



PARTNER TERMS AND CONDITIONS

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING ACCESSING OR CONSUMING THE SOFTWARE OR SERVICES FROM RANCHER. BY CLICKING YOUR ASSENT OR USING, ACCESSING OR CONSUMING THE RANCHER SOFTWARE OR SERVICES, YOU SIGNIFY YOUR ASSENT TO AND ACCEPTANCE OF THIS AGREEMENT AND ACKNOWLEDGE YOU HAVE READ AND UNDERSTAND THE TERMS. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU MUST NOT USE, ACCESS OR CONSUME THE RANCHER SOFTWARE OR SERVICES.

1. The Mechanics of the Agreement

- 1.1 Purpose.** Rancher designs programs for its partners ("**Programs**") to promote Rancher Products, enhance the satisfaction of Rancher's End Users and augment the expertise and resources of partners. These Partner Terms and Conditions, along with a duly executed Partner Acceptance Document, authorizes you to participate in a Rancher Partner Program as set forth in the Partner Acceptance Document (or as otherwise agreed in writing) in the Territory authorized by Rancher and sets forth the terms of your participation. If no Territory is identified above, the Territory will default to the country based on your address. The Rancher Partner Terms and Conditions is comprised of the terms and conditions contained herein including the Program Appendix, any referenced documents or links, and any Rancher transaction documents entered into pursuant to these terms (collectively, the "**Agreement**").
- 1.2 Structure.** This Agreement consists of three parts and Partner's participation in a Program(s) is governed by them: (a) Partner Acceptance Document including these Partner Terms and Conditions; (b) the applicable Program Appendix(ices) which have been agreed to by the Parties; and (c) any transaction documents (subject to this Agreement) for Rancher Products and/or Services (each, an "**Order Form**").

2. Term

- 2.1 Agreement Term.** This Agreement begins on the Effective Date and continues until the expiration or termination of all applicable Program Appendices ("**Term**"). The term of each Program Appendix is independent of the term of any other Program Appendix.

3. Fees and Payment

- 3.1 Payment of Fees.** Fees, if applicable, will be as indicated in each appropriate Program Appendix and/or Order Form, and will be due and payable as set forth in such Program Appendix or Order Form subject to this Agreement. All amounts owed under the Agreement are to be paid in U.S. Dollars.
- 3.2 Billing, Payment, and Taxes.** If Partner acquires Rancher Products and/or Services directly from Rancher, Rancher will invoice Partner as set forth herein and may require receipt of a purchase order for any amounts due to Rancher; provided, however, that any terms contained in a purchase order will not amend, supplement or modify the terms of this Agreement or be binding on Rancher. Partner must pay all sums due to Rancher either (a) net thirty (30) days from the date of invoice if Rancher has approved Partner for such credit terms or (b) if Partner has not been approved for net thirty (30) day credit terms, then on a prepaid basis, in each case without regard to when or whether Partner collects payment from its customer(s). Partner will reimburse Rancher for all costs and expenses incurred by Rancher in connection with the collection of overdue amounts, including without limitation reasonable attorneys' and/or legal fees. All amounts payable shall be exclusive of any Taxes. Partner will pay to Rancher, in addition to any amounts due to Rancher for Rancher Products or Services, an amount equal to any Taxes arising from or relating to this Agreement that are paid or are payable by Rancher unless Partner presents Rancher with a valid tax exemption or resale certificate. In the event of a cross-border transaction, if Partner is required under and applicable law or regulation, domestic or foreign, to withhold or deduct any portion of the payments due to Rancher, then the sum payable to Rancher will be increased by the amount necessary for Rancher to receive an amount equal to the sum it would have received had no withholdings or deductions been made, unless Partner provides Rancher with the original withholding tax documentation that is sufficient for Rancher to apply for and obtain a tax credit for the full withheld amount. The Parties will work together in good faith to minimize adverse tax consequences to Rancher created by cross-border transactions. Any payments more than thirty (30) days past due will be subject to a late fee of one and one-half percent (1½%) per month, or the maximum rate allowable by law, whichever is less.

