

Bomgar Corporation
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Carahsoft Rider to Manufacturer End User License Agreements
(for U.S. Government End Users)

- 1. Scope.** This Carahsoft Rider and the Bomgar Corporation ('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 <http://www.bomgar.com/eula.htm> are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's EULA are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft' s contract #GS-35F-0119Y, including, but not limited to the following:
 - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

 - (b) Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.

 - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

 - (d) Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to
 - (a) Error! Unknown document property name.**

verify Ordering Activity's compliance with this Agreement.

- (e) **Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court..

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements.
- (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.

**BOMGAR
END USER LICENSE AGREEMENT
STANDARD TERMS AND CONDITIONS**

THIS BOMGAR END-USER LICENSE AGREEMENT (this "Agreement") is entered into as of the date (the "Effective Date") specified in the Order Form referencing the Software, between Bomgar Corporation, a Mississippi corporation ("Licensor"), and the individual or entity set forth in the Order Form ("Customer"). Customer enters into and accepts this Agreement and the terms and conditions hereof as of the Effective Date by (i) Customer's acceptance at the log-in or other screen for such purpose, (ii) use of the Software, or (iii) signing the Order Form.

In consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. License. Subject to the terms, conditions, and limitations set forth in this Agreement, including the payment of the License Fee, and except as expressly provided herein, Licensor hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicenseable, non-proprietary Object Code License to do the following: (a) solely in support of the internal business activities of Customer, install, use, and execute the Software for concurrent use by the number of Log-In Users as Licenses granted on the Order Form (for example, one License would allow one Log-In User at a time) for the Software licenses; (b) use the Documentation only for the purpose of installation and use of the Software; and (c) make one back-up copy of the Software and Documentation solely for archival purposes. The License granted hereunder does not include any other rights except as expressly specified herein. Any use or copying of the Software or Documentation not expressly authorized hereunder is prohibited and a breach of this Agreement. All Third Party Software is licensed to Customer in accordance with a separate license agreement(s) included with the Software, listed in the Documentation or available at <http://www.bomgar.com/gpl.htm>. Customer agrees to abide by all of the terms and conditions of such Third Party Software license agreements, and a breach of any such agreement will be considered a material breach of this Agreement. To the extent that any such Third Party Software license terms conflict with the rights granted to Customer hereunder or the restrictions imposed on Customer hereunder, such license terms shall control over the conflicting provision of this Agreement solely with respect to such particular Third Party Software. If Licensor or its licensors include additional or revised Third Party Software in a later release of any Software (or Third Party Software therein), Licensor may, upon notice via email or otherwise (such as through release notes) to Customer's designated maintenance contacts or other designated contact, modify or add license terms for such software as necessary to comply with any requirements of the licensor(s) of such Third Party Software. Except as specifically permitted in this Agreement, Customer shall not directly or indirectly (i) use any Confidential Information to create any software or documentation that is similar to any of the Software or Documentation; (ii) encumber, transfer, rent, lease, time-share or use the Software in any service bureau arrangement or for the benefit of any third party; or (iii) copy (except for archival purposes to the extent permitted in **Section 1(c)**), distribute, manufacture, adapt, create derivative works of, translate, localize, port or otherwise modify the Software or permit or suffer any third party to engage in any of the acts proscribed in clauses (i) through (iii). Except as expressly provided in the Order Form, Customer represents and warrants that each Log-In User is an employee or agent of Customer. Customer shall be liable for any failure by employees, agents or third party contractors to comply with

the terms of this Agreement. Any reference to “sale” herein with respect to the Software or Documentation shall mean the License hereunder.

