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

1. **Scope.** This Carahsoft Rider and the __OC Systems RTI__ ('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 (http://www.rtiperformance.com/pdf/license/RTI_Commercial_License_Agreement.pdf) 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 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.

OC SYSTEMS RTI Software License Agreement

END-USER LICENSE AGREEMENT FOR OC Systems Software Product:

RootCause Transaction Instrumentation ("RTI") herein referred to as RTI.

IMPORTANT: READ CAREFULLY!

This OC Systems Software License Agreement ("SLA") is a legal agreement between you, the "Licensee" and OC Systems, Inc. ("OCS") the "Licensor", for use of the Software Product "RTI" as defined below.

Installing this software from media or downloaded files by you indicates your acceptance as Licensee of these terms and conditions. If Licensee does not agree with them, Licensee should return the unopened package and all other documentation within 15 days and Licensee's money will be refunded.

OC Systems, Incorporated ("Licensor") or "OCS" and the Licensee agree as follows:

1.0 DEFINITIONS

1.1 "Target Application" shall mean the software to which RTI is being applied.

1.2 "RTI" shall mean the shared libraries and software to instrument and collect data from the "Target Application" and the User Interface software used to define and view the collected data.

1.3 "Product" shall have the same meaning as RTI.

1.4 "Target Application Environment" shall mean the computer or network on which the Target Application executes"

1.5 Documentation shall mean all documentation accompanying RTI including but not limited to the User's Guide in any form, on-line or printed.

2.0 GRANT OF LICENSE

2.1 OCS grants to Licensee and Licensee hereby accepts a non-exclusive, revocable, and non-transferable software license to RTI. The specific quantities of RTI licensed by OCS to Licensee will be defined in an Order Form, signed by the parties or otherwise accepted by OCS, which may consist of (a) one or more mutually agreed order forms, statements of work, work orders or similar transaction documents, or (b) an order placed by Client through OC Systems' online store accessible from an OC Systems website. The parties agree that the terms of this Agreement will govern all purchases and use by Client of Software and Services unless otherwise agreed by the parties in writing.

2.2 Limited Copying Permitted. Licensee is permitted to make copies of the software only as necessary to use the Product, within the quantities of the signed Order Form. No other copying or distribution of RTI is permitted under this license.

3.0 NO OTHER COPYRIGHT, BACK-UP, AND TRANSFER RIGHTS CONVEYED

3.1 Licensee agrees that it shall not, nor authorize anyone else to, disassemble, reverse engineer or otherwise decompile or translate any part or all of the Java classes or object code provided as RTI.

Licensee shall not modify the Product under any circumstances and Licensee has no right to authorize anyone else to modify, disassemble, or make any copies of the Product.

3.2 Licensee shall be permitted to make copies of the RTI provided that all copies shall be made solely for backup purposes only.

3.3 Licensee's rights in the Product are expressly limited to the rights as set forth in this Agreement. The Product shall at all times remain the property of OCS or its Licensors in whole and in part and Licensee shall have no right, title or interest therein, except as provided in this Agreement.

3.4 Licensee acknowledges that the Product is copyrighted and licensed (not sold) by OCS, or one of its Licensors.

4.0 TERM AND TERMINATION

4.1 The license is effective until terminated. Licensee may terminate the license at any time by giving written notice to OCS, effective as of the date of mailing of said notice. The license will also terminate if Licensee fails to comply with any material term or condition of this Agreement and fails to cure the same within thirty (30) days. Licensee agrees that within thirty (30) days after the termination of this Agreement, Licensee shall destroy or return to OCS the original Product and all copies of RTI in its possession and certify in writing to OCS, that through its best efforts, and to the best of its knowledge, the original RTI and all copies of RTI in its possession have been returned or destroyed, except that Licensee may keep a copy of the Product in its archives.

4.2 Termination of this license for any reason shall not be the basis of a claim of reimbursement.

5.0 REPRESENTATIONS AND WARRANTIES

5.1 OCS represents and warrants that: (a) it has the authority to enter into this Agreement with Client; and (b) to OCS knowledge, OCS branded Software does not, at the time of delivery to Client, include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software.

6.0 DISCLAIMER OF ALL WARRANTIES

6.1 Products provided under this agreement may contain or be derived from portions of materials provided by a third party under license to Licensor. OCS and any said third parties disclaim all warranties, either express or implied, with respect to the use of such materials in connection with products including (without limitation) any IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The express warranties and remedies provided in a Commercial License which may be purchased from OCS are in lieu of all other liabilities or obligations of OCS and/or any said third parties (whether such liabilities or obligations would arise under this Agreement or otherwise by operation of law) for damages arising out of or in connection with the delivery, use or performance of the Product in the form delivered.