4. Termination

- 4.1 Termination by Rancher or Partner.** Rancher may (without prejudice to any other right or remedy) terminate this Agreement in whole or in part (including any Program Appendix and Partner's participation in any Program) for any reason at any time upon ninety (90) days prior written notice to Partner. If Partner or Rancher breaches the terms of this Agreement, and the breach is not cured within thirty (30) days after written notice of the breach is given to the breaching party (except for payment obligations, in which case five (5) days), then the other party may, by giving written notice of termination to the breaching party, terminate this Agreement in whole or in part (including any Program Appendix and Partner's participation in any Program) without prejudice to any other right or remedy; unless a shorter cure period is otherwise stated under this Agreement or in the applicable Program Appendix and provided that no cure period is required for a breach of Sections 6, 6.4, 7.2 or 10.3 hereof.
- 4.2 Effect of Agreement Termination or Expiration.** Termination or expiration of this Agreement in whole for any reason will immediately terminate Partner's participation in any and all Programs. Upon such termination or expiration, Partner will immediately (i) cease referring to itself as a Rancher Partner, or any other title associated with the Program, and using those titles in any communication or advertising; (ii) to the extent applicable, cease all promotion, demonstration, sale(s) and distribution of the Rancher Products and/or Services; (iii) cease all use of the Rancher Marks; (iv) return or destroy, at Rancher's option, all printed materials containing Rancher Marks, including all documentation and Promotional Materials; and (v) remit all fees due to Rancher



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within fifteen (15) days of such termination or expiration. If the termination is not the result of a Partner breach, the Partner will be entitled to sell, for a period of no longer than sixty (60) days after termination, any of its inventory of Rancher Products (subject to this Agreement) for which Rancher has been fully paid and that are required to fulfill any unperformed contracts of Partner outstanding at the date of termination or expiration. All rights and obligations of the Parties under this Agreement and all applicable Program Appendices will terminate immediately, except that obligations under Sections 3, 5.4, 6, 7.3, 7.4, 8, 9, 10, 11, and 13 hereof, and any Partner payment obligations will survive such termination or expiration. **Termination of this Agreement shall not affect any agreements between Rancher and any End User.**

- 4.3 No Compensation.** Upon termination or expiration of this Agreement for any reason or at any time, Rancher will have no obligation to Partner (except as Rancher otherwise may be liable to Partner for Rancher's material breach of this Agreement), or to any employee, agent or representative of Partner, for compensation or for damages of any kind, whether on account of the loss by Partner or such employee, agent or representative of present or prospective sales, investments, compensation or goodwill. Rancher hereby indemnifies and holds Rancher harmless from and against any and all claims, costs, damages and liabilities whatsoever asserted by any employee, agent or representative of Partner under any applicable cancellation, termination, labor, social security, payments under national insurance, or other laws or regulations.

5. Program Details

- 5.1 Programs, Application Process and Acceptance.** Program Appendices and Program Guides may be amended by Rancher at the time of renewal of the applicable Program Appendix, provided if you do not agree with the terms of the new Program Guide, you may elect not to renew the applicable Program Appendix subject to the terms of such Program Appendix. Unless otherwise agreed in writing, any subscriptions for Rancher Products or Services purchased under a Program Appendix will commence upon the earlier of (a) the first use of such Product or Service, (b) the purchase date of such Product or Service or (c) the commencement date set forth in the Order Form.

- 5.2 Affiliate Authorizations.** Partner's Affiliate(s) may participate in a Program only upon (a) approval by Rancher, including with regard to Program level and credit terms, and (b) execution of a written participation agreement with Rancher or its Affiliate(s) to bind the Partner Affiliate to this Agreement.

