

**Case Commons, Inc.**  
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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 Local Motion Services Agreement (EULA or Manufacturer End User License Agreement or Manufacturer 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. The Manufacturer EULA is consistent with Federal Acquisition Regulation ("FAR") Part 12.212 and Federal law, including with respect to the following: 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 (or portions thereof) in the Manufacturer's EULA are inconsistent with the Federal Law (*See* FAR 12.212(a)), the language that is inconsistent with Federal law 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) 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.
  - (c) 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.

- (d) Termination.** The portion of clauses in the Manufacturer EULA referencing termination or cancellation are hereby deemed to be deleted if, and to the extent, determined to be inconsistent with FAR 52.212-4(l) and (m). 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..

- (e) Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109), 28 U.S.C. 1498, the Lanham Act, 28 U.S.C. § 1498 (Patent and copyright cases), 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) is 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 portions of clauses in the Manufacturer EULA referencing equitable remedies, to the extent not consistent with federal law, are deemed not applicable to the Government order and are therefore deemed to be deleted.

- (f) 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.

- (g) 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, if and to the extent relevant and applicable, and all portions of clauses

governing Assignment in the Manufacturer EULA which are inconsistent with federal procurement law are hereby deemed to be deleted.

- (h) Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002). The portion of any clause in the Manufacturer EULA that waives jury trial are deemed to be deleted.
- (i) Customer Indemnities.** FAR Clause 52.232-39, Unenforceability of Unauthorized Obligations (JUN 2013) is made a part of this Agreement. All portions of any Manufacturer EULA clauses referencing Customer Indemnities that are not authorized by federal law are hereby deemed to be deleted.
- (j) 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 revised to be consistent with DOJ's right to represent the Government in any case as set forth in 28 U.S.C. 516.
- (k) Renewals.** The Manufacturer EULA does not require automatic renewal. 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.
- (l) 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 making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law, 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.
- (m) Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (n) 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 mitigation.
- (o) 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.
- (p) 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.

**(q) 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 any party's right to recover all damages for infringement, misappropriation, 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.

**(r) Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.

**(s) 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.

**(t) 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.

THIS END USER LICENSE AGREEMENT (THE “**AGREEMENT**”), MADE AND ENTERED INTO BETWEEN CASE COMMONS, INC. AND THE END USER AS OF THE **EFFECTIVE DATE** (AS DEFINED BELOW), GOVERNS THE SOFTWARE PROVIDED BY CASE COMMONS, INC. AND ITS AFFILIATES, (“**CASE COMMONS**”) INCLUDING ANY FREE CASE COMMONS SOFTWARE (“**FREE SOFTWARE**”) AND SOFTWARE PURCHASED THROUGH CASE COMMONS OR OTHER CHANNELS (“**PURCHASED SOFTWARE**”) AND ANY AND ALL UPDATES, UPGRADES, DERIVATIVES, AND MODIFICATIONS THERETO, COLLECTIVELY THE CASE COMMONS SOFTWARE (“**SOFTWARE**”). CONFIRMATION OF YOUR ORDERS (“**ORDER CONFIRMATION**”) WILL BE DEEMED INCORPORATED INTO AND MADE PART OF THIS AGREEMENT. ALL SOFTWARE IS PROVIDED ONLY IN OBJECT CODE FORMAT.

YOU WILL BE REQUIRED TO INDICATE YOUR AGREEMENT TO THESE TERMS AND CONDITIONS IN ORDER TO RECEIVE ACCESS TO OR DOWNLOAD THE SOFTWARE OR COMPLETE THE INSTALLATION PROCESS FOR THE SOFTWARE. BY SIGNING THIS AGREEMENT, YOU ARE CONSENTING TO BE BOUND BY THIS AGREEMENT. IF YOU AGREE TO THESE TERMS ON BEHALF OF A PRIVATE BUSINESS OR A GOVERNMENT AGENCY, DEPARTMENT OR INSTRUMENTALITY, YOU REPRESENT AND WARRANT THAT YOU HAVE AUTHORITY TO BIND THAT BUSINESS TO THIS AGREEMENT, AND YOUR AGREEMENT TO THESE TERMS WILL BE TREATED AS THE AGREEMENT OF THE BUSINESS. IN THAT EVENT, “YOU” AND “YOUR” REFER HEREIN TO THAT BUSINESS.