2. Maintenance Services. (a) Maintenance Period. Unless otherwise provided on the Order Form, Customer will be required to purchase Maintenance Services for a period of one year from the Effective Date (the “Maintenance Period”). All Maintenance Services are provided by Licensor and not third parties. Licensor may offer, and Customer may purchase, extended annual coverage Maintenance Services for Customer’s use after the termination or expiration of the Maintenance Period. In the event that Customer has previously existing license(s) to the Software, Licensor may prorate the fee for the Maintenance Services in order to coordinate the renewals of all of the Customer’s Maintenance Services. After the Maintenance Period, Customer and Licensor may agree to extend the Maintenance Period upon the payment by Customer to Licensor of the applicable Maintenance Services fee then in effect. In the event that Customer elects not to extend the Maintenance Period and later seeks to reinstate such Maintenance Services, it will be in Licensor’s sole discretion whether to reinstate such Maintenance Services and on what terms. A 10% reinstatement fee of Customer’s current annual maintenance cost may be charged prior to reinstatement of maintenance services. Maintenance Services can not be limited to certain Log-In Users; therefore, if Customer wants to have Maintenance Services for any Log-In Users under this Agreement then it will be required to have Maintenance Services for all Log-In Users under this Agreement. Maintenance Services are for one year terms and may not be terminated by Customer except for cause and upon thirty (30) days written notice to Licensor and the opportunity to cure. (b) Scope of Maintenance Services. Unless otherwise provided in a Customer Services Plan between Licensor and Customer, the Maintenance Services shall be the services specified on Licensor’s website at <http://www.bomgar.com/maintenance.htm> or such other webpage of which Licensor shall notify Customer by email to Customer’s email address. (c) Limitations. Maintenance Services do not include onsite service visits by Licensor at Customer’s location. Licensor may perform services other than the Maintenance Service(s) as requested and approved by Customer and to the extent agreed upon by Licensor. In exchange for such additional services, Customer agrees to pay Licensor its normal hourly rates then existing for such services. In addition to the hourly rates, Customer shall reimburse Licensor for shipping, travel, living, and out-of-pocket expenses reasonably incurred in conjunction with the rendering of additional services hereunder. (d) Designated Customer Personnel. Customer shall provide prior written notice to Licensor in the event there any restrictions on whom Licensor may interface with in providing Maintenance Services to Customer.

3. Title. (a) Title to Software and Documentation. All right, title, and interest in and to the Software and the Documentation, including, without limitation, the media on which the same are furnished to Customer, are and shall remain the sole and exclusive property of Licensor; provided, however, that Licensor claims no right in the Third Party Software, and the same is owned exclusively by the licensor(s) of the Third Party Software. Except for the License, Customer acknowledges that no right, title, or interest in or to the Software or the Documentation is granted pursuant to this Agreement, and no such assertion shall be made by Customer. (b) Title to Upgrades. All right, title, and interest in and to any Upgrades to the Software or Documentation are and shall remain the sole and exclusive property of Licensor. (c) Proprietary Materials. Customer acknowledges that the Software and Documentation are works copyrighted under United States federal copyright law and protected by other intellectual property rights and embody valuable confidential and secret information of Licensor, the development of which required the expenditure of considerable time and money by Licensor. Except as expressly provided in a Third Party License Agreement or by law, Customer shall not in any

manner or under any circumstances use, copy, modify, enhance, merge, reverse engineer, reverse assemble, decompile, or in any way alter the Software, Hardware or Documentation or any copy, adaptation, transcription, or merged portion thereof or otherwise attempt to derive Source Code therefrom; provided, however, that, if any applicable laws (such as national laws implementing EC Directive 2009/24) expressly give Customer the right to perform any of the aforementioned activities without Licensor's consent, Customer shall, before exercising such right, notify Licensor of its intent to exercise any such rights and only exercise such rights if Licensor has not, within twenty (20) business days after Licensor's receipt of such request, agreed to provide Customer with the result which Customer would otherwise have obtained by exercising such rights (in which case Customer shall pay Licensor its then-standard rates for such work). Customer shall not permit or suffer any person to remove any proprietary or other legend or restrictive notice contained or included in any material provided by Licensor, and Customer shall not permit or suffer any person to reproduce or copy any such material except as specifically provided in this Agreement. Customer agrees to maintain any and all of Licensor's copyright, trademark, and other notices on the Software and Documentation and shall reproduce such notices on any and all copies, in whole or in part, thereof (which copies may only be made as expressly permitted herein). Customer understands and agrees that the Software may be protected by devices, including but not limited to, key codes and password protection that disables use of the Software except in accordance with the uses allowed hereunder. Customer will not attempt, directly or indirectly, to disable, bypass, or defeat such devices. Customer will not take any action that jeopardizes Licensor's proprietary rights or acquire any right in the Software or the Confidential Information. Licensor will own all rights in any copy, translation, modification, adaptation, or derivation of the Software or other items of Confidential Information, including any improvement or development thereof. Customer will obtain, at Licensor's request, the execution of any instrument that may be appropriate to assign these rights to Licensor or perfect these rights in Licensor's name. (d) Secure Handling and Inspection. Customer shall keep the Software and the Documentation on its premises, safe and secure and preclude unauthorized persons from having access thereto. Customer hereby permits Licensor reasonable access to all premises where the Software may be installed or used, during normal business hours, and upon reasonable notice in order to inspect the Software and to confirm compliance with the terms hereof. (e) Third Party Access. Customer shall not allow any third party to have access to the Software without Licensor's prior written consent. (f) Remote Information. Customer hereby acknowledges and agrees that Licensor may verify Customer's licensed use of the Software through online verification procedures which may include gathering product information (e.g. Bomgar product, Bomgar version, Bomgar Box host) and Session/Connection Type (e.g. OS version, Jumpoints, Bomgar Customer application information and timestamps). In addition, Customer acknowledges that the Software provides for trouble support notification to Licensor in the event of a Software failure.

