

Avere Systems, Inc.

910 River Avenue

Pittsburgh, PA 15212

www.averesystems.com

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

- 1. Scope.** This Carahsoft Rider and the Manufacturer Agreement 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 Agreement <http://www.averesystems.com/terms-and-conditions-of-sale> 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 Agreement's 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 Government contracts as set forth in Government 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement are hereby deemed to be deleted.
- (j) Customer Indemnities.** All Manufacturer Agreement clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) Contractor Indemnities.** All Manufacturer Agreement 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 Agreement 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 Agreement 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 Agreement, 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 Agreement 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 Agreement and this Rider contain no confidential or proprietary information and acknowledges the Agreement 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.

Terms and Conditions of Sale

AVERE SYSTEMS TERMS AND CONDITIONS OF SALE

The Sales Quotation (“Quote”) and these Terms and Conditions of Sale (“Agreement”) shall constitute the complete and exclusive statement of all the terms of the agreement between Avere Systems, Inc., a Delaware corporation having its principal place of business at 910 River Avenue, Pittsburgh, PA 15212 (“Avere”), and entity identified on the Quote (“Purchaser”). This Agreement shall be binding and effective upon either (i) execution of the Quote by Purchaser’s authorized representative or (ii) submission of a purchase order by Purchaser to Avere that is identical to the Quote with respect to Products and Services ordered, pricing and shipping date(s). The parties agree that any terms or conditions contained in any purchase order or other document provided by Purchaser that purport to modify, supersede or amend this Agreement shall be of no force or effect, notwithstanding any integration clause or other language to the contrary in such purchase order or other document.

1. **Purchase of the Products.** Upon payment by Purchaser, Avere agrees to sell to Purchaser the hardware products listed in the Quote (“Hardware”) and license to Purchaser the software embedded in, integrated with or otherwise supplied with the Hardware (“Software”) (such Hardware and Software, collectively the “Products”). The Software is licensed and not sold to Purchaser, and Purchaser’s use thereof is subject to the software end user software license agreement attached hereto as Exhibit A.

2. **Services.** Upon payment by Purchaser, Avere agrees to use commercially reasonable efforts to provide to Purchaser the services listed in the Quote (the “Services”). Avere shall provide support and maintenance services under the terms and conditions set forth in Exhibit B (“Support and Maintenance Services”) if listed in the Quote and paid for by Purchaser.

3. **Price; Payment Terms; Interest.** The price paid by Purchaser shall be that stated in the Quote. All prices are in United States (U.S.) dollars, and all payments are to be made in U.S. dollars. Payment terms are net 30 days from the date of invoice. Avere reserves the right to charge Purchaser interest on any delinquent balance at the lesser of 1.5% per month or the maximum rate permitted by law.

4. **Taxes.** Purchaser is responsible for paying or reimbursing Avere (or providing Avere with a valid exemption certificate) for all sales, use, value added and other taxes (except taxes on Avere’s net income), and all customs duties and tariffs now or hereafter claimed or imposed by any governmental authority upon the sale of the Products or Services or the licensing of the Software to Purchaser, or upon payments to Avere under this Agreement.

5. **Shipment and Delivery.** Avere shall make delivery of the Products F.O.B. (Incoterms 2000) Avere’s facilities. All risk of loss passes to Purchaser upon delivery to the carrier at the shipment point. Purchaser hereby grants to Avere a purchase money security interest covering each shipment of Products made hereunder (and any proceeds thereof) in the amount of Avere’s invoice for such shipment until payment in full is received by Avere.

6. Export Control

6.1. **Exporter and Importer of Record.** For international shipments, Purchaser or its properly authorized agent or freight forwarder shall be exporter of record from the U.S. Purchaser shall be the importer of record and is responsible for fulfilling quota terms, obtaining import licenses, paying import license or permit fees, duties and customs fees, and any other governmental or import taxes or fees, and preparing and submitting all required documentation in connection with importing the Products.