## 1. DEFINITIONS.

**1.1** “Affiliate” shall mean, with respect to any person or entity, any other person or entity that directly or indirectly Controls, is Controlled by, or is under common Control with such person or entity, from time to time, but only for so long as such Control exists.

**1.2** “Control” and its grammatical variants means (i) a general partnership interest in a partnership, or (ii) the beneficial ownership of a majority of the outstanding equity entitled to vote for directors.

**1.3** “Effective Date” shall mean the date that you accept the terms and conditions of this Agreement via signature.

## 2. LICENSE, TERM, AND TERMINATION.

**2.1 Purchased Software Term.** Unless earlier terminated, this Agreement will be in effect perpetually for any Purchased Software. “Term” means the period in which the Agreement is in effect.

**2.2 Purchased Software Free Trial Term.** Notwithstanding the foregoing, if the applicable Order Confirmation is limited to a free trial license, then the Term will be limited to the free trial period specified in the Order Confirmation or with the license key, if any. Subject to the terms and conditions of this Agreement, Case Commons grants to You a non-exclusive, worldwide, fully-paid up copyright license to use the Free Case Commons Software for the duration of the free trial period only. This Agreement and any license rights granted hereunder will automatically terminate at the end of the free trial period, and there will be no Renewal Term. Any license keys provided for a free trial will automatically expire and may cause the Software to become non-operational at the end of the free trial period. Provisions in this Agreement regarding License Fees, Maintenance and Support, and Warranty will not apply to free trials.

**2.3 Purchased Software License.** Subject to Your agreement with the terms and conditions of this Agreement, including Your payment of the license fees set forth in each Order Confirmation (the “License Fees”), Case Commons grants to You a nonexclusive, nontransferable, revocable, limited license during the Term to access and use the Software for which You have paid the applicable License Fees as set forth in Your Order Confirmation(s), only for Your internal business purposes (which shall include use under these terms and conditions by consultants, accountants, auditors and attorneys hired to perform services for You).

**2.4 Software Restrictions.** You agree not to (i) access and use the Software except as expressly authorized in this Agreement and Your Order Confirmation; (ii) copy the Software (except as required to run the Software and for reasonable backup purposes); (iii) modify, adapt, or create derivative works of the Software; (iv) rent, lease, loan, resell, transfer, sublicense (including but not limited to offering any of the functionality of the Software on a service provider, hosted or time sharing basis) or distribute the Software

to any third party; (v) decompile, disassemble or reverse-engineer the Software or otherwise attempt to derive the Software source code; (vi) disclose to any third party the results of any benchmark tests or other evaluation of the Software; or (vii) authorize any third parties to do any of the above.

**2.5 Ownership.** Case Commons and/or its licensors own all worldwide right, title and interest in and to the Software, including all worldwide patent rights (including patent applications and disclosures); copyright rights (including copyrights, copyright registration and copy rights with respect to computer software, software design, software code, software architecture, firmware, programming tools, graphic user interfaces, reports, dashboard, business rules, use cases, screens, alerts, notifications, drawings, specifications, databases and specifications); moral rights; trade secrets and other rights with respect to confidential or proprietary information; know-how; other rights with respect to inventions, discoveries, ideas, improvements, techniques, formulae, algorithms, processes, schematics, testing procedures, technical **information** and other technology; and any other intellectual and industrial property rights, whether or not subject to registration or protection; and all rights under any license or other arrangement with respect to the foregoing (collectively, “Intellectual Property Rights”). All right, title, and interest in and to all copies of the Software remains with Case Commons and/or its licensors. The Software are copyrighted and protected by the laws of the United States and other countries, and international treaty provisions. You may not remove or obscure any copyright, trademark, and/or proprietary rights notices from the Software.

