

**Carahsoft Rider to Manufacturer Commercial Supplier Agreements**  
**(for U.S. Government End Users)**  
**Revised 20161213**

- 1. Scope.** This Carahsoft Rider and the Manufacturer's Commercial Supplier Agreement (CSA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").
- 2. Applicability.** The terms and conditions in the attached Manufacturer's CSA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a) (1) (B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's CSA is inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's Multiple Award Schedule Contract, GS-35F-0119Y, including, but not limited to the following:
  - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", defined as an entity authorized to order under Government contracts as set forth in General Services Administration Order OGP 4800.2I, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
  - (b) Changes to Work and Delays.** Subject to General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of the GSAR and the FAR provisions shall take precedence.
  - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

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

**(e) Termination.** Clauses in the Manufacturer's CSA referencing suspension, termination or cancellation of the Manufacturer's CSA, the License, or the Customer's Account are hereby deemed to be deleted. Termination, suspension or cancellation shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

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

**(f) Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

**(g) Force Majeure.** Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.

**(h) Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA are hereby deemed to be deleted.

**(i) Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All of the Manufacturer's CSA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) **Renewals.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) **Future Fees or Penalties.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) **Taxes.** Taxes are subject to GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w) (1) (x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).
- (o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer's CSA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w) (1) (iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.

**(r) Limitation of Liability: Subject to the following:**

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

**(s) Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

**(t) Public Access to Information.** Manufacturer agrees that the CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA and this Rider will be available to the public.

**(u) Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).

# **XCENTIAL END USER LICENSE AGREEMENT**

## **Xcential LegisPro Software**

This License Agreement for Xcential LegisPro software (the "**Agreement**") is made and entered into by and between Xcential Corporation ("**Xcential**") and the Licensee identified in the Ordering Document ("**Licensee**"). This Agreement, and the corresponding Xcential Ordering Document by which Licensee orders certain Software, set forth the terms and conditions under which Licensee may license and use such Software. Ordering Documents are governed by this Agreement.

### **1. License.**

**1.1 License Grant.** Subject to the terms and conditions of this Agreement and the Ordering Document, and in consideration of Licensee's payment of all Fees, Xcential grants to Licensee, and Licensee agrees to comply with a non-sublicensable, non-transferable, non-exclusive, limited license to use the Software during the License Term. A license key that enables the Software may be required and forwarded to Licensee electronically. Licensee will only use the Software to process and display legislative documents and data. The license grant set forth herein is limited to indexing the number of Documents specified on the Ordering Document.

**1.2 Other Users.** Licensee may allow Other Users to use the Software for the purposes authorized in this Agreement, and subject to the terms of this Agreement. Licensee is responsible for the behavior of the Other Users in connection with this Agreement.

**1.3 Shipment and License Keys.** Where applicable, the Software will not be shipped until Xcential receives either: (a) a complete and duly executed Order Form; or (b) a purchase order from Licensee referencing a Quote. Upon shipment, Xcential may provide Licensee with a temporary license key and will transmit a permanent license key upon receipt of full payment.

### **2. Installation, Operation and Adaptation of Software.**

**2.1 Installation sites.** Licensee may install and run the Software on network servers and personal computers located on Licensee's internal network, including, but not limited to, devices connected to Licensee's virtual private network.

**2.2 Third party network installation.** The Software may also be copied, installed and run on third party network servers that are dedicated solely to use by or for the benefit of Licensee in accordance with the terms hereof. Such third party network servers shall be accessible only to employees of Licensee or technical subcontractors of Licensee ("**Authorized Personnel**"), solely for

purposes of running and maintaining the network server and ancillary technical support services for and on behalf of Licensee in accordance with the terms hereof. Authorized Personnel may access the network servers either while on the Premises or remotely through a secure virtual private network from computers that are owned or used by Licensee (or such technical subcontractors) and connected to such network server.

