legal terms or conditions on such purchase order or document will be of no effect. Client has not relied upon any representations other than those set forth in this Agreement and the Service Orders referred to herein.

10.5 Execution; Counterparts; Electronic Signatures.

(a) This Agreement is not binding upon either party until it is signed by an authorized corporate representative of Coalfire and Client.

(b) This Agreement may be executed in counterpart originals, duly signed by both parties, each of which will be deemed an original, but all of which, together, will constitute one and the same Agreement.

(c) Coalfire and Client agree, and hereby state their collective intent, to conduct transactions via electronic means. Accordingly, Client represents that Client’s email system includes security measures of sufficient efficacy (e.g., password protection) that any electronic correspondence from such email address that refers to this Agreement and/or any Service Order will: (i) constitute sufficient evidence to establish the identity of Client as the sender of such electronic correspondence; (ii) be effective as confirmation of the intent of Client and Coalfire to conduct transactions by electronic means; (iii) be effective as delivery by Client of a manually executed counterpart to this Agreement and/or the Service Order referenced in the electronic correspondence; and (iv) indicate Client’s acceptance of the terms of, and intent to authenticate and sign, this Agreement and/or the Service Order referenced in the electronic correspondence. For the avoidance of doubt, Client expressly agrees that any such response or confirmation issued by or on behalf of Client will constitute an electronic signature, enforceable under all applicable laws and will be determined to have been sent by Client.

10.6 Force Majeure. Coalfire and Client will not be liable for any failure to perform or delay in performance of its obligations under this Agreement or any Service Order, resulting from the elements, acts of God or any other cause beyond the reasonable control of the party failing to perform.

10.7 Headings. The headings and Sections herein are for reference purposes only and do not in themselves convey any rights or create any responsibilities not specifically designated within the Sections.

10.8 Independent Contractor Relationship. The parties understand and agree that the personnel assigned by Coalfire to Client under this Agreement are Coalfire's employees or agents. Under no circumstances are such personnel to be considered Client employees or agents. Coalfire will perform its obligations under this Agreement as an independent contractor and not as an agent or joint venture partner of Client. Under no circumstances shall Client's employees have any authority to act on behalf of Coalfire.

10.9 No Third Party Beneficiaries. No term or provision of this Agreement is intended to be, or will be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such third party will have any right or cause of action hereunder.

10.10 Non-Solicitation of Personnel. Neither party will actively recruit the other party's personnel engaged in providing or receiving Services under this Agreement. In light of the considerable efforts and expenses required to recruit, train and maintain Coalfire personnel, Client agrees not to hire Coalfire personnel involved in providing Services hereunder for the duration of this Agreement and for a period of one year following the conclusion of work, unless Coalfire provides Client with prior written consent. If Client hires any Coalfire personnel during the aforementioned period, and prior written consent has not been obtained, then Client will pay a conversion fee equal to 50% of the then-current annual salary of each Coalfire personnel converted in contradiction of this Section. Such conversion fees will be invoiced to Client and due to Coalfire as set forth in Section 2 (Fees; Expenses; Payment) of this Agreement.

10.11 Notices. Any notices required under this Agreement will be in writing. Notices will be delivered in person or sent by overnight courier or facsimile addressed to the addresses in the Service Order. Notice will be effective when sent by overnight courier or facsimile or upon delivery if delivered in person.

10.12 Performance of Services. Coalfire will perform the Services at sites established by Client unless otherwise agreed to in each Service Order, *provided, however, that* Coalfire may conduct sampling in connection with the Services from any sites that Coalfire deems appropriate.

10.13 Reasonable Cooperation. Client will reasonably cooperate with Coalfire and take all actions reasonably necessary to enable Coalfire to perform the Services contemplated herein. To that end, Client will provide on a timely basis all information, as well as access to systems and personnel, reasonably requested by Coalfire to enable Coalfire to provide the Services.

10.14 Severability. If any provision of this Agreement is determined to be unenforceable or invalid, the remaining provisions of this Agreement will remain in full force and effect.