**2.6 Termination.** You may terminate this Agreement at any time by destroying or returning to Case Commons all copies of the Software, including any documentation, in Your possession and control, and providing to Case Commons a written statement signed by an authorized representative of Your Business notifying Case Commons that You are terminating the Agreement and certifying such destruction or return. If You are not a U.S. Government agency, department, or instrumentality, upon thirty days’ notice, Case Commons may terminate this Agreement (and Your license rights) upon notice in the event that You breach any provision of this Agreement and have not cured the breach during such notice period. If You are a U.S. Government agency, department, or instrumentality, termination terms and conditions shall be governed by 48 C.F.R. 52.212-4 (l) and (m). Upon any expiration or termination of this Agreement, the rights and licenses granted hereunder will automatically terminate, and You agree to immediately cease using the Software and to return or destroy all copies of the Software in Your possession or control. In the event of termination of this Agreement, Case Commons will have no obligation to refund any License Fees, Support Fees, or other fees received from You during the Term. All provisions of this Agreement related to disclaimers of warranties, limitation of liability, remedies, damages, or Case Commons’ proprietary rights shall survive termination.

### **3. FEES AND SUPPORT.**

**3.1 Purchased Software License and Fees.** In order to access and use the Software, You are required to pay to Case Commons the License Fees in accordance with Your Order Confirmation. The License Fees will be due and payable in accordance with the terms set forth in Your Order Confirmation. All License Fees are non-refundable once paid. Any fees and payment terms for Case Commons Extensions will be identified on Your Order Confirmation or on Case Commonsbase.com.

**3.2 Maintenance and Support.** Subject to Your payment of the applicable annual maintenance and support fees set forth in Your Order Confirmation (the “Support Fees”), Case Commons will provide the level of support for the Purchased Software identified in Your Order Confirmation in accordance with the support descriptions set forth in **Attachment A**. Case Commons is not obligated to support, update or upgrade the Free Software.

### **4. WARRANTY AND LIABILITY.**

**4.1 Purchased Software Warranty.** Case Commons warrants the Software shall conform substantially to the then-current applicable Software specifications for ninety (90) days from the date of execution of the End User License Agreement. If it appears that any Software or portion thereof does not so conform, and the End User notifies Vendor or Distributor promptly within the warranty period, Vendor’s sole obligation shall be, at Vendor’s option, to correct or provide a workaround for or replace the defective Software or refund the purchase price paid for such Software. Vendor makes no warranty that its Software shall work in combination with any hardware or software products of third parties, that the operation of the Software shall be uninterrupted or error-free, or that all defects in the Software shall be corrected.

**4.2 Warranty Disclaimer.** EXCEPT AS SET FORTH ABOVE, CASE COMMONS DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, QUIET ENJOYMENT AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. YOU AGREE THAT, AS BETWEEN YOU AND CASE COMMONS, YOU ARE RESPONSIBLE FOR THE ACCURACY AND QUALITY OF YOUR DATA INPUT INTO ANY SOFTWARE. FURTHERMORE, THE WARRANTIES SET FORTH ABOVE SHALL NOT APPLY TO: (A) ANY THIRD PARTY SOFTWARE OR HARDWARE, WHETHER OR NOT SUCH THIRD PARTY SOFTWARE OR HARDWARE IS PROVIDED BY CASE COMMONS; (B) ANY SOFTWARE THAT HAS BEEN MODIFIED, REPAIRED OR ALTERED, EXCEPT BY CASE COMMONS; (C) ANY SOFTWARE WHICH HAS NOT BEEN MAINTAINED IN ACCORDANCE WITH ANY HANDLING OR OPERATING INSTRUCTIONS SUPPLIED BY CASE COMMONS; OR (D) ANY SOFTWARE THAT HAS BEEN SUBJECTED TO UNUSUAL PHYSICAL OR ELECTRICAL STRESS, MISUSES, ABUSE, NEGLIGENCE OR ACCIDENTS. VENDOR SHALL NOT BE RESPONSIBLE FOR ANY SOFTWARE, FIRMWARE, INFORMATION OR MEMORY DATA OF END USER CONTAINED IN, STORED ON, OR INTEGRATED WITH ANY SOFTWARE RETURNED TO CASE COMMONS PURSUANT TO ANY WARRANTY UNDER THIS AGREEMENT.