7.0 LIMITATION OF LIABILITY

7.1 In no event shall OCS and/or any third party providers of materials under license to Licensor be liable under any legal theory for any damages, including, but not limited to, direct, indirect, special, incidental or consequential damages (including, but not limited to, lost profits or anticipated savings) arising out of the use of or inability to use such Product, even if OCS and/or said third parties have been advised of the possibility of such damages.

8.0 GOVERNMENT AND GOVERNMENT CONTRACTOR LICENSEES

8.1 If Licensee is any unit or agency of the United States Government, or a contractor which will or may supply the Product to any unit or agency of the United States Government, Licensee agrees that: (a) The Product is "Commercial Computer Software" as that term is defined in DoD FAR Supplement 252.227-7013 (a)(1), and in any corresponding DAR and ASPR clauses; (b) OCS represents to Licensee that the Product is developed at private expense, and no part of it was developed with government funds; (c) The government's use of the Product is subject to "Restricted Rights" as that term is defined in DoD FAR Supplement 252.227-7013 (c)(1)(ii); (d) OCS represents that the Product may be deemed a trade secret of OCS for all purposes including for the purpose of the Freedom Of Information Act; (e) Each copy of the Product supplied to the government or to another government contractor will also bear and/or have affixed near it the restricted rights legend.

9.0 PAYMENTS

9.1 Licensee will submit payment in full for all products identified in a signed Order Form hereunder net thirty (30) days from the invoice date for product

10.0 INDEMNIFICATION FOR PATENT AND COPYRIGHT INFRINGEMENT

10.1 Provided Licensee is in compliance with the restrictions of this Agreement, OCS will defend Licensee against suits arising from any valid claim that the Product in the form delivered infringes or violates any patent, copyright, or trademark registered by a third party in the United States of America, Canada, or any member of the European Economic Community, or any member of the European Free Trade Association. Licensor shall have no liability for any above mentioned claim based upon the use of other than the current, unaltered version of the Product available from Licensor if such infringement would have been avoided by the use of a current unaltered version of the Product.

11.0 EXPORT REGULATIONS

11.1 Licensee acknowledges that certain Government Export Regulations prohibit, except under a special validated license, the exportation of technical data relating to certain commodities unless the exporter has received certain written assurances from the foreign importer. Licensee hereby agrees with and gives its assurance to Licensor that Licensee will not knowingly, unless prior authorization as may be required from any relevant governmental agency is obtained, re-export, directly or indirectly, any technical data, or direct by-product thereof, received from Licensor under this Agreement and will not export directly the Licensed Programs, or any products incorporating the Licensed Programs to any country restricted under any governmental regulation. Licensor makes no representations that a license is not required or that, if required, it will be issued by any requisite governmental agency.

12.0 GENERAL

12.1 This Agreement will be governed by the laws of the Commonwealth of Virginia. If any term, provision, or portions thereof, of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding, the remaining provisions of this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken. Furthermore, failure of Licensor to enforce any term, provision, or portions thereof, of this Agreement shall not void the remainder of this Agreement.

12.2 Any notices to Licensor or other communications required or permitted hereunder shall be sufficiently given when delivered by hand and acknowledged thereof, or sent by certified mail, postage prepaid, addressed as follows: OC Systems Inc., 10521 Rosehaven Street, Suite 210, Fairfax, VA, ATTN: Contracts.

12.3 Licensee acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Licensee further agrees that it is the complete and exclusive statement of the agreement between the parties and except as permitted herein supersedes any proposal or prior

agreement, oral or written, and any other communications between the parties relating to the subject matter of this Agreement.

12.4 No modification, addition to or waiver of any right, obligation or default under this Agreement shall be effective unless in writing and signed by both parties.

12.5 This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors to substantially the entire business and assets of the respective parties hereto. Licensee shall not otherwise assign this Agreement without the prior written consent of OCS. OCS shall not unreasonably withhold such consent.

12.6 Licensee acknowledges that the provisions of Sections 2.2, 3, 4, 5, 6, 7, 8, 11, and 12, survive the expiration or prior termination of this Agreement.

12.7 Licensee is responsible for payment of any taxes, including personal property taxes, resulting from this license.

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