

**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.).

This Perpetual License Agreement (“**Agreement**” or “**ForgeRock EULA**” as applicable) is made by and between ForgeRock US, Inc. (“**ForgeRock**”), a Delaware corporation having offices at 201 Mission Street, Suite 2900, San Francisco, CA 94105 and the entity that has licensed from ForgeRock products and services (“**Customer**”) either directly or from an authorized reseller of ForgeRock products (“**Authorized Reseller**”). This Agreement shall become effective upon the date the Order Form is signed by the Government Contracting Officer (the “**Agreement Effective Date**”). The Ordering Party is the entity authorized to order under GSA contracts as set forth in GSA ORDER OGP 4800.21, as may be revised from time to time.

The terms and conditions in this Agreement 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 ForgeRock 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:

In consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1 **DEFINITIONS.** Capitalized terms used in this Agreement shall have the meaning assigned to them as set forth below.

1.1. “**Agreement Term**” means the period of validity for the Agreement, beginning on the Agreement Effective Date and ending as specified herein.

1.2. “**Confidential Information**” means all non-public information disclosed by a party to the other party which: (a) is marked as “Confidential” or with a comparable legend if disclosed in written, graphic, machine readable or other tangible form, or (b) which should reasonably in good faith be treated as confidential or proprietary based on the nature of the information or the circumstance surrounding its disclosure. Confidential Information does not include information which: (i) is generally known or publicly available or which, hereafter through no act or failure to act on the part of recipient, becomes generally known or available; (ii) is rightfully known to recipient at the time of receiving such information; (iii) is furnished to recipient by a third party without restriction on disclosure; or (iv) is independently developed by recipient without having relied on the Confidential Information of the disclosing party. Notwithstanding the forgoing, any provisions that require the Customer 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. ForgeRock agrees that the ForgeRock EULA and this Agreement contain no confidential or proprietary information and acknowledges the ForgeRock EULA and this Agreement will be available to the public.

1.3. “**Copyleft License**” means a software license that requires that information necessary for reproducing and modifying such software must be made available publicly to recipients of executable versions of such software (see, e.g., GNU General Public License and <http://www.gnu.org/copyleft/>).

1.4. “**Designated System**” means the network or application identified in the applicable Order Form for which the Software may be used to facilitate access.

1.5. “**Documentation**” means the generally available end user documentation provided by ForgeRock with the Software.

1.6. “**External Identity**” means a unique identifier for a device or user that is not employed/controlled by Customer and is managed by the Software.

1.7. “**Fees**” means, as applicable, the fees charged by ForgeRock or an Authorized Reseller for licenses and services as set forth on the applicable Order Form.

1.8. “**Identity**” means a unique identifier for a device or user that is managed by the Software.

1.9. “**Identity License**” means a license, pursuant to this Agreement, that permits one Identity to be managed by the Software during the License Term.

1.10. “**Intellectual Property Rights**” means any intellectual property rights, including patents, utility models, rights in designs, copyrights, moral rights, topography rights, database rights, trade secrets, and rights of confidence, in all cases whether or not registered or registrable in any country, and including the right to apply for the same and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world from time to time.

1.11. “**Internal Identity**” means a unique identifier for a device or user that is employed/controlled by Customer and is managed by the Software.

1.12. “**Mentoring Services**” means, collectively, packaged and training services made generally available by ForgeRock for purchase by Customer in accordance with its standard policies (a description of the current mentoring services may be found at: [www.forgerock.com/terms](http://www.forgerock.com/terms)).

1.13. “**Order Form**” means an order form that incorporates the terms of this Agreement between the Customer and ForgeRock or an Authorized Reseller.

1.14. “**Order Form Effective Date**” means the effective date of each Order Form, as set forth on the applicable Order Form (and if nothing is stated shall be the last date executed between the parties of such Order Form).

1.15. “**Software**” means the generally available, commercially licensed software, in binary form, set forth in the applicable Order Form, including all Updates thereto and the Documentation delivered to the Customer hereunder.

1.16. “**License Term**” shall mean the length of time as further defined in Section 7.1.

