

**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.).

# IPsoft Master Framework Agreement

This IPsoft Master Framework Agreement ("**Framework Agreement**") is effective as of \_\_\_\_\_ ("**Framework Effective Date**") and is entered between IPsoft Government Solutions LLC, a Delaware limited liability company, with offices located at 17 State Street, New York, New York ("**IPsoft**"), and [Customer Name], a [State / Entity Type], with offices located at [Customer Address] ("**Customer**") (each a "**Party**" and together the "**Parties**").

## 1.0 DEFINITIONS

These capitalized terms are defined as follows:

- 1.1 "Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity or otherwise.
- 1.2 "Affiliate" means any current or future corporation, partnership or other entity that is in or under the direct or indirect control of IPsoft or Customer. For purposes of the foregoing, "control" exists whenever there is an ownership, profits, voting or similar interest (including any right or option to obtain such an interest) representing at least 50% of the total interests of the pertinent entity then outstanding.
- 1.3 "Customer Properties" means any and all software, websites, APIs (application programming interfaces) or other products made owned by Customer that may include or interface with one or more Products.
- 1.4 "Documentation" means any and all Product specifications set forth in a Module and any manuals or other documentation provided with the Product, in any form or medium that IPsoft makes available to Customer in hard copy or electronic form.
- 1.5 "Intellectual Property Rights" means any and all now known or hereafter known tangible and intangible: (a) rights associated with works of authorship throughout the world, including, but not limited to, copyrights and moral rights; (b) trademark and trade name rights and similar rights; (c) trade secrets; (d) patents; (e) all other intellectual property rights (of every kind and nature throughout the world and however designated), whether arising by operation of law, contract, license or otherwise; and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues now or hereafter in force (including any rights in any of the foregoing).
- 1.6 "Product" means, collectively, the IPsoft Properties and Third Party Materials licensed to Customer by IPsoft pursuant to a specific Module, including any updates, upgrades or new versions which are made available by IPsoft to Customer.
- 1.7 "Loss" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

- 1.8 "Open Source Program" means any open source software program that is subject to any open source license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other obligation, restriction or license agreement that substantially conforms to the Open Source Definition prescribed by the Open Source Initiative or that otherwise may require disclosure or licensing to any third party of any source code with which such software program is used or compiled.
- 1.9 "IPsoft Properties" means any and all IPsoft proprietary products, software, APIs (application programming interfaces), web portals, and other technologies, information and materials provided by IPsoft to Customer pursuant to a Module, excluding all Third Party Materials.
- 1.10 "Representative" means any director, officer, employee, agent, advisor or consultant of either of the parties or any director, officer, employee, agent, advisor or consultant of an Affiliate.
- 1.11 "Services" mean all services to be furnished to Customer by IPsoft, its suppliers or its subcontractors hereunder, as described in an associated Module.
- 1.12 "Third Party Materials" means all materials and information in any form or medium, including any Open Source Programs or other software, documents, data, content, specifications, products, equipment or components that are not proprietary to IPsoft.

## 2.0 CONTRACTUAL FRAMEWORK

- 2.1 Scope. This Framework Agreement establishes the contractual framework for the licensing of Products and/or the provision of Services by IPsoft to Customer pursuant to Modules (defined below) executed by IPsoft and Customer.
- 2.2 Components. The Parties will execute supplemental modules to this Framework Agreement containing terms and conditions applicable to specific Products and Services offered by IPsoft (each, once fully executed, a "**Module**"). Each Module, upon execution, shall be fully incorporated into this Framework Agreement. The Parties may also execute work orders or purchase orders under specific Modules (collectively, "**Orders**"), each of which shall be incorporated into the Module under which it is issued, and this Framework Agreement, upon execution.



- 2.3 Exhibits. Any documents attached to the Framework Agreement, a Module or an Order are to be considered exhibits no matter what such documents are labelled or called (collectively, "**Exhibits**"). In no event is an Order or Module to be considered an Exhibit. Unless explicitly stated otherwise, the document to which an Exhibit is attached prevails over conflicting terms in that Exhibit. References to this

Framework Agreement, Modules, and Orders shall be deemed to also refer to any Exhibits attached to those documents unless otherwise stated.

- 2.4 Precedence of Terms. In the event of a conflict or inconsistency among the provisions of this Framework Agreement, a Module, Schedule Contract GS-35F-0119Y, or an Order, then the order of precedence shall be determined in accordance with General Services Administration Acquisition Regulation (GSAR) 552.212-4(s)

Notwithstanding the above, the Parties may agree that the terms of a specific Module shall supersede a provision or provisions of this Framework Agreement, provided that such Section or Sections of the Framework Agreement is identified and specifically referenced in the Module.

