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San Jose, CA 95113

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

- 1. Scope.** This Carahsoft Rider and the Manufacturer End User License Agreement (EULA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").

- 2. Applicability.** The terms and conditions in the attached Manufacturer EULA ([www._____/us.html](#)) 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 EULA are inconsistent with the Federal Law (*See FAR 12.212(a)*), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's contract #GS-35F-0119Y, including, but not limited to the following:
 - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER ADM 4800.2H, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

 - (b) Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.

 - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

 - (d) Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice

and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.

- (e) **Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court..

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.
- (i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.
- (j) **Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

- (l) **Renewals.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) **Future Fees or Penalties.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (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 EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA 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.

MODRIA RESOLUTION CENTER SUBSCRIPTION AGREEMENT TERMS AND CONDITIONS

1. DEFINITIONS

1.1 **"Authorized Dispute"** means a dispute that falls within the authorized dispute type or types, such as the nature of the dispute and/or the nature of the parties to the dispute, specified on a Quotation.

1.2 **"Authorized User"** means one of the following persons who has been assigned a unique username-password combination to access and use the Resolution Center, and registered online to access and use the Resolution Center, but only when associated with filing or processing a an Authorized Dispute: (i) an employee or authorized contractor of Customer, (ii) parties, or counsel for parties, to the dispute, (iii) a third party neutral provided or requested by Customer, or (iv) an agent or authorized representative of a party to the dispute.

1.3 **"Case Data"** means data pertaining to a specific Authorized Dispute before Customer and entered into the Resolution Center by an Authorized User. Case Data includes, but is not limited to, personally identifiable information about parties and individuals involved in the proceedings administered by Customer; proceeding-specific documentation and information uploaded to the Resolution Center by Authorized Users; orders, rulings, and Customer's proceeding-specific internal notes; or communications between or among its employees, parties, and third party neutrals.

1.4 **"Configuration Data"** means data entered by Customer or by Modria on Customer's behalf in order to configure Resolution Center to support Customer. Configuration Data includes but is not limited to the establishment of user accounts, customization of screen layouts, and custom data field definitions. Configuration Data excludes Usage Data and Case Data.

1.5 **"Fees"** means the fees described in any Quotation.

1.6 **"Implementation Services"** means the services performed by Modria to configure and rollout Resolution Center to Customer and Authorized Users, as described in a Quotation, or a proposal or statement of work incorporated into a Quotation.

1.7 **"Intellectual Property Rights"** means patent rights (including, without limitation, patent applications and disclosures), copyrights, trademarks, trade secrets, moral rights, know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.8 **"Project Plan"** means the plan set forth in a statement of work or proposal incorporated into a Quotation.

1.9 **"Software"** means any Modria or third-party software used by Modria to provide the Implementation Services and/or Resolution Center.

1.10 **"Resolution Center"** means the online services provided by Modria that provide online dispute resolution, including but not limited to dispute intake, facilitated negotiation, case management, mediation, and arbitration. The specific features are described on one or more Quotations. Resolution Center will be provided through the website located at a URL to be provided to Customer (the "URL"). Modria may change the URL from time to time upon no less than ten (10) days notice to Customer.

1.11 **"Term"** means the term of this Agreement as defined in Section 9.1.

1.12 **"Quotation"** means the first quote, and any subsequent quote, associated with this Agreement that includes one or more of a software-as-a-service subscription, consulting services, and/or setup fees. Each Quotation is incorporated into this Agreement by reference, along with any associated proposal or statement of work.

1.13 **"Usage Data"** means metadata and raw data accumulated by Modria software, including but not limited to Authorized User usage of the Resolution Software modules, frequency of access, proceeding duration, aggregate uploaded information volume, and information tracked or trackable through cookies or similar methods in order to provide Authorized Users with the services requested of the software.

2. PROVISION OF RESOLUTION CENTER

2.1 **Implementation Services.** Subject to Customer's cooperation and assistance in accordance with Section 4.1, Modria will provide any Implementation Services as described in the Project Plan, subject to the agreement of the parties.