- 5.3 Territory.** Partner may participate in the Program(s) only in the Territory designated in this Agreement. Rancher and Partner may elect to expand the Territory, add Affiliates and/or establish different terms and conditions (e.g. currency, taxes, entities, etc.) by mutual written agreement, which may take the form of a Partner Acceptance Document or written participation agreement subject to this Agreement.

- 5.4 Verifications.** During the Term and for at least two (2) years thereafter, Partner will keep and maintain commercially reasonable written records regarding Partner's use and distribution of the Rancher Products and Services and business activities related to the Program(s) ("**Records**"). Rancher may, at its own expense, verify the Records to determine Partner's compliance with this Agreement. This verification may take the form of requests for information, documents or records (to which Partner will respond promptly), on-site visits (for which Partner shall grant Rancher the requisite access), or both. The Parties will act reasonably and cooperate with each other in respect of such verifications. Any on-site visit will occur during regular business hours and will not interfere unreasonably with Partner's business. For an on-site visit, Rancher will give Partner at least thirty (30) day's prior written notice.

5.5 Additional Requirements

- 5.5.1** For each Rancher Product (or Partner product that incorporates a Rancher Product or Service, in whole or in part) that Partner sells to an End User under a Program Appendix, Partner shall purchase the equivalent Rancher Product with respect to such conditions at the term (1 or 3 years) and support level. For example, if the End User purchases a one-year 24x7 support level Rancher product from Partner, Partner shall purchase a one-year Premium (24x7) Rancher Product from Rancher. Similarly, Partner is only authorized to resell the complete Rancher Product it purchased and is not permitted to decouple the Rancher Product or sell it in parts. For example, Partner will not purchase a one-year Rancher Product from Rancher and then break it into multiple shorter increments of time for resale. Partner will work with Rancher to ensure that its resale of Rancher Products to End Users is consistent with the terms for the Rancher Products purchased.

- 5.5.2** Without limiting the generality of Sections 5.5.1 or 6.4, Partner agrees: (i) not to modify the Rancher Products in any manner unless agreed to by Rancher in writing and (ii) not to use or resell the Rancher Products in any manner or for any purpose not permitted by this Agreement, including, without limitation, for Partner's own internal or production use, other than as may be expressly permitted in the applicable Program Appendix or by any applicable mandatory rule of law. For certain Programs and only during the term of the Program, Rancher may provide Partner with access to non-production, evaluation, development kits and/or not for resale (aka "**NFR**") Rancher Products for the sole purpose of testing and/or supporting its partners and/or End Users on issues related to Partner's rights and obligations hereunder. Should Partner resell or use its access to such Rancher Products for Partner's own internal or production use other than as expressly permitted in the applicable Program Appendix, Partner agrees to purchase



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the appropriate Rancher Product(s) under Rancher's standard terms for such resale and/or use, and to pay the applicable fee for all periods. This Agreement establishes the rights and obligations associated with Rancher's Programs, Products and Services, and is not intended to limit Partner's rights to software code under the terms of an open source license.