6.2. **Compliance.** Purchaser agrees to comply with all applicable export and reexport control laws and regulations applicable in any US or foreign jurisdiction in which Purchaser does business, including the Export Administration Regulations (“EAR”) maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department’s Office of Foreign Assets Control (“OFAC”), and the International Traffic in Arms Regulations (“ITAR”) maintained by the Department of State. Purchaser covenants that it shall not (directly or indirectly) sell, export, reexport, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from Avere under this Agreement, including the Hardware, to any destination, entity, or person prohibited by

the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. Purchaser agrees to indemnify, to the fullest extent permitted by law, Avere from and against any fines or penalties that may arise as a result of Purchaser's breach of this Section 6.2.

7. Warranty to Purchaser.

7.1. Limited Hardware Warranty. Avere warrants to Purchaser that, during the one (1) year period following Purchaser's receipt of the Products, the Hardware will perform substantially in accordance with the documentation provided by Avere. If any Hardware fails to comply with the foregoing warranty during the applicable warranty period (a "Defect"), Avere shall, at its option, repair or replace the applicable Product, or the affected part(s) thereof, with a new or refurbished Product or part (following Purchaser's return of the Product in accordance with Section 7.2 below), or provide a workaround for the Defect. For purposes of this limited warranty, "refurbished" means a Product or part that has been returned to its original specifications. Avere shall only be obligated with respect to Defects which are reproducible by Avere. This Section 7.1 sets forth Purchaser's sole and exclusive remedies for a breach of the above limited warranty.

7.2. Return Procedures. Products shall be non-returnable except as provided in Section 7.1. Purchaser is responsible for the shipping costs of any Product with a Defect to Avere, and Avere will be responsible for all return shipping costs of repaired or replacement units to Purchaser. Replacement Products will be warranted for the remaining warranty period of the original Product. Purchaser must contact Avere to obtain an RMA number and otherwise comply with Avere's then-current warranty return policies and procedures prior to returning any Product to Avere.

7.3. Limitation. The warranties set forth above shall not apply to any Products (i) which have been modified, repaired, or altered by Purchaser or any third party, or (ii) which have not been maintained in accordance with any handling or operating instructions supplied by Avere or have been subjected to physical or electrical stress, misuses, negligence, or accidents.

7.4. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ALL PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTY WHATSOEVER, AND AVERE EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING OUT OF A COURSE OF DEALING OR PERFORMANCE. AVERE ALSO MAKES NO WARRANTY REGARDING NONINTERRUPTION OF USE, FREEDOM FROM BUGS OR VIRUSES, OR RETENTION OR PROTECTION OF DATA. THE PRODUCTS ARE NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN ENVIRONMENTS THAT ARE HAZARDOUS OR THAT REQUIRE FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE PRODUCTS COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. AVERE SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH ACTIVITIES, AND PURCHASER AGREES NOT TO USE THE PRODUCT FOR SUCH ACTIVITIES.

8. Limitation of Liability. NEITHER AVERE NOR ITS SUPPLIERS OR LICENSORS WILL BE LIABLE WITH RESPECT TO ANY PRODUCT OR OTHER SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY AMOUNTS IN EXCESS OF THE AGGREGATE AMOUNT PAID TO AVERE UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION FIRST AROSE, OR (II) ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER, OR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND. THE FOREGOING LIMITATIONS APPLY IN THE AGGREGATE, AND THE EXISTENCE OF MULTIPLE CLAIMS SHALL NOT ENLARGE SUCH LIMITATION. NEITHER AVERE NOR ITS SUPPLIERS OR LICENSORS WILL HAVE ANY LIABILITY FOR ANY FAILURE OR DELAY DUE TO MATTERS BEYOND ITS REASONABLE CONTROL. THIS SECTION 8 SHALL NOT BE DEEMED TO PRECLUDE ANY

LIABILITY WHICH, UNDER APPLICABLE PRODUCTS LIABILITY LAW, CANNOT BE PRECLUDED BY CONTRACT.

9. Allocation of Risk. PURCHASER AND AVERE ACKNOWLEDGE AND AGREE THAT THE FOREGOING SECTIONS 7 AND 8 FAIRLY ALLOCATE THE RISKS IN THE AGREEMENT BETWEEN THE PARTIES. PURCHASER AND AVERE FURTHER AGREE THAT THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND THAT THE LIMITATIONS SPECIFIED IN SECTION 8 SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY HEREUNDER.

