

**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.).

## GENERAL TERMS AND CONDITIONS OF ARCUSYS PRODUCTS AND SERVICES

### 1 Scope of application and definitions

Unless otherwise agreed in writing, these general terms and conditions (**General Terms**) of Arcusys Inc. (**Supplier**) shall apply to the delivery of the Valamis eLearning software (together with documentation, media, accessories and other written material related thereto hereinafter the **Product**), as well as services (**Services**) by the Supplier or its affiliated company or an authorized third party to the customers and users thereof (**Customer**), as may be further specified in a separate Products and Services or similar agreement (together with these General Terms, hereinafter the **Agreement**), if any.

These General Terms shall not apply to maintenance and support of the Product, which are subject to a separate agreement.

### 2 Delivery and acceptance

The Supplier endeavors to comply with the agreed-upon delivery dates, or if no delivery dates have been agreed upon, the Supplier endeavors to deliver the Product within a reasonable time from the date of execution of the Agreement. If the delivery is based on data or material to be provided by the Customer, the date of delivery shall be calculated from the date, when the Supplier has notified to the Customer that it has received such data and material in accordance with the Agreement. If any authorizations or permissions are required from the competent authorities, the date of delivery shall be calculated from the date, when the Supplier has notified to the Customer that it has received such authorizations or permissions in accordance with the Agreement.

Each party shall appoint a contact person for the purposes of the Agreement. The contact person's responsibility shall be to follow and supervise the progress of the delivery and to inform its own organization and the other party on issues related to the implementation of the delivery.

The Customer shall contribute to the delivery using its best efforts. The Customer agrees to perform its duties in conformance with the Agreement, with due care and the professional skill required for the task. The Customer shall provide the Supplier with all information that the Supplier deems necessary in order to perform the tasks included in the delivery. The Customer shall be responsible for information and instructions given to the Supplier, as well as for the suitability of the result of the delivery for the Customer's purposes. The Customer shall further ensure that the use of the Products and information provided by the Customer for the purposes of the delivery do not infringe any rights of third parties.

Unless otherwise agreed in writing, the delivery term shall be 14 days from order date.

Unless a separate acceptance testing procedure has been agreed upon, the Customer shall perform an acceptance inspection of the Product not later than seven (7) days from the Product's delivery date. If it has been separately agreed upon in writing that installation is performed by the Supplier, the above-mentioned acceptance inspection period shall commence on the date when the Supplier notifies to the Customer that it has performed the installation in accordance with the Agreement. The Customer shall immediately notify the Supplier in writing of any errors or defects detected during the acceptance inspection. Notwithstanding the Customer's reclamation, the delivery shall be deemed accepted in the event the delivery does not contain errors or defects as specified in Section 10. The Customer shall be responsible for the preparation of the testing material, performance of the tests and all related costs. The delivery shall also be deemed accepted if the Customer puts the Product, or a part thereof, in the production use, or fails to notify the Supplier within the above-mentioned acceptance period of any errors or defects in the delivery. At the request of the Supplier, the Customer shall provide the Supplier with a written acceptance certificate signed by duly authorized representative of the Customer. Notwithstanding the foregoing, General Services Administration Acquisition Regulation (GSAR) 552.212-4(a) shall govern the Inspection and Acceptance of delivered products and services.

### 3 Installation

Unless otherwise agreed in writing, the Customer shall be responsible for the installation of the Products at its own expense. In the event the Customer installs the Product, the Supplier shall provide the Customer with instructions necessary for the performance of the installation, and for the preparation of the operational environment of the Product.

In the event it has been agreed that the Supplier installs the Product, the following shall apply:

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- (i) The Customer shall, at its cost and in a timely manner, prepare the operational environment to conform to the requirements specified in the Agreement, or specified separately by the Supplier. The Supplier may inspect the operational environment prior to the installation date and may require that the Customer corrects and remedies all detected errors and defects therein at its own expense;
- (ii) Installation is performed during the normal business hours of the Supplier;
- (iii) The Customer shall arrange for the Supplier an access to the installation premises for the performance of the installation at a time to be agreed by the parties;
- (iv) The Customer shall, at its expense, arrange the working and storing space necessary to perform the installation.
- (v) If additional personnel or special tools are necessary due to a reason attributable to the Customer's installation premises, the Customer shall pay all related additional costs;
- (vi) The Customer shall provide the Supplier with all communications, equipment and other resources reasonably required for the installation at Customer's cost;
- (vii) The Customer shall ensure that the installation premises and environment complies with the working environment and safety regulations as set forth in applicable laws, degrees and orders issued by the competent authorities;
- (viii) The Customer shall ensure in other respect that the installation may be performed as agreed, within the agreed-upon timetable, as well as undertakes to be solely liable for all additional costs caused by delays attributable to the Customer; and
- (ix) The Customer shall be responsible that its own or third party products do not cause interference to the Supplier's Products to which such Customer or third party Products are connected.