2.2 **Resolution Center.** Subject to Customer's compliance with the terms and conditions of this Agreement, commencing on the launch date set forth in the Project Plan or on the first Quotation and continuing throughout the remainder of the Term, Modria will make an instance of Resolution Center available to Customer. Customer and Authorized Users may access and use the Resolution Center solely to process Authorized Disputes (the **"Permitted Purposes"**).

2.3 **Restrictions.** Customer shall not attempt to interfere with or disrupt Resolution Center or the Software or attempt to gain access to any systems or networks that connect thereto (except as required to access and use Resolution Center). Customer shall not allow access to or use of Resolution Center by anyone other than Authorized Users. Customer shall not: (a) copy, modify or distribute any portion of Resolution Center or Software; (b) rent, lease, or provide access to Resolution Center on a time-share or service bureau basis; or (c) transfer any of its rights hereunder (except as specified in Section 13.8). In addition,

Customer agrees not to disassemble, decompile or reverse engineer Resolution Center or allow any third party to do so, except to the extent such restrictions are prohibited by law.

2.4 Acceptable Use Policies. Customer acknowledges and agrees that Modria does not monitor or police communications or data transmitted through Resolution Center and that Modria shall not be responsible for the content of any such communications or transmissions. Customer shall use Resolution Center exclusively for the Permitted Purposes, consistent with all applicable laws, regulations and the rights of others. Customer shall not use Resolution Center to transmit any bulk unsolicited commercial communications. Customer shall keep confidential and not disclose to any third parties, and shall ensure that Customer-affiliated Authorized Users keep confidential and do not disclose to any third parties, any user identifications, account numbers and account profiles.

2.5 Data Maintenance and Backup Procedures. Modria shall use commercially reasonable procedures to store the Case Data. In the event of any loss or corruption of Case Data, Modria shall use commercially reasonable efforts to restore the lost or corrupted Case Data from the latest backup maintained by Modria in accordance with Modria's procedures. Modria shall not be responsible for any loss, destruction, alteration, unauthorized disclosure or corruption of Case Data caused by any third party. MODRIA'S EFFORTS TO RESTORE LOST OR CORRUPTED CASE DATA PURSUANT TO THIS SECTION 2.5 SHALL CONSTITUTE MODRIA'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF CASE DATA.

2.6 Minimum Site Performance. During the Term, Resolution Center will meet the performance standards set forth its service level standards as set forth on the Modria website, which Modria may change from time to time.

3. NEW SERVICES.

3.1 If Customer requests Modria to perform any services that are different from or in addition to the Implementation Services and making available Resolution Center, as set forth herein ("New Services"), and Modria is willing to provide such different or additional services, then Modria shall provide a Quotation to Customer listing the fees for such requested New Services ("New Service Fees"). If Customer accepts such Quotation in writing and executes a new GSA Customer Purchase Order within fifteen (15) days: (a) Modria shall perform the New Services; (b) the Fees shall be adjusted to reflect the New Service Fees; and (c) such New Services shall be deemed Implementation Services and/or services performed in connection with making available Resolution Center under this Agreement, as appropriate.

4. CUSTOMER OBLIGATIONS

4.1 Cooperation and Assistance. As a condition to Modria's obligations hereunder, Customer shall at all times: (a)

provide Modria with good faith cooperation and access to such information, facilities, and equipment as may be reasonably required by Modria in order to provide the Implementation Services and make available Resolution Center, including, but not limited to, providing business requirements, security access, support for interviews and specification review and approval, and software interfaces to Customer's business applications; (b) provide such personnel assistance as may be reasonably requested by Modria from time to time; and (c) carry out in a timely manner all other Customer responsibilities set forth in this Agreement. In the event of any delay in Customer's performance of any of the obligations set forth in (a), (b) or (c), or any other delays caused by Customer, Modria may adjust the milestones and launch date set forth in the Project Plan or Quotation(s) to account for such delays in accordance with the Federal Acquisition Regulation, underlying GSA Schedule Contract, and in coordination with the applicable Contracting Officer.