10.15 Subcontracting. Coalfire reserves the right to employ agents and subcontractors to assist Coalfire when providing any part of the Services. Any reference to Coalfire's staff in this Agreement includes agents and subcontractor staff. Coalfire will remain liable to Client in respect to any Services provided, subject to the other provisions of this Agreement. Where Client requires Coalfire to contract the services of a subcontractor specified by Client, Client will accept responsibility for the work to be performed by such subcontractor. Coalfire shall not be responsible for, or liable to Client or to any other third party for the work performed by, all acts, omissions, defaults and neglects of, such subcontractor(s), or Coalfire's reliance thereon. In the above circumstances Client will be responsible and liable for, and will indemnify and hold Coalfire harmless against any and all liability which Coalfire may incur to any person and against all claims, demands, proceedings, damages, losses, costs and expenses (including reasonable attorneys' fees), made against, suffered or incurred by Coalfire, directly or indirectly as a result of or in connection with the work performed by any such subcontractor. In addition, should Coalfire incur any expenses in

reviewing, auditing or correcting the work of a subcontractor specified by Client, Client shall promptly reimburse Coalfire for such expenses.

11. ADDITIONAL PROVISIONS REGARDING CERTAIN COALFIRE SERVICES. Subject to the terms and conditions of the Agreement, including the applicable Service Orders, Coalfire may sell or license to Client, and Client may purchase or license one or more of the following Services: (a) security assessment services, as further described below; (b) IT compliance assessment and management solutions and services ("NAVIS Services" described below); or (c) IT audit, control development, IT risk assessment, incident response and consulting services.

11.1 Security Assessment Services. If the Services requested by Client in a Service Order include technical security testing, penetration testing (including physical, application, ethical or network penetration assessment and testing) or computer forensic services, Coalfire will use various commercial, open source, freely distributed or proprietary testing tools, techniques and monitoring methods to evaluate the devices, software or resources (collectively "Systems") identified by the Client, and verified by Coalfire, as within scope. Coalfire may, at its discretion, also use tools that meet the definition of malware by anti-virus platforms. Coalfire is hereby authorized to perform those Services identified in any Service Order subject to this Agreement on Systems, including IP addresses, identified by the Client as within scope. Coalfire is not responsible for adverse consequences resulting from inaccurate information, including inaccurate IP Addresses, furnished by Client with respect to any System.

11.2 NAVIS Services - IT Compliance Assessment and Management Solutions and Services. If the Services requested by Client in a Service Order include Client's access to any of Coalfire's NAVIS Services (i.e., hosted compliance assessment or management solutions Software modules), then the terms and conditions of this Section 11.2 will apply. For purposes of this Agreement, "Software" means the computer programs, software applications, modules and interactive computer service for compliance assessment and management solutions and its applicable documentation (if any), including without limitation, all related interfaces, functionality, web-services, supplements, add-on components, corrections, modifications, bug fixes, enhancements, updates, new versions or releases that Coalfire subsequently may make available to Client, to the extent that such items are not accompanied by a separate end user license agreement.

(a) License Grant. Subject to the terms and conditions of this Agreement and the applicable Service Order (including Client's obligation to pay all fees when due), Coalfire hereby grants to Client a limited, personal, non-exclusive, non-transferable, revocable right and license, without right to grant sublicenses, during the License Term (as defined below) for Client to access and execute the Software electronically via the Internet and use the Software solely within the license scope set forth in the applicable Service Order and solely for Client's internal business purposes. Coalfire will make the Software available to Client via a digital information processing, transmission and storage system ("Server") maintained by or on behalf of Coalfire. Coalfire reserves the right to modify the Software at any time as business needs dictate in Coalfire's sole discretion, *provided that* the terms of this Agreement will remain in effect and will govern Client's use and obligations with respect to any modified Software. For purposes of this Agreement, "License Term" means the period of time designated in a Service Order during which Client is authorized to access and use the Software pursuant to the terms of this Agreement. Any use of the Software not expressly permitted in this Agreement is prohibited. Client acknowledges that the Software and its structure, organization, and source code constitute valuable trade secrets of Coalfire and its suppliers. It is expressly understood that the use of the Software is subject to the terms of this Agreement including, but not limited to, Sections 5 and 6.