10. Patent and Copyright Infringement.

10.1. Avere will defend and/or settle any claim, suit or proceeding brought against Purchaser by a third party to the extent it is based on a claim that the Products (including the Software) as supplied by Avere to Purchaser constitute direct infringement of any U.S. patent issued as of the Effective Date specified in the Quote or any U.S. copyright, except where the alleged infringement is based on (a) Avere's compliance with Purchaser's designs or specifications, (b) Purchaser's use of the Products in combination with any other product or process for which the Products were not designed (whether direct or contributory infringement) or in a manner for which the Products were not designed, or (c) Purchaser's or anyone else's modification of the Products after Avere delivers them to Purchaser. The foregoing obligation is contingent on Purchaser (i) notifying Avere of the claim promptly in writing and furnishing Avere with a copy of each material communication, notice, or other action relating to the alleged infringement, (ii) giving Avere all authority, information, and assistance (for which Avere will bear the reasonable expense) Avere deems necessary to defend or settle the claim, suit, or proceeding, (iii) not making any admission or compromise, and not settling any claim, suit, or proceeding, and (iv) giving Avere exclusive control of the defense, including the right to select counsel and to negotiate and enter into a settlement. If these conditions are faithfully complied with, Avere will bear the costs of the defense and will pay all damages and costs awarded against Purchaser to the extent they are based on such infringement claim.

10.2. If Purchaser's use of the Products is enjoined, Avere may, in its sole discretion, either procure for Purchaser the right to continue using the Products, replace them with non-infringing goods, or modify the Products to make them non-infringing, or if none of those options is reasonably available to Avere, refund Purchaser's purchase price (less depreciation) upon Purchaser's return of the Products to Avere.

10.3. If a claim, suit or proceeding is brought against Avere based on a claim that Products manufactured and supplied by Avere to Purchaser constitute direct infringement of a patent, copyright, database right, trademark, or other intellectual property right based on any of acts recited in Section 10.1(a),(b) or (c), Purchaser shall defend such claim and indemnify and hold harmless Avere for, from, and against all damages and costs awarded against Avere subject to the same conditions as are applicable to Purchaser under Section 10.1(i)-(iv).

10.4. THIS SECTION 10 STATES THE SOLE AND EXCLUSIVE REMEDY OF PURCHASER (AND THE SOLE AND EXCLUSIVE LIABILITY OF AVERE) FOR THE ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS BY THE PRODUCTS.

11. Confidential Information; Proprietary Markings. Purchaser agrees to exercise at least the same degree of care to safeguard the confidentiality of the Software and any other data or information of Avere that is identified as "confidential" or "proprietary" or with similar designation, or that would be understood by a reasonable businessperson as being confidential or proprietary due to its content and/or the circumstances surrounding its disclosure ("Confidential Information") as Purchaser would exercise to safeguard the confidentiality of Purchaser's own highly confidential information, but not less than reasonable care. Purchaser agrees not to (i) disclose to any third party any Confidential Information, (ii) reproduce or attempt to reproduce the Software or any portion thereof in any form or medium, or (iii) use the Software or other Confidential Information for any purpose not specified in this Agreement. Purchaser warrants that all persons having access to the Software or other Confidential Information under this Agreement will be bound by a written confidentiality agreement not less protective of Avere than the terms and conditions set forth herein. Purchaser agrees not to remove or destroy any copyright, logo, trademark, trade name, proprietary markings, or confidentiality legends placed upon or contained within the Products, its containers, or documentation. Purchaser agrees to comply with all legends that appear on or in the Products.

12. Term and Termination. This Agreement shall become effective as of the Effective Date specified in the Quote and remain in effect until terminated as set forth herein. Either party may terminate this Agreement in the event that the other party materially defaults in performing any obligation under this Agreement and such default continues uncured for a period of 30 days following written notice of default. Avere may terminate this Agreement at any time upon: (i) the institution of insolvency, receivership, or bankruptcy proceedings, or any other proceedings for the settlement of debts of Purchaser; (ii) the making of an assignment for the benefit of creditors by Purchaser; or (iii) the dissolution of Purchaser. Sections 6, 7.4, 8, 9 and 11 through 16 shall survive any termination of this Agreement.

