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 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 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

(b) **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.

Resilient End User License Agreement (EULA)

March 27 2014

PLEASE CAREFULLY READ ALL OF THE TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT AND OUR PRIVACY POLICY. IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND OUR PRIVACY POLICY, DO NOT CLICK "I ACCEPT," AND YOU ARE NOT PERMITTED TO ACCESS OR USE THE RESILIENT.COM SERVER.

This End User License Agreement for the Resilient.com Server (**"Agreement"**) is between you (the legal entity on behalf of which such individual is acting) (**"You"** or **"Your"**) and Resilient Corporation, a Delaware corporation with offices at 1530 Devere Drive, Pasadena, MD 21122 (**"Resilient"**). You acknowledge and agree that by accepting the terms of this Agreement, a binding agreement is concluded solely between You and Resilient, and not with any other entity (e.g., search engine provider, front-end application, software company, etc.), and that Resilient Corporation is solely responsible for the applications licensed hereunder and the content thereof.

1. DEFINITIONS

1.1 "Authorized Resilient For the End User" means You or any other individual who has been licensed by Resilient to download, access, display, manipulate, store and distribute Resilient Data or Files from an Authorized Laptop, Computer or Handheld Device as defined by Resilient Corporation's Terms of Use .

1.2 "Authorized Resilient Server End User" means You or if You are entering into this agreement on behalf of a legal entity, a single employee of such entity whom Resilient has agreed to provide with secure access to and use of the Resilient.com Server and Resilient Server Software so that You or such individual or entity can create and distribute Resilient Files to Authorized Devices.

1.3 "Authorized Device" means any handheld device authorized by Resilient Corporation, such as an iPhone, iPad, Android, Blackberry, Windows, Laptop or Desktop Computer or any other device utilizing the supported software as listed in the Documentation which is owned or controlled by You and on which the Resilient Data has been installed in accordance with this Agreement.

1.4 "Compatible Data Files" means those data files which are listed in the Documentation as being compatible with the Resilient.com Server and from which data is taken to create Resilient Data Files by Authorized Resilient Server End Users.

1.5 "Documentation" means all works of authorship, whether in hard copy or electronic

form, including but not limited to: programs, programming tools, spreadsheets, designs, analyses, reports, supporting materials, summaries, working papers, reports, literature, SOWs, recommendations, white papers, the user guides, manuals and other forms of materials or documentation made available to You by Resilient which are related to the Resilient Server Software.

1.6 "Resilient.com Server" means the server(s) owned and/or operated by or on behalf of Resilient Corporation from time to time and all Resilient Corporation proprietary software, web pages, content (other than provided user content) and documentation thereon, including the Resilient Server Software and the Documentation.

1.7 "Resilient Files" means any report created by an Authorized Resilient Server End User which contains data that was extracted from a Compatible Data File.

1.8 "Resilient Server" means either the Resilient.com Server or those Servers authorized by Resilient, as applicable.

1.9 "Resilient Server Software" means Resilient's proprietary server software, in object code format only, that can be remotely accessed from and emulated on an Authorized Device, along with the Documentation therefor.

2. LICENSES; LICENSE RESTRICTIONS

2.1 License Grant. Subject to the terms and conditions of this Agreement, Resilient Corporation hereby grants to You a limited, personal, non-exclusive, non-transferable, non-sublicenseable, revocable license to remotely access the Resilient.com Server from Your Authorized Device solely to emulate and use the Resilient Server Software to: a) upload and store Compatible Data Files; b) create, manipulate and store Resilient Files derived from Your Compatible Data Files; c) distribute Resilient Files (provided that You do not sell, rent, lease, or otherwise charge for the distribution of, access to or use of any such Resilient Files) to the Authorized Handheld Devices of other Authorized Resilient Corporation Server End Users; and d) use the Documentation in support of Your authorized use of the Resilient Server Software and Resilient Data and Files.