4. Fees and Payments. (a) Fees. Customer shall pay to Licensor the License Fees, any applicable Maintenance Services fees, and other charges and expenses set forth in the Order Form. The License Fees shall be paid in U.S. Dollars unless otherwise specifically agreed in writing by both parties. For any fees payable after completion of the delivery and/or installation obligations hereunder (e.g., Maintenance Services fees), Licensor may modify such fees at its discretion upon notice to Customer at least sixty (60) days prior to the due date of such fees. If no payment terms are set forth on the Order Form, Customer shall make payment upon the earliest of receipt of any invoice or delivery of the Software. Customer shall pay for all additional services provided and costs incurred by Licensor which are not described herein on a time-and-expenses basis in accordance with Licensor's then standard rates as established by Licensor from time to time. All such payments shall be paid in full

when due, without right of deduction or set-off. (b) Past-Due Charges. Customer agrees to pay a charge for any amounts that are more than thirty (30) days past due at the rate of the lesser of (i) one and one-half percent (1.5%) per month or (ii) the greatest rate allowed by law. In addition, Licensor may (i) terminate the Customer's ability to purchase additional Licenses or Hardware while charges are past due, and/or (ii) terminate Customer's use of the Software as provided herein. (c) Taxes. All fees paid or payable to Licensor are exclusive of any federal, state, or local excise, sales, use, intangible, import charges, value added, or other taxes, duties or similar assessments imposed with respect to the Software, Documentation, Hardware, and/or the services provided hereunder. Customer is solely responsible for the payment of any and all taxes resulting from this License, the use of the Software, Hardware, or this Agreement, except for any federal, state, or local income tax imposed on Licensor in connection with revenues associated with this Agreement. Customer hereby agrees to hold harmless Licensor from and against any and all claims and liabilities arising from Customer's failure to report or pay any such taxes, duties or similar assessments if any and to promptly pay any such taxes, duties or similar assessments that may become due.

5. Delivery and Customer's Obligations. Licensor will deliver the Software to Customer at Customer's e-mail address indicated on the Order Form. Any Hardware will be shipped, at Customer's expense, to Customer's shipping address as shown on the Order Form. The Software will be deemed conclusively accepted by Customer upon the earlier of (a) actual use by Customer or (b) thirty (30) days after the delivery of the Software to Customer. Except to the extent otherwise set forth in a written agreement between Customer and Licensor, Customer shall be solely responsible for the implementation, configuration, and operation of the Software, including but not limited to, all of the cost and expense in obtaining and preparing the site and any hardware for the Software. Customer may not install or use the Software on any hardware or other computer system/network environment not configured and conforming to Licensor's specifications.

6. Disclaimer, and Limitation of Liability.

(a) DISCLAIMER. CUSTOMER IS SOLELY RESPONSIBLE FOR ITS USE OF THE SOFTWARE AND SHALL AT ALL TIMES USE THE SOFTWARE IN COMPLIANCE WITH ALL APPLICABLE LAWS. THE SOFTWARE, DOCUMENTATION, HARDWARE, UPGRADES, AND SERVICES ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS ONLY, AND LICENSOR MAKES NO PROMISES, REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED, REGARDING OR RELATING TO THE SAME, OR TO ANY OTHER MATERIAL FURNISHED OR PROVIDED TO CUSTOMER PURSUANT TO THIS AGREEMENT OR OTHERWISE. TO THE MAXIMUM EXTENT ALLOWED BY LAW, LICENSOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT WITH RESPECT TO SAID MATERIALS OR THE USE THEREOF. LICENSOR DOES NOT WARRANT OR REPRESENT THAT THE OPERATION OF THE SOFTWARE, HARDWARE, OR UPGRADES WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ANY DEFECTS IN THE SOFTWARE, HARDWARE, UPGRADES, OR DOCUMENTATION, ARE CORRECTABLE OR WILL BE CORRECTED. LICENSOR SHALL HAVE NO RESPONSIBILITIES OR LIABILITY FOR INCORRECT DATA OR INFORMATION INPUTTED INTO THE SOFTWARE OR FOR ERRORS IN OUTPUT, CALCULATIONS, OR RESULTS CAUSED BY THE SAME OR THE HARDWARE OR THIRD PARTY SOFTWARE. LICENSOR DOES NOT WARRANT THAT THERE ARE NO DISCREPANCIES BETWEEN THE SOFTWARE AND DOCUMENTATION.

