

## END USER LICENSE AGREEMENT (EULA) AND SOFTWARE LIMITED WARRANTY

## FOR COMMERCIAL COMPUTER SOFWARE AND ASSOCIATED DOCUMENTATION

## SUPPLIED BY CONTRACTOR UNDER GSA SCHEDULE 70 MULTIPLE AWARD SCHEDULE – CONTRACT GS-35F-0199R

**Software License.** Cross Match Technologies, Inc., hereinafter referred to as "Cross Match" hereby grants to Ordering Activity a nonexclusive, non-transferable, revocable license to use the Software programs and associated documentation. Each licensed copy of the Software may be used only at one location, and on one Ordering Activity controlled or owned computer or Cross Match device, which will meet Cross Match's specifications for use with the Software. "End User" is defined as an "Ordering Activity" as defined in GSA Order ADM 4800.2H, Eligibility to Use GSA Sources of Supply and Services and as may be modified from time to time."

<u>Unauthorized Use of the Software</u>. Ordering Activity shall not, and shall not allow any third party to, (i) alter, modify or adapt the Software, including but not limited to translating, decompiling, disassembling, reverse engineering or creating derivative works; (ii) copy the Software (except that Ordering Activity may make a reasonable number of copies of the Software, for inactive back-up and archival purposes and each such copy will shall contain any copyright notices); or (iii) remove any copyright notice; or (iv) sublicense, assign or transfer whether through a network, service bureau, lease, loan, or otherwise, the Software or its documentation, or any derivative work or copies thereof, in whole or in part.

Limited Software Warranty. For a period of ninety (90) days after initial delivery of the Software (the "Software Warranty Period"), Cross Match warrants that the Software, when used as permitted under this Agreement, will operate substantially as described in the Documentation. Cross Match will, as its sole and exclusive obligation and Ordering Activity's sole and exclusive remedy for any breach of this warranty, use commercially reasonable efforts to remedy any reproducible error in the Software reported to Cross Match by Ordering Activity in writing during the Software Warranty Period, or, if such error is material and Cross Match determines that it is unable to remedy the error, Cross Match will refund to Ordering Activity all License Fees paid by Ordering Activity. EXCEPT FOR THE LIMITED WARRANTIES EXPRESSLY STATED HEREIN, THE SOFTWARE IS PROVIDED "AS IS," AND CROSS MATCH HEREBY EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CROSS MATCH DOES NOT WARRANT OR REPRESENT THAT THE SOFTWARE OR DOCUMENTATION WILL BE FREE FROM BUGS OR THAT THEIR USE WILL BE UNINTERRUPTED OR ERROR-FREE, OR MAKE ANY OTHER REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF T

<u>Limitation of Liability</u>. IN NO EVENT SHALL MANUFACTURER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE ANY OF THE MANUFACTURER'S PRODUCTS OR SERVICES, EVEN IF MANUFACTURER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

FURTHER, THE ENTIRE LIABILITY OF CROSS MATCH FOR ANY CLAIM OR CAUSE OF ACTION ARISING HEREUNDER (WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE SOFTWARE THAT IS THE SUBJECT OF SUCH CLAIM OR CAUSE OF ACTION. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRUAD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (e.g. CLAUSE 552.238-75 - PRICE REDUCTIONS, CLAUSE 52.212-4(h) - PATENT INDEMNIFICATION, AND GSAR 552.215-72 - PRICE ADJUSTMENT - FAILURE TO PROVIDE ACCURATE INFORMATION).

Intellectual Property and Use Limitations. The license of the Software to Ordering Activity does not convey to Ordering Activity any intellectual property rights in the Software, including but not limited to any copyright, patent or trademark rights. Further, the sale of the Products confers on Ordering Activity no license, express or implied, by estoppel or otherwise, under any patents of Cross Match or others covering or relating to any other product or invention or any combination, machine, or process in which such Product might be used.

<u>Compliance with Laws</u>. Ordering Activity shall comply with all applicable laws and regulations. Ordering Activity will not directly or indirectly export or re-export any Software or "technical data" furnished to Ordering Activity under this Agreement without obtaining appropriate authorizations from the U.S. Department of Commerce or other U.S. government agency and will otherwise comply with all U.S. export control laws applicable thereto.

Governing Law. This agreement shall be governed by the law of the United States of America.

<u>U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND</u>. The Software and any accompanying materials are provided with Restricted Rights. Use, duplication or disclosure by the U.S. Government and agencies thereof is subject to restrictions set forth herein and in the approved Federal Supply Schedule of Supplies/Services (FSS) pricelist.

Manufacturer is Cross Match Technologies, Inc., Inc., 3950 RCA Blvd, Suite 5001, Palm Beach Gardens, FL 33410.