**4.3 Limitation of Liability.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, CASE COMMONS' TOTAL CUMULATIVE LIABILITY TO YOU, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE AMOUNTS PAID BY YOU TO CASE COMMONS IN THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL CASE COMMONS BE LIABLE TO YOU FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOSS OF USE, DATA, OR PROFITS, BUSINESS INTERRUPTION, OR COSTS OF PROCURING SUBSTITUTE SOFTWARE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SOFTWARE, WHETHER SUCH LIABILITY ARISES FROM CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT CASE COMMONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY REMEDY IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. WITHOUT LIMITING THE FOREGOING, CASE COMMONS WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY BUSINESS INTERRUPTION OR LOSS OF DATA ARISING FROM THE AUTOMATIC TERMINATION OF THE LICENSE RIGHTS GRANTED HEREIN AND ANY ASSOCIATED CESSATION OF THE FUNCTIONS OF THE SOFTWARE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Case Commons' gross negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract.

**4.4 Purchased Software Indemnity.** Case Commons will defend, indemnify and hold You harmless from and against any loss, damage, liability or cost (including reasonable attorneys' fees) resulting from any third party claim that the Purchased Software, as provided to You and as used within the scope of this Agreement, infringes any trade secret or United States copyright. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to: (a) modification of the Software by anyone other than Case Commons; (b) combination of the Software with any third party software or hardware where such combination is the cause of such infringement; or (c) use of a version of the Software other than the then-current version if infringement would have been avoided by the use of the then-current version. THIS SECTION 4.4 ("Purchased Software Indemnity") SETS FORTH CASE COMMONS' SOLE AND EXCLUSIVE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT BY THE PRODUCTS OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND. In the event of any loss, damage, liability or cost for which Case Commons is obligated to indemnify You hereunder, Case Commons shall have control of the defense and all related settlement

negotiations to the extent permitted by 28 USC 516, and You shall reasonably cooperate with Case Commons in the defense and/or settlement thereof at Case Commons' expense to the extent permitted by 28 USC 516; provided that You may participate in such defense using Your own counsel, at Your own expense.

## **5. GENERAL.**

**5.1 Severability.** All rights and remedies, whether conferred hereunder or by any other instrument or law, will be cumulative and may be exercised singularly or concurrently to the extent permitted by law. Failure or a delay by either Case Commons or You to enforce any term will not be deemed a waiver of future enforcement of that or any other term. The terms and conditions stated herein are declared to be severable. Should any term(s) or condition(s) of this Agreement be held to be invalid or unenforceable the validity, construction and enforceability of the remaining terms and conditions of this Agreement shall not be affected, and if necessary, the valid and enforceable provisions(s) shall be negotiated and substituted therefor to accomplish the intent of the severed provisions(s) as nearly as practicable.

**5.2 Export.** You agree to comply fully with all relevant export laws and regulations of the United States ("Export Laws") to ensure that the Software are not (i) exported or re-exported directly or indirectly in violation of Export Laws; or (ii) intended to be used for any purposes prohibited by the Export Laws, including but not limited to nuclear, chemical, or biological weapons proliferation.

**5.3 Government End User Rights.** You acknowledge that all Software was developed entirely at private expense and that no part of the Software was first produced in the performance of a Government contract. You agree that all Software are "commercial items" as defined in 48 C.F.R. § 2.101, and if You are a U.S. Government agency or instrumentality or if You are providing all or any part of the Software to the U.S. Government, such use, duplication, reproduction, release, modification, disclosure or transfer of this commercial product and data, is restricted in accordance with 48 C.F.R. § 12.211, 48 C.F.R. § 12.212, 48 C.F.R. § 227.7102-2, and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.211, 48 C.F.R. § 12.212, 48 C.F.R. § 227.7102-1 through 48 C.F.R. § 227.7102-3, and 48 C.F.R. §§ 227.7202-1 through 227.7202-4, as applicable, the Software are licensed to U.S. Government end users (i) only as Commercial Items and (ii) with only those rights as are granted to all other users pursuant to this Agreement and any related agreement(s), as applicable. Accordingly, You will have no rights in the Software except as expressly agreed to in writing by You and Case Commons.