**2.3 Use of source code.** Subject to the confidentiality provisions set forth herein, Licensee may, either directly through its Authorized Technical Personnel or indirectly by contracting with third-party programmers (“**Authorized Programmers**”), use the Source Code of the Software to back-up Licensee’s use of the Software, make any corrections to or fix any bugs in the Software and/or rebuild the Software, and create updates, enhancements, modifications, improvements, adaptations and derivative works of the Software (collectively, “**Improvements**”), or combine the Software with other software program applications, solely for use by or for the direct benefit of Licensee in accordance with the terms hereof.

### **3. Restrictions.**

**3.1 Generally.** Except as provided in Section 2 and Section 7.2 , Licensee will not, and will not allow others to: (a) adapt, alter, modify, decompile, translate, disassemble, or reverse engineer the Software or any component thereof; (b) create license keys that enable the Software; (c) copy the Software; (d) use the Software for High Risk Activities; (e) transfer, sublicense, loan, sell, or lease the Software or any component of the Software; or (f) remove or alter any Brand Features or other proprietary notices on or in the Software.

**3.2 Authorized Personnel.** Licensee may not allow anyone other than Authorized Technical Personnel and Authorized Programmers under obligations of confidentiality to install, execute, run or maintain the Software, create Improvements to the Software, or combine the Software with other software program applications.

**3.3 Third Party Components.** Any third party component embedded, included or provided for use with the Software may only be used in conjunction with such Software ordered under the Ordering Document, which use is subject to this Agreement. However, to the extent Software include components governed by open source licenses with provisions inconsistent with this Agreement, those components are instead governed solely by the applicable open source licenses. To the extent Software include components governed by open source licenses requiring the provision of corresponding source code for those components, Xcential hereby provides that source code consistent with those licenses.

**3.4 Transfers.** Licensee may not transfer, assign or sub-license its license rights to the Software under this Agreement, in whole or in part, or, except as otherwise provided in this Section 3 (License Grant), authorize or allow

any use thereof by, any other entity, organization, office, agency or person, whether or not affiliated with Licensee or the U.S. federal or state governments.

**3.5 Revocability.** The license herein granted is revocable upon written notice to Licensee in the event of any unauthorized transfer or sublicense of the Software, in whole or in part, including, without limitation, unauthorized use of the Software other than as expressly set forth herein.

#### **4. Ownership.**

**4.1 Generally.** Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. Intellectual Property Rights in and to the content accessed through the Software are the property of the applicable content owner and may be protected by applicable laws.

In particular, this Agreement constitutes a license and not a sale of the Software. Xcential owns and shall retain, exclusively, all intellectual property rights in and to the Software, including, without limitation, the Source Code, and all Improvements with respect thereto (collectively, the "**Xcential Proprietary Property**"), and Licensee hereby assigns and agrees to assign and deliver to Xcential any and all right, title and interest therein and all embodiments thereof (whether in hard copy or soft copy form). Except as expressly authorized by this Agreement, Licensee may not reproduce, disclose or use Xcential Proprietary Property without the prior written consent of Xcential. Licensee shall not remove, obscure, or alter any notice of proprietary ownership or right of Xcential on any Software product or documentation.

#### **5. Payment Terms.**

**5.1 Purchase Process.** Xcential will provide Licensee an Ordering Document for each purchase, to confirm the Software, quantity and price.

**5.2 Payment.** All Fees are due thirty days from the invoice date. All payments due are in U.S. dollars. Payments made via wire transfer must include the following instructions:

Silicon Valley Bank

San Diego, CA

ABA# 121140399

Xcential Corporation

Account # 3301256428

**5.3 Taxes.** Licensee is responsible for any Taxes, and Licensee will pay Xcential for the Software without any reduction for such amounts. If Xcential is obligated to collect or pay Taxes, the Taxes will be invoiced to Licensee, unless Licensee provides Xcential with a valid tax exemption certificate authorized by the appropriate taxing authority. If Licensee is required by law to withhold any Taxes from its payments to Xcential, Licensee must provide Xcential with an official tax receipt or other appropriate documentation to support such withholding.