4.2 4.3 Enforcement. Customer shall cause any Customer-affiliated Authorized Users to comply with terms and conditions at least as protective of Resolution Center as the terms and conditions of this Agreement. Modria may suspend any Authorized User's access to Resolution Center upon notice to Customer if: (i) in Modria's sole discretion there is an emergency situation, including, but not limited to breach of security; or (ii) continued provision of Services, in whole or in part, or Authorized User's use of Services, in whole or in part, may cause Modria to violate any law, rule, regulation, governmental policy, or order. **4.4 Telecommunications and Internet Services.** Customer acknowledges and agrees that Customer's and its Authorized Users' use of Resolution Center is dependent upon access to telecommunications and Internet services. Customer shall be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use Resolution Center, including, without limitation, any and all costs, fees, expenses, and taxes of any kind related to the foregoing. Modria shall not be responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such telecommunications and Internet services.

4.5 Case Volume Monitoring. Customer agrees that the Quotation(s) provided by Modria are tied to a specified case volume. Modria shall monitor volume of Authorized Cases on an ongoing basis and report to Customer if Customer's total case volume nears the maximum provided in its Quotation. Customer may request that Modria suspend new registrations to the Resolution Center in order to ensure that Customer's case volume does not exceed the maximum permitted under the applicable Quotation. If Customer's case volume exceeds the maximum, Modria shall invoice the GSA Customer for additional fees at the GSA Schedule Price List rate representing the prorated difference between the quoted pricing tier and the next hirer pricing tier, based on its additional usage of the

Resolution Center. Case volumes shall be calculated in increments of 1,000. Modria does not warrant that it can support a case volume materially greater than that specified in the Quotation if Customer does not provide it with advanced notice of such increase.

5. FEES; EXPENSES; TAXES

5.1 Fees. In consideration for Modria providing the Implementation Services and making available Resolution Center, Customer shall pay to Modria the Fees, in accordance with the terms set forth in the underlying GSA Schedule Contract and applicable GSA Customer Purchase Order. Except as provided in Section 4.5, the parties are in agreement that the fees, and the case volume estimates on which those fees are based, as set out in each Quotation, shall only be amended by written agreement between the parties.

5.3 Invoices; Payment; Late Payment. Modria shall invoice Customer in accordance with the terms of the GSA Purchase Order and GSA Schedule Contract, as applicable, for all Fees, Expenses and applicable Taxes (as defined in Section 5.4), , due in that month pursuant to the applicable Quotation(s). 5.4 Taxes. Modria shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption , in accordance with FAR 52.229-1 and FAR 52.229-3. amounts and fees stated or referred to in this Agreement are exclusive of taxes, duties, levies, tariffs, and other governmental charges (including, without limitation, VAT) (collectively, "Taxes"). Customer shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on Modria's net income.

6. OWNERSHIP

6.1 Program Ownership. All Modria software, programs, specifications and other proprietary information with respect thereto, and all copies thereof, are proprietary to Modria and all right, title and interest thereto remains exclusively in Modria. Except for any rights and licenses granted to Customer hereunder, all applicable rights to patents, copyrights, trademarks and trade secrets owned or held by Modria are and shall remain proprietary to Modria.

6.2 Data Ownership. With regard to the data stored in or run through Resolution Center, Customer, or its Authorized Users, own all Case Data, and Customer owns all Configuration Data. Modria owns all Usage Data.

6.3 License. Customer grants Modria a perpetual, royalty-free, worldwide license to use the Case Data and Configuration Data to enhance its software, programs, and services, provided that Modria uses such information only in an aggregated and anonymized form. This license is

subject to Modria's ongoing obligation to comply with all applicable laws and regulations governing personally identifiable information and the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended from time to time including Sections 13400 through 13424 of the Health Information Technology for Economic Clinical Health Act (the "HITECH Act") and the corresponding Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule"), Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule"), and the Notification in the Case of Breach of Unsecured Protected Health Information (the "Breach Notification Rule").

