

Manhattan Software
Marlborough Technology Park
200 Nickerson Rd
Marlborough, MA 01752
<http://www.manhattansoftware.us/>

**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.

CenterStone MASTER CORPORATE SERVICE AGREEMENT

Manhattan Software, Inc. (“MC”), a Delaware corporation with principal offices located at 425 Fortune Blvd., Milford MA 01757 and the Company listed at the end of this agreement and hereafter referred to as “Client” agree that the following terms and conditions will apply to each CenterStone Service Proposal under this CenterStone Master Service Agreement (“Agreement”).

BACKGROUND

MC is an applications services provider that hosts, implements, integrates and supports third party software applications residing at MC’s enterprise data centers for an up-front fee and an annual service fee from Client.

1. SCOPE OF SERVICE

1.1 Services

MC will provide services defined in mutually executed Service Proposals which will be attached and incorporated into this Agreement as separate Exhibits. Unless specified in writing to the contrary, each Service Proposal shall be independent from, and have no impact upon, other Service Proposals.

1.2 Additional Services

Client may upgrade or order additional CenterStone Services (or components of each Service) by contacting MC. MC will send Client a new Service Proposal, based on MC’s requirements analysis and/or proposal for the additional services. Service Proposals are effective when mutually executed.

2. DEFINITIONS

“Addendum (a)” means any document executed by both parties which modifies this Agreement or any Service Proposal. “Agreement” means this CenterStone Service Agreement, and all current and future attached Addendum (a) and all mutually executed Service Proposals. “Consulting Services” means the services provided by MC as may be specified on a Service Proposal. “Client Content” means all proprietary software created or developed by Client, all text, multimedia, graphics, audio, video, data and other information provided by Client. “Documentation” means the Software Application user manual(s) and any other materials supplied by MC concurrently with the delivery of and for use with the CenterStone Service. “Effective Date” means the date the Agreement is signed and accepted by MC. “Lease Abstraction Data Entry Review Period” means the five (5) day period commencing upon notification by MC that the Client may review certain lease abstraction data entry performed by MC. “Network” means MC’s data centers and network. “Hardware” means any equipment MC uses for the CenterStone Service. “CenterStone Service” means the collective bundling of Consulting Services (if applicable) access to the Network, Hardware, Software Application(s), and technology as outlined in Service Proposals. “Service Proposal” means a written order for any CenterStone Service. “Software Application” means the Third Party computer software provided by MC to Client for use with the CenterStone Service. “Third Party” means any entity other than MC and Client.

3. LICENSE & OWNERSHIP RIGHTS

3.1 Rights

MC: (a) grants to Client a limited, non-transferable, non-exclusive license, in object code only, to use the CenterStone Service solely to support Client’s business, provided however, that Client may not (i) use the CenterStone Service in a resale capacity, or (ii) process and/or analyze Third-Party data as a service bureau or on any Hardware other than as set forth in the relevant Service Proposal; and (b) retains all right, title, and interest in and to any Hardware, Software Application(s), and other technology and materials supplied by MC.

3.2 Client Content Ownership

Client retains all right, title, and interest in and to the Client Content.

3.3 Restrictions

Client agrees that the Software Application(s) contain trade secrets and other valuable proprietary information belonging to MC and/or its Third-Party vendors. Client will not (a) alter, or permit a Third Party to alter, any part of any Software Application; (b) copy, or permit a Third Party to copy any Software Application; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from any Software Application or CenterStone Service; (d) license, sell, transfer, lease, or disclose the CenterStone Service or any Software Application ; or (e) allow third parties or any non-employee of Client to access CenterStone Services without specifically and fully identifying such third parties where requested within the CenterStone Service.

4. TERM

4.1 Agreement Term

The initial term of this Agreement shall extend for a period of **three (3) years** from the Effective Date (“Initial Term”) and shall automatically renew for successive one (1) year periods thereafter (the “Renewal Periods”), unless terminated pursuant to Section 10.1 below. Term shall mean the Initial Term or any Renewal Period.

4.2 Service Proposal

Service Proposals include a performance period. If any Service Proposal performance period extends beyond the Initial Term or any Renewal Period, this Agreement will remain in effect until the Service Proposal performance period is completed.

5. PAYMENTS

5.1 Fees, Payment, and Taxes

Client will pay the amount(s) specified in each Service Proposal. Fees for any Renewal Period will be based on the then prevailing rate for the underlying services provided. Payments are due within thirty (30) days of Client’s receipt of MC’s invoice. Late payments are subject to an interest charge, which is the lower of one and one-half percent (1.5%) per month or the maximum legal rate.