**6. Delivery.**

The Software will be delivered by the shipping method indicated on the Ordering Document. Xcential will bear the risk of loss for the Software until the Software is received by Licensee. Upon receipt by Licensee, Licensee bears all risk of loss for the Software.

**7. Technical Support Services (TSS).**

**7.1 Generally.** Subject to Licensee's payment of the Fees, Xcential will provide TSS to Licensee for the Software for the Support Period in accordance with the Technical Support Services Agreement (TSSA) in effect when the Software are ordered. Unless otherwise agreed in writing, to receive TSS Licensee must provide Xcential with all reasonably required access to the Software in accordance with the TSSA. Licensee's failure to provide such access will be at Licensee's own risk and without liability to Xcential.

**7.2 Software Updates.** TSS includes Updates. Licensee's use of Updates is subject to this Agreement and the Ordering Document. Licensee will install Updates in accordance with the TSSA. Licensee may make a copy of an Update to a physical medium solely for the purpose of facilitating the installation of that Update onto the Software. Licensee will immediately erase or destroy the copy of the Update once that Update is installed on the Software.

**8. Confidential Information.**

**8.1 Obligations.** Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information, but with no less than a reasonable standard of care; and (b) not disclose the Confidential Information, except to affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. Each party (and any affiliates, employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its affiliates, employees and agents in violation of this Section.



**8.2 Exceptions.** Confidential Information does not include information that: (a) the recipient already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.

**8.3 Required Disclosure.** Each party may disclose the other party's Confidential Information when required by law, but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.

## **9. Limited Warranty.**

**9.1 Limited Warranty.** Xcential warrants that the executable object code of its Software as delivered to Licensee shall perform substantially in accordance with Xcential's specifications delivered with the Software for a period of ninety (90) days from the date of delivery. This warranty is provided to the original Licensee only.

**9.2 Exclusions.** Excluded from this warranty is any failure, loss or damage caused by installation or use of the Software other than in strict compliance with specifications provided to Licensee by Xcential, operation of the Software in a manner other than as specified by Xcential, modification, alteration or repair not performed by Xcential, Software Improvements not performed by Xcential, use of the Software in combination with other software program applications not created by Xcential, or any force majeure event. Xcential is not liable for loss of Internet access or failure to maintain adequate server capacity, storage or network access. Except in connection with a breach of the foregoing limited warranty, or any TSSA, Xcential is under no obligation to repair, update, enhance, maintain, support or service the Software.

**9.3 Exclusive Remedy.** Xcential's entire liability and Licensee's sole and exclusive remedy with respect to breach of the above warranty will be at Xcential's option: (a) repair of the Software in accordance with the TSSA; (b) replacement of the defective component or entire Software, as applicable; or (c) refund of the purchase price paid for the Software.

## **10. Limitation of Liability.**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (A) XCENTIAL EXCLUDES ALL WARRANTIES, GUARANTEES, CONDITIONS, TERMS, REPRESENTATIONS, AND UNDERTAKINGS; AND (B) XCENTIAL DOES NOT MAKE ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. XCENTIAL DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR-FREE OR UNINTERRUPTED. THE SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES.

## **11. Term and Termination.**

**11.1 Term.** Subject to Licensee's payment of Fees, the term of the license granted in this Agreement for any Software will begin on the Shipment Date and will continue for the License Term, unless terminated earlier as set forth below.

**11.2 Termination for Breach.** Either party may terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.

### **11.3 Effect of Termination.**

**a. Termination for Xcential's Breach.** If the Agreement is terminated for Xcential's breach, the licenses granted herein regarding Licensee's use of the Software may, at Licensee's option, continue for the remainder of the License Term, subject to Licensee's continued compliance with this Agreement.

**b. Termination for Licensee's Breach.** If the Agreement is terminated for Licensee's breach, then: (i) the License Term and all other rights and licenses granted by one party to the other, or any services provided by Xcential to Licensee, will cease immediately; (ii) upon request, each party will promptly return all Confidential Information of the other party; (iii) all payments owed by Licensee to Xcential are immediately due; and (iv) Licensee must immediately return the Software to Xcential via Xcential's authorized return shipment process.

