

**Carahsoft Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Revised 20161213**

- 1. Scope.** This Carahsoft Rider and the Manufacturer's Commercial Supplier Agreement (CSA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").

- 2. Applicability.** The terms and conditions in the attached Manufacturer's CSA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a) (1) (B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's CSA is inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's Multiple Award Schedule Contract, GS-35F-0119Y, including, but not limited to the following:
 - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", defined as an entity authorized to order under Government contracts as set forth in General Services Administration Order OGP 4800.2I, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

 - (b) Changes to Work and Delays.** Subject to General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of the GSAR and the FAR provisions shall take precedence.

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

- (d) Audit.** During the term of this CSA: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this CSA. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this CSA.
- (e) Termination.** Clauses in the Manufacturer's CSA referencing suspension, termination or cancellation of the Manufacturer's CSA, the License, or the Customer's Account are hereby deemed to be deleted. Termination, suspension or cancellation shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:
- Carahsoft may request cancellation or termination of the CSA on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section (q) below or if such remedy is otherwise ordered by a United States Federal Court.
- (f) Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) Force Majeure.** Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.
- (h) Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA are hereby deemed to be deleted.
- (i) Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All of the Manufacturer's CSA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) **Renewals.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) **Future Fees or Penalties.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) **Taxes.** Taxes are subject to GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w) (1) (x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).
- (o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer's CSA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w) (1) (iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.

(r) Limitation of Liability: Subject to the following:

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

(s) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

(t) Public Access to Information. Manufacturer agrees that the CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA and this Rider will be available to the public.

(u) Confidentiality. Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).

Application Usage Agreement

This Application Usage Agreement (this "Agreement") between Vertiba, LLC ("Company") and an Ordering Activity (defined below) ("Client"), sets forth the terms and conditions under which Company will provide Client access to certain software applications. Client is a Government Customer (Agency) who, under GSA Schedule Contracts, is the "Ordering Activity," defined as an "entity authorized to order under GSA Schedule Contracts" as defined in GSA Order ADM4800.2I ("GSA Order"), as such order may be revised from time to time. This Agreement is subject to, and is hereby incorporated into, the Carahsoft Technology Corporation's ("Carahsoft") GSA Multiple Award Schedule (MAS) 70 Contract ("Carahsoft MAS 70 Contract").

1. Right to Use the Application. During the Term (defined below) and subject to the terms of this Agreement and Carahsoft's MAS 70 Contract, Company grants Client the non-exclusive, non-transferable, royalty free, limited right to access and use the application described in this Section 1 (the "Application"). The Application is comprised of the following:

(i) VIP Form Tool application is a managed application on the Salesforce platform, providing enhanced configuration and definition functionality to support complex forms input by Salesforce users. The application provides for an enhanced user experience with conditional logic, validations, and workflows to ensure data is collected efficiently and accurately.

2. Restrictions. Company and its third-party providers and/or licensors own all right, title and interest in and to the Application, including all intellectual property rights therein. Company shall have no obligation to provide Application maintenance and support services or any obligation to supplement the Application, including without limitation, any patches, upgrades and updates ("**Support Services**") related to the Application unless expressly provided for under a separate statement of work ("SOW") or order ("Order"). To the extent a separate statement of work or Order expressly provides for Support Services, any patches, upgrades or updates shall be considered part of the Application and shall be governed by the provisions of this Agreement and Carahsoft's MAS 70 Contract. This Agreement does not convey to Client any ownership interest in or to the Application, but only a limited right to access and use the Application during the Term. Company reserves all rights in the Application that are not expressly granted in this Agreement, including the right to modify the Application at any time. Client may not (i) use the Application in any illegal or unlawful manner or for any illegal or unlawful purpose; (ii) resell, distribute, sublicense, reproduce, rent, share or transfer the Application except as permitted in this Agreement; (iii) modify or make derivatives works based upon the Application; (iv) reverse engineer, decompile or disassemble the Application; or (v) charge the Client Customers a fee to use or access the Application or otherwise use the Application for commercial purposes except for the purposes contemplated in the SOW or Order.

3. Term and Termination. This Agreement shall be effective upon Client's award of an Order and shall continue indefinitely unless terminated in accordance with Carahsoft's MAS 70 Contract (the "Term"). At the conclusion or expiration of the Term, or the termination of this Agreement, Client's and the Client Customers' right to access and use the Application shall immediately cease.

4. Reserved.

5. Confidentiality. The parties agree not to permit access to or to disclose the other party's Confidential Information, except to its authorized employees and contractors who are bound by confidentiality agreements with terms no less restrictive than those of this section and who need to use or have access to the other party's Confidential Information as permitted by this Agreement. In no event shall a party use less than a reasonable degree of care in protecting Confidential Information. "Confidential Information" includes documents, data, software and information which, when provided by one party to the other: a) are clearly identified as "Confidential" or "Proprietary" or are marked with a similar legend; b) are disclosed orally or visually, identified as Confidential Information at the time of disclosure and confirmed as Confidential Information in writing within 10 days; or c) a reasonable person would understand to be confidential or proprietary at the time of disclosure.

6. Client Data and Privacy. Client's collection and use of any data relating to the users of the Application ("Client Data") shall comply with all applicable laws and regulations. Client shall ensure that it receives any necessary consent prior to collecting and using such Client Data and Client shall own all of the Client Data. Company expressly disclaims any responsibility or liability whatsoever with respect to Client's collection and use of Client Data.

7. Representations and Warranties.

7.1 Company. THE APPLICATION AND ANY RELATED SERVICES ARE PROVIDED “AS-IS” AND COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND EXCLUDES ALL TERMS NOT SET OUT IN THIS AGREEMENT, IN EACH CASE EXPRESS OR IMPLIED THROUGH STATUTE, COMMON LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THOSE CONCERNING NON-INFRINGEMENT, MERCHANTABILITY, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND NO TERM, REPRESENTATION OR STATEMENT NOT EXPRESSLY CONTAINED IN THIS AGREEMENT WILL BE BINDING ON COMPANY AS A WHETHER AS A WARRANTY OR OTHERWISE.

7.2 Client. The Client warrants that it will comply fully with all applicable laws and regulations in any of its dealings with respect to the Application.

8. Limitation of Liability

8.1 Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS AGREEMENT OR OTHERWISE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, LOSS OR BUSINESS, LOSS OF OPPORTUNITY, LOSS OF SAVINGS, LOSS OF REVENUE, LOSS OF DATA OR USE OF DATA OR INTERRUPTION OF BUSINESS. THIS CLAUSE SHALL NOT IMPAIR, OR BE DEEMED TO IMPAIR, THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CALIMS ACT, 31 U.S.C. §§ 3729-3733.

8.2 Limitation of Liability. IN NO EVENT WILL COMPANY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED \$5,000.

9.0 General Provisions

9.1 Governing Law. This Agreement shall be governed in all respects by the federal laws of the United States.

9.2 Entire Agreement. In the event of a conflict between the terms of this Agreement, Carahsoft’s MAS 70 Contract, any Client-originated instrument, or any other document, the conflict shall be resolved in accordance with General Services Administration Acquisition Regulation (GSAR) 552.212-4(s) Order of Precedence. This Agreement may only be changed in a writing signed by a GSA Contracting Officer and Carahsoft Technology Corporation.

9.3 Notices. All notices shall be in writing and shall be delivered by email, facsimile transmission or overnight mail and shall be deemed given upon receipt. Notices shall be sent to the respective addresses set forth above and shall be addressed to the General Counsel.

9.4 Reserved.

9.5 Reserved.