1.17. **“Support Period”** means the period of time for which Customer may receive Support Services as specified in the Order Form. The initial term set forth in the Order Form together with any renewal term is collectively referred to as the Support Period.

1.18. **“Support Services”** means, the support services made generally available by ForgeRock to Customer in accordance with its standard policies (a copy of the current terms may be found at: [www.forgerock.com/terms](http://www.forgerock.com/terms)).

1.19. **“Update”** means a major or minor release of the Software, or a fix, or patch thereto, that ForgeRock may make available to Customer.

## 2. Software License and Restrictions.

2.1. **Rights to Use.** During the applicable License Term, ForgeRock grants to Customer a perpetual, world-wide, non-exclusive and non-transferable license to permit Customer to access, copy, install (solely at Customer's facilities or at a Customer-controlled space within a third-party data center) and use the Software in accordance with the Documentation to manage Identities for the Designated System set forth in the applicable Order Form, but only for the number of Identities for which Customer has purchased Identity Licenses. Each Identity License is specific to a unique Identity and under no circumstance may an Identity License be transferred to, shared among or used by different users or devices.

2.2. **Supply.** ForgeRock agrees that it will supply Customer with sufficient quantities of the Software to meet the Customer's needs for the duration of the Term and any extensions thereof.

2.3. **Commercial Product Certification.** ForgeRock certifies that the Software sold under this Agreement or any subsequent contract modification are newly manufactured products, that are of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and are sold, leased, or licensed in the course of normal business operations to the general public.

2.4. **Trade Agreement Certification.** ForgeRock hereby states that the Software delivered under this Agreement is a U.S. made end product, a designated country end product, a Caribbean Basin country end product, a Canadian end product, or a Mexican end product as defined in the FAR clause 52.225-5 TRADE AGREEMENTS (Aug 2009). Any Trade Agreements clauses other than 52.225-5, are not acceptable.

2.5. **Restrictions.** Except as expressly set forth in this Agreement, Customer shall not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute or otherwise transfer rights or usage in the Software, (b) provide the Software on a timesharing, service bureau, service provider or other similar basis, (c) remove or alter any copyright, trademark or proprietary notice in the Software, or (d) use the Software in any way that would subject the Software, in whole or in part, to a Copyleft License.

2.6. **Source Code.** The source code underlying the open source components of the Software, subject to the applicable license, is available at [www.forgerock.org](http://www.forgerock.org).

## 3. Proprietary Rights.

3.1. **ForgeRock Intellectual Property.** Title to and ownership of all copies of the Software whether in machine-

readable (source, object code or other format) or printed form, and all related technical know-how and all rights therein (including without limitation all Intellectual Property Rights applicable thereto and in all derivative works by whomever produced), belong to ForgeRock and its licensors and shall remain the exclusive property thereof. All rights not expressly granted to Customer are reserved by ForgeRock and its licensors.

3.2. **Suggestions.** Customer is not obligated to provide ForgeRock with any suggestions, enhancements, recommendations or other feedback (“Suggestions”). To the extent Customer does provide ForgeRock with any Suggestions, Customer hereby grants to ForgeRock a royalty-free, worldwide, transferable, sublicensable, irrevocable, right and license to use, copy, modify and distribute, including by incorporating into any software or service owned by ForgeRock, any Suggestions provided by Customer relating to any software or service owned or offered by ForgeRock.

## 4. Customer Obligations.

4.1. **Customer Responsibilities.** Customer shall: (a) not use the Software in breach of the terms and conditions of Section 2 (Software License and Restrictions) and promptly notify ForgeRock in writing of any increase in use of the Software that exceeds the number of Identity Licenses purchased, (b) be solely responsible for the accuracy, use, integrity, and legality of any information processed within the Software, (c) purchase a commercial license for all copies of any Software products in use for which it has purchased any commercial licenses (i.e. Customer may not use open source versions of the Software licensed hereunder during the applicable Support Period), (d) use the Software in accordance with applicable laws, rules, regulations and the Documentation, (e) not use the Software to store or transmit infringing, libellous or otherwise unlawful, illegal or tortious material, and (f) notify ForgeRock promptly of any unauthorized use of, or access to, the Software of which it becomes aware. Customer shall indemnify ForgeRock from any damages or claims arising from third party claims arising from violations of this Section 4.1.