**c. Expiration of the License Term.** Upon expiration of the license term, Licensee must delete all Software as instructed by Xcential. If Licensee chooses to delete the Software, Licensee must provide written certification to Xcential of this deletion within ten business days of the expiration of the License Term.

## **12. Limitation of Liability.**

**12.1 Limitation on Indirect Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANY TERM OR PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (WHETHER OR NOT BASED ON ANY ACTION IN CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION LOSSES, OR LOSS OF REVENUES, SALES OR PROFITS, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

**12.2 Limitation on Amount of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE FEES PAYABLE TO XCENTIAL HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY DIRECT DAMAGES IN EXCESS OF, AND EACH PARTY'S TOTAL LIABILITY HEREUNDER SHALL NOT EXCEED, THE TOTAL FEES PAYABLE IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

**12.3 Exceptions to Limitations.** These limitations of liability do not apply to breaches of confidentiality obligations, or violations of a party's Intellectual Property Rights by the other party.

### **13. Infringement.**

**13.1 By Xcential.** Xcential represents and warrants to Licensee that Xcential has the right to grant Licensee the license set forth in this Agreement. Xcential will defend, indemnify and hold Licensee harmless, at Xcential's own expense, from any and all demands, claims, suits, proceedings and actions against Licensee brought by an unaffiliated third party that alleges that the Software as delivered by Xcential to Licensee infringes or misappropriates any patent, copyright, trademark, trade secret or other intellectual property right of such third party.

**13.2 Conditions.** The foregoing obligations are conditioned on Licensee: (i) notifying Xcential promptly in writing of any such action; (ii) giving Xcential sole control of the defense thereof and any related settlement negotiations; and (iii) cooperating and, at Xcential's reasonable request, assisting Xcential in such defense. Licensee may not settle any such action without Xcential's prior written consent. Licensee may participate in such defense at Licensee's own expense.

**13.3 Remedies.** If the Software becomes, or in Xcential's opinion is likely to become, the subject of an infringement claim, Xcential may, at its option and expense, either (i) procure for Licensee the right to continue using the Software; (ii) replace or modify the Software so that it becomes non-infringing; or (iii) proceed with the defense and/or settlement of the claim as set forth herein.

**13.4 Termination and Refund.** If Xcential does not reasonably believe the options in Section 14.3 are commercially reasonable, Xcential may terminate the license for the allegedly infringing Software and refund a percentage of the Fees paid by Licensee through the date a third party claim occurs for the allegedly infringing Software, per Section 14.1, less depreciation for use assuming straight line depreciation over the Support Period.

**13.5 Exceptions.** Xcential will have no obligation under this Section or otherwise with respect to any allegation or claim based upon: (i) any use of the Software by Licensee, any customer or any user not in accordance with this Agreement; (ii) any use of the Software by Licensee, any customer or any user in combination with products, equipment, software, or data not supplied by Xcential if such infringement would have been avoided but for the combination with other products, equipment, software or data; or (iii) any modification of or

Improvements to the Software by any person other than Xcential or its expressly authorized agents or subcontractors. Licensee agrees to defend, indemnify and hold Xcential harmless from and against any action to the extent arising from a claim based on any action or conduct set forth in this subsection (14.3).

**13.6 By Licensee.** Licensee will indemnify, defend, and hold harmless Xcential from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of: (a) a third party claim made against Xcential for infringement or misappropriation based on conduct by Licensee as described in Section 14.2; or (b) Licensee's breach of Section 16 (Export Compliance).

**13.7 General.** The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party has full control and authority over the defense, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay any money will require that party's prior written consent, such consent not to be unreasonably withheld or delayed; and (b) the other party may join in the defense with its own counsel at its own expense. THE INDEMNITIES ABOVE ARE THE ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

**14. Government Purposes (applicable to United States government Licensees only).**

The Software is commercial within the meaning of the applicable civilian and military Federal acquisition regulations and any supplements thereto. If the user of the Software is an agency, department, employee, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, including technical data or manuals, is governed by the terms, conditions and covenants contained in the Xcential standard commercial license agreement, as contained herein.