**5.4 Choice of Law and Disputes.** The following Choice of Law and Disputes terms and conditions shall apply under this Agreement:

(a) For other than the U.S. Government as a party, this Agreement shall be governed by and construed in accordance with the Federal laws of the United States, as if performed wholly within the state and without giving effect to the principles of conflict of law. If You are the U.S. Government as a party to this Agreement, this Agreement shall be governed by and interpreted in accordance with the Contract Disputes Act of 1978, as amended (41 U.S.C. 7101-7109). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at 48 C.F.R § 52.233-1, which is incorporated in this Agreement by reference.

**5.5 Miscellaneous.** If any portion of this Agreement is found to be void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect. Neither party may assign this Agreement, in whole or in part, except in connection with an internal reorganization or a sale of the Business with which this Agreement is associated without Case Commons' prior written consent, and any attempt to assign this Agreement other than as permitted above will be null and void; provided, however, Case Commons may assign its rights to receive payment due as a result of performance of this Agreement to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. § 3727) and may assign this Agreement in accordance with the provisions at 48 C.F.R § 42.12, as applicable. This Agreement is intended for the sole and exclusive benefit of the parties and is not intended to benefit any third party. Only the parties to this Agreement may enforce it. This Agreement, together with the underlying GSA Schedule Contract, the Schedule Price List and any applicable GSA Customer Purchase Orders, and any Order Confirmations constitute the complete



and exclusive understanding and agreement between the parties regarding their subject matter and supersede all prior or contemporaneous agreements or understandings, written or oral, relating to their subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both parties.

**THE PARTIES BELOW HAVE ENTERED INTO THIS AGREEMENT AS OF THE EFFECTIVE DATE. EACH PARTY SIGNING BELOW REPRESENTS AND WARRANTS THAT THEY HAVE THE AUTHORITY TO BIND THE BUSINESS TO THIS AGREEMENT, AND THEIR AGREEMENT TO THESE TERMS WILL BE TREATED AS THE AGREEMENT OF THE BUSINESS. IN THAT EVENT, “YOU” AND “YOUR” REFER HEREIN TO THAT BUSINESS.**

|                    |            |
|--------------------|------------|
| Case Commons, Inc. | Customer   |
| Name:              | Name:      |
| Title:             | Title:     |
|                    |            |
| Signature:         | Signature: |

## ATTACHMENT A

### MAINTENANCE AND SUPPORT SERVICES TERMS AND CONDITIONS

#### 1. GENERAL

**1.1** Subject to Your payment of the applicable annual maintenance and support fees set forth in Your Order (the “Support Fees”), Case Commons will provide the level of support identified in Your Order in accordance with the support descriptions set forth below. Support Fees will be due and payable in accordance with Your Order Confirmation. Without limiting the foregoing, Case Commons will notify You of the then-current annual Support Fee for Your level of support in each Renewal Notice. Support Fees will be non-refundable once paid.

**1.2** No other maintenance or support for the Software is included in this Agreement. Case Commons will have no obligation of any kind to provide support for problems in the operation or performance of the Software caused by any of the following (each, a “Licensee-Generated Error”): (a) modifications to the Software not made by Case Commons or a party expressly authorized by Case Commons; or (b) use of the Software other than as authorized in this Agreement or as provided in the documentation for the Software. If Case Commons determines that it is necessary to provide support for a problem caused by a Licensee-Generated Error, Case Commons will notify You thereof as soon as Case Commons is aware of such Licensee-Generated Error and Case Commons will have the right to invoice You at Case Commons’ then-current time and materials rates for any such support provided by Case Commons.

#### 2. SUPPORT

**2.1 Case Commons Maintenance and Support.** For customers who are current on their maintenance and support contracts, Case Commons shall provide program updates, fixes, security alerts and critical patch updates to the Casebook software. In addition, Case Commons shall update program documentation and assist customers with service requests during normal business hours, Monday to Friday 8:00 AM ET to 6:00 PM ET or through an expanded service offering as explicitly agreed to in writing between Case Commons and Customer.

**2.2 Your Obligation to Assist.** Should You report a purported defect in the Software to Case Commons, Case Commons may require You to provide them with the following information: (a) a general description of the operating environment, (b) a list of all hardware components, operating systems and networks, (c) a reproducible test case, and (d) any log files, trace and systems files. Your failure to provide this information may prevent Case Commons from identifying and fixing that purported defect.