6.4 Reservation of Rights. Except for the rights and licenses granted to Modria hereunder, all applicable rights to patents, copyrights, trademarks and trade secrets owned or held by Customer are and shall remain proprietary to Customer.

7. CONFIDENTIALITY AND NON-CIRCUMVENTION

7.1 Definition. By virtue of this Agreement, the parties may have access to each other's Confidential Information. "Confidential Information," as used in this Agreement, means any written, machine-reproducible and/or visual materials that are clearly labeled as proprietary, confidential, or with words of similar meaning, and all information that is orally or visually disclosed, if not so marked, if it is identified as proprietary or confidential at the time of its disclosure or in a writing provided within thirty (30) days after disclosure, and any information of any nature described in this Agreement as confidential. Modria Confidential Information includes, without limitation, the Resolution Center and any Software whether in source or executable code, documentation, nonpublic financial information, pricing, business plans, techniques, methods, processes, and the results of any performance tests of the Resolution Center or the Software. Case Data is the Confidential Information of Customer. Notwithstanding the provisions of this Section 8, Modria shall be entitled to use the information licensed by Customer pursuant to Section 7.3 for the licensed purposes, but shall otherwise maintain the confidentiality of such information.

7.2 Exclusions. Confidential Information shall not include information that: (a) is or becomes publicly known through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure; (c) is rightfully disclosed to the receiving party by a third party without restriction on disclosure; (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or (e) Usage Data.

7.3 Use and Nondisclosure. During the Term and for so long as the Confidential Information retains its confidential, proprietary or trade secret character, neither party shall make the other's Confidential Information available to any third party or use the other's Confidential Information for any purposes other than exercising its rights and

performing its obligations under this Agreement. Each party shall take all reasonable steps to ensure that the other's Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement, but in no event will either party use less effort to protect the Confidential Information of the other party than it uses to protect its own Confidential Information of like importance. Each party will ensure that any agents or subcontractors that are permitted to access any of the other's Confidential Information are legally bound to comply with the obligations set forth herein. Notwithstanding the foregoing, Confidential Information may be disclosed as required by any governmental agency, provided that before disclosing such information the disclosing party must provide the non-disclosing party with sufficient advance notice of the agency's request for the information to enable the non-disclosing party to exercise any rights it may have to challenge or limit the agency's authority to receive such Confidential Information. Customer understands and agrees that Modria may use, analyze, publish and otherwise exploit the Case Data and the Configuration Data, in aggregated and non-identifying form only, in connection with analyzing use of, promoting or otherwise improving the Resolution Center. Courts of competent jurisdiction may require certain information to be released. Modria recognizes that Federal agencies are subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, which requires that information that does not fall under certain exceptions must be released when requested and, therefore, some information may be released despite being characterized as "confidential" by Modria.

7.4 The Parties agree that Modria and successors in interest or permitted assigns shall not at any time prior to the expiration of one (1) year from the date of termination of this Agreement, directly or indirectly, during or after the term of this Agreement, enter into any agreement, association or partnership with sources not their own and which have been made available to them through this Agreement by the Customer, without the express written permission of the Customer. Modria further agrees not to be a lender, investor, distributor, consultant, etc. to any company, person or organization to any of its affiliated companies, successors in interest or assigns, either directly or indirectly, introduced to it by the Customer, without prior written consent of the Customer.

8. WARRANTY

8.1 Warranty for Resolution Center. Modria warrants that Resolution Center will provide the functionality set forth in each Quotation.

