

SOFTWARE LICENSE AGREEMENT

Idera, Inc.

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BY PROCEEDING TO INSTALL OR USE THE SOFTWARE IN WHICH THIS AGREEMENT IS ELECTRONICALLY EMBEDDED, YOU HEREBY ACKNOWLEDGE AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, THEN CLICK "DO NOT ACCEPT," DO NOT INSTALL OR USE THE SOFTWARE. BY CLICKING ON "ACCEPT" YOU ACKNOWLEDGE AND AGREE THAT ON BEHALF OF YOURSELF AND YOUR EMPLOYER YOU HAVE READ THIS SOFTWARE LICENSE AGREEMENT (THIS "AGREEMENT") CAREFULLY, THAT YOU AND YOUR EMPLOYER AGREE TO BE BOUND BY THIS AGREEMENT AND THAT IF APPLICABLE YOUR EMPLOYER HAS INFORMED YOU OF THE RELEVANT PROVISIONS OF THIS AGREEMENT WHICH MAY BE APPLICABLE TO YOU. THIS AGREEMENT, SHALL GOVERN YOUR INSTALLATION AND USE OF THE SOFTWARE IN WHICH THIS AGREEMENT IS ELECTRONICALLY EMBEDDED UPON YOUR AGREEMENT TO PURCHASE SUCH SOFTWARE. IDERA URGES YOU TO CAREFULLY READ THIS AGREEMENT AND ASSESS YOUR USE OF THE SOFTWARE PRIOR TO INSTALLING OR USING THE SOFTWARE OR MAKING ANY DECISION TO PURCHASE IT.

THIS SOFTWARE LICENSE AGREEMENT, dated as of the date of Customer's purchase of a permanent License Key for use the Licensed Software, between Idera, Inc., a Texas corporation (including its divisions, Idera, R1Soft, PointSecure and VolumeShield, "Idera"), and the customer set forth on the purchase order pursuant to which the licenses for the Licensed Software were purchased ("Customer"), sets forth the terms and conditions whereby Idera agrees to provide to Customer and Customer agrees to acquire from Idera one or more licenses to use certain software, documentation and maintenance services related thereto, owned or licensed by Idera, as set forth on the Purchase Orders delivered in connection with this Agreement. Only the terms and conditions contained in the Purchase Order shall supersede any conflicting terms and conditions in this Agreement but only to the minimum extent necessary to harmonize the terms in such Purchase Order with the terms contained herein. The Purchase Order together with the terms and conditions of this Agreement, shall constitute and be construed as a single agreement consisting of the terms and conditions contained in the Purchase Order together with the terms of this Agreement. This Agreement specifically supersedes and replaces the terms and conditions of all prior agreements between Idera and Customer, including, but not limited to, any demo or trial agreements which may accompany or are embedded in Idera's products or which have been previously in force between the parties. In consideration of the mutual promises and agreements contained herein, the parties hereto also agree as follows:

