

228548 agenda# 36712

**HIDALGO COUNTY PURCHASING DEPARTMENT**  
**SOLE SOURCE AFFIDAVIT**

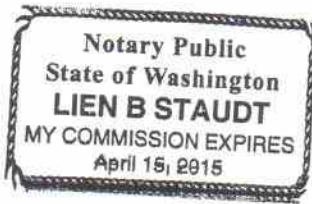
**THIS IS AN OFFICIAL PURCHASING DOCUMENT-RETAIN WITH PURCHASE ORDER**

Before me, the undersigned official, on this day, personally appeared \_\_\_\_\_  
a person known to me to be the person whose signature appears below, whom after being duly sworn  
upon his/her oath deposed and said:

1. My name is MORGAN EDWARDS I am over the age of 18, have never been convicted of crime and am competent to make this affidavit.
2. I am an authorized representative of the following company or firm: ULTRABAC SOFTWARE.
3. The above named company or firm is the sole source for the following item(s), product(s) or service(s):  
ULTRABAC, UB DIZ GOLD, AND AGENTS
4. Competition in providing the above named item(s), product(s), service(s) is precluded by the existence of a patent, copyright, secret process or monopoly as stated under Section 262.024(a)(7)(A), of the Local Government Code. Also, attached hereto is a sole source letter, which sets forth the reasons why this Vendor is a sole source provider (dated and signed).
5. There is/are no other like item(s) or product(s) available for purchase that would serve the same purpose or function.
6. Note: This Vendor understands that by providing false information on this Sole Source Affidavit, it may be considered a non-responsible Vendor on this and future purchases and may result in discontinuations of any/all business with Hidalgo County.

Signature Morgan Edwards

SWORN AND SUBSCRIBED TO under oath before me on 27 day of Dec., 2012.



Lien B. Staudt  
NOTARY PUBLIC  
Lien B. Staudt  
PRINTED NAME  
4/15/2015  
MY COMMISSION EXPIRES

COMPANY NAME: Ultrabac Software  
ADDRESS, CITY, STATE & ZIP CODE: 15015 main st, ste 200, Bellevue, WA 98007  
PHONE: 425-644-6000 NUMBER: \_\_\_\_\_  
CONTACT NAME AND TITLE: Dianna Baxter - Direct Accounts Admin.  
WEB ADDRESS: www.Ultrabac.com EMAIL: Ultrabac.maintenance@Ultrabac.c  
FEDERAL TAX ID NUMBER: 91-117-8250 TEXAS SALES TAX NUMBER: \_\_\_\_\_

## UltraBac Software End User License Agreement

**ULTRABAC SOFTWARE** (Barratt Edwards International Inc.; "LICENSOR" or "ULTRABAC") is a Washington corporation with its principal offices located at 15015 Main Street, Bellevue, WA 98007.

**CUSTOMER: READ CAREFULLY BEFORE INSTALLING THE SOFTWARE PRODUCT(S).**

WHEN USED IN THIS END USER LICENSE AGREEMENT, THE TERMS "YOU," "LICENSEE" AND "CUSTOMER" MEAN THE PURCHASER OF A SOFTWARE PRODUCT AS DEFINED IN THIS AGREEMENT, AND THE TERMS "YOUR," "YOURS," "LICENSEE'S" AND "CUSTOMER'S" ARE INTERCHANGEABLE.

THIS LICENSE AGREEMENT AND THE APPENDICES ATTACHED HERETO ARE HEREINAFTER COLLECTIVELY REFERRED TO AS THE "EULA."

EACH SOFTWARE PRODUCT (AS DEFINED IN SUBSECTION 1.d IN THIS EULA AND ATTACHED APPENDICES A-1 AND A-2) CONTAINS COPYRIGHTS, INVENTIONS, TRADE SECRETS AND OTHER INTELLECTUAL PROPERTY RIGHTS (AS DEFINED IN SUBSECTION 1.a BELOW) BELONGING TO ULTRABAC OR LICENSED FROM THIRD PARTIES, INCLUDING MICROSOFT CORPORATION.

