Carahsoft Rider to Akamai Technologies, Inc. End User Services Agreement (for U.S. Government End Users)

- 1. Scope. This Carahsoft Rider and the Akamai Technologies, Inc. ('Manufacturer' or 'Contractor') End User Services Agreement (EUSA) establish the terms and conditions enabling Carahsoft to provide Services to U.S. Government agencies (the "Client" or "Licensee").
- 2. Applicability. The terms and conditions in the attached Manufacturer EUSA 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 EUSA 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 contracting 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 EUSA referencing termination or cancellation of the Manufacturer's EUSA 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 EUSA 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 EUSA 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 EUSA 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 EUSA 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 EUSA are hereby deemed to be deleted.
- (j) Customer Indemnities. All Manufacturer EUSA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) Contractor Indemnities. All Manufacturer EUSA 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 EUSA 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 EUSA 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 software, if any, shall be in accordance with this Rider and Manufacturer EUSA, 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 EUSA 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 EUSA and this Rider contain no confidential or proprietary information and acknowledges the EUSA 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.

AKAMAI TERMS & CONDITIONS

1. **DEFINITIONS.** "Agreement" means these Terms & Conditions, applicable Transaction Documents, the AUP and any related attachments. "Akamai" means Akamai Technologies, Inc, its Affiliates, or entities authorized by Akamai to provide a Service. "Customer" means the entity that orders the Services and is responsible for the payment of fees under, and compliance with, this Agreement. "Service" means services or products ordered by Customer in a Transaction Document; Service descriptions, billing methodologies, usage requirements and related terms are located at www.akamai.com/service and are incorporated herein. "Transaction Documents" means documents that set forth the description of the Services being purchased from Akamai and any additional terms set forth in Order Forms, Statements of Work or other documents executed by the parties. Other capitalized terms used here have the definitions set forth below or in the Transaction Document(s).

2. SCOPE. Customer and its Affiliates may order Services by executing the applicable Transaction Documents, which shall become effective when counter-signed by Akamai. "Affiliate" means any entity controlling or controlled by or under common control with a party, where "control" is defined as the ownership of more than 50% of the equity or other voting interests of such entity. Transaction Documents entered into between Akamai and an Affiliate. Unless otherwise agreed by the parties, any conflict between a Transaction Document and these terms will be resolved in favor of the Transaction Document.

3. RESPONSIBILITIES

3.1 Akamai shall provide the Services as set forth in the applicable Transaction Document. All rights in the Services are reserved to Akamai.

3.2 Each party shall perform its obligations as set forth in this Agreement. Except as expressly permitted in a particular Transaction Document, Customer shall not resell the Services to a third party nor enter into any similar relationship with a third party to enable the purchase or use of the Services through Customer. For purposes of the foregoing, end-users accessing Customer's web site are not considered to be using the Services. When using the Services, Customer shall comply with Akamai's acceptable use policy ("AUP") located at www.akamai.com/html/policies/index.html, the current version of which is attached hereto as Exhibit A.

4. PAYMENT TERMS

4.1 Customer shall pay for the Services within thirty days of invoice date. All prices are in U.S. dollars, and all payments shall be in U.S. currency, unless otherwise set forth in the Transaction Document. All taxes (other than taxes assessed on the net income of Akamai) are the responsibility of Customer. There shall be no deduction in respect of any such taxes, or any offset against payment for any taxes; and all payments shall be grossed up to take account of any withholding taxes. After the initial Term of the applicable Transaction Document, Akamai may amend the fees for Services upon thirty days prior notice if such change is generally applicable to its customers, provided that if Akamai increases the fees Customer shall have the right to terminate its purchase of the applicable Service without termination charge by providing written notice to Akamai within thirty days of the effectiveness of the increased fees.

4.2 Customer shall pay a late charge of one percent per month (or part of a month), or the maximum lawful rate permitted by applicable law, whichever is less, for all amounts not paid within thirty days of invoice date, plus all costs, including reasonable attorneys' fees, incurred to collect any unpaid amounts. Unless prohibited by applicable law or regulation, all invoiced amounts not disputed in writing within sixty days of invoice date are deemed accepted. Restrictive endorsements or other statements on checks accepted by Akamai are not enforceable. From time to time, Akamai reserves the right to reasonably require payment assurance.