GENERAL TERMS AND CONDITIONS

1. Definitions –

- (a) "Agreement" means this master software license agreement, together with all Exhibits, Schedules, Annexes, Purchase Orders made a part hereof in accordance with the terms of this Agreement and all amendments, modifications, supplements and alterations thereto effected in accordance with the terms of this Agreement.
- (b) "Confidential Information" means all technical and non-technical information in both tangible and intangible form, including, but not limited to, product design information, software code, technical information, customer information, cost and pricing information, financial information, the terms of this Agreement and the results derived from or methodology employed by Customer in conducting any benchmark testing of the Licensed Software; provided that the term "Confidential Information" shall not include information which the recipient can show by reasonable proof (i) to have been known by the recipient prior to the time of disclosure by the disclosing party, (ii) to have become part of the public domain through no fault or breach of this Agreement by the recipient, (iii) to have been disclosed to the recipient in good faith by a third party who is not under any obligation of confidence or secrecy to the disclosing party at the time such third party discloses the information to the recipient or (iv) to have been compelled to be produced by a court of competent jurisdiction, provided that the recipient shall first give notice of any such request or order of the court to give the disclosing party an opportunity to contest or limit said request or order of the court.
- (c) "Critical Errors" means any error, defect or omission that (i) is discovered in the Licensed Software, (ii) is reproducible and (iii) prevents its operation substantially in accordance with the Licensed Documentation.
- (d) "Designated Hardware" means, with respect to each Licensed Software, the server or instance, as applicable, specified in writing by Customer in connection with the generation of the License Key by Idera for such Licensed Software.
- (e) "Licensed Documentation" means the published user manuals that Idera makes generally available for the Licensed Software.
- (f) "Licensed Material" means the Licensed Software and the Licensed Documentation.
- (g) "Licensed Software" means the machine-readable object code version of (i) the software specified on each Purchase Order, whether embedded on disc, tape, internet download site or other media and (ii) all Updates, revisions, enhancements, improvements and modifications to and programming fix for the Licensed Software that Customer is entitled to receive pursuant to Section 4 of this Agreement.
- (h) "Maintenance Services" means the services set forth in Section 4 hereof.
- (i) "Maintenance Term" means the period of time for which Customer has purchased Maintenance Services, as evidenced by the Purchase Order executed and delivered by Idera and Customer in connection therewith, together with all renewals effected in accordance with Section 4 of this Agreement.
- (j) "Purchase Order" means (i) Idera's "Price Quote and Purchase Order," as such purchase order may be amended, supplemented or modified from time to time in accordance with this Agreement or (ii) any other non-Idera purchase order delivered by Customer to Idera but solely to the extent permitted by and delivered in accordance with Section 16.
- (k) "Update" means any revision, enhancement, improvement or modification to or programming fix for the Licensed Software or Licensed Documentation which Idera makes generally available, incorporates into and makes a part of the Licensed Software or Licensed Documentation and does not separately price or market.

2. LICENSE –

- (a) **Use** – Subject to the terms and conditions of this Agreement and Customer's full compliance herewith and according to the scope, time period and other terms indicated on the applicable Purchase Order attached hereto, Idera hereby grants Customer and Customer hereby accepts from Idera, a perpetual, non-exclusive and non-transferable right and license to install and use the Licensed Material purchased by Customer on the applicable Designated Hardware that is possessed and operated by or on behalf of Customer and to copy the Licensed Material as permitted by this Agreement. Customer's right to use the

Licensed Material shall extend to (i) use by third parties under contract with Customer to provide outsourcing services for Customer's own internal business operations and (ii) solely in the case of a license to use Idera's backup software products, Customer's provision of data back-up and protection services to its end user customers using servers and systems owned and controlled by Customer; provided, in the case of both clauses (i) and (ii) above, such third parties have agreed to abide by the terms of this Agreement, including the confidentiality provisions contained herein.

- (b) **Copies and Disaster Recovery** -- Customer may install and use each item of Licensed Software, as applicable, (i) on one instance per license for all Licensed Software licensed by Idera on a per-instance basis, (ii) or on one CPU with one user per license for all Licensed Software licensed by Idera on a per-user basis or (iii) on one CPU without regard to the number of users for all Licensed Software licensed by Idera on a per-CPU-basis. In no event shall Customer install or operate the Licensed Software on more than one CPU, instance or user, as applicable, per license purchased. Customer is not required to disclose to Idera the serial numbers of the CPUs upon which the Licensed Software is installed; provided, however, that Customer shall not remove the Licensed Software from such CPUs and install them on new CPUs without obtaining the prior consent of Idera and a new License Key. Customer may make a reasonable number of back-up archival copies of the Licensed Software and any related Updates. In the event of any disaster that results in the complete failure of Customer's computer system, Customer's right to use the Licensed Software shall include, during the pendency of such disaster, the temporary right to use the Licensed Software on hardware substantially similar to the hardware upon which the Licensed Software was installed immediately prior to such disaster. Customer shall reproduce all confidentiality and proprietary notices on each of the copies permitted hereunder and maintain an accurate record of the location of each of the copies. Customer shall not otherwise copy or duplicate the Licensed Material. Customer shall not reverse engineer, disassemble, translate, modify, adapt, or decompile the Licensed Material or apply any procedure or process to the Licensed Material in order to ascertain, derive, and/or appropriate the source code or source listings for the Licensed Software or a trade secret or other proprietary information contained in the Licensed Software.
- (c) **Maintenance Optional** -- Customer's right to use the Licensed Software shall survive any election by Customer to terminate or not obtain Maintenance Services from Idera.