13. Force Majeure. Avere shall not be liable to Purchaser for any alleged loss or damages resulting from delays in performance (including loss or damages resulting from delivery of the Products being delayed) caused by acts of Purchaser, acts of civil or military authority, governmental priorities, earthquake, fire, flood, other acts of God, epidemic, quarantine, energy crisis, strike, labor trouble, component shortage, war, riot, terrorism, accident, shortage, delays in transportation, or any other causes beyond Avere's reasonable control.

14. Resale and Transfer of Product. The rights and licenses granted to Purchaser hereunder for the Software are personal to Purchaser. Without Avere's prior written approval, and except as expressly permitted in Section 15, Purchaser shall not resell or otherwise transfer the Products without first deleting or otherwise removing all Software in its entirety.

15. Assignment. Purchaser shall not assign, delegate, or transfer any of its rights or obligations under this Agreement either in whole or in part without the express written consent of Avere, except that Purchaser shall have the right to assign this Agreement in whole as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets upon notice to Avere. Any attempted assignment, delegation, or transfer without such consent shall be void. Avere shall have the right to assign this Agreement in whole or in part. This Agreement shall bind and inure to the benefit of each party's successors and permitted assigns.

16. General. This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania without reference to that state's choice of law provisions. The parties hereby disclaim application of the United Nations Convention on Contracts for the International Sale of Goods. The parties hereby expressly consent to the exclusive jurisdiction and venue of the federal and state courts within Allegheny County to adjudicate any dispute arising out of or related to this Agreement. The parties are independent contractors and nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. Amendments to this Agreement shall not be effective unless in writing and signed by both parties. Notices under this Agreement will be sufficient only if personally delivered or delivered by a major commercial rapid delivery courier service to a party at its address first set forth herein or as amended by notice pursuant to this subsection. If not received sooner, notice by mail will be deemed received three days after deposit to the courier service. This Agreement represents the complete and entire agreement of the parties relating to the subject matter hereof and supersedes all prior or simultaneous representations, discussions, negotiations and agreements whether, oral or written.

EXHIBIT A END USER SOFTWARE LICENSE AGREEMENT

THE PRODUCT CONTAINS CERTAIN COMPUTER PROGRAMS AND OTHER PROPRIETARY MATERIAL, THE USE OF WHICH IS SUBJECT TO THIS END USER SOFTWARE LICENSE AGREEMENT ("EULA"). USE OF THE SOFTWARE INDICATES PURCHASER'S ACCEPTANCE OF THIS EULA IN ITS ENTIRETY.

1. LICENSE

Subject to the terms and conditions of this EULA and the Agreement as a whole, Avere grants Purchaser a limited, non-exclusive, non-transferable (except as expressly permitted herein), non-sublicenseable license to execute and use the Software in object code form, together with the accompanying documentation, solely for supporting Purchaser's internal business operations ("License"). Purchaser may only use the Software on the Products, and in the manner specified in the accompanying documentation. Purchaser has no right to receive any source code or design documentation relating to the Software. The License is further restricted to the particular protocols and accompanying documentation purchased hereunder.

2. RESTRICTIONS

Avere shall at all times retain title, all ownership rights, and all intellectual property rights in and to the Software and the accompanying documentation and any derivative works thereof. Except as expressly set forth in the License above, all rights are reserved by Avere. Without limiting the generality of the foregoing, Purchaser shall not, nor shall Purchaser allow any third party to: (a) decompile, disassemble, decrypt, extract, or otherwise reverse engineer or attempt to reconstruct, or discover any source code or underlying ideas, algorithms, or file formats of, or used in, the Software by any means whatsoever; (b) remove or conceal any product identification, copyright or other notices contained in or on the Software or accompanying documents; (c) reproduce or modify the Software, incorporate it into or with other software or create a derivative work of any part of the Software or (d) allow for timesharing, service bureau, subscription service, or rental use of the Software. Purchaser shall not publish or provide any results of benchmark tests run on the Software to a third party without Avere's prior written consent.