## 5. Support and Mentoring Services.

5.1. **Support Levels.** During the Support Period, ForgeRock shall provide Customer with the level of support purchased by Customer and specified on the applicable Order Form. All Identity Licenses in each installation of the Software must be supported at the same level, unless otherwise agreed in writing.

5.2. **Training Credits.** Customer may purchase training credits (“**Training Credits**”) that may be used towards the purchase of training services. The number and value of Training Credits shall be set forth on the applicable Order Form. All Training Credits shall expire twelve (12) months from the applicable Order Form Effective Date. Any Training Credit not used during the required timeframe shall expire and have no further value.

5.3. **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications and GSAR 552.212 -4 (f) Excusable delays.

## 6. Fees and Payment.

6.1. **Payments & Fees for Reseller Purchases.** In the event that the licenses and services are purchased hereunder through an Authorized Reseller, Customer's obligation to pay shall be subject to a separate agreement to pay such Authorized Reseller. Customer acknowledges, that

in addition to all other remedies under the law, the Authorized Reseller may be entitled to terminate licenses granted hereunder for a breach of such separate agreement with Customer (e.g. a failure to pay for such licenses).

6.2. Payment for Direct Purchases. If any purchases are made directly with ForgeRock pursuant to this Agreement, all Fees due hereunder will be on the applicable Order Form. Except as otherwise provided therein, Fees are: (a) invoiced upon the Order Form Effective Date or upon ForgeRock's acceptance of a purchase order, as applicable, (b) based upon the number of Identity Licenses purchased, even if actual usage is lower and (c) are exclusive of all taxes (for which Customer shall be responsible, except for taxes on ForgeRock's net income). Taxes are subject to FAR 52.212-4(k). Unless otherwise specified in the Order Form, all Fees shall be due within thirty (30) days from the date of ForgeRock's invoice. Customer agrees to provide ForgeRock with complete and accurate billing and contact information. A service charge of 1.0% per month or the highest lawful interest rate established under the Prompt Payment Act or permitted by law, whichever is lower, shall be applied to all amounts which are not paid when due under this Agreement, accruing from the due date.

6.3. Reporting. Upon request from ForgeRock and no more than once per calendar quarter, Customer shall report its actual usage of the Software under each Order Form. In the event that the number of Identities exceeds the number of Identity Licenses previously purchased, such report shall be deemed an Order Form for the number of Identity Licenses required to bring Customer in compliance with the terms of this Agreement. The Identity Licenses shall be prorated from the report date to the end of the then current Term. All Fees shall be invoiced as of the report date and due in accordance with the terms herein.

6.4. Renewal. The Support Period of each Order Form shall not automatically renew.

6.5. Future Fees or Penalties. All ForgeRock EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Customer from paying any fees or penalties beyond the Agreement 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.

## 7. **Term and Termination.**

7.1. Term. This Agreement shall become effective upon the Agreement Effective Date and shall continue unless terminated as otherwise set forth herein. The License Term for all Software licensed hereunder shall begin on the applicable Order Form Effective Date and continue perpetually unless terminated as otherwise provided herein.

7.2. Support Period. Each Support Period shall commence on the date set forth on the relevant Order Form and expire on the date set forth therein, unless renewed in accordance with Section 6.4 (Renewal) or terminated in accordance with this Section 7. The expiration or party's termination for any reason of any individual Order Form shall not result in a termination of this Agreement but shall result only in the termination of such Order Form. The provisions of this Agreement relating to the effects of termination shall apply to each Order Form as an independent contract.

7.3. Carahsoft may request cancellation or termination of this Agreement on behalf of ForgeRock if such remedy is

granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section 11.3 below or if such remedy is otherwise ordered by a United States Federal Court.

