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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 OpenSGI ('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 will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to
    - (a) Error! Unknown document property name.**

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.

OPENSGI (GSA 7-28-2011 CARAHSOFT)

**SCHEDULE C**

**END USER LICENSE AGREEMENT**

All capitalized terms not otherwise defined in this End User License Agreement (EULA) shall have the definition set forth in the Terms and Conditions.

1. **Software License Grant:** Subject to the terms and conditions of this EULA, including, without limitation, the payment of applicable Licensed Software license fees, OpenSGI hereby grants to CUSTOMER a non-exclusive, non-transferable license to use the object code version of the Licensed Software solely as (a) embedded in the Products, (b) bundled with the Products, or (c) provided on a stand-alone basis for use with the Products, as applicable, solely for CUSTOMER's internal business purposes, which license extends only to functionality which RESELLER has paid to license hereunder.
2. **Documentation:** The documentation provided with the Products may be used and copied by CUSTOMER only as reasonably necessary in connection with CUSTOMER'S authorized internal use of the Licensed Software.
3. **Restrictions:** CUSTOMER will not remove any Software from the Products. CUSTOMER will not copy the Licensed Software (except as permitted under applicable copyright law with respect to back-up or archival copies). CUSTOMER hereby certifies that it is licensing the Licensed Software as an end user and CUSTOMER will not distribute, disclose, market, rent, lease or otherwise transfer to any third party the Licensed Software or any portion thereof, including without limitation, by using the Licensed Software in a service bureau, facility management, third party training or timeshare provider capacity. CUSTOMER will not attempt, and CUSTOMER will use CUSTOMER's best efforts to prevent CUSTOMER's employees and contractors from attempting, to reverse engineer, disassemble, decompile, modify, adapt, translate or create derivative works from the Products, in whole or in part.
4. **Updates:** OpenSGI is not obligated to provide any updates, upgrades or new versions of the Licensed Software to CUSTOMER except as expressly provided under the terms of the applicable Licensed Software warranty set forth in the Terms and Conditions, and any applicable maintenance service terms set forth in Exhibit D or as mutually agreed upon in writing by the parties. Any updates, upgrades or new versions of the Licensed Software provided to CUSTOMER by OpenSGI under this Agreement shall be deemed to be Licensed Software for the purposes of this Agreement.
5. **Licensed Software Ownership:** CUSTOMER acknowledges and agrees that: (a) the Licensed Software and the Documentation, and all copies thereof, are the property of OpenSGI or its licensors, and not CUSTOMER; and (b) CUSTOMER will use the Licensed Software and the Documentation only under the terms and conditions described herein.
6. **Limited Warranty:** OpenSGI warrants to CUSTOMER that during the thirty (30) day period following delivery of the Products, the Licensed Software portion thereof will perform substantially in accordance with the specifications.
7. **Disclaimer of Warranties:** OPENSGI WARRANTS THE PRODUCTS ONLY TO CUSTOMER PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. EXCEPT AS SET FORTH ABOVE, OPENSGI MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE PRODUCTS. OPENSGI EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES AS TO SATISFACTORY QUALITY, CONDITION, PERFORMANCE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO SUCH LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO CUSTOMER.

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9. **Open Source Restrictions:** CUSTOMER represents and warrants that it will not incorporate into or combine with, in conjunction with the Products, the Licensed Software or a derivative work of such Licensed Software, any software that is licensed pursuant to Open Source License Terms. Notwithstanding the foregoing, CUSTOMER shall be entitled to use Open Source Software provided by CUSTOMER to CUSTOMER with the Licensed Software provided that CUSTOMER does not alter, modify or change in any respect the method or way in which the Open Source Software is combined with, links to or otherwise operates with the Licensed Software.
10. **Third Party Software Terms:** To the extent that the Licensed Software incorporates Third Party Software, CUSTOMER's use of the Licensed Software to the special terms and conditions as set forth by the third party providers.
11. **Limitation of Liability.** OPENSGI'S TOTAL LIABILITY ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNTS RECEIVED BY OPENSGI UNDER THIS AGREEMENT FOR THE RELEVANT PRODUCTS DURING THE TWELVE (12) MONTHS IMMEDIATELY PROCEEDING THE FIRST OCCURRENCE OF THE EVENTS GIVING RISE TO SUCH LIABILITY.