YOU MAY NOT INSTALL, COPY, DISPLAY, EXECUTE, PERFORM OR USE A SOFTWARE PRODUCT EXCEPT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS EULA. A SOFTWARE PRODUCT MAY ONLY BE INSTALLED, COPIED, DISPLAYED, EXECUTED, PERFORMED AND/OR USED IN ACCORDANCE WITH THE TERMS AND CONDITIONS CONTAINED IN THIS EULA AND THE APPENDIX THAT APPLIES TO THE SPECIFIC SOFTWARE PRODUCT BUT ONLY WHEN YOU HAVE FULLY PAID FOR SUCH SOFTWARE PRODUCT.

IF YOU INSTALL, COPY, DISPLAY, EXECUTE, PERFORM OR MAKE ANY OTHER USE OF A SOFTWARE PRODUCT, YOU ARE DEEMED TO HAVE ACCEPTED AND YOU ARE BOUND BY ALL THE TERMS AND CONDITIONS OF THE EULA (INCLUDING WITHOUT LIMITATION EACH APPENDIX APPLICABLE TO SUCH SOFTWARE PRODUCT).

IN ORDER TO USE A SOFTWARE PRODUCT, YOU MAY BE REQUIRED TO OBTAIN A UNIQUE ELECTRONIC ACTIVATION CODE OR CODES FROM ULTRABAC TO ENABLE INSTALLATION, COPYING, DISPLAY, EXECUTION, PERFORMANCE AND OTHER USE OF THE SOFTWARE PRODUCT.

IF YOU DO NOT ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS EULA, YOU ARE PROHIBITED FROM INSTALLING, COPYING, DISPLAYING, EXECUTING, PERFORMING, OR USING IN ANY OTHER FASHION ANY SOFTWARE PRODUCT. IN SUCH CASE, YOU MAY, WITHIN 30 DAYS OF PURCHASE OF A SOFTWARE PRODUCT, AS EVIDENCED BY THE VENDOR'S RECEIPT AND/OR INVOICE, CONTACT THE VENDOR THAT SOLD YOU A SOFTWARE PRODUCT FOR ANY REFUND OR CREDIT THAT MAY BE ALLOWED BY THE VENDOR'S PRODUCT RETURN POLICIES.

IF, HOWEVER, YOU PURCHASED A SOFTWARE PRODUCT DIRECTLY FROM ULTRABAC, YOU MAY RETURN TO ULTRABAC THE SOFTWARE PRODUCT, EXCLUDING SOFTWARE UPDATES AND CONVERSIONS, AND THE PURCHASE PRICE WILL BE REFUNDED IN FULL ONLY IF YOU (1) CONTACT ULTRABAC FOR A RETURN AUTHORIZATION NUMBER WITHIN 15 DAYS FROM DATE OF PURCHASE OF SUCH SOFTWARE PRODUCT AS EVIDENCED BY THE SOFTWARE PRODUCT RECEIPT/INVOICE; (2) RETURN THE PACKAGE CONTAINING THE SOFTWARE PRODUCT AND ITS DOCUMENTATION, MEDIA AND ALL RELATED ITEMS TO ULTRABAC IN UNDAMAGED AND RESALABLE CONDITION; AND (3) CERTIFY IN WRITING THAT YOU HAVE NOT KEPT, DISTRIBUTED, SHARED, SOLD, LOANED ANY COPY OF THE SOFTWARE PRODUCT OR OTHERWISE VIOLATED THIS LICENSE.

PLEASE BE AWARE THAT ANY VIOLATION OF THIS EULA IS ALSO UNLAWFUL AND WOULD SUBJECT YOU TO CLAIMS OF INFRINGEMENT, MISAPPROPRIATION AND CONVERSION OF ULTRABAC'S COPYRIGHTS, TRADE SECRETS, INVENTION RIGHTS, AND OTHER INTELLECTUAL PROPERTY RIGHTS, AND WILL SUBJECT YOU AND EACH INDIVIDUAL INFRINGER TO CLAIMS FOR BOTH ENTITY AND PERSONAL LIABILITY FOR DAMAGES (INCLUDING WITHOUT LIMITATION STATUTORY DAMAGES) AND OTHER REMEDIES AND RELIEF. ANY VIOLATION OF THIS EULA MAY ALSO CONSTITUTE VIOLATION OF CRIMINAL LAWS.

