

**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.).



## **EKAHAU SITE SURVEY END-USER LICENSE AGREEMENT -- COMMERCIAL LICENSE**

NOTICE:

THIS EKAHAU SOFTWARE PRODUCT TOGETHER WITH ACCOMPANYING DOCUMENTATION ("EKAHAU SITE SURVEY" OR "ESS") IS THE PROPERTY OF EKAHAU, INC. ("EKAHAU"). THE PRODUCT IS MADE AVAILABLE TO YOU, THE ORIGINAL PURCHASER, SUBJECT TO THE FOLLOWING LICENSE AGREEMENT.

PLEASE READ THIS LICENSE AGREEMENT CAREFULLY BEFORE INSTALLING OR USING THE PRODUCT.

SHOULD YOU HAVE ANY QUESTIONS RELATED TO THE INSTALLATION OR USE OF EKAHAU SITE SURVEY, PLEASE CONTACT EKAHAU SUPPORT AT [www.ekahau.com/support](http://www.ekahau.com/support).

SHOULD YOU HAVE ANY QUESTIONS RELATED TO THE TERMS OF THE AGREEMENT, PLEASE CONTACT EKAHAU SALES AT [sales@ekahau.com](mailto:sales@ekahau.com).

### **1. DEFINITIONS**

The following terms whenever used in this Agreement shall have the meaning herein assigned to them unless their use in the context is inconsistent with such meaning:

Ekahau, Inc. is a Delaware corporation having its registered office at 1925 Isaac Newton Square E, Suite 200, Reston, VA 20190, U.S.A. (below referred to as "Ekahau"). Ekahau's web address is [www.ekahau.com](http://www.ekahau.com).

"Documentation" means the written or on-line instructions, help information, and other reference materials related to Ekahau Site Survey, provided by Ekahau.

"Effective Date" is defined in Section 8.1 below.

"Ekahau Site Survey" or "ESS" means the following software ("Software") and related documentation provided to You by Ekahau:

- (i) Ekahau Site Survey, a software for planning, deploying and troubleshooting WLANs (Wi-Fi networks)
- (ii) Any software or hardware components delivered with Ekahau Site Survey.

"License" means license to use the Ekahau Site Survey under the terms and conditions of this Agreement.

"Maintenance Agreement" means a separate agreement on the support and maintenance of Ekahau Site Survey concluded or potentially to be concluded between Ekahau and You.

"Modifications" means all improvements and modifications or adaptations to any part of the Software and/or Documentation.

"the Party / Parties" means Ekahau and/or Licensee.

"Price List" means the list of license fees for Ekahau Site Survey.

"Territory" means each and every country where the Software can be legally used and exported.

## 2. GRANT OF LICENSE

2.1 Subject to the provisions and conditions set forth in this Agreement and the "Limitations of Use," Ekahau hereby grants Licensee a nonexclusive and nontransferable license to use Ekahau Site Survey within the Territory as follows:

- (i) to install and use one (1) copy of the Software (Ekahau Site Survey);
- (ii) to make no more than one (1) inactive copy of the Software solely for archival and back-up purposes.

2.2 Licensee shall have no right to use the Software, Documentation or Ekahau Site Survey or any part of them for any purpose other than as specified in Section 2.1 above. The prohibited uses include but are not limited to:

- (i) engaging in any licensing, selling, leasing, lending, sublicensing, transferring or redistributing the Software and the Documentation provided by Ekahau to third parties in whatever technical form, in whole or in part;
- (ii) integrating the Software in Licensee's software programs in any manner or form;
- (iii) creating or developing a product for commercial use by third parties in whatever technical form, in whole or in part;
- (iv) making any modifications to the Software in whatever technical form, in whole or in part;

2.3 Licensee shall have the right to use sub-contractors for the tasks referred to in Section 2.1 on the following conditions:

- (i) sub-contractors shall not receive or acquire any rights (in addition to the right to actually perform the tasks referred to above) relating to the Software, Documentation, Ekahau Site Survey or any parts of them, and
- (ii) Licensee shall enter into agreements with any such sub-contractors requiring that such sub-contractors comply with terms providing Ekahau protections equivalent to the ones specified in Sections 2.2, 6 and 10 (however, with no right to disclose Confidential Information to any party except Licensee) of this Agreement,

and any breach of such terms by any such sub-contractor shall be deemed to be a breach of this Agreement by Licensee.