#### 3. CONFIDENTIAL INFORMATION

**3.1 Confidential Information.** “Confidential Information” means any Case Commons’: (a) Software; and (b) business or technical information that is marked in writing by Case Commons as “confidential” or “proprietary” at the time of disclosure (or obtained by You through inspection or observation of Case Commons’ property or facilities), (c) information that, due to its nature or under the circumstances of its disclosure, You know or have reason to know should be treated as confidential or proprietary and is so marked, or (d) information that, if disclosed orally or in other intangible form or in any form that is not so marked, is identified as confidential at the time of such disclosure and summarized in writing and transmitted to the receiving party within thirty (30) days of such disclosure.

**3.2 Exclusions.** Confidential Information does not include information that: (a) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party or any of its employees, consultants, investors, affiliates, licensors, suppliers, subcontractors, customers, clients and other persons and entities (collectively, the “Representatives”); (b) is rightfully known by the receiving party or its Representatives at the time of disclosure without an obligation of confidentiality, as evidenced by the receiving party’s contemporaneous written records; (c) is independently developed or acquired by the receiving party or its Representatives without use of the disclosing party’s Confidential Information; (d) is rightfully received by the receiving party or its Representatives from a third party without restriction on use or disclosure; or (e) is disclosed with the prior written approval of the disclosing party.

**3.3 Use and Disclosure Restrictions.** Each party will not use the other party's Confidential Information except as necessary for the performance or enforcement of this Agreement and will not disclose such Confidential Information to any third party except to those of its Representatives who have a bona fide need to know such Confidential Information for the performance or enforcement of this Agreement; provided that each such Representative is bound by a written agreement that contains use and nondisclosure restrictions consistent with the terms set forth in this Section. Each party will employ all reasonable steps to protect the other party's Confidential Information from unauthorized use or disclosure, including, but not limited to, all steps that it takes to protect its own information of like importance. The foregoing obligations will not restrict either party from disclosing the other party's Confidential Information: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body or law, provided that the party required to make such a disclosure, to the extent permissible under the circumstances, (i) gives reasonable notice to the other party to contest such order or requirement, and (ii) only furnishes that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is legally required to be disclosed, and to exercise all commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to the Confidential Information it discloses; (b) to its legal or financial advisors; (c) as required under applicable securities regulations; and (d) subject to customary restrictions, to present or future providers of venture capital and/or potential private investors in or acquirers of such party. The receiving party shall be responsible for any breach of this Agreement by its Representatives.

#### **4. TERM AND TERMINATION**

**4.1 Term.** This Agreement will commence on the date of the Order (the "Effective Date") and, unless terminated earlier in accordance with the terms of this Agreement, for a period of one year thereafter (the "Initial Term"). If Company allows its support Term to expire, then Company may seek to re-activate support and maintenance by submitting an Order that includes fees for the lapsed period.

**4.2 Termination.** Each party will have the right to terminate this Agreement or any Statement of Work if the other party breaches any material term of this Agreement or Statement of Work and fails to cure such breach within thirty (30) days after receipt of written notice thereof. If You are a U.S. Government agency or instrumentality, termination terms and conditions shall be governed by 48 C.F.R. 52.212-4 (l) and (m).

**4.3 Effect of Termination.** Upon the expiration or termination of this Agreement or of any Statement of Work: (a) Case Commons will promptly return to Company all Company materials; (b) each party will promptly return to the other party all Confidential Information of the other party in its possession or control; and (c) Company will, within thirty (30) days after receipt of Case Commons' invoice, pay all accrued and unpaid fees and expenses. Notwithstanding the foregoing to the contrary, the receiving party may retain copies of project notes for reference purposes, which the receiving Party shall continue to treat as Confidential Information under this Agreement. For the avoidance of doubt, anything that is stored on routine back-up media solely for the purpose of disaster recovery shall be subject to destruction in due course, provided that, employees are precluded from accessing such information in the ordinary course of business prior to destruction.

**4.4 FORCE MAJEURE.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, acts of terror, riot, acts of God or governmental action.

*End of Attachment A*