3. DELIVERY AND PAYMENT TERMS --

- (a) **Delivery** -- Delivery terms for all products and services provided hereunder shall be fob delivery to a common carrier.
- (b) **Payment** -- Upon execution of each Purchase Order by both parties, Idera shall deliver an invoice to Customer specifying the license fees and maintenance fees payable pursuant to such Purchase Order. Customer shall pay all license fees and maintenance fees specified therein within 30 days of Customer's receipt of such invoice. All fees payable by Customer in respect of any implementation or training services provided hereunder ("Ancillary Services") may be separately invoiced. Customer's payment obligation with respect to all license and maintenance fees owing hereunder shall be independent of the provision of Ancillary Services, whether or not such Ancillary Services are separately invoiced. Any late payment of any amount owing hereunder shall accrue interest at a rate equal to the lesser of (i) 15% per annum and (ii) the maximum rate permitted by law.
- (c) **Taxes** -- All payments referred to in this Agreement are exclusive of value added tax, sales tax and any other applicable taxes, duties or imposts which (with the exception only of those based on Idera's income) shall also be payable by Customer in accordance with applicable law.

4. **MAINTENANCE** -- Idera does not warrant that the Licensed Software will operate error-free or may be used error-free. Upon Customer's payment of the maintenance fees associated with the Maintenance Term purchased by Customer for the Licensed Software specified in each

Purchase Order or purchase confirmation, Idera shall provide Maintenance Services in accordance with this Section 4 and in accordance with the additional Maintenance Services terms specified in such Purchase Order or purchase confirmation.

- (a) **Maintenance Agreement** - Idera or its authorized representative will provide Maintenance Services for the Licensed Software during each Maintenance Term. Maintenance Services includes problem determinations, reasonable problem resolutions, provisioning of software program temporary fixes and new releases. Maintenance Services shall also include the additional Maintenance Service terms expressly set forth in writing in each Purchase Order or purchase confirmation, which are hereby incorporated herein by reference. Maintenance Services shall entitle Customer to receive, at no additional cost, all Updates.
- (b) **Additional Maintenance Term** -- Upon expiration of each Maintenance Term, Maintenance Services shall automatically renew for an additional 12-month Maintenance Term and Idera will invoice Customer unless Idera or its authorized representatives are notified by Customer in writing at least 60 days prior to the expiration of the current Maintenance Term that Customer will not purchase Maintenance Services for another Maintenance Term.
- (c) **Reinstatement** -- If Customer terminates Maintenance Services or allows Maintenance Services to lapse, Customer may, at its option, reinstate Maintenance Services within one year of such termination or lapse by providing notice to Idera and making payment of Idera's then-current list maintenance fees for the upcoming 365-day period plus an amount equal to 1.5 times the maintenance fees that would have accrued during the period subsequent to such termination or lapse, had Customer not terminated Maintenance Services or allowed such Maintenance Service to lapse.

5. **PROPRIETARY RIGHTS** -- Customer shall not acquire, by virtue of this Agreement, any other right or license than as expressly provided herein. Customer shall not reproduce the Licensed Material or other confidential or proprietary information of Idera, except as provided in this Agreement. All proprietary rights in and to the Licensed Material, all derivatives, translations, modifications, adaptations, improvements, enhancements or developments thereof and all confidential or proprietary information of Idera, including without limitation, all rights under and with respect to patents, copyrights, trademarks and rights under the trade secret laws of any jurisdiction shall remain the property of Idera or its applicable licensor, whether recognized by or perfected under applicable local law. Customer shall promptly notify Idera of any infringement of Idera's proprietary rights of which it becomes aware.

6. LIMITED WARRANTIES

- (a) **Warranty** - Idera warrants to Customer that during the first 30 days after purchase of each Licensed Software (the "Warranty Period") such Licensed Software will perform substantially as described in the accompanying Licensed Documentation. Idera does not warrant that (i) the Licensed Software will satisfy or may be customized to satisfy any of Customer's requirements or any other particular use or (ii) the use of the Licensed Software will be uninterrupted or error-free. Laws from time to time in force may imply warranties that cannot be excluded or can only be excluded to a limited extent. This Agreement shall be read and construed subject to any such statutory provisions.
- (b) **Year 2000 Compliancy** - Idera warrants to Customer that the Licensed Software conforms to the recognized standard for year 2000 compliance insofar as a 4-digit year or century code is used throughout the Licensed Software.
- (c) **Remedies** -- If (i) at any time during a Maintenance Term, the Licensed Software contains Critical Errors which make the Licensed Software unable to perform substantially as described in the accompanying Licensed Documentation, (ii) during the Warranty Period, Idera breaches any of the warranties set forth in clause (a) above or (iii) at any time during the term of this Agreement, Idera breaches any of the warranties set forth in clause (b) above, then Customer shall promptly notify Idera of