2.2 Third Party Licenses. The Resilient Server Software may contain third party software which is subject to additional notices and/or terms and conditions. Such required third party software notices and/or additional terms and conditions are located at Resilient Corporation, 1530 Devere Drive, Pasadena, MD 21122 and are made a part of and incorporated by reference into this Agreement. In addition, you acknowledge and agree that certain third party software which is not incorporated into the Resilient Server Software may be required in order for You to use or enjoy the full benefit of the Resilient Server Software (including, without limitation, Adobe Flash Player). You shall be fully responsible for obtaining a lawful copy of such software. Furthermore, Your use of such separately acquired third party software shall be in accordance with any terms and

conditions of the end user license agreement provided with such software. You acknowledge that Your access to and use of the Resilient.com Server does not carry, and You do not receive under this Agreement any license, covenant not to sue, or other rights under any third party intellectual property rights or other rights. As such, You hereby agree not to use the Resilient.com Server to upload or store any Compatible Data Files nor to create, access, display, manipulate, store or distribute any Resilient Data and/or Files which contain proprietary third party content or data unless and until You have obtained all necessary rights therefor.

2.3 License Restrictions. You agree that the license granted herein is solely for non-commercial purposes (i.e. You are not permitted to sell, rent, lease, or otherwise charge for access to or use of any Resilient Data and/or Files created by You). In addition, You agree that You will not, nor permit others to: (a) access or use the Resilient.com Server or any element thereof (including, without limitation, the Resilient Server Software) except by Authorized Resilient Server End Users; (b) attempt to reverse engineer, decompile, disassemble, or extract any element of and/or otherwise discover any source code, algorithms, methods or techniques embodied in the Resilient Server Software, except to the extent expressly permitted by applicable law, notwithstanding contractual obligations to the contrary, and then only after (i) You have notified Resilient Corporation in writing of Your intended activities and the information sought and (ii) Resilient Corporation fails to provide such information within a reasonable period of time following such notice; (c) modify, transfer, assign, pledge, sublicense, rent, lease, sell, resell, or create derivative works based on the Resilient.com Server or any software, data, content or information thereon (including, without limitation, the Resilient Server Software), including but not limited to any user interfaces related to the foregoing; nor (d) distribute the Resilient Data and/or Files except as expressly permitted in Section 2.1.

2.4 Product Activation; Server Access Technology. You acknowledge and agree that the Resilient.com Server may include server access restrictions, security and other technology designed to prevent unauthorized use and copying beyond the scope of the licenses granted in this Agreement. In addition, You acknowledge and agree that the Resilient.com Server may include technology designed to access (both manually and automatically) the Resilient.com Server and collect the unique device identifier (UDID) associated with an Authorized Device, which UDID will then be transmitted to the Resilient Server. You agree that You will not attempt to, or encourage or assist any other person to, circumvent or modify any security technologies included as part of the Resilient.com Server.

2.5 No Support by Third Parties. You acknowledge that Third Parties have no obligation whatsoever to furnish any maintenance and support services with respect to any of the Resilient.com Server and/or Resilient Server Software.

2.6 User Access. You acknowledge and agree that Your remote access to the Resilient.com Server from Your Authorized Device(s) and emulation and use of the Resilient Server Software may require You to create a user account, including the use of a user name and

password or other logon credentials (altogether, **Logon Credentials**). It is important that You remember Your Logon Credentials and that You keep them in a safe offline location. If You forget Your Logon Credentials You may not be able to remotely access the Reilient.com Server nor emulate or use any software, Resilient Data and/or Files, content or data thereon. You are solely responsible for maintaining the confidentiality of Your Logon Credentials and for all activities on the Resilient.com Server that occur through the use of Your Logon Credentials. You agree to: (i) immediately notify Resilient Corporation of any unauthorized use of Your user account, Your Compatible Data Files, Resilient Data and/or Files or any other breach of security of which You become aware, and (ii) ensure that You secure user account and computer from unauthorized third party access. Resilient Corporation will not be liable for any loss or damage arising from Your failure to comply with this Section. Please note that You may be issued new Logon Credentials or required to change Your Logon Credentials from time to time.

2.7 Privacy. You acknowledge and agree that Your access to the Resilient.com Server may require You or provide You the option to transmit to Resilient Corporation certain personal and non-personal information about You, such as Your Login Credentials, name, email address, telephone number, mailing address, company name, employment title, and/or certain technical information about Your system hardware and software. Resilient Corporation will collect, use and in certain limited circumstances disclose Your personal information (e.g. to contractors and service providers who are assisting Resilient Corporation in the operation or hosting of the Resilient Server Software) in accordance with its Privacy Policy. As a condition to accessing and using the Resilient.com Server You are required to accept the terms of our Privacy Policy. You hereby acknowledge and agree that You have read our Privacy Policy which is available at Resilient Corporation, 1530 Devere Drive, Pasadena, MD 21122 and is incorporated herein by this reference.