7.4. Termination Rights. If either party is in default of any material provision of this Agreement and such default is not corrected within thirty (30) days of receipt of written notice, the other party shall have the right to terminate this Agreement immediately by providing written notice to the party in breach. Either party shall have the right to immediately terminate this Agreement in writing if the other party: (a) voluntarily or involuntarily becomes the subject of a petition in bankruptcy or of any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors which is not dismissed within one hundred twenty (120) days or (b) admits in writing its inability to pay its debts as they become due.

7.5. Effect of Termination; Surviving Provisions. Upon expiration or termination of an Order Form or termination of the Agreement as a whole, the Identity Licenses shall not terminate unless the termination is due to Customer's breach of the Agreement and in such instance, Customer shall immediately stop using any such Identity Licenses and delete all copies of the Software. Upon expiration or termination of an Order Form or termination of the Agreement as a whole, each party shall immediately return or destroy the other party's Confidential Information received thereunder in its possession or under its control. Customer's obligation to make payment of any unpaid Fees and the terms of Section 1 (Definitions), 3 (Proprietary Rights), 4 (Customer Obligations), 6.5 (Audit Rights), 7 (Term and Termination), 8 (Confidentiality), 9.4 (Disclaimer of Warranties), 11 (Limitation of Liability), and 12 (General) shall survive termination or expiration of this Agreement.

## 8. **Confidentiality.**

8.1. Obligation. ForgeRock and Customer agree that, for a period of three (3) years after last receipt of the other party's Confidential Information, it will: (a) use the other party's Confidential Information only in connection with fulfilling its rights and obligations under this Agreement and (b) hold the other party's Confidential Information in strict confidence and exercise due care with respect to its handling and protection, consistent with its own policies concerning protection of its own Confidential Information of like importance but in no instance with less than reasonable care, such due care including without limitation requiring its employees, professional advisors and contractors to execute non-disclosure agreements which are consistent with the terms and conditions of this Agreement and no less protective of each party's Intellectual Property Rights as set forth herein before allowing such parties to have access to the Confidential Information of the other party.

8.2. ForgeRock agrees that this Agreement contains no confidential or proprietary information and acknowledges this Agreement will be available to the public. Any provisions that require the Customer 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.

8.3. Exceptions to Obligation. Notwithstanding Section 8.1 (Obligation), either party may disclose Confidential Information to the extent required by law, provided the other party uses commercially reasonable efforts to give the party owning the Confidential Information sufficient notice of such

required disclosure to allow the party owning the Confidential Information reasonable opportunity to object to and to take legal action to prevent such disclosure.

## **9. Warranties, Exclusive Remedies and Disclaimers.**

9.1. Warranties. ForgeRock warrants for the sole benefit of Customer that for a period of ninety (90) days from the Effective Date ("Warranty Period"): (a) the Support Services and Mentoring Services will be performed by ForgeRock with due care and skill in a professional, workmanlike manner and (b) during the Warranty Period, the Software shall perform materially in accordance with the Documentation. The foregoing warranties shall not apply to any error or failure resulting from: (i) use of the Software in an operating environment other than as set forth in the Documentation, (ii) Customer's failure to follow any reasonable instructions of ForgeRock, (iii) use of the Software outside the terms and conditions of this Agreement, (iv) Customer's negligence or accident, or (v) modification of the Software by anyone other than ForgeRock.

9.2. Remedy for Mentoring & Support Services. As ForgeRock's entire liability and Customer's exclusive remedy for breach of the warranty set forth in 9.1(a), if Customer notifies ForgeRock in writing within ten (10) days of completion of the applicable Mentoring or Support Services, ForgeRock shall re-perform such services at no additional cost to Customer.

9.3. Corrections of Software. As ForgeRock's entire liability and Customer's exclusive remedy for breach of the warranty set forth in Section 9.1(b), ForgeRock shall, at no charge: (a) use commercially reasonable efforts to make a correction available to the Software, (b) replace the Software with conforming Software, or (c) after making all commercially reasonable efforts to provide the foregoing remedies, terminate the applicable license and refund the Fees received by ForgeRock.