IF YOU PURCHASED A SOFTWARE PRODUCT THAT IS AN UPGRADE OF AN EARLIER VERSION OF A SOFTWARE PRODUCT, THEN TERMS AND

CONDITIONS IN THIS EULA SHALL SUPERSEDE THE TERMS AND CONDITIONS OF THE LICENSE THAT APPLIED TO THE EARLIER VERSION, AS OF THE DATE OF INSTALLATION OF THE UPGRADE.

Section 1: DEFINITIONS.

The following definitions apply to this License.

- a. "Intellectual Property Rights" shall mean all worldwide intellectual property rights arising under statutes, laws, regulations, common law, treaties, conventions, or other source, whether or not vested or inchoate, including, without limitation, all (i) provisional patents, patents applications, patents, conceptions, Inventions as defined herein, discoveries, or improvements owned or licensable, including without limitation any patent applications filed or patents acquired before, on or after YOUR purchase of a Software Product for any Intellectual Property Rights in existence in the Software Product that YOU purchased or in any updates, patches, fixes or upgrades to such Software Product; (ii) rights associated with works of authorship including copyrights, copyright applications, copyright registrations, moral rights, mask work rights, mask work applications, and mask work registrations; (iii) rights relating to the protection of trade secrets and any Confidential Information as defined herein; (iv) trademark, trade dress, or service mark rights; (v) any right analogous to those set forth in this Subsection 1.a and any other proprietary rights relating to intangible or industrial property; and (vi) utility models, divisionals, continuations, continuations-in-part, renewals, reissues, and extensions of the foregoing (whether now existing, hereafter filed, issued, or acquired), for any Intellectual Property Rights existing prior to, on or after the Effective Date in or to the Software Product that YOU purchased or in or to any updates, patches, fixes or upgrades to such Software Product.
- b. "Invention" as used herein is to be construed broadly and includes, but is not limited to, concepts, discoveries and ideas, whether patentable or not, including but not limited to computerized business methods, programs, methods, applications, designs, formulas, machines, methods, processes, product ideas or designs, and techniques, as well as improvements thereof or know-how related thereto.
- c. "Confidential Information" is to be construed broadly and includes, but is not limited to, all of the following: software architecture, data and other recorded information, designs, devices, discoveries, drawings, Inventions, know-how, materials and documents, procedures and products, software (including interfaces, object code, source code, firmware and any and all enhancements, related documentation, releases, revisions, and updates thereto), trade secrets, specifications, and the like, all whether in preliminary or final form and in and on any media whatsoever, that are created, conceived, reduced to practice, developed, discovered, invented or made, relating to the Software Product. Confidential Information does not include what is already public or what is later publicly made known without any unlawful acts, omissions and conduct of CONTRACTOR or third-parties.
- d. "Software Product" or "Software Products" shall mean ONLY the software program or software products from those listed below that CUSTOMER purchased AND that is or are specifically identified in ULTRABAC's invoice or invoices, including without limitation, applications, help files, libraries, executables, applets, user manuals and documentation, technical manuals, systems manuals, keyboard function strips, and any and all other products included in any package, box or container, and all associated Intellectual Property for all computer operating systems ("Platforms"). A current list of software products and pricing are available at the following Web pages: [Products Main Page](#) or [Products Order Page](#).
- e. "Person" shall mean an individual or any form of organization or entity including, but not limited to, corporations, partnerships, associations, limited liability companies, and governmental units. "YOU" may be any one of the aforesaid individuals or entities defined as a "Person."
- f. "Virtual Machine" shall mean an operating system that is running in a "virtualized" environment hosted on a physical computer whether the virtualization is accomplished by software or hardware, including for example only and not by way of limitation, software providing Virtual Machine environments including without limitation Microsoft Virtual PC, Microsoft Virtual Server, User-mode Linux, and VMware, or hardware-based virtual machines such as Intel's VT

(Vanderpool) and AMD's Pacifica.

Section 2. GRANTS OF LICENSE; WinPE MODIFIED OBJECT CODE LIMITATIONS.