**15. Export Compliance.**

Licensee will comply with, and will obtain all prior authorization from the competent government authorities required by, the Export Control Laws. This Section 15 will survive termination or cancellation of this Agreement.

**16. Miscellaneous.**

**16.1 Notices.** All notices must be in writing and addressed to the attention of the other party's Legal counsel and primary point of contact. Notice will be deemed given: (a) when verified by written receipt if sent by personal courier, overnight courier, or mail; or (b) when verified by automated receipt or electronic logs if sent by facsimile or email.

**16.2 Assignment.** Neither party may assign or transfer any part of this Agreement without the written consent of the other party, except assignment of the Agreement in its entirety to an Affiliate but only if: (a) the assignee agrees in writing to be bound by the terms of this Agreement; and (b) the assigning party remains liable for obligations incurred under the Agreement prior to the assignment. Any other attempt to transfer or assign is void.

**16.3 Change of Control.** Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction), (a) the party experiencing the change of control will provide written notice to the other party within 30 days after the change of control, and (b) the other party may immediately terminate this Agreement any time between the change of control and thirty days after it receives the written notice in subsection (a).

**16.4 Force Majeure.** Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.

**16.5 No Agency.** The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

**16.6 No Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver.

**16.7 Severability.** If any provision of this Agreement is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.

**16.8 No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**16.9 Equitable Relief.** Nothing in this Agreement will limit either party's ability to seek equitable relief.

**16.10 Governing Law.** This Agreement is governed by Federal law.

**16.11 Amendments.** Any amendments to this Agreement must be agreed upon in writing.

**16.12 Survival.** Those provisions that by their nature should survive termination of this Agreement, will survive termination of this Agreement.

**16.13 Entire Agreement.** This Agreement, including any documents attached to this Agreement, and the Ordering Document, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. If there is a conflict between the documents that make up this Agreement and the terms and conditions of Carahsoft Technology Corporation's Multiple Award Schedule 70 Contract GS-35F-0119Y, the conflict will be resolved in accordance with GSAR 552-212-4(s) Order of Precedence.

**16.14** Counterparts. The parties may enter into this Agreement by executing the applicable Order Document, which may be executed in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

**17.** Definitions.

"Affiliate" means, with respect to either Xcential or Licensee, any entity that directly or indirectly Controls, is Controlled by, or is under common Control with such party.

"Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

"Confidential Information" means information disclosed by a party to the other party under this agreement that is marked as confidential or would normally be considered confidential under the circumstances. Information provided to Xcential by Licensee during Xcential's provision of TSS is Licensee's Confidential Information.

"Control" means control over greater than fifty percent of the voting rights or equity interests of a party.

"Licensee Content" means content owned by, or lawfully licensed to, Licensee. Licensee Content may be located on servers that are owned and operated by Licensee, or operated on Licensees behalf.

"Documentation" means Xcential proprietary documentation in the form generally made available by Xcential to its Licensees for use with the Software.

"Export Control Laws" means all applicable export and re-export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State.

"Fees" means all applicable fees as set forth in the Ordering Document.

"Graphic" means an unaltered graphic in the form provided by Xcential for the purpose of identifying that the Software is provided by Xcential.

"High Risk Activities" means uses such as the operation of nuclear facilities, air traffic control or life support systems, where the failure of the Software could lead to death, personal injury, or environmental damage.

"Intellectual Property Rights" means any and all rights existing from time to time under patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide.

"License Term" means the period of time during which Licensee is authorized to use the Software, and will be set forth in the Ordering Document.

"Order Form" means the written Xcential order form for the Software Xcential will provide to Licensee subject to this Agreement. All Order Forms are subject to this Agreement, and will contain at least: (i) Software name; (ii) Document limit, as applicable; (iii) price; (iv) type of TSS provided and the Support Period; (v) the License Term; and (vi) a reference number.