9.4. Disclaimer of Warranties. EXCEPT AS SET FORTH IN SECTION 9.1 (WARRANTIES), THE SOFTWARE LICENSED HEREUNDER IS LICENSED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. FORGEROCK AND ITS LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OF NON-INFRINGEMENT. THE REMEDIES SET FORTH HEREIN ARE THE SOLE AND EXCLUSIVE REMEDIES FOR ANY CLAIMS THAT FORGEROCK HAS VIOLATED ANY WARRANTY. . This clause does not limit or disclaim any of the warranties specified in the GSA Schedule 70 contract under FAR 52.212-4(o). In the event of a breach of warranty, the U.S. Government reserves all rights and remedies under the contract, the Federal Acquisition Regulations, and the Contract Disputes Act, 41 U.S.C. 7101-7109.

## **10. Indemnity.**

10.1. ForgeRock Intellectual Property Indemnification. ForgeRock agrees to indemnify Customer against any damages finally awarded against Customer including reasonable attorney's fees incurred in connection with a third party claim alleging that the Customer's use of the unaltered Software infringes or misappropriates any third party U.S. or European Union member states' patent or copyright in the country designated for delivery of the Software in accordance

with the terms of this Agreement, provided that Customer provides prompt written notice of such claim to ForgeRock, grants ForgeRock the sole right to control and defend such claim to the extent permitted by 28 U.S.C. 516, and provides to ForgeRock all reasonable assistance. In the event of a claim or threatened claim under this Section by a third party, ForgeRock may, at its sole option: (a) revise the Software so that it is no longer infringing, (b) obtain the right for Customer to continue using the Software, or (c) terminate the Agreement upon thirty (30) days' notice and refund any license fees received by ForgeRock, reduced on a three-year straight line pro-rata basis. Notwithstanding the foregoing, ForgeRock shall have no liability or indemnification obligations from claim that arise from: (i) a version of the Software other than the then current version, (ii) modification of the Software by anyone other than ForgeRock, (iii) combination, operation or use of the Software with any other products not supplied by ForgeRock, (iv) any claim made for any use of the Software outside of a valid License Term, (v) to the extent any such claim arises from any infringement or alleged infringement of any third party's Intellectual Property covering a standard set by a standard setting body, or (vi) any claim or damages arising after ForgeRock's notice to Customer that Customer should cease use of the Software in accordance with this paragraph. Nothing in the foregoing shall be interpreted to: (1) violate DOJ's right (28 U.S.C. 516) to represent the Customer in any case and/or (2) require that the Customer give sole control over the litigation and/or settlement. Any conflicting term in ForgeRock's EULA are hereby deemed to be deleted.

10.2. THIS SECTION 10 STATES THE ENTIRE LIABILITY OF FORGEROCK AND THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE SOFTWARE.

## **11. Limitation of Liability.**

11.1. Limitation on All Damages. TO THE EXTENT NOT PROHIBITED BY LAW, EXCEPT FOR EITHER PARTY'S BREACH OF SECTION 8 (CONFIDENTIALITY) AND CUSTOMER'S LIABILITY ARISING UNDER SECTION 4.1 (CUSTOMER OBLIGATIONS), IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE 100% OF THE FEES PAID IN CONNECTION WITH THE RELEVANT ORDER FORM WHICH GAVE RISE TO THE DISPUTE. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS FOR ITS IDENTITY LICENSES. 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.

11.2. Disclaimer of Consequential Damages. EXCEPT FOR EITHER PARTY'S BREACH OF SECTION 8 (CONFIDENTIALITY) AND CUSTOMER'S LIABILITY ARISING UNDER SECTION 4.1 (CUSTOMER OBLIGATIONS), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ANY LOST PROFITS, REVENUE, OR DATA, INTERRUPTION OF BUSINESS OR FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN.

## 12. General.

12.1. Publicity. Unless specifically authorized by the Customer in writing, ForgeRock may not include the U.S. Government's name and logo in its vendor lists or on its website and marketing collateral.