5. CONFIDENTIAL INFORMATION. This section 5 shall not apply so long as Akamai and Customer are parties to an effective non-disclosure agreement that would govern the disclosure of information hereunder. Any information that a receiving party knows or has reason to know is confidential or proprietary (because such information is identified by the disclosing party orally or in writing as such or is not generally known in the relevant industry), is "Confidential Information" and shall remain the sole property of the disclosing party. The terms of any Transaction Document shall also constitute Confidential Information of the other, except as required by law or in furtherance of the relationship between the parties. This section shall not apply to information disclosed in published materials, generally known to the public, lawfully obtained from any third party, or known to or independently developed by the receiving party. Neither party shall use the other party's name, logo or marks without the other party's prior written consent.

6. TERM AND TERMINATION

6.1 The "Term" is set forth in the Transaction Document and automatically renews for successive terms of equal duration unless either party notifies the other of its intent to not renew at least sixty days prior to the expiration of the applicable Term. Termination of an individual Transaction Document shall not terminate any Services under other Transaction Documents. These Terms & Conditions shall apply to, and remain effective for the Term of, any extant Transaction Document. If no Transaction Document is in effect, either party may terminate these Terms & Conditions at any time upon notice to the other party.

6.2 Either party may terminate a Transaction Document if the other materially breaches this Agreement and such breach continues unremedied for thirty days following notice or such other period designated herein. Akamai may immediately suspend all Transaction Documents for payments not received within thirty days of payment due date.

6.3 Customer acknowledges and confirms that the fees set forth in the Transaction Document are committed for the Term and will become payable regardless of actual use of Services. Except for a termination by Customer as expressly permitted hereunder, if a Transaction Document is terminated prior to end of the Term for any reason (including if Customer ceases use of the Services prior to expiration or termination of the Term), such a termination shall constitute a material breach of the Agreement. Because it is very difficult to accurately estimate the harm caused by this breach or any other material breach of the Agreement by the Customer, the parties agree that as compensation and not as a penalty Akamai shall be entitled to invoice, and Customer agrees to pay, the committed fees outstanding for the remainder of the then-current Term, in addition to all other fees outstanding at the date of termination.

7. INDEMNIFICATION

7.1 Akamai shall defend, indemnify and hold Customer harmless from and against any claim made, or any suit or proceeding brought against Customer, but only to the extent it is based on an allegation that a Service furnished hereunder directly infringes an issued patent or other intellectual property right under the laws of a country in which the Service is actually provided to Customer. If a Service is held to infringe and the use enjoined, Akamai shall have the option, at its own expense, to procure for Customer the right to continue using the Service; or replace same with a non-infringing service; or modify such Service so that it becomes non-infringing. If Akamai is unable to provide one of the foregoing remedies, Customer may terminate the applicable Service without termination charge upon written notice to Akamai. Akamai shall have no liability for any infringement of patents, copyrights, or other intellectual property rights resulting from Customer Content (as defined below), use of the Service other than as specified in relevant Akamai documentation, the use or combination of the Service with any hardware, software, products, applications, data or other materials not specified or provided by Akamai, or to the extent the claims arise from products or services not supplied by Akamai.

7.2 Customer is solely responsible for all content and applications, including any third party content or applications, provided to Akamai for delivery via the Akamai network ("Customer Content"). Customer retains all right, title and interest in its Customer Content, and Customer Content shall not be deemed part of any Service by virtue of being located on or served from Akamai servers. Customer acknowledges that Akamai does not assume and should not be exposed to the business and operational risks associated with Customer's business or any aspects of the operation or contents of Customer's web site(s). Customer shall defend, indemnify, and hold Akamai harmless as a result of any claim by a third party against Akamai with respect to any Customer Content, operation of Customer's web site(s) (including without limitation any activities or aspects thereof or commerce conducted thereon), or misuse of a Service or the Akamai network.

7.3 The indemnified party shall (a) promptly notify the indemnifying party in writing of any claim, suit or proceeding for which indemnity is claimed, and (b) allow the indemnifying party solely to control the defense of any claim, suit or proceeding. The indemnifying party shall not enter into any settlement that imposes liability or obligations on the indemnified party without obtaining the indemnified party's prior written consent.