The Software is Avere's Confidential Information and contains trade secrets. It is protected by the copyright and other intellectual property laws of the United States and international treaties and other applicable law. Purchaser must take adequate steps to protect the Software from unauthorized disclosure or use.

3. TRANSFERABILITY OF LICENSE

The License is personal to Purchaser. Purchaser shall not assign, sublicense or transfer the License or this Agreement without Avere's prior written approval, except as expressly permitted in Section 15 of the Agreement.

4. TERMINATION OF LICENSE

The License is effective during the term of the Agreement. Upon termination of the Agreement, Purchaser shall immediately cease all use of the Software and so certify to Avere in writing. Purchaser's obligations under this EULA shall survive termination.

5. LIMITED WARRANTY AND DISCLAIMER

Subject to the conditions and limitations on liability stated in this Agreement, Avere warrants for a period of ninety (90) days from Purchaser's receipt of the Software: (i) that Software will materially conform to Avere's accompanying documentation for such Software and (ii) that the media containing the software (but not the Software itself) is free from physical defects. Software maintenance and support, if any, are governed by a separate agreement.

AVERE'S LIABILITY WITH RESPECT TO SOFTWARE UNDER ANY WARRANTY IS LIMITED EXCLUSIVELY TO SOFTWARE REPAIR OR REPLACEMENT, AT AVERE'S OPTION. OTHERWISE, THE SOFTWARE AND THE ACCOMPANYING DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND FITNESS FOR A PARTICULAR PURPOSE.

6. U.S. GOVERNMENT

The Software and any accompanying documentation constitute commercial computer software and commercial computer software documentation developed exclusively at private expense, and are in all respects proprietary property belonging solely to Avere or its licensors. If Purchaser is licensing the Software and accompanying documentation on behalf of any part of the U.S. Government, the following provisions apply: The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and/or the accompanying documentation by the U.S. Government or any of its agencies shall be governed solely by the terms of the Agreement and shall be prohibited except to the extent expressly permitted by the terms of the Agreement. Contractor/Manufacturer is: Avere Systems, Inc., 910 River Avenue, Pittsburgh, PA 15212. Except as expressly licensed hereunder, all rights are reserved.

7. COMPLIANCE WITH LAWS

Avere's Software is subject to U.S. export control laws and may be subject to export or import regulations in other countries. Purchaser shall comply with all applicable federal, state, local and foreign laws and ordinances including, but not limited to all export and import laws, restrictions and regulations of the Department of Commerce or other U.S. or foreign agency or authority.

8. GENERAL

Any notice, report, approval, or consent required or permitted by this EULA shall be in writing. If any provision of this EULA shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that the obligations of the parties shall remain in full force and effect and enforceable. Purchaser agrees that a material breach of this EULA by it would cause irreparable injury to Avere for which monetary damages would not be an adequate remedy and that Avere shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law. Any amendments or waivers shall be effective only if made in writing by non-preprinted agreements clearly understood by both parties to be an amendment or waiver and signed by an authorized representative of each party. This Agreement is the final and complete Agreement between the parties relating to the license of the Software hereunder.

EXHIBIT B

SUPPORT AND MAINTENANCE SERVICES

1. GENERAL

Subject to Purchaser's payment of the annual support and maintenance fees as set forth herein ("Annual Support and Maintenance Fees"), Avere shall use commercially reasonable efforts to provide Purchaser the Support and Maintenance Services. For the avoidance of doubt, this Exhibit B relates to the provision of services, and does not constitute a warranty.

2. SUPPORT

Avere shall provide Purchaser with technical assistance regarding the installation and use of the Product, the identification of Software and/or related documentation problems, and the reporting of technical problems. Purchaser's support plan is specified in the Quote. Avere support plans cover one (1) year terms and provide the following features:

Platinum Level Support

Includes the following:

- 24 x 7 Access to Web Site, Phone, and Email Support
- Software support, including maintenance releases and major upgrades
- Hardware support: on-site hardware replacement within 4 hours of Avere confirmation of receipt of support request regarding Hardware failure.