such nonconformance or breach. To the extent that such Critical Errors exist and are solely Idera's responsibility, Idera shall (A) use all commercially reasonable efforts to correct such Critical Error within 30 days of notification or (B) provide Customer within 30 days of notification with a plan acceptable to Customer for correcting such Critical Errors. If the Critical Errors are not corrected or if an acceptable plan for correcting such Critical Errors is not established, Idera shall replace any defective Licensed Software or, if not practicable, accept the return of the defective Licensed Software and refund to Customer the amount paid for the defective Licensed Software, less depreciation based on a 3-year straight line schedule. Idera's obligations under this Section 6(c) shall be waived in the event of (I) any problem with data on disk files or diskettes which have been caused by deficiencies in Designated Hardware or Designated Hardware manufacturer's products, or by improper handling or use of the software media by Customer, or (II) an unauthorized alteration or revision to Licensed Software or to Customer's computer system by Customer or its employees. Customer acknowledges that this Section 6(c) sets forth Customer's sole and exclusive remedy, and Idera's and its authorized representatives' exclusive liability, for any breach of warranty or other failure of the Licensed Software to function properly.

- (d) **Disclaimer - EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL WARRANTIES, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE LICENSED MATERIAL, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY IDERA OR ITS AUTHORIZED REPRESENTATIVES OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE) ARE HEREBY OVERRIDDEN AND DISCLAIMED.**

7. INDEMNITY

- (a) **Indemnity** – Idera agrees, subject to this Section 7 and Section 8 below, to defend and indemnify Customer from and against all damages, judgments, awards and settlements arising from the violation of any third party's trade secrets or infringement of such third party's copyright or patents by the Licensed Material. Customer shall promptly notify Idera in writing of each alleged violation or infringement upon learning that a claim may be asserted and Idera or its authorized representative may, at its option, have sole control over the defense of the claim and any negotiation for its settlement or compromise. In no event shall Customer take any action that is contrary to Idera's interest.
- (b) **Alternative Remedy** - If a claim described in Paragraph 7(a) may or has been asserted, Customer will permit Idera, at Idera's option and expense, to (i) procure the right to continue using the Licensed Material, (ii) replace or modify the Licensed Material to eliminate the infringement while providing functionally equivalent performance or (iii) accept the return of the Licensed Material and refund to Customer the amount actually paid to Idera or its authorized representative for such Licensed Material less depreciation based on a 3-year straight-line depreciation schedule.
- (c) **Limitation** - Idera shall have no indemnity obligation to Customer hereunder if the violation or infringement claim results from (i) a correction or modification of the Licensed Material not provided by Idera or its authorized representative, (ii) the failure to promptly install an Update or (iii) the combination of the Licensed Software with other non-Idera software.

8. NO CONSEQUENTIAL DAMAGES - UNDER NO CIRCUMSTANCES WILL IDERA OR ITS AUTHORIZED REPRESENTATIVES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS BY CUSTOMER OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, PROFITS, USE OF MONEY OR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, BREACH OF

CONTRACT, BREACH OF ANY INTELLECTUAL PROPERTY RIGHT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, EXCEPT ONLY IN THE CASE OF PERSONAL INJURY WHERE AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY INCURRED IN ANY ACTION OR PROCEEDING BY IDERA OR ITS AUTHORIZED REPRESENTATIVE EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE SPECIFIC LICENSED SOFTWARE THAT DIRECTLY CAUSED THE DAMAGE.

