## Kapow (GSA 05-10-2012 CARAHSOFT FINAL)

## ATTACHMENT VII END USER LICENSE AGREEMENT

THE FOLLOWING TERMS AND CONDITIONS, TOGETHER WITH THE TERMS AS SET FORTH ON THE END USER SALES ORDER AND IN THE MASTER GSA CONTRACT (INCLUDING APPLICABLE INCORPORATED REGULATIONS), SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE END USER AND KAPOW TECHNOLOGIES, INC.

#### 1. Grant of License

Subject to the terms and conditions of this License Agreement, Kapow grants to the End User a non-exclusive, nontransferable license to use the program with which this license is distributed (the "Software"), and the accompanying documentation (the "Documentation"), (the Software, the media embodying the Software and the Documentation are referred to as the "Licensed Material") at a single site location for which the End User has paid the applicable license fee. The Licensed Material shall be used only by the End User's employees, only for End User's use and not for the benefit of any other person or entity.

## 2. Ownership

The Licensed Material and all intellectual property rights therein and related thereto are the sole and exclusive property of Kapow. Subject to the terms hereof, the End User has a license to use the Licensed Material as long as this License Agreement remains in full force and effect. Any other use of the Licensed Material by any person, business, corporation, government organization or any other entity is strictly forbidden and is a violation of this License Agreement.

### 3. Copyright

The Licensed Material contains material that is protected by patent, copyright, trade secret law and other intellectual property rights, and by international treaty provisions. The End User may make one (1) copy of the Software for backup purposes only, and that copy shall include all proprietary notices of Kapow. End User may not copy the Documentation. End User may not remove any proprietary notices of Kapow from the Licensed Material. Other than rights granted by applicable law or regulation and the master GSA contract, all rights not granted to End User in this License Agreement are reserved to Kapow and, if applicable, its licensor(s). Kapow may make changes to the Licensed Material at any time without notice. Except as otherwise expressly provided, Kapow grants no express or implied right under Kapow patents, copyrights, trademarks, or other intellectual property rights.

## 4. Audit/Information Collection Rights

End User acknowledges and agrees that Kapow has the right to implement a "call home" feature that is built into the Software to collect and track information upon Software startup and on a daily basis from End User in order to monitor and manage End User's usage of the Software and compliance with its contractual obligations of this License Agreement. The specific information to be collected includes: company name, email address, Software name, its version and edition numbers, IP address, license key, number of CPUs on which the Software is running and the operating system for the respective server. In the event the results of the information collection reveal that End User has misappropriated its use of the Software, End User must immediately remedy the problem, which may include bringing the Software back into compliance with End User's contractual usage and/or payment of incremental fees to compensate Kapow for the incremental usage. End User's failure to remedy any misappropriation of Software usage could subject End User to termination pursuant to Section 7 of this License Agreement, along with other rights and remedies of Kapow whether under this License Agreement, by law or otherwise.

## 5. Protection and Restrictions

End User agrees to use its best efforts and take all reasonable steps to safeguard the Licensed Material to ensure that no unauthorized person shall have access thereto and that no unauthorized copy, publication, disclosure or distribution, in whole or in part, in any form shall be made. End User acknowledges that the Licensed Material contains valuable confidential information and trade secrets and that unauthorized use and/or copying would be harmful to Kapow. End User may not: (i) use or copy the Software except as expressly allowed in this License Agreement; (ii) transfer, assign, publish, display, disclose, distribute, rent, lease, modify, loan, lend or use the Software for timesharing or service bureau purposes or otherwise for the benefit of any third

party; (iii) modify, translate, adapt or create derivative works based on the Software or any part thereof or merge the Software with any other software; (iv) reverse engineer, decompile or disassemble the Software or otherwise attempt to create or discern the source code from the object code for the Software; (v) transmit the Software over any network or between any devices, although End User may use the Software to make such transmissions of other materials; or (vi) publicly disseminate performance information or analysis (including without limitation benchmarks) relating to the Software except with Kapow's prior written consent. The Licensed Material may not be exported or re-exported in violation of any export regulations of any applicable jurisdiction.

### 6. Disclaimer & Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, KAPOW DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF, TITLE AND NON-INFRINGEMENT, COURSE OF DEALING OR USAGE OF TRADE. Kapow does not warrant that the functions contained in the Software will meet any requirements or needs End User may have, or that the Software will operate error-free, or in an uninterrupted manner, or that any defects or errors in the Software will be corrected, or that the Software is compatible with any particular platform. Except as required pursuant to a valid and binding maintenance contract between Kapow and End User, Kapow is not obligated to provide any updates to the Software. Some jurisdictions do not allow the waiver or exclusion of implied warranties so some or all of the foregoing may not apply to End User.

END USER ASSUMES ALL RISK AS TO THE SELECTION, USE, PERFORMANCE AND QUALITY OF THE SOFTWARE. IN NO EVENT WILL KAPOW OR ANY OTHER PARTY WHICH HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE LICENSED MATERIAL BE LIABLE TO END USER OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, OR FOR ANY CLAIM BY ANY OTHER PARTY, EVEN IF KAPOW OR SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### 7. Termination

If the End User breaches one of the following: (a) reverse engineers, decompiles, disassembles, or otherwise attempts to discover the source code of the software, (b) unbundles the constituent component parts of the software, or (c) provides use of the software in a computer service business, third party outsourcing facility or service bureau arrangement, or time sharing basis, and the breach is not in dispute, Kapow may request to terminate this License Agreement in accordance with FAR 52.212-4(l). If the Government fails to cure a material breach of this License Agreement within 60 days of written notice of such breach and the breach is not in dispute, the End User may request to terminate the Order to which this License Agreement applies for the convenience of the Government in accordance with FAR 52.212-4(l); however, End User has no rights to a refund, in whole or in party of any License Fee paid if this License Agreement is terminated for such breach. Nothing in this paragraph shall prevent Kapow from filing a claim or limit Kapow's damages under the Contract Disputes Act 41 USC §§ 7101-7109. Government acknowledges that material breach includes but is not limited to the Government's failure to pay any amounts owed to Kapow, Government's use of the Software beyond or contrary to this License Agreement, or the Government's breach of Section 5 of this License Agreement.8.

Assignment

End User may not transfer or assign any of End User's rights to use the Licensed Material to another person or entity, without first obtaining the prior written approval of Kapow, which approval shall not be unreasonably withheld. If such approval is granted, the transferee/assignee shall be required to execute a new license agreement with Kapow.

# 9. Government Restricted Rights

End User acknowledges that by accepting delivery of the Licensed Material, the Licensed Material qualifies as commercial computer software and commercial computer software documentation within the meaning of the Federal Acquisition Regulations and contract clauses applicable to this procurement. The terms and conditions of this License Agreement are fully applicable to the Government's use and disclosure of the Licensed Material, and supersede any conflicting terms or conditions. Use of the Licensed Material by the Government constitutes acknowledgement of Kapow's proprietary rights therein. Contractor or Manufacturer is Kapow Technologies, Inc.