- a. The Appendices set forth the specific licenses granted for specific Software Products provided, however, that a license only becomes operative upon authorized purchase and payment by CUSTOMER for each such license. Unless specifically allowed by the appendices that apply to a specific Software Product, each virtual machine (as defined in subsection 1.f above) requires a separately purchased and licensed software product, and no software product may be used on more than one virtual machine. In other words, if a server has two or more virtual machines, then each virtual machine must have a fully paid-up and licensed software product for that virtual machine for any use of any software product. Each "physical" machine requires the purchase of a Software Product in addition to the purchase of a Software Product for each Virtual Machine that may be allowed to use such Software Product. As an example, if a physical machine runs a Software Product and also hosts two Virtual Machines that also use such Software Product or that otherwise runs such Software Product in their virtual environments, then a total of three Software Product licenses for that Software Product must be purchased for lawful and permitted use under this EULA. All terms and conditions of this EULA shall apply to each Software Product, subject to such additional terms and conditions contained in the Appendices. Appendices A-1 and A-2 lists certain Software Products. Appendix A-3 sets forth additional grants and restrictions with respect to such Software Products. PLEASE BE ADVISED THAT YOU may request from ULTRABAC special written permissions and mechanisms for transferring installation and use of purchased Software Products within your computing environment (for example, from one server to another server), but any approval by ULTRABAC is within the sole discretion of ULTRABAC and must be made in writing signed by an authorized representative of ULTRABAC and such writing must be made a part of this EULA as an Amendment, with all other terms and conditions of this EULA (including appendices) remaining in effect.
- b. WinPE Modified Object Code. Some of the Software Products are also subject to a "Microsoft Windows Pre-Install Environment License and Distribution Agreement." Windows® is a registered trademark of Microsoft Corporation. "Modified Object Code" means the Microsoft Windows XP Professional binary code as modified in part by the Windows Pre-Install Environment Tool ("WinPE Tool"). ULTRABAC's Software Products contain Modified Object Code. Only so long as CUSTOMER is in compliance with this License can the CUSTOMER lawfully use the Modified Object Code that is included in the installation and use of the Software Product. The CUSTOMER may not lawfully use the Modified Object Code separate, apart, and independently of the Software Product licensed from ULTRABAC. Microsoft Corporation shall not have any obligations to CUSTOMER arising from or with respect to this License or the Modified Object Code. Nothing in this EULA shall constitute or be deemed any grant or attempted grant of any rights or immunities to or under Microsoft's intellectual property or proprietary rights in the Modified Object Code. ***The WinPE Tool date limited (a legal "time bomb" as defined by Microsoft) and the Modified Object Code will stop functioning 24 hours after a Software Product is launched, in which case the Software Product must be launched again for the Modified Object Code to function for up to another 24 hour period.*** The Modified Object Code is provided "AS IS." CUSTOMER acknowledges and agrees that CUSTOMER disclaims any and all Microsoft Corporation liability related to the SOFTWARE Product or the Modified Object Code. All CUSTOMER support issues will be handled solely by ULTRABAC in accordance with its support policies in effect at the date of any request for support, including without limitation terms and conditions for support, including charges for support. In no case shall CUSTOMER request technical support regarding use of the SOFTWARE Products containing the Modified Object Code. The Modified Object Code may not be licensed on any terms inconsistent with terms and conditions of the "Microsoft Windows Pre-Install Environment License and Distribution Agreement."

Section 3. TERM AND TERMINATION.

- a. Term. This EULA shall be effective so long as CUSTOMER is in compliance with all its terms and conditions.
- b. Termination of EULA. This EULA shall be automatically terminated upon any breach by CUSTOMER of any of its terms and conditions. Any such termination shall not operate as a bar, discharge, forgiveness, waiver, impairment, or other limitation of ULTRABAC's rights in law or equity against any CUSTOMER who breaches this EULA, including without limitation, rights to any unpaid license fees. Immediately upon any termination of this EULA arising from CUSTOMER's breach of this License and without any obligation of ULTRABAC to notify CUSTOMER of said breach, CUSTOMER's rights to the applicable Software Products shall be terminated, and CUSTOMER shall return to ULTRABAC all documentation and materials and copies thereof within its possession or control and thereafter shall make no further use of the Software Products.
- c. Survival. Sections 1, 2.b, 3, 4, 5, 6, and 7 shall survive any termination of this EULA.

Section 4. LIMITED WARRANTY AND DISCLAIMER; LIMITATIONS OF LIABILITY.

