

Carahsoft Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Revised 20160504

- 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 Government Order 4800.2H 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 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 termination or cancellation of the Manufacturer's CSA are hereby deemed to be deleted. Termination 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.).

Product License Agreement

GEMEDY END USER LICENSE AGREEMENT

PLEASE READ THE TERMS OF THIS AGREEMENT CAREFULLY BEFORE INSTALLING OR USING THE GEMEDY SOFTWARE.

YOUR RIGHT TO USE THE SOFTWARE IS GOVERNED BY THE TERMS OF THIS AGREEMENT. CLICKING THE "YES" BUTTON AT THE END OF THIS AGREEMENT INDICATES YOUR ACCEPTANCE OF THE TERMS OF THIS AGREEMENT. IF YOU DO NOT ACCEPT THESE TERMS BY CLICKING "YES," YOU WILL NOT BE ABLE TO CONTINUE WITH THE SOFTWARE INSTALLATION PROCESS OR TO USE THE SOFTWARE.

INTRODUCTION

This is a legal agreement ("Agreement") between you, the end user, and Gemedy, Inc. ("GEMEDY"), a Delaware corporation with its principal place of business at 350 Third Street, Suite 2011, Cambridge, MA 02142, U.S.A., which covers the Gemedy ADAPT software developed and distributed by GEMEDY (the "Software") and its accompanying documentation ("Documentation"). The term "you" in this Agreement refers to the individual or organization that initially purchased the Software, in such quantities and at such prices as identified in your purchase order to GEMEDY (the "Schedule")

1. **LICENSE.** This is a license agreement and **NOT** an agreement for sale. GEMEDY licenses you to use the Software and Documentation only as permitted by this Agreement, and such license is subject to, and conditioned upon, your compliance with the terms of this Agreement. GEMEDY retains all rights not expressly granted to you in this Agreement. Subject to the terms of this Agreement, you have a non-exclusive, nontransferable and limited right to install the Software onto the hard drive or other mass storage device of either (a) one (1) computer equipped with not more than one (1) CPU core or (b) one (1) instance of a virtual machine running on one (1) computer with not more than one (1) CPU core, and use the Software and Documentation on that computer or instance of a virtual machine solely for your internal and non-commercial use. You may install, register and use a maximum of one copy of the Software. You may make one (1) archival copy of the Software and Documentation for back-up purposes, provided that such copy contains all of the original copy's proprietary notices and is kept in your possession, but you may not otherwise copy or distribute the Software or Documentation in any form or by any medium. GEMEDY reserves the right to audit your deployment and use of the Software for compliance with the terms of this Section 1 at any time during your normal business hours upon reasonable notice.

2. **TERM; TERMINATION.** This Agreement shall commence when you accept its terms by clicking on the "Yes" button below and shall automatically terminate after thirty (30) days unless you register the Software before the end of such thirty-day period. Once you have registered the Software, the license granted in this Agreement shall continue indefinitely until terminated by you or by GEMEDY. You may terminate this Agreement at any time by (a) returning to GEMEDY all removable media (i.e. CD, DVD, etc.) containing the Software and Documentation, or any parts thereof, and (b) destroying all other copies of the Software and Documentation, or any parts thereof. This Agreement, and any and all rights provided to you in connection with the Software, shall automatically terminate if you fail to comply with the terms of this Agreement. Upon any termination of this Agreement, you shall cease using the Software and Documentation, and shall (a) return to GEMEDY all removable media containing the Software and Documentation, or any parts thereof and (b) destroy all other copies of the Software and Documentation, or any parts thereof. All sections of this Agreement, other than Section 1 ("License"), shall survive termination of this Agreement.

3. **OWNERSHIP; INTELLECTUAL PROPERTY.** All right, title, and interest in the Software and Documentation, and all patents, trademarks, copyrights and all other intellectual property and other proprietary rights applicable thereto, shall at all times remain solely and exclusively with GEMEDY. You shall not (nor shall you permit any third party to) take any action inconsistent with such right, title, and interest. Unauthorized reproduction of the Software or Documentation is strictly prohibited by United States copyright and other laws and by international treaties, and may subject you to civil

and/or criminal penalties. You acknowledge that any breach of your obligations with respect to the proprietary rights of GEMEDY or its licensors or third party suppliers may cause GEMEDY irreparable injury for which there may be inadequate remedies at law and that GEMEDY and its licensors and third party suppliers will be entitled to equitable relief, in addition to all other remedies available to it.

4. LIMITATION ON USE. You represent and warrant to GEMEDY that you shall not (and shall not permit any third party to):

- (a) sell, rent, lease, sublicense, grant a security interest in, or otherwise transfer or distribute any copies of the Software or Documentation to others;
- (b) offer the benefits or services of the Software to any third party, whether such arrangement is in the nature of a service bureau, an outsourcing service, an application service provider or any other similar service or business;
- (c) modify, translate, reverse engineer, decompile, or disassemble the Software;
- (d) modify, customize, or create derivative works based on the Software or the Documentation (i.e. create a new program that incorporates all or part of the Software or Documentation);
- (e) alter, destroy or otherwise remove any proprietary notices or labels on the Software or Documentation;
- (f) avoid, circumvent or disable any security mechanism, procedure or protocol, or any copyright protection, provided or included in connection with the Software;
- (g) disclose the results of Software performance benchmarks to any third party without GEMEDY's prior written consent;
- (h) use the Software other than for its intended purpose;
- (i) permit or provide access to or use of the Software by any third party as a service or otherwise except for access to or use of the Software by your employees or independent contractors for internal and non-commercial use only;
- (j) use the Software in a manner that violates any applicable law, including without limitation laws prohibiting the unauthorized copying of copyrighted materials; or
- (k) export of the Software in violation of U.S. laws and regulations, including the Export Administration Act of 1979, as amended, and successor legislation, and the Export Administration Regulations issued by the Department of Commerce.