8. DISCLAIMER AND LIMITATIONS. EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, PAST OR PRESENT, STATUTORY OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR SECURITY. EXCEPT FOR EACH PARTY'S LIABILITY ARISING OUT OF ITS INDEMNIFICATION, PAYMENT AND CONFIDENTIALITY OBLIGATIONS AND TO THE FULLEST EXTENT PERMISSIBLE BY LAW, LIABILITY FOR ALL CLAIMS ARISING HEREUNDER, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER TO AKAMAI UNDER THE APPLICABLE TRANSACTION DOCUMENT DURING THE SIX MONTHS PRECEDING THE CLAIM. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST DATA, LOST PROFITS, BUSINESS INTERRUPTION, REPLACEMENT SERVICES OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY.

9. MISCELLANEOUS. Any notice required or permitted shall be in writing and shall be delivered to the contact person listed on the Transaction Documents by personal delivery, deposited with an established overnight courier, or mailed by certified or registered mail, return receipt requested. Such notice will be deemed to have been given as of the date it has been so delivered or deposited, or five days after it has been mailed. Customer may not assign this Agreement, including by operation of law, without Akamai's prior written consent, which will not be unreasonably withheld, delayed or conditioned. The Agreement is binding upon and inures to the benefit of each party and its successors and permitted assigns. The Agreement shall be interpreted under Massachusetts law. Notwithstanding any local laws to the contrary, the parties agree that the governing language of this Agreement and any notices related hereto shall be English. Prior agreements, representations, and statements with respect to the subject matter are superseded. This Agreement may be changed only in writing signed by Akamai and Customer, and no effect shall be given to terms set forth in any Customer purchase order, confirmation or similar document. No failure or delay of either party to exercise or enforce any of its right operates as a waiver of any such right. If any provision is held unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions shall remain in effect. If either party is prevented from performing any of its obligations due to any cause beyond the party's reasonable control, that party's performance will be excused for the period of the delay or inability to perform due to such occurrence. The parties are independent contractors. Sections 4, 5, 6.3, 8 and 9 shall survive termination.

AKAMAI TERMS & CONDITIONS

Exhibit A

Acceptable Use Policy

This Acceptable Use Policy ("AUP") sets forth guidelines for acceptable use of Akamai's network and systems (the "Akamai Network") and its services, software and products ("Akamai Services," together with the Akamai Network, the "Akamai Network and Services") by our customers, resellers and other users of the Akamai Network and Services (each, a "Customer"). This list is not meant to be exhaustive, but merely illustrative of examples of conduct deemed by Akamai to be inappropriate, improper or harmful to Akamai's reputation, Network or Services and therefore prohibited when using the Akamai Network and Services. The guidelines and restrictions in this AUP on use of the Akamai Network and Services by a Customer shall apply equally to the Customer's employees and any other person or entity that is provided access to the Akamai Network and/or Services directly or indirectly by the Customer ("Users"). By using the Akamai Network and Services, Customer acknowledges that it has read, understood and agrees to comply with the terms of this AUP. Customer shall (i) ensure that its Users comply with this AUP and (ii) be responsible for violations of this AUP by Customer or its Users.

General Conduct

Customer must use the Akamai Network and Services in a manner consistent with the permitted use of such Akamai Network and Services. Unless otherwise expressly permitted in writing by Akamai, Customer may not assign, transfer, distribute, resell, lease or otherwise provide access to any third party to the Akamai Network or Services, or use the Akamai Network or Services with or for the benefit of any third party (other than Internet end users). Customer may only use the Akamai Network and Services for lawful purposes and in accordance with this AUP.

Responsibility for Content

Akamai takes no responsibility for any Customer or User content created, accessible or delivered on or through the Akamai Network and Services. Akamai does not monitor or exercise any editorial control over such content. Customer is solely responsible for (i) any content published or made available through the Akamai Network or Services by Customer and its Users and (ii) compliance with all laws applicable to the publication and distribution of such content. Customer shall be solely responsible for maintaining a copy of its content.