#### **4 Data and material provided by the Customer**

The Customer shall provide all data and material agreed to be provided by the Customer in the agreed-upon form, or in another form specified by the Supplier in writing. For the avoidance of doubt, all intellectual property rights related to such data and the material provided by the Customer shall at all times belong to the Customer, and the Supplier is not entitled to use them except for the purposes of the Agreement.

The Customer shall be responsible for the instructions, data and material provided by it. The Customer shall further ensure that utilization of such instructions, data and material does not infringe any intellectual or any other right of a third party, law or any orders issued by the competent authorities.

The Customer shall be responsible for the acquisition and working order of all equipment, software and telecommunication connections not included in the Service description forming part of the Agreement, if any, or the agreed delivery. The Customer also agrees to ensure that such equipment, software and telecommunication connections meet the requirements set forth by the competent authorities and do not cause interference to the Supplier's performance or to the general communications network. The Customer shall immediately remove all equipment, software and connections, which may cause such interference and be liable for any damage caused by them as well as costs related to the error-diagnosis and other related work.

#### **5 License**

Unless otherwise agreed in writing, the license terms specified in section 5 shall apply.

If the delivery contains Supplier's or third party's standard software or other material, such software or material shall be subject to the attached License Agreement. The Customer agrees and acknowledges that the Product has been developed on a Liferay platform and the use of Product requires that the Customer has agreed to and obtained the necessary license(s) for the Liferay platform and software of Liferay Inc.

Copyright and other intellectual property rights as well as title in and to the Product, documentations and other materials delivered to the Customer or generated during the performance of Services, and all modifications, alterations, enhancements and changes thereof (jointly **Deliverables**), shall at all times belong to the Supplier irrespective of whether or not such material has been created in co-operation of the parties. Title to all copies of the Deliverables shall also belong to the Supplier.

The Supplier grants to the Customer a non-exclusive and non-transferable license to use the Deliverables for the Customer's own internal operations for the purposes specified in the Agreement, or otherwise by the Supplier in writing. The Customer shall ensure that the persons entitled to use the Product based on the license granted hereunder comply with these General Terms.

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The Product and other possible software included in the Deliverables shall be delivered in an object code version. The Customer may use the Product in a single server per paid license. If the server on which any item of the Product is used becomes temporarily unavailable, the Customer may temporarily use the Product on an alternative server. The Customer may not sell, pass or otherwise assign its license to a third party or otherwise utilize the Deliverables financially. The Customer shall have no right to use the Product for service bureau or facilities management purposes.

The Customer shall have the right to make changes or other alterations to the Deliverables only with the prior written consent of the Supplier. The Customer may reverse engineer, disassemble or decompile the Deliverables only if and to the extent such activity is expressly permitted by the applicable mandatory rules of the Finnish Copyright Act (8.7.1961/404, as amended). The Customer may make one (1) backup/archival copy of the Product and other possible software included in the Deliverables to be used if the original operating environment is not available. The Customer shall not have the right to make other copies, or allow other copies to be made, of the Deliverables even for private use. The backup/archival copy shall contain all the same legends and copyright notices as the original and will be subject to the same conditions and restrictions as the original.

The Customer is responsible for ensuring that the Product is used in accordance with the manuals and instructions related thereto. The Customer is also responsible for maintaining back-up data necessary to replace data in the event of loss or damage to such data for any cause.

Unless otherwise expressly agreed in the Agreement, the Agreement shall have no effect on either party's intellectual property rights or any other rights existing prior to the execution of the Agreement, nor alter either party's rights to the documentation, software and/or parts thereof, furnished by one party to the other party for the purposes of the Agreement. If the Customer uses the Deliverables for any purpose than those stated in the Agreement, the Supplier may immediately terminate the license and/or increase the license fees retroactively to correspond to such use.