"Ordering Document" means either a Xcential Order Form, or a Xcential Quote.

"Other Users" means Licensee's Affiliates, agents, contractors, or authorized end users.

"Primary System" means any Software for which Licensee has obtained a license from Xcential.

"Quote" means a written document supplied by Xcential specifying the Software Xcential will provide to Licensee subject to this Agreement. All Quotes are subject to this Agreement, and will contain at least: (i) Software name; (ii) Document limit, as applicable; (iii) price; (iv) type of TSS provided and the Support Period; (v) the License Term; and (vi) a reference number.

"Shipment Date" means the date of shipment by Xcential or its designated agent.

"Support Period" means the period of time, set forth on the Ordering Document, during which Xcential will provide TSS. Unless otherwise agreed to in writing, the Support Period will begin upon the later of: (i) Xcential's installation of the Software; or (ii) ten days following the Shipment Date.

"TSS" means the technical support services provided by Xcential, in accordance with Xcential's TSSA, for the Software identified in the Ordering Document for Support Period.

"TSSA" means Xcential's then current Technical Support Services Agreement.

# Xcential Technical Support Services Agreement

Xcential Corporation, a Delaware corporation ("Xcential"), shall provide Technical Support Services (collectively, "Services") to the Customer for Supported Software, in accordance with the terms of this Agreement (the "Agreement").

## 1. Definitions.

### **“Supported Software” or “Software”**

means software purchased from Xcential or custom software developed by Xcential for the Customer, for which Technical Support is expressly included in the software purchase agreement or which is separately purchased by the Customer.

### **“Technical Support”**

means the provision of telephone or web-based technical assistance by Xcential to Customer’s technical contacts with respect to Installation, Errors and Improvements, at the corresponding Services level purchased by Customer.

### **“Installation”**

means setting up software for ongoing use by the Customer, after any development and testing period defined in the software development or purchase agreement. Software may be installed on computers owned by the Customer or using third-party cloud services.

### **“Error”**



means a failure in the Software to materially conform to the specifications described in the applicable product documentation.

**“Modified Code”**

means any modification, addition and/or development of code scripts deviating from the predefined software products developed by Xcential for Customer use upon installation. Modified Code excludes customizable Software options for which Xcential offers Services on the applicable Xcential price list.

**“Services Fees”**

means the fees for Services specified in a corresponding Xcential or reseller invoice.

**“Services Period”**

means the period for which Customer has purchased the Services and any subsequent renewal periods and shall commence:

- a. for Software licenses for which Services are mandatory, on the date the applicable Software is installed for Customer use, and
- b. for Software licenses for which Services are optional, on the date of purchase of the Services.

**“Severity”**

is a measure of the relative impact an Error has on the use of the Software, as determined by Xcential. Four levels of Severity apply to all Software:

**“Severity One”**

Customer's production server or other mission critical system(s) are down and no workaround is immediately available and

- a. all or a substantial portion of Customer's mission critical data is at a significant risk of loss or corruption;
- b. Customer has had a substantial loss of service; or
- c. Customer's business operations have been severely disrupted.

**“Severity Two”**

that major functionality is severely impaired such that:

- a. operations can continue in a restricted fashion, although long-term productivity might be adversely affected;
- b. a major milestone is at risk; ongoing business operations are affected; or
- c. a temporary workaround is available.

**“Severity Three”**

a partial, non-critical loss of functionality of the software such that:

- a. the operation of some component(s) is impaired but allows the user to continue using the Software; or
- b. Customer milestones are at minimal risk.

**“Severity Four”**

general usage questions and cosmetic issues, including errors in the documentation.

**“Subscription Services”**

means any Patches, Maintenance Releases, Minor Releases and Major Releases to the Software, and their Documentation, that Xcential provides to Customer.