2.8 Security. Resilient Corporation has implemented physical, electronic and managerial procedures in order to help safeguard and prevent unauthorized access, use and/or disclosure of Your Compatible Data and/or Files, Resilient Data and/or Files and other sensitive information Resilient Corporation has collected from You. Although Resilient Corporation uses reasonable efforts to safeguard the security of such information, transmissions made on or through the Internet and information stored on Resilient Corporation's Resilient.com Server are vulnerable to attack and cannot be guaranteed to be secure. In addition, submissions made via e-mail are not protected by encryption and are vulnerable to interception during transmission. In addition, please be aware that any Resilient Data and/or Files which You place in a public folder can be freely accessed by third parties. You covenant that You will not attempt to access, upload, distribute or make available for distribution any proprietary and/or confidential Resilient Data and/or Files unless You have sufficient rights and proper authorization to do so and You further agree that You will not distribute nor make available for distribution any proprietary and/or confidential Resilient Data and/or Files to third parties who do not themselves have sufficient rights and proper authorization to access and/or download such proprietary and/or confidential Resilient Data and/or Files.

3. FEEDBACK

3.1 Feedback. If You elect to provide any feedback or comments of any nature to Resilient Corporation, all of Your feedback and comments shall be the sole and exclusive property of Resilient Corporation, and Resilient Corporation shall have the right to use such feedback in any manner and for any purpose in Resilient Corporation's discretion without remuneration, compensation or attribution to You, provided that Resilient Corporation is under no obligation to use such feedback.

4. OWNERSHIP.

4.1 Proprietary Rights. As between Resilient Corporation and You, Resilient Corporation retains all right, title and interest (including all intellectual property rights and other rights) in and to the Resilient.com Server, including without limitation the Resilient Server Software, the Documentation and updates of any of the foregoing, and any feedback submitted by You in accordance with Section 3.1, subject only to the limited licenses expressly set forth in Section 2.1 of this Agreement. You do not acquire any other rights, express or implied, in the Resilient.com Server other than those rights expressly granted under this Agreement. However, You retain the rights and/or the ownership in all content and data uploaded by You in any Compatible Data Files. You hereby grant Resilient Corporation, its affiliates, contractors and each of their agents a non-exclusive, irrevocable, worldwide license to (a) upload, copy and store the Compatible Data Files onto the Resilient.com Server (b) extract some or all of the content and data from the Compatible Data Files (c) create and store Resilient Files derived from some or all of the data from Your Compatible Data Files and (d) distribute Resilient Files containing some or all of the content and data from Your Compatible Data Files to Authorized Devices, in each case (a)-(d), solely to the extent directed by You or as necessary to perform Resilient Corporation's obligations, or to ensure the proper operation thereof. You hereby represent and warrant that You have the right to grant the foregoing license to Resilient Corporation and that Resilient Corporation's exercise of its rights hereunder will not infringe or misappropriate the intellectual property rights or other rights of any third party.

4.1 Reverse Engineering or Forking. You agree: (i) not to create or attempt to create by reverse engineering, disassembly, decompilation or otherwise, the source code, internal structure, architecture, or organization of any Resilient Corporation Intellectual Property, Software, Deliverable or any part thereof, from any object code or information that may be made available to You, or aid, abet or permit others to do so; (ii) not to reverse engineer, disassemble or decompile any other Resilient Corporation Intellectual Property, Software or Deliverable (iii) not to remove, alter or obliterate any identification or notices of any proprietary or copyright restrictions from any product, Software, Service, Deliverable, Documentation or support material; (iv) not to copy any Intellectual Property or Software, including without limitation Resilient Corporation Intellectual Property, Software, Service, Documentation or support material, develop any derivative works thereof or include any portion of any Resilient Corporation Intellectual Property in any other software program; (v) except as expressly permitted herein, not to provide use of Resilient Corporation Intellectual Property or Software in a computer service business, rental or commercial

timesharing arrangement; (vi) not to develop any other products containing any of the concepts and ideas contained in the Intellectual Property or Software that are not readily apparent from normal use pursuant to the license(s) granted hereunder; and (vii) not to develop methods to enable unauthorized parties to use any Resilient Corporation Intellectual Property, Software, Service, Documentation or support material.

Forking of the Resilient Corporation Commercial Foundation Software

"Forking" and "to Fork" means create derivative works of the object or source code for a product, or to distribute a product or a derivative work of a product under a new or different brand, regardless of any right to do so under any license.