Gold Level Support

Includes the following:

- 24 x 7 Access to Web Site, Phone, and Email Support
- Software support, including maintenance releases and major upgrades
- Hardware support: in the event of a hardware failure, Avere will provide next day advance replacement.

Silver Level Support

Includes the following:

- 24 x 7 Access to Web Site, Phone, and Email Support
- Software support, including maintenance releases and major upgrades
- Hardware support: in the event of a hardware failure, Avere will repair or replace the hardware through ground delivery, after receiving the failed unit.

3. SOFTWARE MAINTENANCE

Avere shall provide to Purchaser, without additional charge, such updates, modifications, bug fixes, and other corrections to the Software that Avere makes generally available to other licensees of the Software using the same Hardware purchased by Purchaser who have paid for support and maintenance services, together with one set of associated documentation, if any (the "Updates"). All Updates and any other modifications delivered to Purchaser pursuant to this Exhibit B shall be deemed to be a part of the Software and shall be subject to all the terms and conditions of this Agreement.

4. EXCLUSIONS

Avere has no obligation to support: (i) Software modified without Avere's written consent, (ii) use of the Software other than in accordance with this Agreement or the related documentation, (iii) Software with respect to problems attributable to Purchaser's failure to implement all Updates, (iv) Purchaser or third party applications whether or not integrated with the Avere Software, or (v) Software installed on any computer hardware other than the Products or otherwise in contravention of the terms of this Agreement.

5. PURCHASER RESPONSIBILITIES

Purchaser shall designate two persons to serve as primary contacts between Purchaser and Avere. Purchaser shall initiate all support inquiries through these contacts.

Purchaser agrees to promptly implement all Updates provided by Avere. Purchaser agrees to provide Avere with reasonable access to all necessary personnel to answer questions about any problems reported by Purchaser regarding the Products. Purchaser will provide Avere with access to its facilities, network, equipment, hardware, and software so that Avere can provide support to Purchaser; Avere does not guarantee performance of the services described herein if such access is not provided by Purchaser.

6. TERM

Support and Maintenance Services shall commence as of the date Product is shipped to your location, unless the Agreement is earlier terminated as provided in the Agreement, shall remain in effect for a term of 12 months. Thereafter, absent notice of non-renewal by Purchaser at least 60 days prior to the expiration of the then-current term, Support and Maintenance Services shall be automatically renewed for additional 12 month periods (each a "Support Renewal Term") subject to the payment of fees as set forth below; provided, however, that Avere may discontinue Support and Maintenance Services prior to the start of any such Support Renewal Term upon written notice to Purchaser, in which case any Annual Support and Maintenance Fees already paid by Purchase for such Support Renewal Term shall be refunded.

7. CHARGES

Avere shall invoice Purchaser for the Annual Support and Maintenance Fees in the amount specified in the Quote upon execution of this Agreement, and thereafter at Avere's then-current pricing in advance of each Support Renewal Term. Thirty (30) days prior to the expiration of the applicable term, Avere will send an e-mail to the billing contact listed in the Quote setting forth the Annual Support and Maintenance Fees applicable for such Support Renewal Term. If Purchaser elects not to renew the Support and Maintenance Services, Purchaser may re-enroll only upon payment of the following fees: (i) the Annual Support and Maintenance Fees for the Support Renewal Term; (ii) 100% of all Annual Support and Maintenance Fees that would have been paid had Purchaser not terminated the Support and Maintenance Services; and (iii) Avere's then-current Support and Maintenance Services reinstatement fee.

**ATTACHMENT VII
END USER LICENSE AGREEMENT**

Please include a copy of your End User License Agreement.


Please review and approve the attached Rider to accompany your EULA. The Rider is a pre-negotiated document that Carahsoft has with GSA to reduce the time it takes for GSA Legal to review your EULA.

**Avere Systems, Inc.
910 River Avenue
Pittsburgh, PA 15212
www.averesystems.com
EULA URL (if available)**

By signing the below you are confirming that you agree to the terms of the Carahsoft Rider.



Contact Name; Contact Title



Date