2.4 Nothing in this agreement grants any rights, license or interest with respect to the source code of the Software.

2.5 Nothing in this agreement grants the right to receive any upgrades, modifications or other enhancements to the Software at any time.

2.6 The Licensee's rights in and to the Software are solely as set forth in Section 2.1, and do not include any rights of ownership.

2.7 The grant of License shall not be deemed to result in the sale, transfer or any other conveyance of Ekahau's trademarks or any other intellectual property right of whatsoever nature held or used by Ekahau to Licensee. Ekahau will retain all rights in and to Ekahau's trademarks, Ekahau Site Survey as well as to the results of any work performed by Ekahau under this Agreement or the Maintenance Agreement.

### 3. TECHNICAL ASSISTANCE. MAINTENANCE

3.1 Ekahau may agree to provide Licensee with technical assistance (hereinafter referred to as "Technical Assistance"). Compensation payable to Ekahau for Technical Assistance is specified in a separate Maintenance Agreement. Notwithstanding the above, Licensee is entitled to free technical support for a period of 30 days starting from receiving the license key.

3.2 Rights and obligations of the Parties as regards to the maintenance of Ekahau Site Survey are specified in the Maintenance Agreement.

### 4. TRADEMARK AND LOGO

4.1 Licensee may not remove any copyright or trademark notices, or any other proprietary rights legends from the Software or Documentation.

4.2 Licensee shall cause all product documentation (such as manuals) relating to Licensee's Product(s) to be marked with and the about-dialogues of Licensee's Product(s) to include the trademark and logo as well as the copyright notice.

4.3 Licensee may not apply to register any of the Ekahau trademarks and/or logos anywhere in the world. If any application for registration referred to in this Section 4.3 is or has been filed by or on behalf of Licensee or its Affiliate in any country and relates to any mark which, in the reasonable opinion of Ekahau, is confusingly similar, deceptive or misleading with respect to, or dilutes or in any way damages any of the Ekahau trademarks or logos, Licensee shall, at Ekahau's request, abandon (as well as cause its Affiliates to abandon) all use of such mark, and any registration or application for registration thereof.

### 5. LICENSE FEES

5.1 License Fee: Licensee shall pay the respective License Fee to Ekahau against respective invoice of Ekahau within thirty (30) days of the Effective Date, or by credit card in advance.

5.2 All sums payable to Ekahau under this Agreement shall be paid in the currency specified in Price List and net, free and clear of all taxes (including, but not limited to, Value Added Tax and Sales Tax), deductions and withholdings such possible taxes and/or deductions to be borne by Licensee.

5.3 In case Licensee fails to pay the License Fee specified in the Price List in due time, Ekahau shall be entitled without prejudice to any other right or remedy to charge from Licensee interest at the level of ten (10) per cent per annum on the unpaid amounts from the due date of the payment in question to the date on which the payment is credited to Ekahau's bank account, and Licensee shall pay such interest within thirty (30) days from the date of Ekahau's respective invoice. Notwithstanding the foregoing, Licensee's payment of fees shall be in accordance with General Services Administration Acquisition Regulation (GSAR) 552.212-4(i) Payment and the Prompt Payment Act.

## 6. WARRANTIES AND DISCLAIMERS

6.1 By signing this Agreement Licensee acknowledges and accepts that the Software is a complex software product and may include defects.

