

Sensics, Inc.
7125 Thomas Edison Drive
Suite 103
Columbia, MD 21046
<http://sensics.com/>

**Carahsoft Rider to Manufacturer End User License Agreements
(for U.S. Government End Users)**

- 1. Scope.** This Carahsoft Rider and the Sensics, Inc. ('Manufacturer') End User License Agreement (EULA) 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 EULA 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 EULA are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's 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 GSA contracts as set forth in GSA ORDER 4800.2G ADM, 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 GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which 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 Agreement: (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 Agreement. 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
 - (a)** Error! Unknown document property name.

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 Agreement.

- (e) **Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement 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 will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA 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 (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.
- (j) **Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All Manufacturer EULA 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 Manufacturer EULA 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 Manufacturer EULA 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 FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (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 EULA, 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 EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (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 EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA 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.

PURCHASE AGREEMENT

This Purchase Agreement (“Agreement”) is made this ____ day of ___, 200_ by and between:

Seller	Buyer
Name	Name:
Street Address:	Street Address:
City/State/Zip/Country:	City/State/Zip/Country:
Contact/Phone #:	Contact/Phone #:

General Terms. Seller agrees to sell, and Buyer agrees to buy, the Products listed below (collectively, the “Products”) subject to the provisions of this Agreement. Buyer agrees to pay Seller the Purchase Price listed below in accordance with the Payment Terms. **This Agreement is subject to the Terms and Conditions of Sale attached hereto as Exhibit A (“Terms and Conditions”) which is a part hereof and incorporated herein by reference for all purposes.** **General:** Buyer shall comply with the Terms and Conditions attached to this Order Form and incorporated herein by reference. This Order Form, together with the Terms and Conditions, constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, and communication regarding this subject, whether written or oral. Except as otherwise specifically set forth herein, the Agreement may not be amended except in a writing signed by both parties

Product Description:	
Product Quantity:	
Purchase Price: US \$_____	Payment Terms: Payment by Buyer is required upon Buyer’s execution of this Purchase Agreement. Buyer shall remit payment to Seller as follows:
Shipment Date:	Within _____ days after Seller’s receipt of full payment.

When agreed to by Buyer, by signing this Agreement and returning it to Seller via fax to_____. This Agreement will constitute a legally binding agreement between Buyer and Seller.