LICENSOR PROVIDES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH RESPECT TO ANY THIRD PARTY SOFTWARE.

(b) LIMITATION OF DAMAGES. (i) IN NO EVENT SHALL LICENSOR, AND/OR LICENSOR'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, DISTRIBUTORS, MARKETING PARTNERS, RESELLERS, LICENSORS, PARENT, AFFILIATES OR SUBSIDIARIES (COLLECTIVELY THE "LICENSOR PARTIES") BE LIABLE FOR ANY LOSS OF DATA, COSTS OF SUBSTITUTE GOOD OR SERVICES, LOSS OF PROFITS OR INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT, OR THE USE OR INABILITY TO USE ANY SOFTWARE, DOCUMENTATION OR SERVICES, BASED ON ANY THEORY OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. (ii) LICENSOR PARTIES' CUMULATIVE LIABILITY TO CUSTOMER FOR ALL CLAIMS RELATING TO: (A) DEFECTIVE SERVICES SHALL NOT EXCEED THE FEES PAID BY THE CUSTOMER FOR THE SERVICES GIVING RISE TO THE CLAIM (WHICH FOR MAINTENANCE SERVICES SHALL NOT EXCEED THE ANNUAL MAINTENANCE FEES PAID BY THE CUSTOMER FOR THE PERIOD IN WHICH THE DEFECTIVE MAINTENANCE SERVICES WERE PERFORMED); OR (B) THE SOFTWARE, HARDWARE OR OTHERWISE RELATING TO THIS AGREEMENT, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL LICENSE FEES OR HARDWARE FEES (AS APPLICABLE) PAID TO LICENSOR HEREUNDER WITH RESPECT TO THE SOFTWARE OR HARDWARE (AS APPLICABLE) GIVING RISE TO THE CLAIM. (iii) LICENSOR PARTIES SHALL NOT BE LIABLE FOR CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST LICENSOR PARTIES MORE THAN TWO YEARS AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE. (iv) EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN A WRITTEN AGREEMENT BETWEEN LICENSOR AND CUSTOMER, LICENSOR SHALL HAVE NO RESPONSIBILITY WITH RESPECT TO ANY THIRD PARTY SOFTWARE, AND CUSTOMER WILL LOOK SOLELY TO THE LICENSOR(S) OF THE THIRD PARTY SOFTWARE FOR ANY REMEDY.

(c) USE IN ACCORDANCE WITH LAW. Customer agrees and acknowledges that the Software, Documentation and Hardware are provided to be used only for lawful purposes. Customer agrees and acknowledges that the Software may notify the user on whose computer certain of the Software will be installed of such installation and may permit such user to reject such installation. Further, Licensor may require that the Software contain Licensor's waiver of liability agreement in favor of Licensor which shall be accepted by each end user prior to granting full remote access to the end user's computer and prior to the downloading of Jumpoint™ Agents or Jump™ clients. CUSTOMER REPRESENTS AND WARRANTS THAT CUSTOMER, ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS AND AGENTS SHALL ONLY USE THE SOFTWARE, DOCUMENTATION AND HARDWARE, AND ANY COPIES THEREOF, AS PERMITTED BY APPLICABLE LAWS AND WITH THE KNOWLEDGE AND CONSENT OF THE OWNER AND USER OF EACH COMPUTER ON WHICH THE SOFTWARE IS INSTALLED OR WITH WHICH THE SOFTWARE IS USED. CUSTOMER ACCEPTS COMPLETE AND FULL RESPONSIBILITY FOR ALL USE OF THE SOFTWARE.