### 3.0 FEES AND PAYMENT TERMS

- 3.1 Fees. In consideration for the Products and Services provided by IPsoft in accordance with this Framework Agreement, Customer shall pay to IPsoft the prices and/or rates as specified in the applicable Module and/or Order.
- 3.2 Taxes. Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder.
- 3.3 Payment Terms. Unless otherwise agreed upon by the Parties in a Module or Order, Customer shall pay all invoiced amounts due to IPsoft within thirty (30) days from the date of IPsoft's invoice. Customer shall make all payments hereunder in the currency set forth in the Order and in accordance with the instructions set forth in the invoice.

### 4.0 TERM AND TERMINATION

- 4.1 Term. This Framework Agreement will come into effect on the Framework Effective Date, and each Module will come into effect on such Module's effective date set forth therein. This Framework Agreement shall remain in force for five (5) years after the Framework Effective date, at which point they will terminate automatically (the, "**Framework Term**"). Unless otherwise stated, each Module shall remain in effect for five (5) years from that Module's effective date (each a "**Module Term**").
- 4.2 Termination for Convenience. IPsoft may terminate this Framework Agreement or any Module without cause and for convenience by giving Customer thirty (30) days prior written notice.
- 4.3 Termination for Cause. If either Party is in Material Default, the non-defaulting Party may terminate the Framework Agreement or any Modules upon notice. A "**Material Default**" means a Party's: (a) breach of any duties, obligations or responsibilities under this Framework Agreement, a Module or an Order, and failure to cure that

breach within thirty (30) days after written notice specifying the breach; or (b) general assignment for the benefit of creditors, or ceasing to conduct its business or operations in the ordinary course, including becoming a party to any insolvency, bankruptcy, receivership, or similar proceeding, which is not dismissed within thirty (30) days after its commencement.

#### 4.4 Effect of Termination.

4.4.1 In the event that the Framework Agreement is terminated for Material Default under Section 4.3, termination will cause all current Modules, and any Orders issued under those Modules, to terminate, unless the Parties mutually agree to continue specified Modules. In that case, the Parties shall enter into a separate agreement listing the Modules to be continued and further stating the Parties' intent that this Framework Agreement will continue to apply to the listed Modules even though the Framework Agreement between them has been or will be terminated.

4.4.2 In the event that the Framework Agreement is terminated for convenience under Section 4.2, or otherwise expires, any Module shall continue to be in effect until the end of the applicable Module Term. The terms and conditions of this Framework Agreement shall remain in effect until the termination of that Module Term. No customer may enter into a Module that comes into effect after the Framework Term.

4.5 Obligations upon Termination. Upon expiration or termination of the Framework Agreement, each Party shall return to the other, within ten (10) business days, all Confidential Information of the other held by each Party.

## 5.0 CONFIDENTIALITY

5.1 Definition. "**Confidential Information**" means all nonpublic information, in any form, provided or made available by one Party or its Representatives (the "**Discloser**") to the other Party or its Representatives (the "**Recipient**") that is marked with a confidentiality marking or that the Recipient knows or should know to be confidential given the nature of the information. Confidential Information does not include any information that is: (a) already lawfully in the possession of, or known to, the Recipient without any obligation of confidentiality; (b) publicly available at the time of disclosure to the Recipient or which, after disclosure, becomes publicly available through no fault of the Recipient; (c) lawfully provided or disclosed to the Recipient by a non-party to the Framework Agreement without any obligation of confidentiality; or (d) independently developed by the Recipient, as established by documentary evidence, without the use of any Discloser Confidential Information.

5.2 Non-Disclosure. The Recipient shall not disclose Confidential Information to any other person or entity. The Recipient shall not disclose Confidential Information to any of its Representatives, except on a need-to-know basis as required by that Representative to perform under this Framework Agreement or any Module, provided that those Representatives are subject to confidentiality obligations to protect disclosed Confidential Information that are no less restrictive than the obligations imposed under this Framework Agreement. The Recipient shall use



reasonable care to protect Confidential Information from misuse and unauthorized disclosure.