6. Reservation of Rights, Intellectual Property

- 6.1 Trademarks.** Rancher grants Partner a non-exclusive, non-transferable, royalty-free, revocable license in the Territory and during the Term to use the Rancher Marks solely in connection with the marketing and distribution of Rancher Products and/or Services as permitted in this Agreement, without the right to sublicense. Any other use of Rancher Marks is not permitted. Partner will provide Rancher with representative samples of the use of Rancher Marks contained within any materials including web pages, marketing, advertising, promotional and collateral materials ("**Promotional Materials**").
- 6.2 Goodwill.** All goodwill created by the use of Rancher Marks by Partner is for the sole benefit of, and accrues to Rancher. Partner acquires no right, title or interest in Rancher Marks or the goodwill associated with them, other than the right to use Rancher Marks in accordance with this Agreement. Partner will not challenge the validity of Rancher Marks, nor assist anyone in challenging their validity. Partner agrees not to make any application to register any Rancher Mark or any domain names containing a Rancher Mark, and not to use or register any trade name, trademark, service mark, slogan, logo or domain name that is confusingly similar to, or a reference to, any Rancher trade name, trademark or service mark during or after the Term of this Agreement. Partner may not disparage Rancher, Rancher Marks or Rancher Products.
- 6.3 Intellectual Property.** Partner agrees that all trade name, trademark, service mark, copyright, patent, trade secret, domain name and all other intellectual and industrial property rights anywhere in the world, including moral rights, and all applications, provisional applications, registrations, continuations and renewals thereof, and all associated goodwill (present or future) in and to the Rancher Products, are and will, as among the parties, be owned by and vested in Rancher or its licensors, notwithstanding any use of terms such as "purchase," "sale" or the like within this Agreement. Rancher may provide access to third party software programs with the Rancher Software that are not part of the Rancher Software. These third-party programs are (a) not required to run the Rancher Software, (b) provided as a convenience, and (c) subject to their own license terms.
- 6.4 Additional Reservations.** Rancher reserves all rights not expressly granted in this Agreement and all rights not expressly granted to the Rancher Products and Services (including rights under any trademarks, copyrights, patents or other intellectual property of Rancher). Partner will not use Rancher Products or Services to create an offering competitive with Rancher, directly or indirectly, or, unless specifically permitted in this Agreement, for the benefit of any other person or entity or permit any third party to make such use. If Rancher determines that any of the Rancher Products or Services is being used (in whole or in part) by Partner in any way to (a) avoid paying fees that would otherwise be due hereunder, (b) provide Services to third parties outside of the scope of a Program or (c) create revenue without payment of fees to Rancher for Rancher Products or Services, Rancher may immediately suspend performance and/or terminate this Agreement and any Program, and reserves its rights to exercise any and all legal and equitable remedies available to it.
- ### 7. Limited Warranties, Limitation of Liability, Disclaimer of Damages and Insurance and Indemnity
- 7.1 General Representations and Warranties.** Rancher represents and warrants that: (a) the Services will be performed in a professional and workmanlike manner by qualified personnel; (b) it has the authority to enter into this Agreement with Partner; and (c) to Rancher's knowledge, Rancher branded Software does not, at the time of delivery to Partner, include malicious code for the purpose of damaging or corrupting the Software.
- 7.2 Disclaimer of Warranties.** EXCEPT AS SET FORTH IN SECTION 7.1 ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE RANCHER PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. Partner will make no representations or warranties on behalf of Rancher regarding the Rancher Products or Services in connection with the distribution of the Rancher Products or Services or otherwise.
- 7.3 Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FOR ALL EVENTS AND CIRCUMSTANCES, RANCHER'S AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY TO PARTNER AND ITS AFFILIATES ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY ORDER FORM HEREUNDER, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN



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CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE TOTAL AMOUNT PAID TO RANCHER AND ITS AFFILIATES BY PARTNER AND ITS AFFILIATES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY FOR THE RANCHER PRODUCT OR SERVICE THAT IS THE SUBJECT MATTER OF THE CLAIM OR U.S. \$5,000.00, WHICHEVER IS GREATER. THE FOREGOING LIMITATION SHALL NOT APPLY TO CLAIMS FOR BODILY INJURY (INCLUDING DEATH) AND DAMAGE TO TANGIBLE PERSONAL PROPERTY CAUSED BY THE NEGLIGENCE OF RANCHER OR ITS EMPLOYEES.