7. Indemnification. (a) Infringement. To the extent Customer is not otherwise in breach of the terms of this Agreement, Licensor will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that the Bomgar Software, other than the Third Party Software, directly infringes any registered United States copyright or trademark and Licensor will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. (b) Conditions. Licensor's obligations under the preceding paragraph with respect to an action are conditioned on (i) Customer notifying Licensor promptly in writing of such action, (ii) Customer giving Licensor sole control of the defense thereof and any related settlement negotiations, and (iii) Customer cooperating with Licensor in such defense (including, without limitation, by making available to Licensor all documents and information in Customer's possession or control that are relevant to the infringement or misappropriation claims, and by making Customer's personnel available to testify or consult with Licensor or its attorneys in connection with such defense). (c) Licensor's Options. If any Bomgar Software becomes or, in Licensor's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, Licensor may, at its option, (i) procure for Customer the right to continue using such Bomgar Software, (ii) replace or modify such Bomgar Software so that it becomes non-infringing without substantially compromising its functionality, or, if (i) and (ii) are not reasonably available to Licensor, then (iii) terminate Customer's license to the allegedly infringing Bomgar Software and repurchase the affected licenses less depreciation at the rate of thirty three percent and one third (33.33%) per year, or pro rata for part of the year, from the date of payment to the date of removal of the applicable Bomgar Software, and terminate the Agreement. If Licensor selects option (ii) or (iii), Customer shall immediately refrain from use of the allegedly infringing Bomgar Software. THIS SECTION SETS FORTH THE ENTIRE OBLIGATION OF LICENSOR AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT AND MISAPPROPRIATION CLAIMS AND ACTIONS. (d) Exclusions. Notwithstanding the foregoing, Licensor shall have no liability for (i) any modifications made to any software, hardware, firmware, other materials that are made or requested by Customer; (ii) compliance with Customer's designs, specifications, or instructions; (iii) use of technical information or technology provided by Customer; (iv) use of Software, the Hardware, or Third Party Software in a manner or with software or hardware not approved or prohibited by Licensor; (v) use of any release of the Software other than the most current made available to Customer, (vi) claims in which Customer or any affiliate of Customer has an interest. Customer agrees to indemnify, defend, and hold Licensor harmless from and against any claim, liability, cost, or expense (including attorneys' fees) related to a claim of infringement arising out of any of the principles outlined above, or (vii) use of the Software or Hardware with software or hardware not provided by Licensor or otherwise specified in the applicable Documentation. (e) Indemnification for Breach or Use of Software. Customer shall indemnify, defend, and hold harmless Licensor and all the Licensor Parties from and against any and all losses, liabilities, obligations, claims, suits, costs, expenses, damages, or judgments of any kind or nature whatsoever (including reasonable attorneys' fees and other reasonable expenses associated with, and any costs incurred pursuing indemnification claims hereunder), whether actual or threatened, resulting from or in any way connected with (i) a breach of this Agreement by Customer, its officers, directors, employees, contractors or agents, and or (ii) use of the Software, Hardware or Documentation (including any copies thereof) by Customer or any of its officers, directors, employees, contractors, agents or any third party who makes use of the Software, Hardware or Documentation, or any copies thereof; including without limitations, any of the foregoing in any way resulting from or related to any and all claims, actions, suits, or proceedings alleging fraud, breach of security, violation of applicable data privacy laws or any other applicable laws, breach of contract or negligence.

8. Term; Termination. (a) Term. Subject to the limitations contained in this Agreement, the term of each individual License granted under this Agreement begins on the earlier of the date of delivery or the Effective Date and will have a perpetual term unless earlier terminated as provided in this Agreement. (b) Termination. In addition to any other rights of termination set forth herein, this Agreement and the License granted hereunder shall terminate (i) immediately upon termination of the license to any Third Party Software to the extent such Third Party Software is necessary for part of the operation of the Software; (ii) immediately upon the breach by the Customer or any of its officers, employees and/or agents of **Sections 1,3, 4,6(c), or 9**, or (iii) upon ten (10) days after notice from Licensor to Customer in the event that Customer or any of its officers, employees and/or agents has breached or violated any provision of this Agreement (except **Sections 1,3,4,6(c) and 9**). (c) Action Upon Termination. In addition to any other remedies Licensor may have, upon termination of the License, Customer shall within five (5) days return to Licensor the Software, Documentation, Confidential Information, and all copies thereof, or upon request by Licensor, in its sole discretion, destroy the same and certify in writing by an officer of Customer that same have been destroyed together with the manner, date, and time of such destruction. Termination shall not release Customer and Customer shall remain liable to Licensor for all amounts incurred and/or due and payable as of the effective date of termination. Except as may otherwise be provided in the Third Party Software license agreements, Customer's license to Third Party Software terminates at such time as Customer's license to the Bomgar Software terminates. (d) Survival of Terms. The provisions of **Sections 2,3,4,6, 7, 8(b), 8(c), 8(d),9, 11, and 12** (and all other provisions which by their nature would extend beyond the term of this Agreement) shall survive the termination of this Agreement.