- 5.3 Use of Confidential Information. The Recipient may only use Confidential Information to perform its obligations under this Framework Agreement and/or any Module. The Recipient will not make copies of Confidential Information in any manner that obstructs or obscures the confidentiality marking of the Discloser. Except for rights expressly granted under these General Terms, Confidential Information made available to the Recipient does not grant the Recipient a license right or any other intellectual property in the Confidential Information.
- 5.4 Compelled Disclosure. A disclosure of Confidential Information compelled under a valid order issued by a court or governmental agency of competent jurisdiction (a "**Legal Order**") shall not be considered to be a breach of confidentiality by Recipient or a waiver of that obligation by Discloser. Before any such disclosure, Recipient shall provide prompt written notice to Discloser and reasonable assistance in seeking a protective order or other limitations on disclosure. If, after taking these steps, the Recipient remains subject to a Legal Order to disclose any Confidential Information, it shall disclose only that Confidential Information specifically required and seek assurances from the applicable court or agency that the Confidential Information will be afforded confidential treatment.
- 5.5 Remedies. It is agreed that monetary damages may not be a sufficient remedy for breach of confidentiality. The Discloser is entitled to seek injunctive relief without proof of actual damages. In addition, the Discloser may seek other legal relief, including monetary damages.
- 5.6 Return of Materials. All documents and other tangible forms of Confidential Information, including any copies, will remain the sole and exclusive property of the Discloser, and must be promptly returned or destroyed by the Recipient upon termination of the Framework Agreement or applicable Module, or at any other time as requested by the Discloser. Confidential Information electronically archived or otherwise contained in business records prepared by the Recipient need not be returned or destroyed, but will continue to be protected as Confidential Information.

## 6.0 INTELLECTUAL PROPERTY

- 6.1 All Intellectual Property Rights in the IPsoft Properties and Services belonging to IPsoft shall remain vested with IPsoft. Nothing in this Framework Agreement shall be deemed to grant Customer any right, title or interest in any IPsoft Properties or Services, including any Intellectual Property Rights.
- 6.2 To the extent that, by operation of law or otherwise, Customer obtains any interest in the IPsoft Properties, Services or the product of the Services performed on Customer's behalf by IPsoft, Customer hereby unconditionally and irrevocably assigns to IPsoft, its entire right, title and interest in and to any Intellectual Property Rights that Customer may acquire in the IPsoft Properties, Services, or the product of the Services.

- 6.3 Forgoing Sections 6.1 and 6.2 may be modified or superseded by additional intellectual property provisions in a Module.
- 6.4 All rights to Third Party Materials belong to and remain with the respective owners of such Third Party Materials.

## **7.0 THIRD-PARTY RIGHTS.**

- 7.1 Products or Services provided by IPsoft to Customer may contain Third Party Materials subject to various other terms and conditions imposed by the licensors of such Third Party Materials. As applicable, Customer's use of Third Party Materials is subject to and governed by the third party licenses covering such Third Party Materials.

## **8.0 WARRANTIES AND REPRESENTATIONS**

- 8.1 Mutual Representations and Warranties. Each Party represents and warrants that:
- (a) it is validly organized and in good standing under the laws of the state where it is organized, with all requisite power and authority to execute, deliver and perform under the Framework Agreement and any Module.
  - (b) it has full right, power, and authority to grant the other Party the licenses, rights, and remedies provided under the Framework Agreement and any Modules;
  - (c) there are no actions, suits or proceedings pending or threatened, or any other event, matter, occurrence or circumstance that, to the Party's knowledge, challenges or may have a material adverse impact on this Framework Agreement or any Module; and
  - (d) once duly executed, this Framework Agreement, each Module and any Orders, as applicable, will constitute its legal, valid and binding obligation.
- 8.2 Compliance with Laws. Customer represents and warrants that it shall comply with all applicable laws, rules and regulations in its performance under this Framework Agreement and use of any Products and Services provided hereunder.
- 8.3 Disclaimer of Warranties. EXCEPT AS SPECIFICALLY PROVIDED IN THIS FRAMEWORK AGREEMENT OR A MODULE, IPSOFT MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SPECIFICALLY PROVIDED IN THIS FRAMEWORK AGREEMENT OR A MODULE, IPSOFT MAKES NO WARRANTY OF ANY KIND THAT THE PRODUCTS OR SERVICES, OR ANY DERIVATIVE OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET CUSTOMER'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES OR MATERIALS (INCLUDING

ANY SOFTWARE, HARDWARE, SYSTEM OR NETWORK), OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL OPEN-SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN-SOURCE COMPONENTS AND THIRD-PARTY MATERIALS.