8.2 Disclaimer. Customer assumes sole responsibility and liability for results obtained from the use of Resolution Center and for conclusions drawn from such use. Modria shall have no liability for any claims, losses, or damage caused by errors or omissions in any information provided to Modria by Customer in connection with Resolution Center or any actions taken by Modria at Customer's

direction. Modria shall have no liability for any claims, losses or damages arising out of or in connection with Customer's or any Authorized User's use of any third-party products, services, software or web sites that are accessed via links from within Resolution Center. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8.1, MODRIA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT, THE IMPLEMENTATION SERVICES OR THE RESOLUTION CENTER. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8.1, MODRIA DISCLAIMS ANY WARRANTY THAT THE RESOLUTION CENTER WILL BE ERROR FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. MODRIA FURTHER DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE RESOLUTION CENTER AS TO MERCHANTABILITY, ACCURACY OF ANY INFORMATION PROVIDED, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. MODRIA FURTHER DISCLAIMS ANY AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM MODRIA OR ELSEWHERE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES IN CERTAIN CIRCUMSTANCES. ACCORDINGLY, SOME OF THE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY.

9. TERM AND TERMINATION

9.1 Term. This Agreement shall commence on the Effective Date and shall continue for the period of one (1) year thereafter (the "Initial Term"), unless terminated earlier as provided in this Agreement. The Initial Term and any renewal periods are collectively the "Term".

9.2 Termination for Cause. 9.3 Rights and Obligations Upon Expiration or Termination. Upon expiration or termination of this Agreement, Customer's and Authorized Users' right to access and use Resolution Center shall immediately terminate, Customer and its Authorized Users shall immediately cease all use of Resolution Center, and each party shall return and make no further use of any Confidential Information, materials, or other items (and all copies thereof) belonging to the other party. Notwithstanding the foregoing, Customer and its Authorized Users may continue to use Resolution Center, subject to written notice and payment of the Fees described in each Quotation, in order to resolve any disputes that were opened prior to any expiration or termination for a period not to exceed forty-five (45) days from the date of expiration or termination (the "Completion Period"). In the event that Customer utilizes the Completion Period, the obligations in this Section 9.3 related to return of Confidential Information and Case Data will apply after the end of the Completion Period, as applicable. Modria may destroy or otherwise dispose of any Case Data in its possession unless Modria receives, no later than ten (10) days after the effective date of the expiration or

termination of this Agreement (or the end of the Completion Period, if applicable), a written request for the delivery to Customer of the then-most recent back-up of the Case Data. Modria will use reasonable efforts to deliver the back up to Customer within thirty (30) days of its receipt of such a written request. Customer shall pay all reasonable expenses incurred by Modria in returning Case Data to Customer. Also upon expiration or termination of this Agreement, Modria shall cease use of the Customer Marks (as defined in Section 4.2); provided, however, that (a) Modria shall have a reasonable time to remove the Customer Marks from promotional materials, (b) Modria shall be entitled to exhaust materials printed during the Term that include the Customer Marks, and (c) Modria shall not be required to remove any such printed materials from circulation.

9.4 Survival. The rights and obligations of Modria and Customer contained in Sections 5 (Fees, Expenses and Taxes), 6 (Ownership), 7 (Confidentiality), 9.3 (Rights and Obligations Upon Expiration or Termination), 9.4 (Survival), 10 (Indemnification), 11 (Limitation of Liability), 12 (Acknowledgement), and 13 (General) shall survive any expiration or termination of this Agreement.

10. INDEMNIFICATION

10.2 Indemnification by Modria. Modria shall defend, indemnify and hold harmless Customer, its officers, directors and employees, from and against any liabilities, losses, damages and expenses, including court costs and reasonable attorneys' fees, arising out of a claim that the Resolution Center infringes or misappropriates the Intellectual Property Rights of any third party, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer. Modria's obligations under this Section 10.2 are contingent upon: (a) Customer providing Modria with prompt written notice of such claim; (b) Customer providing reasonable cooperation to Modria, at Modria's expense, in the defense and settlement of such claim; and (c) the opportunity to intervene in any suit or claim filed against the GSA Customer, at its own expense, through counsel of its choosing. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S. pursuant to its jurisdictional statute, 28 U.S.C. § 516. In the event that Modria's right to provide Resolution Center is enjoined or in Modria's reasonable opinion is likely to be enjoined, Modria may obtain the right to continue providing Resolution Center, replace or modify the allegedly infringing components of Resolution Center so that they become non-infringing with materially similar functionality, or, if such remedies are not reasonably available, terminate this Agreement without liability to Customer. THE FOREGOING STATES THE ENTIRE OBLIGATION OF MODRIA AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY RESOLUTION CENTER. Modria shall have no liability

under this Section 10.2 to the extent that any third-party claims described herein are based on use of Resolution Center in a manner that violates this Agreement or the instructions given to Customer by Modria.