- a. LIMITED WARRANTIES. Only the limited warranties expressly stated in this Section 4 are made to CUSTOMER. To the maximum extent permitted by applicable laws, no other warranty of any kind, whether express or implied, is made to the Customer or any other Person.
  1. ULTRABAC warrants that it has the right to make the licenses granted by this EULA.
  2. ULTRABAC makes no warranty of any kind, implied or express, that any Software Product will meet CUSTOMER's requirements, or that any Software Product will be uninterrupted or error-free. The Software Products are licensed "AS IS" and with all faults. ULTRABAC makes no warranty as to use or performance of a Software Product.
- b. NO IMPLIED WARRANTIES. EXCEPT AS EXPRESSLY STATED IN SECTION 4.a.(1) ABOVE, ULTRABAC DOES NOT MAKE AND HEREBY SPECIFICALLY EXCLUDES AND DISCLAIMS ALL WARRANTIES OR INDEMNITIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY TRADE USAGE OR COURSE OF DEALING, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS, RESULTS, LACK OF NEGLIGENCE, OR ANY THING ELSE. YOU HEREBY EXPRESSLY WAIVE ALL SUCH OTHER WARRANTIES OR INDEMNITIES, EXPRESS OR IMPLIED.
- c. LIMITATIONS OF LIABILITY AND REMEDIES.
  1. UNDER NO CIRCUMSTANCES SHALL ULTRABAC OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AFFILIATES, OR SUPPLIERS, BE LIABLE FOR ANY SPECIFIC PERFORMANCE OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL, TREBLE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, ARISING OUT OF OR IN ANY WAY RELATING TO THIS EULA OR ANY SOFTWARE PRODUCT (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST GOODWILL OR PROFITS, LOSS OF DATA OR SOFTWARE, WORK STOPPAGE OR IMPAIRMENT OF OTHER GOODS, LOSS OF PRIVACY, FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR REASONABLE CARE, NEGLIGENCE, OR FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) EVEN IF ULTRABAC OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AFFILIATES, OR SUPPLIERS, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR KNOWS OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER OR NOT ANY EXCLUSIVE RIGHT UNDER THIS EULA FAILS IN ITS ESSENTIAL PURPOSE.
  2. THE RIGHTS AND REMEDIES OF CUSTOMER ARE SPECIFICALLY SET FORTH IN THIS SECTION 4 AND ARE THE CUSTOMER'S EXCLUSIVE REMEDIES. NOTWITHSTANDING ANY DAMAGES THAT CUSTOMER MIGHT INCUR FOR ANY REASON WHATSOEVER, IN NO CASE SHALL ANY POTENTIAL LIABILITY TO A CUSTOMER FOR ANY DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, DIRECT OR GENERAL DAMAGES, BY ULTRABAC OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS,

AFFILIATES, OR SUPPLIERS, IN THE AGGREGATE EXCEED THE DOLLAR NUMBER EQUAL TO (A) THE TOTAL LICENSE FEES PAID BY THE CUSTOMER TO ULTRABAC IN THE THIRTY-SIX (36) MONTHS FOR THE SOFTWARE PRODUCT PRIOR TO THE DATE OF ANY EVENT GIVING RISE TO ANY CLAIM TIMES (B) THE NUMBER EQUAL TO THIRTY-SIX (36) MINUS THE NUMBER OF MONTHS THAT THE SOFTWARE PRODUCT PERFORMED, DIVIDED BY (C) THIRTY SIX (36). AS AN EXAMPLE ONLY, IF A SOFTWARE PRODUCT WORKS FOR TWENTY-FIVE (25) MONTHS PRIOR TO AN EVENT GIVING RISE TO A CLAIM, THEN THE NUMBER TO BE USED FOR B IS ELEVEN (11;  $36 - 25 = 11$ ). THE "CAP" ON DAMAGES THEN EQUALS  $11/36$  TIMES THE TOTAL LICENSE FEES PAID FOR THE PRODUCT IN THE THIRTY-SIX MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.

3. NOTHING IN THE FOREGOING SHALL BE DEEMED TO EXCLUDE, RESTRICT OR LIMIT IN ANY MANNER (a) THE LIABILITY, IF ANY, OF CUSTOMER OR ANY OTHER PERSON FOR ANY INFRINGEMENT OR OTHER VIOLATION OF ANY OF ULTRABAC'S INTELLECTUAL PROPERTY RIGHTS OR (b) ANY OF ULTRABAC'S RIGHTS OR REMEDIES, IN LAW OR EQUITY.