Accepted: BUYER

By _____

Name of Authorized Signer and Title

EXHIBIT A

TERMS AND CONDITIONS OF SALE

1. **Taxes, Shipping.** The Purchase Price specified on the first page of this Agreement does not include any (a) taxes payable on such price, or on the transfer, sale or use of the Product, or (b) shipping or other transportation charges, all shipments being made F.O.B. Seller's facility. The Buyer shall pay all insurance, taxes, shipping charges, storage charges, and other costs or expenses relating to its receipt, transfer, sale and use of the Product. In the event Buyer's account becomes past due, or is otherwise deemed insecure, Seller may, in its sole discretion, suspend, interrupt or disconnect activities under this Agreement. In the event of such suspension, interruption or disconnection, Buyer may be required to post a deposit or such other security, as Seller deems necessary in order to resume activities under this Agreement. In the event that a billing dispute should arise, Buyer must notify Seller in writing no later than 10 days after receipt of invoice. Buyer will be required to state in detail the nature of the claim, the amount in question and provide supporting documentation. Upon receipt of claim, Seller will investigate the claim and respond in writing no later than 45 days after receipt of the claim.
2. **Shipment Risk of Loss.** Seller will ship the Products F.O.B. Baltimore, MD ("Seller's Facility"). Risk of loss, damage or destruction of or to any Product(s) passes to Buyer upon delivery of the Product to Seller's Facility.
3. **Confidentiality.** Except as otherwise permitted in this Agreement, as required to enforce the terms of this Agreement, or otherwise authorized by Seller, Buyer agrees to treat any Product Technology as confidential, and to use it only as required in the use of the Product by Buyer, and not to disclose it to any third party. If Buyer is required to produce any such information by order of any government agency or regulatory body, subpoena or by law, its release of the required information will not constitute a violation of this provision, provided it provides the Seller with prompt notice of the requirement and cooperates, at no cost to it, in efforts to protect the information. Notwithstanding the foregoing, the confidentiality obligations set forth in this section shall not apply to any information which (i) is publicly available without breach of this Agreement, (ii) is independently developed by the Buyer outside the scope of this Agreement and without reference to or use of the Product Technology, or (iii) is rightfully obtained by the recipient party from third parties which are not obligated to protect its confidentiality.
4. **Exportation and Other Regulations.** Buyer will at all times comply with any and all applicable export rules, regulations and laws governing the importation or export of the Product.
5. **Warranties.** SELLER WARRANTS TO THE BUYER THAT FOR A PERIOD OF ONE YEAR FROM SELLER'S SHIPMENT, THE PRODUCT WILL CONFORM WITH THE PRODUCT'S PUBLISHED SPECIFICATIONS FURNISHED WITH THE PRODUCTS. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY SHALL BE VOID IF THE PRODUCT HAS BEEN TAMPERED WITH, MODIFIED, ABUSED, NEGLECTED, OR IMPROPERLY USED, OR DAMAGED FOR REASONS BEYOND SELLER'S CONTROL, SUCH AS ELECTRICAL POWER FLUCTUATIONS OR FAILURES, AND NATURAL DISASTERS. SELLER IS NOT RESPONSIBLE FOR USE OF THE PRODUCT IN COMBINATION WITH OTHER GOODS NOT PROVIDED OR AUTHORIZED BY SELLER. THIS WARRANTY ALSO SPECIFICALLY EXCLUDES BURN-IN OF THE OLED MICRO-DISPLAYS ASSEMBLED INSIDE SELLER'S PRODUCT.
6. **Default, Remedies.** Buyer shall be in default under this Agreement upon the failure of Buyer to observe or perform any of Buyer's agreements herein contained. In the event of default by the Buyer, Seller shall be entitled to collect from Buyer all costs, fees and expenses incurred to enforce its rights hereunder, including, without limitation, court costs, costs of arbitration, legal fees, and fees paid to other professionals or agencies. THE SELLER'S OBLIGATIONS, AND BUYER'S EXCLUSIVE REMEDY UNDER THIS AGREEMENT SHALL BE THE REPAIR OR REPLACEMENT OF A PRODUCT WHICH DOES NOT MEET THE WARRANTIES. SELLER WILL MAKE SUCH REPAIR OR REPLACEMENT AS ARE NECESSARY TO BRING THE AFFECTED PRODUCT IN CONFORMANCE WITH THE SELLER'S PUBLISHED SPECIFICATIONS FURNISHED WITH THE PRODUCTS, PROVIDED BUYER PROMPTLY NOTIFIES SELLER OF THE FAILURE IN WRITING WITHIN THE WARRANTY PERIOD, AND THE DEFECTIVE PRODUCT IS RETURNED TO SELLER WITH TRANSPORTATION CHARGES PREPAID BY BUYER, AND SELLER'S EXAMINATION OF SUCH PRODUCTS SHALL DISCLOSE TO ITS SATISFACTION THAT SAID DEFECTS EXISTS, AND SELLER MUST BE ABLE TO REPRODUCE SUCH DEFECT IN THE PRODUCT.
7. **DISCLAIMERS.** EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY STATED HEREIN, SELLER MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE WHATSOEVER, EXPRESSED OR IMPLIED, ORAL OR IN WRITING. ANY LOSS, DAMAGE OR EXPENSE DIRECTLY OR INDIRECTLY ARISING FROM BUYER'S, ITS AGENTS' OR ANY CUSTOMER'S INSPECTION, DELIVERY, PICK-UP, PURCHASE SHALL BE THE SOLE RESPONSIBILITY OF BUYER.
8. **Limitation of Liabilities.** In no event shall Seller be liable for loss of profit, indirect, special, incidental, or consequential damages arising out of any breach of this Agreement or obligations under this Agreement. Seller shall not be liable for any damages caused by delay in delivery, installation, or furnishing of the Product. Seller's liability under this Agreement shall in no event exceed the per unit Purchase Price under this Agreement for the Product that is the subject of any claim.