9. Confidential Information. Customer, on its own behalf and on behalf of its employees, officers, directors, agents, and affiliates, during the term of this Agreement and thereafter, covenants and agrees that it will not use, disclose, divulge, disseminate or otherwise make available to any third party any Confidential Information or otherwise make use of any Confidential Information, without the prior written consent of Licensor except as expressly allowed herein. Customer shall use the highest commercially reasonable degree of care to protect the Confidential Information, including ensuring that its employees or consultants with access to such Confidential Information have agreed in writing not to disclose or use the Confidential Information. Customer shall bear the responsibility for any breaches of confidentiality by its employees and consultants. Within fifteen (15) days after request by Licensor, Customer shall return to Licensor all originals and copies of any Confidential Information and all information, records and materials developed therefrom by Customer, or, upon request by Licensor, in its sole discretion, destroy the same and certify in writing that same have been destroyed together with the manner, date, and time of such destruction. Nothing herein shall prevent Customer from disclosing all or part of the Confidential Information as necessary pursuant to the lawful requirement of a court or governmental agency or when disclosure is required by operation of law; provided that prior to any such disclosure, Customer shall use reasonable efforts to (i) promptly notify Licensor in writing of such requirement to disclose, and (ii) cooperate fully with Licensor in protecting against any such disclosure or obtaining a protective order. For purposes hereof, "Confidential Information" shall mean all confidential, proprietary or secret information of Licensor, including without limitation, information provided to Customer that is marked or made known to be "Confidential" (or words of like effect), the Software, and the Documentation. Customer recognizes and acknowledges that the use or disclosure of Confidential Information in a manner inconsistent with the provisions of this Agreement shall cause Licensor immeasurable damage for which adequate remedy at law may not be available. Licensor shall therefore be entitled to obtain injunctive and other

equitable relief for the breach or threatened breach of this section, without the requirement to post bond; provided that if the court requires a bond, the amount shall not exceed \$1,000. The rights under this section shall be cumulative of all other rights of Licensor. The foregoing obligations shall not apply if and to the extent that Customer establishes that: (i) the information communicated was already known to Customer, without obligation to keep it confidential, at the time of its receipt directly or indirectly from Licensor; (ii) the information communicated was received by Customer in good faith from a third party lawfully in possession thereof and having no obligation to keep such information confidential; (iii) the information is independently developed by Customer without use of any Confidential Information received from Licensor; or (iv) the information communicated was publicly known at the time of its receipt by Customer or has become publicly known other than by a breach of this Agreement or other action by Customer. Customer must specifically notify Licensor in writing if only certain designated individuals are authorized to request changes or execute documents on behalf of Customer.

10. Export Controls. Customer shall comply fully with all export and import laws, regulations, orders, and policies of the U.S., or any other applicable jurisdiction. Customer shall only export or re-export the Software and Documentation, directly or indirectly, in accordance with U.S. Export Administration Regulations, as amended. Customer acknowledges and agrees it is solely responsible for compliance with any and all import and export restrictions, and other applicable laws, in the U.S. or any other applicable jurisdiction. Customer represents that neither the United States Bureau of Industry and Security nor any other federal agency has suspended, revoked or denied Customer's export privileges, and Customer will not use or transfer the Software for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license.

11. General Provisions.

(a) Independent Parties. The parties acknowledge that Licensor is an independent contractor to Customer, and Licensor may engage in other business activities at its sole discretion. This Agreement does not in any way create or constitute a relationship of employment, partnership, or a joint venture between the parties.

(b) Assignment. Customer's rights and obligations under this Agreement may not be assigned or transferred (including by operation of law) without the prior written consent of Licensor and any unauthorized assignment or transfer shall be null and void. Licensor may assign the Agreement or any of its rights and obligations under the Agreement to an affiliate or third party, which assignment shall become automatically effective upon assignment. In the case of any permitted assignment or transfer of or under this Agreement, this Agreement or the relevant provisions shall be binding upon, and inure to the benefit of, the parties and their respective successors, executors, heirs, representatives, administrators and permitted assigns. In the event Licensor permits Customer to assign this Agreement or a License granted hereunder, then the transferee must accept the terms and conditions of this Agreement, and Customer's license to use the Software shall automatically terminate upon transfer.

(c) Force Majeure. Customer agrees that Licensor shall not be liable for any losses and damage, including consequential damages, detention, or delay or failure to perform any services resulting from causes beyond the reasonable control of Licensor including, but not limited to, acts of

God, acts or omissions on the part of Customer, delays in transportation, failure to obtain supplies not caused by the negligence of Licensor, changes in governmental regulations, war, or civil disturbance.

(d) *Notices*. All notices required to be given hereunder shall be given in writing and shall be delivered either by hand, by certified mail with proper postage affixed thereto, or by facsimile (with confirmation copy sent by certified mail) addressed to the signatory at the address set forth on the Order Form, or such other person and address as may be designated from time to time in writing in accordance with this **Section 12(d)**. All such communications shall be deemed received by the other party upon the earlier of actual receipt or actual delivery.