6.2 Ekahau represents and warrants, subject to other terms of this Agreement, to Licensee that (a) it has the corporate authority (1) to enter into and perform this Agreement and (2) to grant all rights expressly granted to Licensee in conformance with the terms of this Agreement, and (b) the latest version of the Software and Documentation (Ekahau Site Survey) delivered by Ekahau to Licensee does not infringe upon or violate any copyright or patent of any third party valid in the country in which such Software was originally delivered, and (c) the hardware consisting of the NIC-300-USB Wi-Fi adapter shall perform as specified by Ekahau in writing for a period of twelve (12) months from the date of delivery or be repaired or replaced.

6.3 EXCEPT AS PROVIDED FOR IN THIS SECTION 6 EKAHAU GIVES NO EXPRESS, IMPLIED, STATUTORY OR OTHER WARRANTIES REGARDING THE SOFTWARE, DOCUMENTATION OR EKAHAU SITE SURVEY INCLUDING, BUT NOT LIMITED TO, WARRANTIES REGARDING FITNESS FOR A PARTICULAR PURPOSE, DESIGN, NON-INFRINGEMENT OR MERCHANTABILITY.

6.4 EKAHAU SHALL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGE, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY (WHETHER CONTRACT, TORT, INCLUDING NEGLIGENCE, OR OTHERWISE). IN NO EVENT WILL EKAHAU'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED ONE HUNDRED (100) PERCENT OF THE TOTAL AMOUNT RECEIVED BY EKAHAU FROM LICENSEE AS LICENSE FEE UNDER THIS AGREEMENT.

6.5 LICENSEE ACKNOWLEDGES AND ACCEPTS THAT EKAHAU SITE SURVEY IS NOT DESIGNED OR LICENSED FOR USE IN ON-LINE EQUIPMENT IN HAZARDOUS ENVIRONMENTS SUCH AS OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR CONTROL, OR IN LIFE-CRITICAL SOLUTIONS. EKAHAU EXPRESSLY DISCLAIMS ANY



LIABILITY RESULTING FROM USE OF THE SOFTWARE, DOCUMENTATION AND EKAHAU SITE SURVEY IN ANY SUCH ON-LINE EQUIPMENT IN HAZARDOUS ENVIRONMENTS AND/OR IN LIFE-CRITICAL SOLUTIONS AND ACCEPTS NO LIABILITY IN RESPECT OF ANY ACTIONS OR CLAIMS BASED ON THE USE OF THE SOFTWARE, DOCUMENTATION AND EKAHAU SITE SURVEY IN ANY SUCH ON-LINE EQUIPMENT IN HAZARDOUS ENVIRONMENTS AND/OR IN LIFE-CRITICAL SOLUTIONS BY LICENSEE, SUB-LICENSEES, DISTRIBUTORS AND/OR END-USERS. FOR PURPOSES OF THIS SECTION 6.5, THE TERM "LIFE-CRITICAL SOLUTION" MEANS AN APPLICATION SOFTWARE PACKAGE OR HARDWARE DEVICE WHOSE FUNCTIONING OR MALFUNCTIONING MAY RESULT DIRECTLY OR INDIRECTLY IN PHYSICAL INJURY OR LOSS OF HUMAN LIFE.

6.6 LICENSEE UNDERSTANDS AND ACCEPTS THAT EKAHAU HAS NO RIGHT TO BIND ITS AFFILIATES IN ANY WAY AND FURTHER THAT EKAHAU PASSES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF WHATEVER NATURE FROM ITS AFFILIATES OR ANY THIRD PARTY TO LICENSEE.