- a. “Patches” means individual fixes for specific problems. Patches may or may not be made generally available and usually do not increment the product version number.
- b. “Maintenance Release” means a generally available release of the Software that typically provides maintenance corrections or fixes only, usually designated by Xcential by means of a change in the digit to the right of the second decimal point (e.g. LegisPro 2.0.1).
- c. “Minor Release” means a generally available release of the Software that (i) introduces a limited number of new features and functionality, and (ii) is usually designated by Xcential by means of a change in the digit to the right of the decimal point (e.g., LegisPro 2.1).
- d. “Major Release,” also known as an “Upgrade,” means a generally available release of the Software that (i) contains functional enhancements or extensions, and (ii) is designated by Xcential by means of a change in the digit to the left of the first decimal point (e.g., LegisPro 3.0).

### **“Third Party Products”**

means any software or hardware that (i) is manufactured by a party other than Xcential and (ii) has not been incorporated by Xcential into the Supported Software.

## **2. Services.**

### **2.1 Provision of Services.**

Subject to the terms of this Agreement, Xcential shall provide Services to Customer during the Services Period at the Services level purchased. Customer’s use of a Subscription Services release will be subject to the terms of the Subscription Services agreement, Xcential Product

Guide for the applicable Subscription, or posted at [www.xcential.com](http://www.xcential.com) on the date Customer first installs that release.

## **2.2 End of Availability.**

Xcential may, at its discretion, decide to retire Software and/or Services from time to time (“End of Availability”). Xcential shall post notice of End of Availability, including the last date of general commercial availability of the affected Software and the timeline for discontinuing Services, at <http://www.xcential.com>. Xcential shall have no obligation to renew a Services Agreement for Software that is outside of the applicable Service life.

## **2.3 Purchase Requirements.**

1. Except as otherwise provided for by Xcential, Customer may purchase initial Services only for the most current, generally available release of the Software.
2. Customer must purchase and/or renew Services at the same Services level for all of the Software in a given environment (e.g., Test, Development, QA, Production).
3. Except as otherwise provided in the applicable price list, the minimum term for any Service offering is one (1) year.
4. These Services terms and conditions will automatically update to Xcential’s then-current Services terms and conditions set forth at <https://www.xcential.com> or as provided to the Customer upon any renewal of Services.

## **2.4 Exclusions.**

Services do not cover problems caused by the following:

1. Accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of computing hardware not furnished by Xcential; operation of the Software with computing hardware not in accordance with the manufacturer’s specifications; or causes other than ordinary use;

2. Improper installation by Customer or use of the Software that deviates from any operating procedures as specified in the Documentation;
3. Third Party Products, other than the interface of the Software with the Third Party Products;
4. Modified Code;
5. Any customized deliverables created by Xcential specifically for Customer as part of consulting services; or
6. Use of the Software with unsupported tools (i.e., Java Development Kit (JDK); Java Runtime Environment (JRE)), APIs, interfaces or data formats other than those included or installed by Xcential with the Software and supported as set forth in the Documentation; or
7. Any issue not covered by Technical Support.

Customer may request assistance from Xcential for such problems, for an additional fee.

In the event that Xcential suspects that a reported problem may be related to Modified Code, Xcential, may, in its sole discretion, (i) request that the Modified Code be removed, and/or (ii) inform Customer that additional assistance may be obtained by Customer by engaging Xcential's consulting services for an additional fee.

## **2.5 Customer Responsibilities.**

Xcential's obligations regarding Services are subject to the following:

1. Customer agrees to receive from Xcential communications via e-mail, telephone, and other formats, regarding Services.
2. Customer's technical contact shall cooperate to enable Xcential to deliver the Services.
3. Customer is solely responsible for the use of the Software by its personnel and shall properly train its personnel in the use and application of the Software.
4. Customer shall promptly report to Xcential all problems with the Software, and shall implement any corrective procedures provided by Xcential reasonably promptly after receipt.