(b) Support and Other Services. Subscriptions to Coalfire's NAVIS products entitle Client to access the Software for a 12 month period or for the term stipulated in any Service Order subject to this Agreement. Reasonable access to a Coalfire advisor, if purchased, is available within the first 90 days of service initiation to support use of Navis

software and customer compliance issues. Thereafter, Coalfire advisors are available for quarterly check-ins for up to one-half hour each, and an advisor may proactively contact you to provide this follow-up support. Additional support time may be purchased, if needed, beyond the initial 90 day period at the client's request. Client acknowledges that Coalfire has no control over the stability and throughput speed of the Internet or availability of the Software on a continuous and uninterrupted basis. Subject to Client's performance of all of obligations hereunder, including the payment of all fees when due, Coalfire will provide Client with technical assistance as is reasonably necessary to access the Software via telephone or remote web-based support (collectively, the "Support Services"). This Agreement does not otherwise entitle Client to receive object code, source code, on-site or additional installation, or training, technical support, telephone assistance, enhancements, updates or bug fixes for the Software. Coalfire, in its sole discretion, may provide Client with any such Support Services upon terms mutually agreed upon between the parties in a duly executed and delivered writing which will be billed at Coalfire's standard rates and prices in effect from time to time or as mutually agreed between the parties in a Service Order or equivalent written agreement. Any software or other programs or materials provided to Client as part of the Support Services are considered part of the Software and will be subject to the terms and conditions of this Agreement, unless otherwise mutually agreed upon by the parties in writing. If requested by Client, Coalfire, in its discretion, may provide consulting or professional services, which will be billed at Coalfire's rates and prices pursuant to terms and conditions to be mutually agreed upon between the parties in writing.

(c) **Ownership.** Client acknowledge that: (i) the Software and all right, title and interest therein, including without limitation, all Intellectual Property Rights in and to the Software, are the sole and exclusive property of Coalfire and its suppliers, (ii) Client receives no right, title or interest in or to the Software except as expressly set forth herein, and (iii) all title and IP Rights in and to any data or content that is not contained in the Software, but may be accessed through use of the Software, is the property of the respective content owners and this Agreement grants Client no rights to use such content. If Client, any of its users or any of Client's affiliates are deemed to have any ownership interest or other rights in the Software, including any and all derivative works, enhancements or other modifications thereto, then Client will assign and/or cause such parties to assign, and Client does hereby assign, irrevocably and royalty-free, all of such ownership interest or other rights exclusively to Coalfire and Client will, at Coalfire's reasonable request and expense, complete, execute and deliver any and all documents necessary to effect or perfect such assignments.

(d) **Remedy.** If Client is dissatisfied with the Software, then Client's sole and exclusive remedy hereunder will be for Client to discontinue Client's use of the Software and terminate the Service Order under which Client obtained rights to access the Software. Notwithstanding anything herein to the contrary, the total cumulative liability of Coalfire and its employees, officers, directors and licensors in connection with the Software will in no event exceed the amount of any fees actually paid by Client to Coalfire for use of the Software hereunder. Client acknowledges that the disclaimers and limitations herein reflect a fair allocation of risk and that Coalfire would not enter into this Agreement without such limitations on its liability, and Client agrees that the foregoing disclaimers and limitations will apply notwithstanding any failure of essential purpose.

11.3 PCI Assessment Services. If the Services requested by Client in a Service Order include a PCI assessment, then the provisions of this Section 11.3 are effective. For purposes of this Section, the terms "**Assessment**" and "**Requesting Organization**" have the meaning ascribed to those terms in Appendix A of the PCI Security Standards Validation Requirements for Qualified Security Assessors (QSAs), a copy of which is located at <https://www.pcisecuritystandards.org>, and "**Results**" means the Report on Compliance and any associated working papers, notes and other materials and information generated in connection with an Assessment, including a copy of this Agreement. Notwithstanding any agreement between the

parties to the contrary and to meet compliance requirements imposed by the PCI SSC, Client understands and agrees that, without further permission from Client, Coalfire will be permitted to submit the Results of each Assessment to a Requesting Organization.

For COALFIRE SYSTEMS, INC.

By _____
 Name Alan Ferguson
 Title Executive VP, Sales

For CLIENT: _____

By _____
 Name _____
 Title _____