## 7. INDEMNIFICATION

7.1 Ekahau shall (subject to Sections 6.3 and 6.4(a) and other terms of this Agreement) indemnify, hold harmless, and defend Licensee from and against any and all suits, actions, damages, costs, losses, expenses (including settlement awards accepted by Ekahau and reasonable attorney's fees) and other liabilities arising from or in connection with any claim that the latest version of the Software and Documentation (Ekahau Site Survey) delivered to Licensee by Ekahau infringes or violates any copyright or patent of any third party valid in the country in which the Software was originally delivered, provided that such third party is not an Affiliate of Licensee. As a condition to Ekahau's obligations under this Section 7.1, Licensee shall (a) notify Ekahau in writing as to any event of which Licensee has knowledge that would give rise to an indemnity obligation hereunder, (b) provide reasonable cooperation and assistance to Ekahau, and (c) allow Ekahau to participate in the defense or settlement of the claim. Ekahau shall maintain control and direction of said defense at its expense, provided that Ekahau shall not be deemed authorized to make any concessions or agree to any commitments which will obligate Licensee monetarily or otherwise, and provided further, that Licensee, at Licensee's expense, shall have the right to participate in such defense.

7.2 The indemnification obligation set forth in Section 7.1 above shall not apply to any claim for infringement or violation resulting from:

(i) the combination, operation or use of the Software, Documentation or the Ekahau Site Survey with any code or programs not developed or supplied by Ekahau pursuant to this Agreement if such claim would have been avoided but for such combination, operation or use;

(ii) the use of other than the latest, unaltered release of the Software and Documentation (Ekahau Site Survey) delivered by Ekahau to Licensee, if such claim would have been avoided but for such use;

(iii) the use of the Software, Documentation or Ekahau Site Survey as modified or enhanced by Licensee if such modification or enhancement results in an infringing or violating product or computer program, and if the use of the unmodified Software, Documentation or Ekahau Site Survey supplied by Ekahau would have avoided such infringement or violation;

(iv) the use of the Software, Documentation or Ekahau Site Survey against the provisions of this Agreement;  
or

(v) Ekahau's inclusion in the Software, Documentation or Ekahau Site Survey of any proprietary technology or information that Licensee provides to Ekahau specifically for inclusion in the Software, Ekahau Site Survey or Documentation.

7.3 In the event of a claim being presented against Licensee resulting from Licensee's use of the Software, Documentation or Ekahau Site Survey in accordance with the rights granted pursuant to this Agreement, Ekahau shall have the right to, at its sole election:

(i) replace or modify the infringing Software, Documentation, or Ekahau Site Survey, or part thereof, so that it becomes non-infringing, or

(ii) acquire for Licensee the right to continue using or distributing the infringing Software, Documentation or Ekahau Site Survey at no additional cost to Licensee.

If Ekahau determines that (a) the right to continue to use cannot be procured under commercially reasonable terms, or (b) such infringing Software, Documentation, or Ekahau Site Survey cannot be replaced or modified at commercially reasonable time and expense, Ekahau shall have the option to terminate this Agreement and provide Licensee, as the sole compensation for the infringement, termination of this Agreement and the License, a refund of the monies received by Ekahau under this Agreement from Licensee within the twelve (12) month period immediately preceding the termination.

## 8. TERM AND TERMINATION

8.1 This Agreement shall be deemed to have been entered into on the date of accepting the terms of this Agreement by Licensee ("the Effective Date") and shall remain in force until terminated according to provisions of Sections 8.2-3 below.

8.2 This Agreement may be terminated in accordance with GSAR 552.212-4(d) Disputes, GSAR 552.212-4(l) Termination for the Ordering Activity's Convenience, GSAR 552.212-4(m) Termination for Cause, and the Contract Disputes Act.

8.3 Termination of the Maintenance Agreement shall not be deemed to form a cause for termination of this Agreement.

## 9. EFFECTS OF TERMINATION

9.1 In the event of termination of this Agreement for whatever reason:

(i) Licensee shall immediately cease to use the Software and Documentation and any part of them;

(ii) Licensee shall on the date of termination of this Agreement at Ekahau's option (a) either return the Software and Documentation to Ekahau at Licensee's cost, or (b) destroy the Software and Documentation and deliver to Ekahau a certificate of comprehensive destruction signed by an officer of Licensee.; and

(iii) Licensee shall cease to make any reference to the trademarks and trade names of Ekahau.