#### Section 5. PROPRIETARY RIGHTS.

- a. YOU shall use YOUR best efforts to prevent unauthorized installation, copying, display, execution, performance, distribution or other use in whole or in part of the Software Products.
- b. No title or ownership of any of the Intellectual Property Rights in any Software Product or related materials and documentation is transferred to YOU.
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- d. YOU agree, recognize and acknowledge the exclusive rights, title and interest of ULTRABAC in and to ULTRABAC's trademarks, service marks, trade names, copyrights, and other Intellectual Property Rights in the Software Products.

#### Section 6. RESTRICTED GOVERNMENT RIGHTS; EXPORT.

- a. Restricted Government Rights. The Software Product and documentation are provided with restricted rights. Use, duplication or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(2)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable, and subject further to ULTRABAC's Intellectual property rights. Contractor/manufacturer is ULTRABAC SOFTWARE, 15015 Main Street, Bellevue, WA 98007.
- b. Export. The Software Product and Modified Object Code are subject to U.S. export jurisdiction. YOU shall defend, indemnify and hold harmless ULTRABAC if you violate any United States laws when YOU install or deploy a SOFTWARE PRODUCT.

#### Section 7. MISCELLANEOUS.

- a. Arbitration, Jurisdiction, Venue and Attorneys' Fees. YOU agree that any dispute regarding, relating to, or arising from this License shall be determined in accordance with the Commercial Arbitration Rules of the American Arbitration Association before a single arbitrator mutually selected by the parties. The award of the arbitrator shall be final and binding on the parties. YOU agree and consent to personal jurisdiction, subject matter jurisdiction and venue in a federal or state court located in Seattle, King County, Washington, to enforce this EULA, and waive all defenses of lack of personal jurisdiction or forum nonconveniens. Any arbitration Award against YOU may be filed with one or more courts of competent jurisdiction over YOU in addition to or in lieu of any federal or state courts located in Seattle, King County, Washington. The prevailing party shall be entitled to be awarded its reasonable attorney fees and costs as awarded by the arbitrator (or the court, as the case may be). YOU further agree that these arbitration provisions are fully enforceable under the New York Convention. This EULA shall be governed by and construed in accordance with the laws of the State of Washington.
- b. Invalidity/Unenforceability/Waiver. The invalidity or unenforceability of any provision of this EULA shall not affect or

impair the validity or enforceability of any other provision hereof. The exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided herein or by law. No waiver of rights shall be valid unless contained in a writing specifically referring hereto and signed by the Person against whom enforcement is sought.

- c. Entire Agreement. This EULA and its attachments constitute the entire agreement with respect to the subject matters hereof, and supersedes and merges all prior and contemporaneous communications, regarding its specific subject matter. It may not be modified except by subsequent written agreement signed by authorized representatives of both YOU and ULTRABAC.
- d. Binding Effect. This Agreement shall be binding upon YOU and YOUR successors and assigns, personal representative, heirs, and estate, and shall inure to the benefit of ULTRABAC and its successors and assigns.
- e. Severability; Savings. If any one or more provisions of this Agreement shall be held by any court to be invalid or unenforceable because excessively broad as to scope, duration, activity or subject, such invalidity or unenforceability shall not adversely affect the validity or enforceability of any other part of this Agreement.
- f. No Waiver. No waiver of any provision of this Agreement, nor delay in enforcing any rights hereunder, shall be construed as a continuing waiver or create an expectation of non-enforcement of that or any other provision or right.
- g. Force Majeure. Time periods for either YOUR or ULTRABAC's performance under any provisions of this Agreement shall be extended for periods of time during which either YOUR or ULTRABAC's performance is prevented due to circumstances beyond YOURS OR ULTRABAC's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, acts of terrorism, war or other strife.
- h. Headings. Headings in this EULA are for convenience only and shall not be used to interpret or construe the provisions.