- 7.4 Disclaimer of Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR ANY ORDER FORM, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL RANCHER OR ITS AFFILIATES BE LIABLE TO THE PARTNER OR ITS AFFILIATES FOR: ANY CLAIM BASED UPON A THIRD PARTY CLAIM; ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF RANCHER OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Without limiting the generality of the foregoing disclaimer, Rancher Products and Services are not specifically designed, manufactured or intended for use in (a) the planning, construction, maintenance, control or direct operation of nuclear facilities, (b) aircraft navigation, control or communication systems, weapons systems or (c) direct life support systems. Partner agrees that it is solely responsible for the results obtained from the use of the Rancher Products and Services.
- 8. Insurance and Indemnity.** Partner shall put in place and at all times maintain during the Term and for two (2) years thereafter, at its own cost and expense, appropriate and sufficient commercial general liability insurance with a reputable insurance company to cover the activities of Partner contemplated in this Agreement. The premiums for these policies of insurance shall be the responsibility of Partner. Upon request, Partner will provide Rancher certificates of insurance for all insurance coverage. Partner will indemnify and hold harmless Rancher from any and all liability, losses, costs, damages or expenses, including reasonable attorney's, solicitor's or legal fees and costs, resulting from or arising out of third party demands or claims against Rancher relating to any of Partner's actions including, but not limited to, performance or non-performance under this Agreement.
- 9. Publicity and Confidentiality**
- 9.1 Publicity.** Partner will keep confidential and will not disclose, market or advertise to third parties the terms of this Agreement (including the fees paid hereunder). Partner or Rancher may reference its relationship with the other, in the normal course of business including during earnings calls, discussions with analysts, meetings with the press, customer briefings, general marketing activities and in regulatory filings. Neither Party will issue formal press releases or other similar activities referencing the other Party without the written consent of the other Party.
- 9.2 Confidential Information.** The parties agree that Confidential Information provided under this Agreement will be held and maintained in confidence and each Party will use at least the same degree of care to protect such Confidential Information that it uses to protect its own confidential information, but in no event less than reasonable care. The recipient may use Confidential Information of the other Party only for the purposes of exercising its rights and fulfilling its obligations under this Agreement. Confidential Information may be disclosed only to Affiliates, employees, agents and contractors with a need to know, and to its auditors and legal counsel, provided in each case they are under a written obligation or legal duty to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. "**Confidential Information**" means all information and materials disclosed by either Party to the other during the Term that is either marked confidential or, by the nature of the information or the circumstances surrounding its disclosure, would reasonably be considered confidential. Confidential Information does not include information that (i) is or later becomes publicly available without breach of this Agreement, or is disclosed by the disclosing Party without obligation of confidentiality; (ii) is known to the recipient at the time of disclosure by the disclosing Party; (iii) is independently developed by the recipient without use of the Confidential Information; (iv) becomes lawfully known or available to the recipient without restriction from a source having the lawful right to disclose the information; (v) is generally known or easily ascertainable by parties of ordinary skill in the business of the recipient; or (vi) is software code in either object code or source code form that is licensed under an open source license. Both Parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information.



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10. General Provisions

10.1 Governing Law and Venue. Any claim, controversy or dispute arising out of or related to this Agreement is governed by the substantive laws of the California. To the extent permissible by law, the terms of the United Nations Convention on Contracts for the International Sale of Goods will not apply, even where adopted as part of the domestic law of the country whose law governs the Agreement. Any claim, controversy or dispute arising out of, or in connection with, or with respect to the validity, interpretation and/or enforcement of the Agreement, including the breach, will be settled exclusively in the state or federal courts of Santa Clara County, California.

10.2 Notices. All notices, consents, waivers and other communications required or permitted by this Agreement must be in English, in writing, and will be deemed given when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile or e-mail with written confirmation of transmission by the transmitting equipment delivered promptly thereafter; or (c) received by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated hereafter (or to such other address, facsimile number, e-mail address or person as a party hereto may designate by notice to the other parties hereto): For Partner: the most current address/fax number indicated by Partner to Rancher in writing; Rancher Labs, Inc., Attention: Legal Department, 10050 North Wolfe Road, Suite SW1-272, Cupertino, CA 95014; Email: legal@rancher.com.