9.2 Any termination of this Agreement shall be without prejudice to the accrued rights of the Parties under this Agreement. The Sections 2.3, 2.4, 2.6, 2.7, 4, 5, 6.4, 6.5, 9, 10, 11, 12, 13, 14 (excluding 14.3) shall survive the termination of this Agreement.

## 10. CONFIDENTIALITY

10.1 For the purposes of this Section 10 confidential information (below referred to as "Confidential Information") is defined as any information received by a Party ("receiving Party") from the other Party ("disclosing Party"), whether before or after the Effective Date, which is marked or described by the disclosing Party in writing as being "Confidential", "Secret" or "Proprietary". The Parties specifically acknowledge that the Software and Documentation are Confidential Information but that either Party may disclose that Licensee is licensing the Software, Documentation and Ekahau Site Survey.

10.2 The confidentiality obligation under this Section 10 shall not cover knowledge which:

(i) was at the time of receipt published or otherwise generally available to the public;

(ii) has after receipt by a Party been published or become generally available to the public otherwise than through any act or omission on part of the receiving Party;

(iii) was lawfully in the possession of the receiving Party at the time of receipt without any restrictions on disclosure;

(iv) was rightfully acquired from third parties without any undertaking of confidentiality imposed by such third parties;

(iv) was developed independently by the receiving Party without reference to the Confidential Information;  
or

(v) is required by applicable law or regulation or by legal process to be disclosed, so long as the receiving Party provides the disclosing Party with prompt notice of such requirement to enable the disclosing Party to seek an appropriate protective order. If no such order is obtained within a reasonably prompt time, the receiving Party may, without liability hereunder, disclose such portion of the Confidential Information that the receiving Party's legal counsel advises is legally required to be disclosed.

10.3 Both Parties agree to maintain Confidential Information in confidence and shall use the same degree of care, but in no event less than reasonable care, to avoid disclosure of Confidential Information as it uses with its own confidential and proprietary information of similar type and importance. Both Parties agree to disclose Confidential Information only to those of its employees, permitted Sub-Licensees and sub-contractors (who have a bona fide need to know solely for the purpose (and to the extent) of exercising its rights contemplated under this Agreement.

10.4 The obligations set forth in this Section 10 shall remain in force for a period of five (5) years as of the date of disclosure of the Confidential Information in question, regardless of an earlier termination of this Agreement.

## 11. FORCE MAJEURE

11.1 The terms and conditions of this Agreement shall be subject to Force Majeure and neither Party shall be responsible for any consequences caused by circumstances beyond his reasonable control, including but without limitation to war (whether declared or not), acts of government or the European Union, court decisions, export or import prohibitions, breakdown or general unavailability of transport, general shortages of energy, fire, explosions, accidents, strikes or other concerted actions of workmen, lockouts, sabotage, civil commotion and riots.

11.2 If either Party suffers delay in the execution of his contractual obligations due to such circumstances, the Party shall as soon as possible give the other Party notice in writing of the cause of delay. Such Party shall, however, perform said contractual obligations as promptly as reasonably practicable after removal of the cause and/or its effects.

11.3 Neither Party shall claim damage or any other compensation from the other Party for delays or non-fulfillment of this Agreement caused by Force Majeure.

## 12. EXPORT CONTROL

12.1 Licensee shall take the proper steps at its own expense to obtain all necessary governmental approvals and validations and other official licenses, permits and certificates when either exporting or re-exporting or importing the Software and Ekahau Site Survey.

12.2 Notwithstanding the provisions of Section 12.1 above Ekahau shall apply for its own export permission in Finland if needed. Should Ekahau fail to acquire such permission in due time the provisions of Section 11 shall apply.