## 9.0 INDEMNIFICATION

9.1 IPsoft Infringement Indemnification. IPsoft will defend Customer from and against any Action by a third party to the extent that such Action arises from an IPsoft Property infringing a third party Intellectual Property Right ("**IP Infringement Claim**"). The Parties agree that IP Infringement Claims do not include, and IPsoft is not obligated to defend, any Actions or Losses arising from any allegation of or relating to any:

- (a) Open-Source Components or other Third-Party Materials;
- (b) incorporation by the IPsoft Properties of, or combination, operation or use of the IPsoft Properties in or with, any technology (including any software, hardware, firmware, system or network), service or other materials not provided by IPsoft;
- (c) modification of IPsoft Properties other than by IPsoft or its contractors in connection with the Framework Agreement or any Module;
- (d) failure to timely implement any maintenance release, modification, update or replacement of the IPsoft Properties made available to Customer by IPsoft, as applicable under any Module;
- (e) use of the IPsoft Properties after IPsoft's notice to Customer of such activity's alleged or actual infringement, misappropriation or other violation of a third party's rights;
- (f) negligence, abuse, misapplication or misuse of the IPsoft Properties or Documentation by or on behalf of Customer, Customer's Representatives or a third party;
- (g) use of the IPsoft Properties or Documentation by or on behalf of Customer that is outside the purpose, scope or manner of use authorized by this Framework Agreement or in any manner contrary to IPsoft's instructions;
- (i) Action or Losses for which Customer is obligated to indemnify IPsoft pursuant to Section 9.2.

9.2 Customer Indemnification. Customer shall indemnify, defend and hold harmless IPsoft and its affiliates, and each of its and their respective officers, directors, employees, agents, subcontractors, successors and assigns (each, including IPsoft, an "**IPsoft Indemnitee**") from and against any and all Losses incurred by the IPsoft Indemnitee in connection with any Action by a third party to the extent that such Losses arise out of or relate to any allegation:

- (a) that any Intellectual Property Right or other right of any Person, or any Law, is or will be infringed, misappropriated or otherwise violated by any:
  - (i) use or combination of the Products or Services by or on behalf of Customer or any of its representatives with any hardware, software, system, network, service or other matter whatsoever that is neither provided by IPsoft nor authorized by IPsoft in this Framework Agreement or Module; or
  - (ii) Customer Properties, or other information, materials or technology or other matter whatsoever directly or indirectly provided by Customer or directed by Customer to be installed, combined, integrated or used with, as part of, or in connection with the Services, Products or Documentation.
- (b) of or relating to facts that, if true, would constitute a breach by Customer of any representation, warranty, covenant or obligation under this Framework Agreement or any Module;
- (c) of or relating to negligence, abuse, misapplication, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Customer or any of its Representatives with respect to the Products or Services or otherwise in connection with this Framework Agreement; or
- (d) of or relating to use of the Products or Services by or on behalf of Customer or any of its Representatives that is outside the purpose, scope or manner of use authorized by this Framework Agreement or any Modules, or in any manner contrary to IPsoft's written instructions.

9.3 Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to Section 9.1 or Section 9.2. The Party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to the Indemnitee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 9.3 will not relieve the Indemnitor of its obligations under this Section 9 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

9.4 Mitigation. In the event of an IP Infringement Claim, IPsoft may, at its option and sole cost and expense:

- (a) obtain the right for Customer to continue to use the IPsoft Properties as contemplated by this Framework Agreement;
- (b) modify or replace the IPsoft Properties, in whole or in part, to seek to make the IPsoft Properties non-infringing, while providing materially equivalent

features and functionality, and such modified or replacement IPsoft Properties will constitute IPsoft Properties under this Framework Agreement; or

- (c) terminate this Framework Agreement, in its entirety or with respect to the affected part or feature of the IPsoft Properties, effective immediately on written notice to Customer, in which event:
  - (i) Customer shall cease all use of the Products and Documentation immediately on receipt of IPsoft's notice; and
  - (ii) provided that Customer fully complies with its post-termination obligations set forth in Section 4.5, IPsoft shall promptly refund to Customer, on a pro rata basis, the share of any license fees prepaid by Customer for the future portion of the Term that would have remained but for such termination.