10.3 Compliance with Law and Export Controls.

10.3.1 As between Rancher and Partner, Partner (a) understands that countries, including the U.S., may restrict the import, use or export of encryption products and other controlled materials (which may include Rancher Products, Services or related technical information) ("**Controlled Materials**"); (b) will be solely responsible for compliance with any such import, use, or export restrictions in connection with Partner's use, sale and/or distribution of Controlled Materials; and (c) will be the importer and exporter of record of the Controlled Materials that Partner uses, sells and/or distributes, and is responsible for all associated obligations, including but not limited to, paying all import duties and tariffs, and obtaining any required regulatory approvals, registrations, and export and import licenses.

10.3.2 Partner will comply with all applicable laws and regulations including all applicable anti-corruption laws and regulations, such as the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act (collectively, the "**Anti-Corruption Laws**"), and will not engage in conduct that would cause Rancher to violate any law or regulation including the Anti-Corruption Laws. Among other conduct, the Anti-Corruption Laws prohibit Partner, directly or indirectly, from receiving anything of value from, or offering anything of value to, either private parties or government or public officials with the intent that the recipient perform improperly a relevant function or activity or a person be rewarded for improper performance. A government or public official includes employees and officers of a government agency, department or instrumentality, as well as the employees or officers of government-owned or government-controlled companies, public international organizations, political parties and candidates for political office. Partner represents and warrants that none of its significant shareholders, owners, partners, officers or directors ("**Partner Officials**") is a government or public official and that if any of the Partner Officials becomes a government or public official, Partner will immediately notify Rancher in writing in accordance with the terms of this Agreement. Partner will not permit its resellers or partners to do anything that would violate or cause Rancher to violate any law or regulation including the Anti-Corruption Laws. If Rancher believes that Partner (or any of its resellers or partners) has breached or may breach any of the provisions of this Section or a notice is provided pursuant to this Section, Rancher may immediately terminate the Agreement or stop performing its obligations (including making payments, if applicable) without any liability to Partner.

10.3.3 As required by U.S. law, Partner represents and warrants that it: (a) understands that certain of the Controlled Materials are of U.S. origin and subject to export controls under the U.S. Export Administration Regulations (the "**EAR**"); (b) is not located in any country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR; (c) will not export, re-export or transfer the Controlled Materials to (1) any prohibited destination, (2) anyone who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government or (3) any end user who Partner knows or has reason to know will use them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, or sounding rockets, or unmanned air vehicle systems; and (d) understands and agrees that if it is in the United States and exports, re-exports or transfers the Controlled Materials to eligible end users, it will, to the extent required by EAR Section 740.17(e), submit semi-annual reports to the U.S. Commerce Department's Bureau of Industry and Security, that include the name and address (including country) of each transferee.

10.3.4 Partner will not engage in any activity that is prohibited under the Anti-boycotting Act (50 USCA 2407, Part 760).