### 13. APPLICABLE LAW

This Agreement shall be interpreted and construed in accordance with the federal laws of the United States. Application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

### 14. MISCELLANEOUS

14.1 Any notice required or authorized to be given hereunder or any other communication between the Parties provided for under the terms of this Agreement shall be served by prepaid registered airmail letter, by guaranteed overnight courier, or by telefax addressed to either Party at its address or telefax number given in Ekahau's Developer Forum Application (at [www.ekahau.com](http://www.ekahau.com)). Any notice so given by post shall be deemed to have been served twelve (12) days after the same shall have been mailed (the day of mailing not included) and any notice so given by telefax shall be deemed to have been received on dispatch and in proving such service it shall be sufficient to prove that the letter or telefax containing the notice was properly addressed and, as the case may, be put into the post or transmitted or alternatively received, in respect of a letter, if actually received earlier than herein stipulated.

14.2 English language shall govern all documents, notices and meetings as well as the arbitration procedure and awards relating to this Agreement. The captions to Sections in this Agreement do not form a part of this Agreement nor may they be used to assist in its interpretation.

14.3 Neither Party shall have any authority to bind the other Party to any obligation or to represent the other in any circumstance and both Parties agree not to so bind or represent the other.

14.4 This Agreement may be amended only by a separate agreement signed by duly authorized representatives of Carahsoft Technology Corporation and GSA.

Neither Party shall, without the prior written consent of the other Party, assign or otherwise transfer its rights and obligations under this Agreement in whole or in part.

14.5 No delay, neglect or forbearance by either Party in enforcing against the other Party any term or condition of this Agreement shall be, or be deemed to be, a waiver nor shall it in any way prejudice any right of that Party under this Agreement.

14.6 Should a part of this Agreement be declared invalid and/or unenforceable for any reason whatsoever the remaining portion of this Agreement shall not be prejudiced and shall continue in full force and effect.

### 15. ENTIRE AGREEMENT

This Agreement and the terms and conditions of Carahsoft Technology Corporation's Multiple Award Schedule Contract sets forth the entire agreement and understanding of the Parties relating to the object hereof and merges all prior discussions and agreements of the matter hereof between them.

THIS EKAHAU MAINTENANCE AGREEMENT (“AGREEMENT”) SETS FORTH THE TERMS AND CONDITIONS UNDER WHICH EKAHAU WILL PROVIDE SOFTWARE MAINTENANCE AND TECHNICAL SUPPORT (“SUPPORT”) FOR YOU OR THE ORGANIZATION ON WHOSE BEHALF YOU ARE ENTERING INTO THIS AGREEMENT (“YOU”) IN RELATION TO YOUR COPY OF EKAHAU SITE SURVEY SOFTWARE (COLLECTIVELY, THE “SOFTWARE”).

### **1. Description of Support**

Support shall consist of assistance via the Ekahau Support Website (“Website”) or telephone but shall be limited to: (a) answering general questions on the use of the Software; (b) diagnosing and troubleshooting issues or problems relating to the use of the Software; and (c) attempting to resolve problems related to the use of the Software.

Ekahau will grant You copies of the new subsequent releases of the Software to correct design faults, discrepancies or defects in the Software which are generally made available at no additional charge.

### **2. Exclusions**

Unless otherwise agreed to in writing by Ekahau, Support does not cover or include the following:

- i. Use of the Software in violation of the End-User License Agreement terms and conditions;
- ii. Backing up or restoring the Software and/or customer data;
- iii. Installation of the Software unless agreed to as part of an upgrade;
- iv. On-site Support;
- v. Formal training on the operation and use of the Software; or
- vi. Consulting, design and configuration services.

At Your request and in Ekahau's sole discretion, Ekahau may charge for performing any of the foregoing services on a time and materials basis plus expenses at its discretion, or perform any of the foregoing services as part of a separate professional services agreement.