9.5 Sole Remedy. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND IPSOFT'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS FRAMEWORK AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE IPSOFT PROPERTIES AND SERVICES) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

## 10.0 LIMITATION OF LIABILITY

10.1 **No Consequential or Indirect Damages.** IN NO EVENT SHALL IPSOFT OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS FRAMEWORK AGREEMENT TO CUSTOMER OR ANY THIRD PARTY UNDER OR IN CONNECTION WITH THIS FRAMEWORK AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY (a) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS, (b) LOSS OF GOODWILL OR REPUTATION, (c) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY PRODUCT OR OPEN-SOURCE COMPONENTS OR OTHER THIRD-PARTY MATERIALS, (d) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (e) COST OF REPLACEMENT GOODS OR SERVICES, OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

10.2 **Maximum Liability.** IN NO EVENT SHALL IPSOFT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS FRAMEWORK AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO IPSOFT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM PURSUANT TO THE ORDER DIRECTLY

APPLICABLE TO THE CLAIM OR [USD 500,000.00 / GBP 350,000.00 / EUR 450,000.00 / CHF 485,000 / AUD 675,000.00 / JPY 50,000,000.00 / NOK 4,000,000.00 / SEK 4,000,000.00 / CAD 650,000.00], WHICHEVER IS LESS.

- 10.3 **One-Year Limitation on Claims.** No action arising under or related to this Framework Agreement may be brought by Customer against IPsoft more than twelve (12) months after it accrues.

## 11.0 GENERAL LEGAL TERMS

- 11.1 Waiver. No waiver by IPsoft of any of the provisions of this Framework Agreement is effective unless explicitly set forth in writing and signed by IPsoft. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Framework Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 11.2 Force Majeure. IPsoft shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Framework Agreement, for any failure or delay in fulfilling or performing any term of this Framework Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of IPsoft including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.
- 11.3 Assignment. Neither Party may assign the Framework Agreement or any portion, without the other Party's prior written consent. Assignments in contravention of this Section are void. However, IPsoft may assign the Framework Agreement: (i) in the event of a merger in which IPsoft is not the surviving entity; (ii) in the event of a sale of all or substantially all of IPsoft's assets; or (iii) to any entity that controls, is controlled by or is in common control with IPsoft. The Framework Agreement will be binding upon any permitted successors and assignees.
- 11.4 Entire Agreement. This Framework Agreement, including any Modules, Orders, and Exhibits, constitutes the complete and entire agreement between the Parties and supersedes all prior oral or written proposals, agreements, or communications between them concerning the subject matters and relationship established under this Framework Agreement.
- 11.5 Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Framework Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

- 11.6 No Third-Party Beneficiaries. This Framework Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Framework Agreement.
- 11.7 Governing Law; Venue. The Framework Agreement and performance under it will be governed by the laws of the State of New York without regard to its conflict of law provisions. The Parties consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in New York County, New York for the purposes of adjudicating any matter arising out of or relating to the Framework Agreement.
- 11.8 Marketing. Upon prior, written consent of the Customer, IPsoft may reference Customer's name in a press release, use Customer's name and logo in IPsoft's marketing materials and on IPsoft's website and feature Customer in a case study produced by IPsoft.
- 11.9 Notices. Any legal notices required or permitted under the Framework Agreement will be considered delivered: (i) when delivered by hand to the Party to be notified, (ii) on the next business day after being sent by a reputable overnight courier service for next business day delivery to the Party to be notified, or (iii) on the third business day after being sent by prepaid United States mail, return receipt requested to the Party to be notified, in each case to the applicable address specified as follows:

If to Customer:	_____	[Name]
	_____	[Title]
	_____	[Address]
	_____	
If to IPsoft:	_____	[Name]
	IPsoft Government Solutions LLC	[Title]
	17 State Street	[Address]
	New York, NY 10004	
with a copy to:	General Counsel IPsoft Government Solutions LLC 17 State Street New York, NY 10004	

- 11.10 Severability. If any term or provision of this Framework Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability

shall not affect any other term or provision of this Framework Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

- 11.11 Use of IPsoft Marks. Customer shall not use the trademarks, tradenames, logos or marks of IPsoft in any marketing materials, on its website, or otherwise without the prior written permission of IPsoft.
- 11.12 Survival. Provisions of these Terms, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of this Framework Agreement including, but not limited to, the following provisions: 4.4 (Effect of Termination), 4.5 (Obligations upon Termination); 5 (Confidentiality); 6 (Intellectual Property), 8 (Warranties and Representations), 9 (Indemnification), 10 (Limitation of Liability), and 11 (General Legal Terms).
- 11.13 Amendment. No amendment to this Framework Agreement or any Module will be valid unless in writing and signed by an authorized representative of each of the Parties.

**IN WITNESS WHEREOF**, IPsoft and Customer have each caused this Framework Agreement to be signed and delivered by their duly authorized representatives as of the Framework Effective Date.

**IPsoft Government Solutions LLC**

**[Customer]**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_