During the term of this Agreement and the twenty-four (24) month period after expiration or termination thereof, and notwithstanding any rights under the terms and conditions of any license, you agree that you shall abide by the following rules of conduct:

(a)   Neither you nor any entity controlling, controlled by, or under common control with you (an Affiliate") shall offer, promote, distribute or otherwise make available any Forked version of any software product released by Resilient Corporation, including without limitation the Resilient Index platform, Key Performance Indicators, Business Essential Queries, data, client libraries and any component thereof.

        (b)   You understand that Resilient Corporation may make some or all of its data—which may include, without limitation, the Resilient Index—available in versions that are distributed without charge under the terms of the Free Software Foundation's General Public License ("GPL") Such release may, at Resilient Corporation's sole discretion, be identical to one or more of the available data sets. This Agreement does not prevent you from distributing Resilient Corporation's Commercial Foundation Software pursuant to the terms and conditions of the GPL, provided that you comply with the Forking prohibition in subsection (a), above.

5. NO WARRANTY; LIMITATION OF LIABILITY

5.1 No Warranty. THE RESILIENT.COM SERVER MAY CONTAIN ERRORS AND DEFECTS OR MAY SUFFER INTERMITTENT DOWNTIME AND IS PROVIDED "AS IS", AS-AVAILABLE, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND RESILIENT CORPORATION AND ITS LICENSORS (INCLUDING BUT NOT LIMITED TO THIRD PARTY PROVIDERS) (COLLECTIVELY REFERRED TO AS "RESILIENT CORPORATION" FOR THE PURPOSES OF SECTION 5) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE RESILIENT.COM SERVER, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY RESILIENT CORPORATION OR ITS REPRESENTATIVE(S) SHALL CREATE A WARRANTY.

RESILIENT CORPORATION DOES NOT WARRANT THAT THE RESILIENT.COM SERVER WILL BE UNINTERRUPTED, SECURE, TIMELY OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE RESILIENT.COM SERVER IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR USE OF THE RESILIENT.COM SERVER PROVIDED BY RESILIENT CORPORATION. **YOUR USE OF THE RESILIENT.COM SERVER IS ENTIRELY AT YOUR OWN RISK** AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

5.2 Limitation of Liability. EXCEPT TO THE EXTENT THE FOREGOING LIMITATION OF LIABILITY IS PROHIBITED BY LAW, NEITHER RESILIENT CORPORATION NOR ANY OF ITS LICENSORS SHALL BE LIABLE TO YOU FOR PERSONAL INJURY, OR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OR INTERRUPTION OF BUSINESS, LOSS OF DATA, LOSS OF GOODWILL OR LOST PROFITS), UNDER ANY THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT, EVEN IF RESILIENT CORPORATION HAS BEN ADVISED OF THE RISK OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY). Nothing herein shall operate to impair or prejudice the U.S. Government's right (a) to recover for fraud or crimes arising out of or relating to this Agreement under any Federal fraud statute, including without limitation the False Claims Act (31 USC §§3729 through 3733), or (b) to express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into this contract. The foregoing limitations will apply even if the above stated remedy fails of its essential purpose. The parties acknowledge that the limitations of liability in this Section 5.2 and in the other provisions of this Agreement and the allocation of risk herein are an essential element of the bargain between the parties, without which Resilient Corporation would not have entered into this Agreement.

6. INDEMNITY.

7. TERMINATION.

This Agreement shall remain in effect until terminated in accordance with its terms. You may terminate this Agreement at any time by notifying Resilient Corporation in writing (or electronically). Upon termination of this Agreement, You will cease all use of the Resilient.com Server (including without limitation the Documentation). Note that upon termination of this Agreement You will no longer be able to access any Resilient Data and/or Files on the Resilient.com Server and Resilient Corporation shall have the right to delete the same. Sections 3, 4, 5, 6, 7 and 8 will survive any termination of this Agreement.

8. GENERAL TERMS

8.1 Governing Law. This Agreement and all matters arising out of or relating to this Agreement shall be governed by the Federal laws of the United States without giving effect to any choice of law rule. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sales of Goods, the application of which is expressly excluded.

Except as required by law, the controlling language of this Agreement is English, and any Dispute brought under this Agreement shall be conducted in the English language.

8.3 Severability and Waiver. If any provision of this Agreement is held to be illegal, invalid or otherwise unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force and effect. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.