You agree to indemnify GEMEDY and its affiliates, officers, directors, employees and agents for any third-party claims relating to your breach of any of the above representations and warranties.

5. DISCLAIMER OF WARRANTY. THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS." GEMEDY DOES NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT ITS OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. GEMEDY HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE OR THE DOCUMENTATION, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THESE DISCLAIMERS OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. GEMEDY warrants that Software will substantially conform to the applicable Documentation for such Software and that any media will be free from manufacturing defects in materials and workmanship until the expiration of the warranty period. GEMEDY does not warrant that the operation of Software

shall be uninterrupted or error free, that all defects can be corrected, or that Software meets Customer's requirements, except if expressly warranted by GEMEDY in its quote. Support Services for Software are available for separate purchase and the Support Options are identified at the Product Notice.

6. **LIMITATION OF LIABILITY.** IN NO EVENT WILL GEMEDY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, DISTRIBUTORS OR RESELLERS BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (SUCH AS DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST DATA, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY), OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF GEMEDY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS, LOSSES OR CLAIMS. IN NO EVENT WILL GEMEDY BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE AMOUNT YOU ORIGINALLY PAID GEMEDY FOR THIS LICENSE OF THE SOFTWARE.

7. **LAWFUL USE OF SOFTWARE ONLY.** You agree that you shall not use the Software or Documentation for any unlawful purpose.

8. **FEES AND PAYMENT TERMS.** You agree to pay (or cause a mutually agreed upon third party to pay) GEMEDY the fees specified in each applicable Schedule . All fees are due and payable in accordance with the Prompt Payment Act (31 USC 3903).

9. **TAX.** You shall be responsible for and shall pay, and shall reimburse GEMEDY on request if GEMEDY is required to pay, any sales, use, valued added (VAT), consumption or other tax (excluding any tax that is based on GEMEDY's net income), assessment, duty, tariff, or other fee or charge of any kind or nature that is levied or imposed by any governmental authority on the Software.

10. **SUPPORT SERVICES.** Provided you have paid the applicable support and maintenance fees, GEMEDY will provide the following support services:

(a) Telephone support to one employee designated by you, who is knowledgeable in the use of the Software and your operating environment, for the installation and use of the then-current release of the Software (provided that a prior release of the Software shall be supported for up to twelve (12) months after release of the subsequent release).

(b) Error correction of the then-current release of the Software. GEMEDY shall exercise commercially reasonable efforts to correct any reproducible error reported by you in the current unmodified release of the Software in accordance with the priority level reasonably assigned to such error by Gemedy.

(c) One (1) set of Documentation and one (1) machine executable copy of the Software for new releases, updates and enhancements of the Software that are not designated by GEMEDY as new products for which it charges a separate fee. For backup purposes, you may make one (1) copy of the Documentation and the Software provided hereunder subject to the terms and conditions of this Agreement.

(d) Support services shall be provided for one (1) year from the effective date of the applicable Schedule and shall be extended each year for an additional one (1) year term unless terminated by either party at the end of the original term or at the end of any renewal term by giving the other party written notice at least ninety (90) days prior to the end of any such term. Support commences on the date the Software is shipped to you.

(e) In the event you elect to discontinue support services, GEMEDY shall have no obligation to provide the support services described in this Section 11. In order to reinstate or renew support services, GEMEDY shall invoice you and you will make payment of the then-current annual support services fee and all unpaid past support services fees in accordance with the Prompt Payment Act. No updates of the Software will be provided to you, and no updates may he copied by you to update any copies of the Software made by you, unless support services have been purchased for such copies. Support services fees will be billed on an annual basis, payable in accordance with the Prompt Payment Act.

(f) GEMEDY shall have no obligation to support (i) altered, damaged or modified Software, (ii) Software that is not the then-current or previous sequential release, (iii) Software problems caused by your negligence, hardware malfunction, third party software malfunction or conflict, or other causes beyond the control of GEMEDY, or (iv) Software installed in an operating environment or in a hardware environment for which the Software has not been licensed.

11. GENERAL. This Agreement and the GSA Multiple Award Schedule Contract into which this Agreement has been incorporated constitutes the entire understanding between you and GEMEDY with respect to the subject matter hereof. It supersedes all prior or contemporaneous oral or written communications, proposals, or representations and warranties; in the event of conflict with any additional terms of any quote, order, acknowledgment, or other communication between the parties relating to its subject matter, the conflict will be resolved in accordance with GSAR 552.212-4(s) Order of Precedence. Any change to this Agreement must be in writing and signed by an authorized representative of GEMEDY. Nothing in this Agreement constitutes a waiver of the rights of GEMEDY under the U.S. Copyright Act or Federal or State law. This Agreement shall be governed by the law of the State of New York, excluding its choice of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed. If any provision of this Agreement is determined to be unenforceable or invalid under any applicable law, this Agreement will not be invalid; instead, the unenforceable or invalid provision shall be deleted. Any dispute relating to this Agreement or the Software shall be brought only in the federal or state court, as applicable, in New York County, New York, and the parties hereby waive any objection to the jurisdiction of such courts. You may not assign this Agreement (by operation of law or otherwise) or sublicense the Software without the prior written consent of GEMEDY, and any prohibited assignment or sublicense shall be null and void.