5. Customer is solely responsible for protecting and backing up the data and information stored on the computers on which the Software is used and should confirm that such data and information is protected and backed up in accordance with any internal or regulatory requirements as applicable, before contacting Xcential for Technical Support. Xcential is not responsible for lost data or information in the event of errors or other malfunction of the Software or computers on which the Software is used.
6. Customer will have dedicated resources available to work on Severity One Errors whenever they occur.

### **3. Fees.**

1. Services Fees are payable on the Effective Date or, in the case of a renewal term, no later than the date of commencement of the applicable Services Period.
2. Services Fees are specified in the applicable price list and are non-refundable.
3. In the event that Customer renews or adds a Services offering that has a minimum term of one (1) year, Customer may elect to make Services for all or a portion of its Software licenses coterminous with the renewed or added Services. In such case, Xcential will prorate the applicable Services Fees to extend the current Services Period to make it coterminous with such renewed or added Services.
4. In cases where Customer purchases a License to migrate up from one edition of the Software to another, any unused period of the Services Period on the original License will be converted and used to extend the Services Period for the newly purchased upgraded License.
5. Services Fees are exclusive of any taxes, duties, or similar charges imposed by any government. Customer shall pay or reimburse Xcential for all federal, state, dominion, provincial, or local sales, use, personal property, excise, value added, withholding or other taxes, fees, or duties relating to the transactions contemplated by this Agreement (other than taxes on the net income of Xcential). All invoices

issued hereunder by Xcential are due and payable within thirty (30) days of the date of the invoice. Amounts not paid on time are subject to a late charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount allowed by applicable law. If payment of any Services Fee is overdue, Xcential may also suspend performance until such delinquency is corrected.

## **4. Warranties and Limitations.**

### **4.1 Limited Warranty.**

Xcential warrants that the Services to be performed hereunder will be done in a workmanlike manner and shall conform to industry standards. Upon Customer providing Xcential with a reasonably detailed written notice to cure within thirty (30) days of occurrence of the nonconformance, Xcential will re-perform the Services to achieve commercially reasonable conformance with the above warranty.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY IS GIVEN EXPRESSLY AND IN PLACE OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TO THE MAXIMUM EXTENT MANDATED BY LAW, THIS REMEDY WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMANCE OF SERVICES.

### **4.2 Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, XCENTIAL SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, ARISING FROM ITS PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL

DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO CUSTOMER. XCENTIAL'S LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE SERVICES FEES PAID BY CUSTOMER TO XCENTIAL UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT MOST DIRECTLY GIVING RISE TO THE CLAIM.

#### **4.4 Termination.**

Xcential may terminate this Agreement and all Services at any time if (1) it is discovered that Customer is currently in breach of its Software license restrictions, pursuant to Customer's Software license or (2) Customer is in material breach of this Agreement.

#### **4.5 Data Protection.**

Customer acknowledges that correspondence and log files generated in conjunction with a request for Services may contain sensitive, confidential or personal information. Customer is solely responsible for taking the steps it considers necessary to protect such data, including obfuscating the logs or otherwise guarding such information prior to sending it to Xcential.

#### **4.6 Other.**

Customer may not assign or delegate this Agreement to any third party without the prior written consent of Xcential. This Agreement shall be governed by the laws of the State of California without regard to conflict of laws principles. The parties consent to the exclusive jurisdiction of the state and federal courts located in San Diego County, California. This Agreement and the terms and conditions of Carahsoft Technology Corporation's Multiple Award Schedule Contract constitutes the entire agreement of the parties with respect to the provision of the Services by Xcential to Customer, and supersedes all prior written or oral communications, understandings and agreements. This Agreement may not be amended except in a written document signed by Carahsoft Technology Corporation and the GSA. Any waiver of the provisions of this Agreement must be in writing to be effective. Except as expressly set forth herein, no terms of any purchase order or other business form that Customer may use will affect the obligations of



the parties under this Agreement, and any such purchase order or other business form of Customer which contains additional or conflicting terms are hereby rejected by Xcential. If any provision of this Agreement is found to be invalid or unenforceable, the remaining terms will continue to be valid and enforceable to the fullest extent permitted by law.