8.4 No Assignment. You may not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any rights or obligations under this Agreement without the prior written consent of Resilient Corporation which may be withheld in Resilient Corporation's discretion. Any purported assignment, transfer or delegation by You shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

8.5 Legal Compliance; Export Administration; and Government Users. By accepting this Agreement You represent and warrant that You (i) are not located in a jurisdiction that is subject to a U.S. government embargo, or that has been designated by the U.S. government as a terrorist supporting country, (ii) You are not listed on any U.S. government list of prohibited or restricted parties, and (iii) You will comply fully with all relevant export laws and regulations of the United States, including, without limitation, the U.S. Export Administration Regulations (collectively **Export Controls**). Without limiting the generality of the foregoing, You will not, and You will require Your representatives not to, export, direct or transfer any Resilient Data and/or Files, to any destination, person or entity restricted or prohibited by the Export Controls. If You are an agency or instrumentality of the United States Government, the Resilient Server Software constitutes commercial computer software and the Documentation constitutes commercial computer software documentation, and pursuant to FAR 12.212 or DFARS 227.7202, and their successors, as applicable, use, reproduction and disclosure of the Resilient Server Software and Documentation are governed by the terms of this Agreement. The manufacturer of the software on the Resilient.com Server is Resilient Corporation, 1530 Devere Drive,

Pasadena, MD 21122.

<u>U.S. Government Restricted Rights</u>. If Software is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense ("DOD") acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions) CHECK , the government's rights in such Software and any documentation, including its rights to use, modify, reproduce, release, perform, display or disclose Software or any documentation, will be subject in all respects to the license rights and restrictions provided in this Agreement.

8.6 Force Majeure. Except for performance of a payment obligation, neither party will be liable to the other by reason of any failure in performance of this Agreement if the failure arises out of the unavailability of communications facilities or energy sources, acts of God, acts of the other party, acts of governmental authority, fires, strikes, delays in transportation, riots, terrorism, war, or any causes beyond the reasonable control of that party.

8.9 Entire Agreement. This Agreement, together with the underlying GSA Schedule Contract, the Schedule Price List and any applicable GSA Customer Purchase Orders, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements or representations, 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; and no other act, document, usage or custom shall be deemed to amend or modify this Agreement.

8.10 Taxes. All fees and other prices are exclusive of local, state, federal and international sales, value added, excise and other taxes and duties of any kind. You shall be responsible for payment of applicable taxes and duties of any kind payable arising out of or in connection with this Agreement, other than taxes levied or imposed based upon Resilient Corporation's net income. Resilient Corporation 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.

8.11 Confidentiality. Except for (a) disclosures to legal and financial advisors as necessary; or (b) as required by law, governmental or judicial order, provided prompt written notice is given to the other party prior to such disclosure and the disclosing party complies with any protective order or equivalent imposed on such disclosure, during the term of this Agreement and for two (2) years following its termination, neither party shall disclose to any third party any information that is clearly marked as "Confidential" or identified in writing to the receiving party as confidential at the time of disclosure "Confidential Information". In protecting Confidential Information, a receiving party agrees to use the same care which it takes for its own confidential information. Without limiting the generality of the foregoing, any and all Commercial Software and the financial and other terms and conditions of this Agreement shall be Confidential Information, and you

represent and warrant to Resilient Corporation that you are permitted to disclose to Resilient Corporation any information which you so disclose.

The non-disclosure obligations of Section 8.8 shall not apply if the information shall have: (a) first become generally known and published through no fault of the receiving party; (b) been learned by the receiving party from a third party; (c) been already known to the receiving party without violating this or any other confidentiality obligation; or (d) been developed by or for the receiving party, independent of activities under this Agreement. Further, the terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's confidential information.

8.12 Automatic Reporting. You acknowledge that certain Resilient Corporation products contain features that report, or permit users to report, the user's usage patterns and problems - whether caused by Resilient Corporation's Software, third party software, or third-party websites - to Resilient Corporation. The reports generated by these features typically include non-personally-identifying information such as the configuration of the user's computer and the code running at the time a problem or communication occurred, and the number and type of Managed Resources being managed by the software. Some of these features give users the option of providing personally-identifying information, though none of these features require it. For example, Resilient Corporation software may include a "call home" feature that automatically and periodically checks the Resilient.com server for available updates. Resilient Corporation analyzes the information provided by these interactive product features to develop a better understanding of how its products are performing and being used. Resilient Corporation shall permit you to opt out of automatic reporting if you so request.