(e) *Severability*. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions of this Agreement shall remain in full force and effect, provided that in such event the parties agree to negotiate in good faith enforceable substitute provisions which most nearly effect the parties' intent in entering into this Agreement.

(f) *Governing Law; Venue, English Language*. This Agreement shall be construed in accordance with the laws of the United States and of the State of Mississippi, applicable to contracts entered into and solely performed therein, without regard to that body of law pertaining to conflicts of law, and expressly excluding (i) the United Nations Convention on Contracts for the International Sale of Goods (ii) the 1974 Convention on the Limitation Period in the International Sale of Goods (the "1974 Convention"); and (iii) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980. Except as necessary to obtain injunctive relief, Customer irrevocably submits to the exclusive jurisdiction of the state and federal courts in the state of Mississippi and irrevocably waives all defenses relating to this jurisdiction. The parties confirm that this Agreement and all related documentation are and will be drafted in English.

(g) *Waiver*. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

(h) *No Third Party Beneficiaries*. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any party other than the parties hereto and their respective corporate affiliates, executors, heirs, representatives, administrators, successors and assigns, any rights or remedies under or by reason of this Agreement.

(i) *Attorneys' Fees*. Customer shall reimburse Licensor for all reasonable costs (including attorneys' fees) incurred by Licensor in collecting late payments from Customer. In the event any dispute or litigation arises hereunder between any of the parties hereto, their heirs, personal representatives, agents, successors or permitted assigns, the prevailing party shall be entitled to all reasonable costs and expenses incurred by it in connection therewith (including, without limitation, all reasonable attorneys' and paralegals' fees and costs incurred before and at any trial, arbitration, or other proceeding and at all tribunal levels), as well as all other relief granted in any suit or other proceeding.

(j) *License to Government*. If any Software or Documentation are acquired by or on behalf of a unit or agency of the United States Government (the "Government"), the Government agrees that such software or documentation is "commercial computer software" or "commercial computer software

documentation" and that, absent a written agreement to the contrary, the Government's rights with respect to such software or documentation are limited by the terms of this Agreement, pursuant to FAR § 12.212(a) and/or DFARS § 227.7202-1 (a), as applicable. Any technical data related to such software or documentation are "Limited Rights Data" pursuant to FAR § 52.227-14 with Alternate II, or, if applicable, are provided to the Government subject to DFARS § 252.227-7015. Any use, modification, reproduction, release, performing, displaying, or disclosing of the Software by the Government shall be governed solely by the terms of this Agreement.

(k) *Integration and Amendment.* This Agreement and written documents referenced herein (including the Order Form) constitute the entire Agreement of the parties superseding and extinguishing all prior agreements or understandings, representations or warranties, relating to the subject matter hereof. This Agreement may not be modified, or amended except (i) by written agreement specifically referring to this Agreement signed by the parties hereto; (ii) by Customer's acceptance of a subsequent electronic agreement provided by Licensor with respect to the Software; or (iii) ten (10) business days after Licensor posts an amendment to this Agreement to a webpage which Licensor shall notify Customer by email to Customer's email address specified on the Order Form, unless Customer notifies Licensor in writing that Customer does not accept such amendment, in which case this Agreement shall immediately terminate. Customer represents and acknowledges that, in entering into this Agreement, it did not rely on any representations or warranties other than those explicitly set forth in this Agreement. CUSTOMER HEREBY AGREES THAT ANY VARYING OR ADDITIONAL TERMS CONTAINED IN ANY PURCHASE ORDER OR OTHER WRITTEN NOTIFICATION OR DOCUMENT ISSUED BY CUSTOMER IN RELATION TO THE SOFTWARE LICENSED OR HARDWARE PURCHASED HEREUNDER SHALL BE OF NO FORCE OR EFFECT.

(l) *Independent Audit.* Licensor shall have the right, upon reasonable advance written notice, to have an independent auditor verify Customer's compliance with this Agreement. Customer shall make all applicable books and records available for such inspection during normal business hours at Customer's principal place of business. Any such audit shall be at the expense of Licensor, unless such audit discloses an underpayment by the Customer for the audited period in excess of five percent (5%) or a breach by Customer of **Sections 1,4,5,7(c) or 10**, in which case Customer shall reimburse Licensor for such expenses. If the audit discloses any underpayment by Customer, Customer shall promptly make payment to Licensor of such underpayment, together with interest.