9. **Force Majeure.** Seller shall not be liable for any delay or interruptions in performance under this Agreement, which is caused by any condition that is beyond the control of the Seller, including, without limitation, strikes, riots, acts of terrorism, acts of God, and unavailability of materials and goods used in the Products.
10. **Assignment.** Buyer may assign this Agreement only with the written consent of the Seller, and any assignment without such consent shall be void. Subject to the foregoing, this Agreement shall be binding inure to the benefit of permitted successors and assigns.
11. **Retention of Title.** The Products shall remain the property of the Seller until Buyer's complete payment of the Purchase Price, or as otherwise agreed. Notwithstanding the foregoing, Buyer does not acquire any property or proprietary rights in software, technical data, know-how, processes, algorithms, code, users manuals, documentation, or applications incorporated, embedded, included or otherwise provided in or with the Product (referred to herein as "Product Technology"), other than the right to use the Product Technology with the hardware. The Seller remains the exclusive owner of any intellectual or industrial property rights relating to the Product Technology and any and all trademarks represented by Seller's company name, logos, and product names. The Product Technology is protected by patent copyright and trade secret laws. Buyer shall not copy or duplicate, remanufacture, translate, reverse engineer, decompile, or disassemble, nor shall Buyer permit any other person, including customers, end users, to copy or duplicate, remanufacture, translate, reverse engineer, decompile, or disassemble, all or any part of the Product or other Product Technology, in any manner.
- Buyer acknowledges and agrees that Seller will suffer irreparable harm which is not easily measured in monetary terms if Buyer violates the terms of this Agreement, and Buyer agrees that, in addition to all remedies (monetary and non-monetary) available to Seller, Seller shall be entitled to seek and receive temporary and permanent injunctive or similar equitable relief to immediately cause Buyer or any customer of Buyer to cease the conduct that violates this Agreement. Buyer agrees that it will not object to the granting of such relief, will not attempt to assert an affirmative or other defense, and will fully cooperate with Seller. The parties agree any such relief shall be granted without the posting of a bond or other monetary requirement by Seller.
13. **U.S. Government End-Users.** The Products, and any related documentation or software provided or otherwise made available pursuant to this Agreement are each a "commercial item" as that term is defined at 48 C.F.R. 2.101. The terms and conditions of this Agreement shall govern any use of the Products by U.S. Government end users, and shall supersede any conflicting contractual terms and conditions. Further, the following additional provision only applies to acquisitions governed by the Department of Defense Federal Acquisition Regulation Supplement ("DFARS") Subpart 227.4 (June 1995): Any documentation pertaining to Product shall be deemed technical data pertaining a commercial item. Accordingly, pursuant to 48 C.F.R. 227.7102-3, the Government's rights in such technical data shall be those limited rights set forth in subparagraph (b)(2) of the "Technical Data - Commercial Items" clause at DFARS 252.227-7015 (NOV. 1995).
14. **General.** (a) If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. (b) The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any right hereunder. (c) This Agreement and these Terms and Conditions constitute the final written expression of the terms of agreement between the parties hereto, and supersede and replace all prior or collateral agreements, discussions, and/or understandings, whether written or oral, between the parties hereto. (d) This Agreement may only be amended in writing signed by all parties hereto and any condition to a party's obligations hereunder may only be waived in writing by such party. (e) Buyer hereby consents to the exclusive jurisdiction of, and venue in, all state and federal courts in the state in which Seller is located as set forth in the first page of this Agreement. If requested by Seller, Buyer also agrees to binding arbitration in such jurisdiction to settle any disputes, such arbitration to be governed by the rules then in effect for the American Arbitration Association. (f) This Agreement may be executed in counterparts, all of which together shall constitute the same instrument. (g) This Agreement and the performance hereunder shall be governed by the law of the State of Maryland, to the exclusion of the United Nations Convention on Contracts for the International Sale of Products (Vienna Convention of 1980, hereafter referred to as CISG). (h) Any reference made to trade terms (such as F.O.B. or "Free on Board") is deemed to be made to the relevant term of Incoterms published by the International Chamber of Commerce. Any reference made to a publication of the International Chamber of Commerce is deemed to be made to the version current at the date of conclusion of the Agreement. (i) The invalidity or unenforceability of any term of this Agreement shall not affect the validity and enforceability of the remainder of this Agreement, or any of its other terms, and such other terms shall be construed as though such invalid or unenforceable term was not included herein.