Inappropriate and Illegal Content

Customer shall not use the Akamai Network and Services to transmit, distribute or store material that is inappropriate (including online gambling), as reasonably determined by Akamai, or material that is illegal, defamatory, libelous, indecent, obscene, pornographic, enables online gambling or inconsistent with the generally accepted practices of the Internet community. Customer shall ensure that its and its Users' use of the Akamai Network and Services and all content transmitted, distributed or stored on the Akamai Network do not violate any applicable domestic or foreign laws or regulations including but not limited to laws relating to content distribution, encryption or export or any rights of any third party. Customer shall not use the Akamai Network and Services to transmit, distribute or store material that contains a virus, worm, Trojan horse, or other component harmful to the Akamai Network and Services, any other network or equipment, or other Users.

Intellectual Property

Customer shall not use the Akamai Network and Services in any manner that would infringe, dilute, misappropriate, or otherwise violate any privacy or other personal rights or any intellectual property rights, including but not limited to, copyrights and laws protecting patents, trademarks, trade secrets or other proprietary information. If Customer uses a domain name in connection with its use of the Akamai Network and Services, such domain name must not violate any trademark, service mark, or other rights of any third party.

Fraudulent/Misleading Content

Customer shall not use the Akamai Network and Services to transmit or distribute material containing fraudulent offers for goods or services, or any advertising or promotional materials that contain false, deceptive, or misleading statements, claims, or representations.

AKAMAI TERMS & CONDITIONS

Email and Spam

Customer shall not use the Akamai Network and Services to send unsolicited e-mail messages or USENET postings, including, without limitation, bulk commercial advertising or informational announcements ("spam"). Further, Customer is prohibited from using the service of another provider to send spam or to otherwise promote a site hosted on or connected to the Akamai Network. In addition, Customer shall not use the Akamai Network and Services to (a) send e-mail messages or USENET postings which are excessive and/or intended to harass or annoy others, (b) continue to send e-mail messages or USENET postings to a recipient who has indicated that he/she does not wish to receive them, (c) send e-mail messages or USENET postings with forged header information, or (d) send malicious e-mail messages or USENET postings, including, without limitation, "mailbombing." Akamai reserves the right to charge Customer at Akamai's standard rates for time required to handle any complaints that Customer or User violate this Email and Spam section.

Security Violations

Customer is prohibited from violating or attempting to violate the security of the Akamai Network and Services, or any third party network, system, server, or account, including, without limitation, engaging in any of the following activities: (a) accessing data, servers, accounts, databases, etc. which such Customer is not authorized to access, (b) impersonating Akamai personnel, (c) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization, (d) attempting to interfere with, disrupt or disable service to any user, host or network, including, without limitation, via means of overloading, "flooding," "mailbombing," "denial of service" attacks, or "crashing," (e) forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting, (f) taking any action in order to obtain services to which such Customer is not entitled, or (g) attempting to utilize another party's account name or persona without authorization from that party. Customer is also prohibited from attempting any action designed to circumvent or alter any method of measuring or billing for Akamai Services. Violations of system or network security may result in civil or criminal liability.

Akamai Rights and Remedies

If Customer becomes aware of any content or activity that violates this AUP, Customer shall take all necessary action to prevent such Content from being routed to, passed through, or stored on the Akamai Network. To the extent Akamai becomes aware of any content or activities that Akamai deems, in its sole discretion, to be in violation of this AUP, Akamai may immediately block access to such content, suspend or terminate any affected Akamai Services, or take any other actions Akamai deems appropriate. Akamai shall be solely responsible for determining if any content or action violates this AUP. Akamai reserves the right to terminate or suspend services if the continued provision of services would violate law or otherwise harm Akamai's Network, Services or customers. Akamai also reserves the right to cooperate with legal authorities and third parties in the investigation of alleged wrongdoing, including disclosing the identity of the party that Akamai deems responsible for the wrongdoing. Akamai will endeavor to provide notice to Customer prior to suspension or termination of Akamai Services but may immediately suspend or terminate in instances where continued provision of Services would have a material adverse effect on Akamai. Akamai shall not be liable for any damages of any nature suffered by any Customer, User, or any third party resulting in whole or in part from Akamai's exercise of its rights under this AUP.

Akamai reserves the right to modify this AUP from time-to-time, in its sole discretion, effective upon posting a revised copy of the Acceptable Use Policy on www.akamai.com. Any use of the Akamai Network and Services after such modification shall constitute acceptance of such modification. Any violation shall be sent to abuse@akamai.com.

Last updated: October 1, 2009