You acknowledge that Ekahau has the right to discontinue the development of any Software component and the Support, including, without limitation, the distribution of older Software versions, at any time in its sole discretion.

### **3. Term and Termination**

This Agreement shall commence and therefore You are entitled to receive Support for the Software during the inclusive dates set forth in the Purchase Order, Statement of Work, or similar document.

You may terminate this Agreement by stopping receipt of Support.

### **4. Contact Information**

Website: <http://www.ekahau.com/support>

Telephone Americas: 1-866-4EKAHAU (+1-866-435-2428)

8:00 AM to 5:00 PM Eastern Time, Monday through Friday (except Ekahau, Inc. holidays)

Telephone EMEA/APAC: +358-20-743-5910

9:00 AM to 5:00 PM Eastern European Time, Monday through Friday (except Ekahau OY holidays)

Your Ekahau Site Survey license key is set forth in the Purchase Order, Statement of Work, or similar document. For identification purposes You may be asked to provide this number with Your Support requests. Please refer to the Ekahau website for the most recent contact information.

## **5. Sole and Exclusive Remedies**

EKAHAU GIVES NO EXPRESS, IMPLIED, STATUTORY OR OTHER WARRANTIES REGARDING THE SUPPORT AND DOCUMENTATION INCLUDING, BUT NOT LIMITED TO, WARRANTIES REGARDING FITNESS FOR A PARTICULAR PURPOSE, DESIGN, NON-INFRINGEMENT OR MERCHANTABILITY.

EKAHAU SHALL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGE, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY (WHETHER CONTRACT, TORT, INCLUDING NEGLIGENCE, OR OTHERWISE). IN NO EVENT WILL EKAHAU'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED ONE HUNDRED (100) PERCENT OF THE TOTAL AMOUNT RECEIVED BY EKAHAU FROM YOU AS SUPPORT AND MAINTENANCE FEE UNDER THIS AGREEMENT.

YOU ACKNOWLEDGE AND ACCEPT THAT THE SOFTWARE IS NOT DESIGNED OR LICENSED FOR USE IN ON-LINE EQUIPMENT IN HAZARDOUS ENVIRONMENTS SUCH AS OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR CONTROL, OR IN LIFE-CRITICAL SOLUTIONS. EKAHAU EXPRESSLY DISCLAIMS ANY LIABILITY RESULTING FROM USE OF THE SOFTWARE IN ANY SUCH ON-LINE EQUIPMENT IN HAZARDOUS ENVIRONMENTS AND/OR IN LIFE-CRITICAL SOLUTIONS AND ACCEPTS NO LIABILITY IN RESPECT OF ANY ACTIONS OR CLAIMS BASED ON THE USE OF THE SOFTWARE, DOCUMENTATION AND EKAHAU SITE SURVEY IN ANY SUCH ON-LINE EQUIPMENT IN HAZARDOUS ENVIRONMENTS AND/OR IN LIFE-CRITICAL SOLUTIONS BY LICENSEE, SUB-LICENSEES, DISTRIBUTORS AND/OR END-USERS. FOR PURPOSES OF THIS AGREEMENT, THE TERM "LIFE-CRITICAL SOLUTION" MEANS AN APPLICATION SOFTWARE PACKAGE OR HARDWARE DEVICE WHOSE FUNCTIONING OR MALFUNCTIONING MAY RESULT DIRECTLY OR INDIRECTLY IN PHYSICAL INJURY OR LOSS OF HUMAN LIFE.

YOU UNDERSTAND AND ACCEPT THAT EKAHAU HAS NO RIGHT TO BIND ITS AFFILIATES IN ANY WAY AND FURTHER THAT EKAHAU PASSES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF WHATEVER NATURE FROM ITS AFFILIATES OR ANY THIRD PARTY TO LICENSEE.

## **6. Applicable Law**

This Agreement shall be interpreted and construed in accordance with the federal laws of the United States, without regard to conflicts of law principles. Application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.