#### APPENDICES

##### APPENDIX A-1: UBDR GOLD™

Products covered by UDRB GOLD™ are:

SKU	DESCRIPTION
UB-SG	UBDR Gold™ Stand Alone Server Only License
UB-SGC	UBDR Gold™ Stand Alone Workstation Only License
UB-DG	UBDR Gold™ Stand Alone Server Only License
UB-DGC	UBDR Gold™ Stand Alone Workstation Only License

##### APPENDIX A-2: UBDR PRO™

Products covered by UDRB PRO™ are:

SKU	DESCRIPTION
UB-SP	UBDR Pro™ Integrated Server License
UB-SPC	UBDR Pro™ Integrated Workstation License
UB-DP	UBDR Gold™ Integrated License
UB-DPC	UBDR Gold™ Integrated License

##### APPENDIX A-3

**SUBJECT TO THE TERMS AND CONDITIONS OF THE EULA, THE FOLLOWING ADDITIONAL GRANTS OR RESTRICTIONS APPLY TO THE PRODUCTS DESCRIBED IN APPENDICES A-1**

**AND A-2:**

1. YOU may use one licensed copy of a Software Product on one Virtual Machine as defined in Subsection 1.f of the EULA. However, YOU are required to purchase a separate license for any Software Product (any of products listed in Appendices A-1 and A-2) that YOU wish to use for each Virtual Machine and the physical machine which hosts the Virtual Machine or Virtual Machines that are to be imaged. For example only and by way of illustration, if YOUR server has five (5) Virtual Machines, YOU must purchase five licenses for a Software Product for the Virtual Machines, on the server, one for each Virtual machine, and another (sixth) license for the physical machine hosting the five Virtual Machines. The Software Product Descriptions describe the kind of machine or Virtual Machine that the Software Product may be used for when purchased and subject to the terms and conditions of the EULA and this Appendix A-3.
2. A license for any Software Product may not be transferred from one physical machine to another physical machine, a Virtual Machine to a physical machine, a physical machine to a Virtual Machine, or from a Virtual Machine to another Virtual Machine, without YOU obtaining prior written approval from ULTRABAC, which approval shall be based on ULTRABAC's sole discretion. However, YOU do not need ULTRABAC's prior written consent if and only if YOU transfer the license for a Software Product from a Virtual Machine to another Virtual Machine (regardless of whether the two Virtual Machines are on the same physical machine) only so long as the destination Virtual Machine uses the same system host name as the original Virtual Machine, and the Software Product is completely removed from the original Virtual Machine, or if the original Virtual Machine is deleted or otherwise completely unavailable for any use.
3. The use of any Software Product for deployment onto new machines or additional Virtual Machines is expressly prohibited without separate and written licensing from ULTRABAC SOFTWARE except in the limited context described in the preceding paragraph 2.
4. The use of any Software Product for upgrading either hardware or software on unlicensed physical machines or Virtual Machines is expressly prohibited without separate and written licensing from ULTRABAC SOFTWARE except in the limited context described in paragraph 2 above.
5. Each legally licensed UBDR Pro™ and UBDR Gold™ physical machine or Virtual Machine is entitled to (1) WinPE based boot CD or alternative form of media. YOU must observe all Microsoft WinPE licensing requirements and restrictions. YOU may not create, copy, maintain, or otherwise keep any duplicate copies of the WinPE based media for any reason other than a backup copy and only subject to Subsection 2.b of the EULA. For example only and without limitation, "cold" booting and backing up, and/or restoring, non-licensed machines or Virtual Machines with UBDR Gold is expressly prohibited without separate and written licensing from ULTRABAC.
6. Booting and restoring non-licensed machines or Virtual Machines with UBDR Pro™ is

- expressly prohibited without separate and written licensing from ULTRABAC SOFTWARE.
7. YOU may make one copy of a purchased Software Product in machine-readable form solely for backup purposes. YOU must reproduce on any such copy all copyright notices and any other proprietary legends on the original copy of the Software Product. YOU may not sell, transfer, assign, license, donate, give away, or otherwise allow any use of the copy of the Software made for other than backup for the licensed physical machine or Virtual Machine, except as described in paragraph 2 above. A backup copy of media or software is expressly prohibited from use with the single exception that the original has become defective, destroyed, or lost.
  8. Subject to United States laws and regulations, YOU agree that ULTRABAC may audit YOUR use of the Software Product for compliance with these terms at any time, upon reasonable notice. In the event that such audit reveals any use of the Software by YOU other than in full compliance with the terms of this Agreement, YOU shall reimburse ULTRABAC SOFTWARE for all reasonable expenses related to such audit in addition to any other liabilities YOU may incur as a result of such non-compliance.