9. CONFIDENTIALITY

- (a) **Confidentiality.** – Customer acknowledges that the Products incorporate confidential and proprietary information developed or acquired by or licensed to Idera and that all results of testing of the Products, whether performed by Customer or another third party, are confidential. In no event will Customer publish or disclose the results of any testing or performance specifications of the Product without Idera's express prior written consent. Each party shall take all reasonable precautions necessary to safeguard the confidentiality of all Confidential Information disclosed by the other party, including those precautions (i) taken by the disclosing party to protect its own Confidential Information and (ii) which the disclosing party or its authorized representative may reasonably request from time to time. Neither party shall allow the removal or defacement of any confidentiality or proprietary notice placed on the Confidential Information disclosed by the disclosing party. The placement of copyright notices on Confidential Information shall not constitute publication or otherwise impair their confidential nature of such information.
- (b) **Disclosure** - If an unauthorized use or disclosure of the disclosing party's Confidential Information occurs within the recipient party's enterprise, the recipient party will immediately notify the disclosing party or its authorized representative and take, at recipient party's expense, all steps which may be available to recover such Confidential Information and to prevent its subsequent unauthorized use or dissemination.

10. TERMINATION – Upon prior written notice to Idera, Customer may terminate this Agreement without any right to refund, except as otherwise expressly set forth in this Agreement. If Customer or any of Customer's employees, consultants, authorized representatives or permitted third parties breach any term or condition of this Agreement, Idera may terminate this Agreement, without judicial or administrative resolution or obligation to refund. This Agreement will terminate automatically if Customer ceases to do business, becomes insolvent, goes or is put into receivership or liquidation, passes a resolution for its winding up (other than for the purpose of reconstruction or amalgamation) or for any of the foregoing, makes an arrangement for the benefit of its creditors, enters into bankruptcy, suspension of payments, moratorium, reorganization or any other proceeding that relates to insolvency or protection of creditors' rights or takes or suffers any similar action in consequence of debt. Upon the termination of this Agreement for any reason, all rights granted to Customer hereunder will cease, and Customer will promptly (i) purge the Licensed Software and any related Updates from the Designated Hardware and all of Customer's other computer systems, storage media and other files, (ii) destroy the Licensed Material and all copies thereof and (iii) deliver to Idera an affidavit certifying that Customer has complied with these termination obligations. The provision of Sections 7 through 12 shall survive the termination of this Agreement.

11. U.S. EXPORT RESTRICTIONS - Customer acknowledges that the Licensed Materials and all related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations. Customer covenants and agrees to comply with all import and export control regulations of the United States with respect to the Licensed Material. Customer acknowledges that it may not re-export or divert the Licensed Material or any related technical information, document or material, or direct derivatives thereof, to any country set forth on the U.S. Department of Commerce's list of T-7 countries (currently, Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria), including any future changes to the government's list of T-7 countries.

12. EQUITABLE RELIEF – The parties recognize that Sections 5, 9 and 11 are necessary for the protection of the business and goodwill of the

parties and are considered by the parties to be reasonable for such purpose. The parties agree that any breach of such Sections would cause the other party substantial and irreparable damage and therefore, in the event of any such breach, in addition to other remedies which may be available, the non-breaching party shall have the right to seek specific performance and other injunctive and equitable relief in a court of law.

13. LICENSE KEY - Customer acknowledges that a special security code owned and controlled by Idera (the "License Key") is required to render the Licensed Software permanently operational on the Designated Hardware. Once utilized to permanently install the Licensed Software on the Designated Hardware, no other password will be required for the Licensed Material to operate on the Designated Hardware and no other disabling device will prevent the Licensed Software from operating on the Designated Hardware. Customer shall not attempt to crack, alter or otherwise derive the License Key. Idera shall promptly provide Customer with all necessary License Keys upon purchase of the Licensed Software or upon any authorized transfer of the Licensed Software to any other hardware equipment permitted under Section 2(b) of this Agreement.

14. UPGRADES - All pricing is determined based upon Idera's then-current list price at the time of purchase. Copies of Idera's price list are available to the Customer upon request. If Customer adds additional user profiles, CPUs or instances, as applicable, above the maximum number prescribed in Idera's price list, then Customer will immediately notify Idera and deliver a Purchase Order to Idera specifying the number of additional user profiles, CPUs or instances, as the case may be, and will pay Idera an additional charge based on Idera's price list in effect at such time.

15. ENFORCEABILITY - If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, void, invalid or illegal, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

16. ENTIRE AGREEMENT

(a) Customer acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms. Customer and Idera further agree that, subject to clause (b) below, this Agreement, together with all Idera purchase orders delivered in connection herewith and all Exhibits, Schedules and Annexes hereto and all Purchase Orders duly executed by both parties, delivered to Idera and attached to the Agreement in accordance with the terms of this Agreement, is the complete and exclusive statement of the agreement between Customer and Idera and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement, including any shrink-wrap agreements, click-wrap agreements or demo or trial agreements which may accompany the Licensed Material or which may have been previously in force between the parties. Subject to clause (b) below, this Agreement may not be amended, modified, supplemented or altered except by a written agreement that is signed by both parties and which expressly refers to this Section 16.