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- 10.3.5** Partner acknowledges that Rancher may be prohibited from providing Controlled Material(s) if Rancher has knowledge or reason to believe that a violation of the applicable law will or has occurred.
- 10.4 No Assignment.** This Agreement is only assignable by Partner with Rancher's prior written consent. Any assignment made by Partner without Rancher's prior written consent will be void and Rancher will not be required to recognize the assignment. Rancher may assign any or all of its rights and delegate or novate any or all of its obligations hereunder without the prior approval of Partner. At the request of Rancher, Partner will execute any papers or documents reasonably necessary to give effect to such assignment or novation. Partner shall promptly notify Rancher of any material change to its ownership structure.
- 10.5 Independent Contractor.** Partner and Rancher are independent contractors for all purposes, without express or implied authority to bind the other. Neither Party nor its employees, agents or contractors is entitled to any employee benefits of the other. Each Party will be responsible for all costs and expenses incident to performing its business. Nothing in this Agreement shall be deemed to constitute a partnership or to create a relationship of principal and agent between the Parties for any purpose.
- 10.6 Force Majeure.** Neither Party will be liable for nonperformance or delays caused by acts of God, wars, riots, strikes, fires, floods, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control. Upon the occurrence of any of the foregoing, the date of performance will be deferred for a period of time equal to the time lost by reason of the delay. This section does not relieve either Party of its obligation(s) to make payments.
- 11. Miscellaneous.** (a) All headings contained in this Agreement are inserted for identification and convenience, and will not be deemed part of this Agreement for purposes of interpretation. (b) If any provision of this Agreement is held invalid or unenforceable for any reason, but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the Parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement. (c) The delay or failure of either Party to exercise any rights hereunder will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the Party against whom such waiver or forfeiture is sought to be enforced. (d) This Agreement will constitute the exclusive terms and conditions with respect to the subject matter of this Agreement, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Partner, including subsequent to the date of this Agreement. This Agreement contains the final, complete and exclusive statement of the agreement between the Parties with respect to the transactions contemplated herein and all prior written agreements and all prior and contemporaneous oral agreements with respect to the subject matter of this Agreement are contained herein. If there is a conflict between the Partner Terms and Conditions and any applicable Program Appendix, Program Guide(s), End User License Agreement or any other Program literature, the terms will be interpreted in the following order (1) the applicable Program Appendix, (2) the Partner Terms and Conditions, (3) the End User License Agreement, and (4) any other Program literature. (e) Except as otherwise provided in Section 2, this Agreement may not be changed except by written instrument signed by authorized signatories of the Parties, that makes specific reference to this Agreement. (f) This Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one and the same instrument. The Parties may exchange electronic signatures and signature pages electronically and such signatures will be effective to bind the Parties. (g) The Parties acknowledge that they have each reviewed and participated in settling the terms of this Agreement. Furthermore, the Parties agree that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be employed in the interpretation or construction of this Agreement.
- 12. Authorized Signatures.** Partner may assent to this Agreement by (i) accepting this Agreement in an on-line transaction at the Partner Portal or a Rancher designated successor to such URL, (ii) electronically signing the document via a Rancher acceptable electronic signature tool and emailing to the email address identified below, or (iii) signing a physical copy of this Agreement and forwarding ALL pages of the signed Agreement via (a) email to legal@rancher.com. via pdf, or (b) mail to Rancher Labs, Inc., Attention: Legal Department, 10050 North Wolfe Road, Suite SW1-272, Cupertino, CA 95014
- 13. Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.



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14. Definitions

- 14.1 **"Affiliate"** means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a Party, where "control" is the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.
- 14.2 **"Documentation"** means user manuals, training materials, software descriptions and specifications, brochures, technical manuals, license agreements, supporting materials and other printed information, whether distributed in print, electronic or video format.
- 14.3 **"Effective Date"** means the first date when both Parties have fully accepted or signed the Agreement.
- 14.4 **"End User"** is defined in the Program Appendices.
- 14.5 Rancher and Partner are collectively referred to as the **"Parties"** and may be referred to individually as a **"Party"**.
- 14.6 **"Products"** and **"Services"** mean the specific Rancher branded offerings set forth in a Program Appendix.
- 14.7 **"Rancher"** means Rancher Labs, Inc. with a principal place of business of 10050 North Wolfe Road, Suite SW1-272, Cupertino, California 95014, U.S.A.
- 14.8 **"Rancher Marks"** means the trademarks owned by Rancher or a Rancher Affiliate that are set forth in an applicable Program Appendix.
- 14.9 The **"Software"** means the Rancher branded software contained in the Rancher Products, including any Updates in any form (e.g. binary, source or recompiled), that are delivered by or obtained from Rancher, directly or indirectly.
- 14.10 **"Taxes"** means any form of taxation of whatever nature and by whatever authority imposed, exclusive of any taxes based on the net income of Rancher.
- 14.11 **"Updates"** mean software fixes, upgrades, enhancements, additions, corrections and modifications, if and when available.