(m) *Public Relations.* Subject to the other terms of this Agreement, Customer agrees to allow Licensor to use Customer's name, logo, and a brief description of Customer's business operations in marketing and public relations' materials such as press releases, advertising, printed collateral, and/or website copy (collectively, "Copy"). Licensor is hereby allowed to refer to Customer as a customer of Licensor in such Copy. Customer further agrees to provide the following marketing assistance:

(i) Customer agrees to the development and joint issuance of two news-oriented press releases: (A) a selection release (issued within thirty (30) days of the Effective Date); and (B) a "go live" release (issued within ninety (90) days following "go live" date). The press release will include a quote attributed to a high-level executive expressing reasons why Customer selected Licensor's solution;

(ii) A high-level executive of Customer will serve as spokesperson for media inquiries related to the selection and implementation of Licensor's solution; and

(iii) Customer agrees to serve as the subject for a written case study and video case study on the selection and implementation of Licensor's solution.

(n) Construction. Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party. Every reference to "including" means "including, without limitation."

(o) Representations. Customer represents and acknowledges that (i) it has read and understands this Agreement; (ii) it has had an opportunity to have its legal counsel review this Agreement; (iii) that this Agreement has the same force and effect as a signed agreement; (iv) issuance of this license does not constitute general publication of the Software, the Documentation or other Confidential Information; and (v) the individual accepting this Agreement on behalf of a corporation or other legal entity personally represents that he or she is duly authorized to accept this Agreement on behalf of such entity and that this Agreement is binding upon such entity.

(p) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but which together shall constitute the same instrument. Each party agrees to be bound by its own facsimiled signature, and agrees that it accepts the facsimiled signature of the other party hereto.

12. Definitions. Except as may otherwise be defined herein, the following terms are defined for the purposes of this Agreement as follows:

"Agreement" means this End User License Agreement and Order Form constituting the entire agreement between the Licensor and the Customer pertaining to the matters set forth therein.

"Bomgar Software" means the package of proprietary computer software programs, in Object Code as identified on the Order Form. Unless specifically indicated or the context requires otherwise, the term Bomgar Software shall include all Upgrades to the Bomgar Software provided to Customer by Licensor.

"Confidential Information" has the meaning set forth in **Section 9**.

"Customer Services Plan" means a written plan as agreed upon between Licensor and Customer regarding the provision of Maintenance Services in addition to, or in substitution of, the specific Maintenance Services as described in this Agreement.

"Documentation" means the written or electronic documents, help files, and other textual matter that describes the specifications, functionality, and limitations, which are included with the Software. Documentation shall not include Source Code.

"Hardware" means the computer equipment and firmware and software included therewith manufactured by Licensor, its affiliate(s) or third-party original equipment manufacturer(s) and sold by Licensor to Customer as more particularly identified on the Order Form.

“License” means any personal, nonexclusive, nontransferable, nonassignable license or licenses for Customer's internal use only granted by Licensor to Customer to use the Software subject to the terms and conditions of this Agreement.

“License Fee” means the fee (as set forth on the Order Form) paid by Customer to Licensor for the license to the Software granted herein.

“Log-In User(s)” means the individual user of the Software that is logged in to use the Software.

“Maintenance Services” means the services provided by Licensor to Customer as described in **Section 3**.

“Object Code” means the binary machine-readable version of the Software.

“Order Form” means the Licensor produced quote/order, or similar document, between Licensor and Customer referencing the licensing of the Software, any Hardware purchases, Licensee Fee(s), and any Maintenance Services fees, and accepted in writing by Customer or through a click through acceptance. The Order Form is a material part of this Agreement.

“Software” means the package of computer software programs, in Object Code form, as identified on the Order Form. Unless specifically indicated or the context requires otherwise, the term Software shall include all Upgrades to the Software provided to Customer by Licensor. Software includes all Third Party Software and all terms applicable to Software generally shall apply to Third Party Software, except as expressly stated herein.

“Source Code” shall mean those statements in a computer language, which when processed by a compiler, assembler, or interpreter become executable by a computer.

“Third Party Software” means the package of computer software program(s) in object code or restricted code form that are owned and licensed by parties other than Licensor and that are either included with the Hardware, integrated with or made part of the Software, or otherwise necessary for the operation of the Software. Unless specifically indicated or the context requires otherwise, the term Third Party Software shall include all Upgrades to the Third Party Software provided to Customer by Licensor or by the applicable third party owner or licensor.

“Upgrade” means any modification, correction, enhancement, deletion, or substitution to Software, including but not limited to, any data file or module thereto, that may be provided by Licensor or a third party, whether under this Agreement, or any other agreement between Customer and Licensor. Upon the installation of any Upgrade of the Software, Customer’s License to previous versions of the Software terminates immediately.