Upon expiration of the license granted hereunder, the Customer shall return, or, if not possible, destroy all Deliverables, including without limitation all copies thereof.

The Customer shall have no right to make changes to the Deliverables, telecommunication solutions or other technical infrastructure that is an object of the license or the delivery, if any, without a written consent of the Supplier. If the Customer makes such changes without the Supplier's prior written consent, the Supplier shall be entitled to charge additional fees for the work caused.

Information furnished by the Supplier to the Customer concerning the Supplier's business methods, processes and procedures contain the Supplier's trade secrets and know-how, and all related intellectual property rights and title to all such information shall at all times belong to the Supplier. The Customer shall not be entitled to financially or otherwise utilize the Supplier's business processes or procedures, unless otherwise expressly agreed in the Agreement.

## **6 Prices and terms of payment**

Unless otherwise agreed, the Supplier shall invoice for the Products after entering into the Agreement, and for the Services after their performance not, however, less than once (1) per month. The terms of payment shall be thirty (30) days net from the date of an invoice. Interest on delayed payments accrues in accordance with the Finnish Interest Act (632/1982, as amended). The Supplier may charge the Customer additional fees for any work performed outside the Supplier's working hours or for work not belonging to the scope of the Agreement. Such additional fees may include, without limitation, overtime compensation, equipment fees, daily allowance, telecommunications fees and other expenses. Notwithstanding the foregoing, payment shall be in accordance with GSAR 552.212-4(g) Invoice, GSAR 552.212-4(i) Payment, and the Prompt Payment Act

In the event the price of the Product or Service has not been specified in the Agreement, or otherwise, the Carahsoft's Schedule Contract price list effective at the time of order shall apply.

The Supplier shall be entitled to charge fifty percent (50%) of the agreed hourly charge for travel time related to travels necessitated by the performance of its obligations hereunder, which exceed a return journey of over thirty (30) kilometers. In the event the return journey is less than thirty (30) kilometers, travel time shall not be chargeable. The Supplier shall invoice the Customer for other travelling costs and daily allowances separately in accordance with its then-current invoicing policy. Notwithstanding the foregoing, costs for transportation, lodging, meals and incidental expenses are allowable subject to the limitations contained in the Federal Travel Regulations and/or Joint Travel Regulations in effect at the time the travel is performed.

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Unless otherwise agreed in writing, the prices specified in the Agreement shall include all public charges determined by the authorities and effective on the date of signing the Agreement, with the exception of value added tax. Value added tax shall be added to the prices in accordance with the then current regulations. Should the amount of public charges determined by the authorities, or their collection basis, change due to changes in regulations or taxation practices, the prices of the Products and Services shall be revised correspondingly.

#### **7 Updates, Replacement of Products and alterations**

From time to time and at the Supplier's sole option, the Supplier may extend, enhance or otherwise modify the Product at any time without notice (**Updates**) but is not obligated to provide Customer with any Updates. The Customer acknowledges that the Supplier has no express or implied obligation to announce or make available any Updates in the future.

Upon approval of the Customer, which shall not be unreasonably withheld, the Supplier shall be entitled to replace the Product with another product or its new improved model or version (**Replacement**). The Replacement shall meet the requirements with respect to the capacity, performance and other features that are set forth in the Agreement for the original Product.

The Supplier shall be, without the approval of the Customer, entitled to make changes, amendments or other enhancements to the Product prior to the delivery thereof, provided that the Product continues to meet the requirements set forth herein.

#### **8 No Support or Maintenance.**

The Supplier has no express or implied obligation, to provide any maintenance, technical or other support or maintenance services for the Product, unless otherwise agreed in writing.

#### **9 Warranties**

THE PRODUCT IS LICENSED ON AN "AS IS" BASIS. THE SUPPLIER DOES NOT WARRANT THAT THE PRODUCT AND THE FUNCTIONS CONTAINED IN THE PRODUCT WILL MEET THE REQUIREMENTS OF THE CUSTOMER OR OPERATE UNINTERRUPTED OR ERROR- OR BUG-FREE OR IN ALL COMBINATIONS SELECTED FOR USE BY THE CUSTOMER.

EXCEPT AS EXPRESSLY STATED IN THE AGREEMENT OR REQUIRED BY MANDATORY PROVISIONS OF LAW, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE. THE SUPPLIER AND ITS DISTRIBUTORS EXPRESSLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND SATISFACTORY QUALITY.