(b) UNDER NO CIRCUMSTANCES MAY THE TERMS OF THIS AGREEMENT OR ANY IDERA PURCHASE ORDER BE AMENDED, MODIFIED, SUPPLEMENTED, ALTERED, SUPERSEDED OR REPLACED BY ANY NON-IDERA INVOICE OR NON-IDERA PURCHASE ORDER OR OTHER SIMILAR INSTRUMENT DELIVERED BY CUSTOMER TO IDERA. EACH PARTY ACKNOWLEDGES AND AGREES THAT, AS A CONVENIENCE TO CUSTOMER AND ONLY FOR CUSTOMER'S INTERNAL ACCOUNTING PROCEDURES, CUSTOMER MAY DELIVER TO IDERA A CUSTOMER INVOICE OR CUSTOMER PURCHASE ORDER OR OTHER SIMILAR DOCUMENT FOR ANY TRANSACTION CONTEMPLATED HEREUNDER AND THAT NO ACTION BY IDERA, INCLUDING IDERA'S DELIVERY OF ANY LICENSED

MATERIALS OR ACCEPTANCE OF PAYMENT, SHALL BE DEEMED TO BE ACCEPTANCE OF ANY OF THE TERMS OR CONDITIONS CONTAINED IN SUCH CUSTOMER INVOICE OR CUSTOMER PURCHASE ORDER OR OTHER SIMILAR INSTRUMENT AND SUCH TERMS AND CONDITIONS SHALL BE VOID AND OF NO FORCE OR EFFECT, UNLESS ACCEPTED BY IDERA PURSUANT TO A WRITTEN INSTRUMENT SIGNED BY BOTH PARTIES AND EXPRESSLY REFERRING TO THIS SECTION 16.

17. MISCELLANEOUS

- (a) Customer may not assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder to any other person or entity without Idera's prior written consent. In the Event of any merger of Customer or a sale of substantially all of the assets of Customer in which Customer is not the surviving entity, Customer may assign or transfer any licenses granted under this Agreement prior to the date of such merger or sale; provided, however, Customer may not transfer any other rights or obligations hereunder, including but not limited to the right to purchase Maintenance Services or additional Licensed Material under the terms of this Agreement. This Agreement shall be binding upon the parties hereto and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.
- (b) All notices or approvals required or permitted under this Agreement must be given in writing and delivered to the appropriate party at the address set forth below the signatures to this Agreement.
- (c) The waiver of compliance with or breach of any term or condition of this Agreement or the failure of a party to exercise any right under this Agreement shall in no event constitute a waiver as to any other failure to comply or breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement. Unless otherwise specified herein, the rights and remedies of Idera set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it at law or in equity.
- (d) THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULES. IDERA AND CUSTOMER HEREBY AGREE ON BEHALF OF THEMSELVES THAT THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE FOR ANY LITIGATION ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF SHALL BE IN AN APPROPRIATE FEDERAL OR STATE COURT IN THE STATE OF TEXAS LOCATED IN HARRIS COUNTY.**
- (e) Unless otherwise specified herein, the rights and remedies of Idera set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it at law or in equity.
- (f) This Agreement is not intended to be nor shall it be construed as a joint venture, association, partnership or other form of business organization or agency relationship.
- (g) Headings used in this Agreement are for reference purposes only and shall not be used to modify the meaning of the terms and conditions of this Agreement. This Agreement may be executed in counterparts, all of which shall constitute one single agreement between the parties hereto.
- (h) In consideration of the mutual covenants contained herein, including the rights and licenses granted to Customer herein, the parties hereto do hereby agree that for a period of two years following Customer's most recent purchase of any licenses or services, including Maintenance Service, from Idera or its authorized representative, Customer shall not solicit, induce, hire, engage, or attempt to hire or engage any employee of Idera, or in any other way interfere with Idera's contractual or employment relations with any of its employees, nor will Customer hire or engage or attempt to hire or engage any individual who was an employee of Idera at any time during such two-year period.