12.2. Governing Law. 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 ForgeRock's EULA referencing equitable remedies are deemed not applicable to a respective Order and are therefore deemed to be deleted.

12.3. Dispute Resolution and Venue. Any disputes relating to ForgeRock's EULA and to this Agreement shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. Customer expressly acknowledges that Carahsoft, on behalf of ForgeRock, shall have standing to bring such claim under the Contract Disputes Act.

12.4. 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 ForgeRock's EULA are hereby deemed to be deleted.

12.5. Notices. Any notices required under this Agreement shall be given in writing, shall reference this Agreement, and shall be deemed to have been delivered and given: (a) when delivered personally, (b) three (3) business days after having been sent by registered or certified U.S. mail, return receipt requested, or (c) one (1) business day after deposit with a commercial overnight courier, with written verification of receipt. All communications shall be sent to the addresses set forth in the preamble of this Agreement or to such other address as may be designated by a party by giving written notice to the other party. Notices shall be addressed to the Legal Department.

12.6. Force Majeure. Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by ForgeRock does not apply to the Agreement and all clauses in the ForgeRock's EULA referencing unilateral termination rights of ForgeRock are hereby deemed to be deleted.

12.7. Compliance with Law. The Software is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply fully with all laws and regulations of the United States and other countries ("**Export Laws**") to assure that neither the Software, nor any direct products thereof are: (a) exported, directly or indirectly, in violation of Export Laws, either to any countries that are subject to U.S. export restrictions or to any end user who is prohibited from participating in the U.S. export transactions by any federal agency of the U.S. government or (b) intended to be used for any purpose prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation. Further, Customer agrees to comply with all relevant anti-bribery and anti-corruption laws in effect in the U.S. and its local regulations, if any. As such, Customer acknowledges and agrees to comply with the United State

Foreign Corrupt Practices Act in all business related to this Agreement.

12.8. US Government Restrictions. Customer acknowledges that the Software consists of "commercial computer software" and "commercial computer software documentation" as such terms are defined in the Code of Federal Regulations. No government procurement regulations or contract clauses or provisions shall be deemed a part of any transaction between the parties unless its inclusion is required by law, or mutually agreed in writing by the parties in connection with a specific transaction. Use, duplication, reproduction, release, modification, disclosure or transfer of the Software is restricted in accordance with the terms of this Agreement.

12.9. General. No modification, termination, extension, renewal or waiver of any provision of this Agreement shall be binding upon a party unless made in writing and signed by both parties. 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.

12.10. No modification of this Agreement or of any term or condition hereof shall result due to either party's acknowledgment or acceptance of the party's forms (e.g., purchase orders, acknowledgment forms, etc.) containing different or additional terms and conditions unless expressly and specifically accepted by both parties by means of a writing which references this Section. In the event that licenses or services are purchased hereunder from an Authorized Reseller, ForgeRock's sole obligations and liabilities shall be as set forth in this Agreement and, in no event, shall the terms of such Authorized Reseller's separate contract with the Customer be binding on ForgeRock. A waiver on one occasion shall not be construed as a waiver of any right on any future occasion. No delay or omission by a party in exercising any of its rights hereunder shall operate as a waiver of such rights. In performing their respective duties under this Agreement ForgeRock and Customer will be operating as independent contractors and neither party is the legal representative, agent, joint venturer, or employee of the other party for any purpose whatsoever. The headings of the Sections of this Agreement are for convenience only and shall not be of any effect in construing the meaning of the Sections. In the event that it is determined by a court of competent jurisdiction that any provision of this Agreement is invalid, illegal, or otherwise unenforceable, such provision shall be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement shall remain in full force and effect and bind the parties according to its terms. To the extent any provision cannot be enforced in accordance with the stated intentions of the parties, such terms and conditions shall be deemed not to be a part of this Agreement. This Agreement, including Order Forms, may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement constitutes the entire and exclusive agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements between the parties with respect to such subject matter.

11.9 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 ForgeRock's EULA are hereby deemed to be deleted.

11.10 Third Party Terms. Subject to the actual language agreed to in the Agreement by the Customer, 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.