#### **10 Confidentiality**

Each party shall keep in confidence all material and information received from the other party and marked as confidential or which should be understood to be confidential. A party shall have the right to use such material and information only for the purposes set forth in the Agreement. The confidentiality obligation shall, however, not be applied to material and information that: (a) is generally available or otherwise public; (b) the receiving party or its affiliated company has received from a third party without any obligation of confidentiality; (c) was in the possession of the receiving party or its affiliated company prior to receipt of the same from the other party without any obligation of confidentiality related thereto; (d) the receiving party or its affiliated company has developed independently without using material or information received from the other party; or (e) a party or its affiliated company must disclose pursuant to a law, decree, or other order issued by the competent authorities or judicial order.

Each party shall cease using confidential material and information received from the other party promptly upon termination of the Agreement or when that party no longer needs the material or information in question for the purpose stated in the Agreement and, unless the parties separately agree on the destruction of such material, return the material in question (including all copies thereof). Each party shall, however, be entitled to retain the copies required by law or regulations.

The Supplier is entitled to use the professional skills and experience acquired in connection with the Agreement.

The rights and obligations pursuant to this clause 11 shall remain in force after the termination of the Agreement.



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## 11 Force majeure

Except for the payment obligations, neither party shall be liable to the other for loss, damage, or delay in work caused by an impediment beyond its control, which that party could not have taken into account at the time of the conclusion of the Agreement, and whose consequence it could not have reasonably avoided or overcome including, but not limited to war, riot, the act or order of any competent civil or military authority, strikes, unauthorized work stoppage or by fire, flood ("**Force Majeure Event**"). Strike, lock-out, boycott and other industrial action shall constitute a Force Majeure Event also when the party concerned is the target or a party to such an action.

A Force Majeure Event suffered by a subcontractor of a party shall also discharge such a party from liability if subcontracting from other source cannot be made without unreasonable costs or a significant delay.

Either party shall inform the other party of a Force Majeure Event in writing without delay. The party shall correspondingly inform the other party of the cancellation of the Force Majeure Event.

## 12 Infringements of intellectual property rights

The Supplier shall at its own expense defend and indemnify the Customer against claims and actions that the Product infringes any of the intellectual property rights of a third party, provided that the Customer notifies the Supplier promptly in writing of such claims, and permits the Supplier to defend or settle the claims, and gives the Supplier all necessary information and assistance available and all necessary authorizations.

If in the justified opinion of the Supplier, the Product infringes the intellectual property rights of a third party, the Supplier shall at its own expense either: (a) obtain the right to use of the Product for the Customer, or (b) replace the Product, or (c) modify the Product in order to eliminate the infringement. If none of the above-mentioned alternatives is available to the Supplier on reasonable terms, the Customer shall, at the request of the Supplier, stop using the Product, return it, and the Supplier shall credit the price paid by the Customer for the Product less the proportion of the price corresponding to the actual time of use.

The Supplier shall, however, not be liable to Customer if the claim: (a) is asserted by the Customer or its affiliated company; (b) results from an alteration of the Product or from compliance with the Customer's instructions or information; (c) results solely from the use of the Product in combination with any product not supplied by the Supplier; or (d) could have been avoided by the use of a released and newest version of the Product.

THIS CLAUSE 13 STATES THE ENTIRE LIABILITY OF THE SUPPLIER AND THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR AN INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHT BY THE PRODUCT.

## 13 Term; termination of the Agreement

Unless otherwise agreed between the Parties, this Agreement shall be valid as long as the license is valid. However, in case the Liferay license is terminated, the Supplier is entitled to terminate the Agreement including any licenses thereunder, with immediate effects.

If the fulfilment of the Agreement is delayed for more than four (4) months due to a Force Majeure Event, either party shall have the right to terminate this Agreement by a written notice to the other party without either party having the right to claim damages for such termination.

## 14 Damages and limitation of liability

The Supplier shall be liable under the Agreement solely for direct damages caused by the Supplier's negligence or other breach of the Agreement, and proven by the Customer not, however, exceeding fifteen percent (15%) of the price of the Product, Service or part thereof, which is the subject-matter of the claim.