11. LIMITATION OF LIABILITY. EXCEPT FOR LIABILITY ARISING FROM A BREACH OF SECTIONS 2.2 OR 2.3 OR SECTION 7, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR COST OF SUBSTITUTE SERVICES, OR OTHER ECONOMIC LOSS, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER ANY CLAIM FOR RECOVERY IS BASED ON THEORIES OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, IN NO EVENT SHALL MODRIA'S AGGREGATE LIABILITY TO CUSTOMER AND ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S ACCESS TO AND USE OF RESOLUTION CENTER EXCEED THE TOTAL MONTHLY SUBSCRIPTION FEES PAID BY CUSTOMER IN THE TWELVE MONTH PERIOD PRECEDING THE CLAIM OR ACTION, REGARDLESS OF THE FORM OR THEORY OF THE CLAIM OR ACTION. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM MODRIA'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

12. ACKNOWLEDGEMENT. The parties acknowledge that the limitations and exclusions contained in Section 11 and elsewhere in this Agreement have been the subject of negotiation between the parties and represent the parties' agreement based upon the perceived level of risk associated with their respective obligations under this Agreement, and the payments made hereunder. Without limiting the generality of the foregoing, the parties acknowledge and agree that (a) the provisions hereof that limit liability, disclaim warranties or exclude consequential damages or other damages or remedies shall be severable and independent of any other provisions and shall be enforced as such, regardless of any breach hereunder, and (b) all limitations of liability, disclaimers of warranties, and exclusions of consequential damages or other damages or remedies shall remain fully valid, effective and enforceable in accordance with their respective terms, even under circumstances that cause an exclusive remedy to fail of its essential purpose.

13. GENERAL

13.1 Governing Law. This Agreement and all matters arising out of or relating to this Agreement shall be governed by United States Federal law.

13.3 Waiver. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

13.4 Notices. All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be sent to the addresses set forth in the most recent Quotation or delivered in person. The notices shall be deemed to have been given upon: (a) the date actually delivered in person; (b) the day after the date sent by overnight courier; or (c) three (3) days following the date such notice was mailed by first class mail. Notices may be confirmed by email or fax.

13.5 Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

13.6 Force Majeure. **13.7 Compliance with Laws.** Each party agrees to comply with all applicable laws and regulations with respect to its activities hereunder, including, but not limited to, any export laws and regulations of the United States.

13.8 Relationship Between the Parties. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties. Neither party will have the power to bind the other or to incur obligations on the other's behalf without such other party's prior written consent.

13.9 Assignment/Successors. Customer may not assign or transfer this Agreement, by operation of law or otherwise, without Modria's prior written consent. Any attempt by you to assign or transfer this Agreement, without such consent, will be null and of no effect. Assignment by Modria is subject to FAR 52.232-23 "Assignment of Claims" (May 2014) and FAR subpart 42.12 "Novation and Change-of-Name Agreements." may assign or transfer this Agreement, at its sole discretion, without restriction. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their successors and permitted assigns.

13.10 Entire Agreement. This Agreement together with the underlying GSA Schedule Contract, Schedule Price List, and applicable GSA Customer Purchase Orders, constitutes the complete and exclusive agreement between the parties concerning its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.

13.11 Non-Exclusive Remedies. Except as set forth in Sections 2.5 and 10.2, the exercise by either party of any

remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

13.13 No Third-Party Beneficiaries. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

13.14 Counterparts. This Agreement may be executed in counterparts, each of shall constitute an original, and all of which shall constitute one and the same instrument.

13.15 Headings. The headings in this Agreement are for the convenience of reference only and have no legal effect.