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR EXPENSES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS AND LOST SAVINGS, OR FOR THE LOSS OF, DAMAGE TO, OR ALTERATION OF DATA OR DATA FILES OF THE OTHER PARTY DUE TO ANY CAUSE AND THE RESULTING DAMAGES AND EXPENSES INCURRED, SUCH AS EXPENSES BASED ON THE RE-CREATION OF DATA FILES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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THE LIMITATION OF LIABILITY SHALL NOT APPLY TO DAMAGES CAUSED BY WILFUL CONDUCT OR GROSS NEGLIGENCE. THE LIMITATION OF LIABILITY SHALL ALSO NOT APPLY TO DAMAGES CAUSED BY THE TRANSFER, COPYING, OR USE OF PRODUCT CONTRARY TO LAW OR THE TERMS OF THE AGREEMENT, OR DAMAGES CAUSED BY A BREACH OF EXPORT RESTRICTIONS RELATING TO THE PRODUCTS OR TECHNICAL INFORMATION.

**15 Governing law; settlement of disputes**

This Agreement is made under, and shall be construed according to the federal laws of the United States. The Parties will use their best efforts to settle by amicable negotiations any differences, which may occur between them in connection with this Agreement.

**16 Assignment of the Agreement**

Neither party shall have the right to assign the Agreement without the prior written consent of the other party. The Supplier may, however, assign the Agreement to its affiliated company or to a third party to whom the business subject to the Agreement is transferred. The Supplier may further assign its receivables under the Agreement to a third party.

**17 Amendment of the Agreement**

The Customer acknowledges and agrees that the Supplier continuously develops Services and Products and therefore the selection and content of Services and Products may change. The Supplier shall also have the right to stop the provision and/or manufacturing of the Services and/or Products. In such case, the Supplier may terminate the Agreement with respect to such terminated Services, Products or their separate parts.

Any other changes or additions to the Agreement shall be agreed in writing by the GSA Contracting Officer and Carahsoft.

## LICENSE AGREEMENT

THIS IS A LEGAL AGREEMENT BETWEEN N.N., (HEREINAFTER "**LICENSEE**") AND Arcusys Inc (HEREINAFTER "**LICENSOR**") FOR THE LICENCE OF THE SOFTWARE AS DESCRIBED HEREIN.

### 1 Definitions

"**Software**" means Valamis eLearning for Liferay platform of Arcusys Inc. (**Arcusys**).

### 2 License Granted

The Licensor grants to the Licensee a non-exclusive and non-transferable right to use of the Software for Licensee's internal purposes on a single server.

The Software is owned by Arcusys, and licensed by the Licensor, and it is protected by copyright laws, international treaties and other applicable national laws. All rights, including, but not limited to, copyright and other intellectual property rights, title and interest in or to the Software, user manuals and other documentation, translations, modifications, enhancements, changes or copies thereof as well as derivative works based upon the Software and related documentation, shall at all times remain the exclusive property of Arcusys. No rights whatsoever is transferred or given to the Licensee to the Software, except as expressly provided herein.

The Licensee agrees and acknowledges that the Software has been developed on a Liferay platform and the use of Product requires that the Licensee has agreed to and obtained the necessary license(s) for the Liferay platform and software of Liferay Inc.

This agreement only gives the Licensee a limited right of use, which is revocable by Licensor, or Arcusys, as the case may be. The Licensee may not sell, sublicense, transfer or otherwise assign any of its rights hereunder to any third party without the prior written permission from the Licensor. In the case such transfer is so authorised by the Licensor, the Licensee must pass all material received to the approved third party, and any backup copy in possession of the Licensee must be erased or otherwise destroyed.

UNDER THE TERMS AND CONDITIONS OF THIS AGREEMENT LICENSEE MAY:

- (a) use the Software on a single server. If the server on which any item of the Software is used becomes temporarily unavailable, the Licensee may temporarily use such Software on an alternative server;
- (b) make and maintain no more than one backup copy of each item of Software, provided that each copy shall contain all the same legends and copyright notices as the original and will be subject to the same conditions and restrictions as the original.

EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT THE LICENSEE MAY NOT:

- (a) use the Software in any manner to provide service bureau, time sharing or other comparable information technology services to third parties;
- (b) copy the Software or related documentation in whole or in part;
- (c) modify the Software;
- (d) reverse engineer, disassemble or decompose the Software unless otherwise provided by the applicable mandatory laws;
- (e) sublicense, assign, or transfer the license, this Agreement or rights or obligations of the Licensee under this Agreement without the prior written consent of the Licensor.

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