6. WARRANTIES & LIMITATIONS

6.1 Warranties

(a) MC warrants and represents that MC has all rights and authority necessary to enter into this Agreement and carry out its terms and conditions. (b) MC warrants that work performed pursuant to any Service Proposal will be performed by qualified personnel using commercially reasonable efforts. (c) MC warrants and represents that to its knowledge the

CenterStone Service and Software Applications do not infringe upon any copyright, patent, trademark, trade secret, or any other intellectual property rights or personal or proprietary rights of any third party.

(d) MC warrants and represents that to its knowledge the Software Applications do not include any software virus, worm, virus macro, Trojan Horse, or other such component designed to permit unauthorized access, to disable, erase, or otherwise harm or maliciously alter software, hardware or data.

6.2 Lease Abstraction Data Entry Review and Confirmation

If the Client requests that MC provide lease abstraction data entry services, the Client agrees to promptly review all of the data entered by MC. Unless MC is notified by the Client within five (5) business days after notification by MC to the Client that such data entry is complete, the data as entered shall be deemed in all material respects to be accurate, complete and acceptable to the Client and MC shall bear no further responsibility whatsoever for the accuracy of such data entry.

6.3 Limitations

EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, MC DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.

7. CLIENT CARE

7.1 Client Assistance Center/ Service Proposals

Each Service Proposal contains services to be provided to Client. MC's Client Assistance Center is available to Client on a 7x24x365 basis. Client Assistance Center calls may be monitored and/or recorded for quality control.

7.2 Maintenance Window

MC has established maintenance windows on Tuesdays and Fridays between 2am and 6am (ET). During this time, MC may take down a Client's server(s) to conduct routine maintenance checks. If Client's server(s) will be down for more than two (2) minutes within this window, MC will so advise Client prior to any proposed maintenance. MC will not be responsible for any damages or costs incurred by Client, if any, for scheduled down time. MC may change its maintenance window upon prior notice to Client.

8. INDEMNITY

8.1 MC Indemnity

MC will: **(a)** defend Client against any claim that the services delivered by MC infringe a Third Party patent, copyright, trade secret, or other proprietary right in the United States; and **(b)** pay reasonable

costs and attorneys fees and damages finally awarded against Client resulting from such claims.

8.1.1 Infringement Remedies. In addition, if in MC's opinion, a legitimate claim of infringement is made, MC will, at its sole option and expense, (subject to its agreement with Software Application vendors) either **(a)** procure for Client the right to continue using the Software Application in question, or **(b)** replace or modify the infringing service(s) delivered by MC so that it becomes non-infringing as long as functionality is not materially and adversely affected. If neither alternative is reasonably available, the Service Proposal affected by the infringing service(s) will be terminated with no further payment obligations by Client thereunder.

8.1.2 Exclusions. MC shall not indemnify Client or be liable for claims based on **(a)** the combination, operation or use of Software Applications or other technology with hardware, data or software not supplied or approved by MC; or **(b)** modifications to the Software Application not made by MC.

8.2 Client Indemnity

Client will **(a)** defend MC against any claims by Third Parties arising from Client content provided to MC or Client misuse of the Software Applications or CenterStone Service provided by MC excluding: (i) proprietary rights infringement claims under Section 8.1 (MC Indemnity); and (ii) claims for bodily injury or damages to tangible personal property proximately caused by the negligent act, error or omission of MC, and **(b)** pay costs, damages, settlements and attorney's fees incurred by or awarded against MC.

8.3 Conditions

The indemnification obligations in Sections 8.1 (MC Indemnity) and 8.2 (Client Indemnity) are contingent on the party seeking indemnification providing: **(a)** Written notice within twenty (20) days of receiving a claim; and **(b)** All necessary information within its control for the indemnifying party to conduct a defense. An indemnifying party shall control any defense and settlement negotiations. The non-indemnifying party may participate in the defense or settlement at its own expense.

9. LIMITATION OF LIABILITY

MC's liability to Client for damages (regardless of the form of action, whether in contract, tort, warranty or otherwise) shall not exceed the amounts paid by Client to MC up to the date of the event which caused the damage. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFIT, REVENUE, OR DATA, ARISING OUT OF OR RELATING TO THIS AGREEMENT EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE

POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGES.

10. TERMINATION

10.1 Termination for Convenience

Either party may terminate this Agreement at the expiration of the Term upon written notice to the other party received at least ninety (90) days prior to the end of the Term. Termination of this Agreement automatically terminates all Service Proposals. Termination of one Service Proposal has no effect on any other Service Proposal or the Agreement.

10.2 Termination for Breach

Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches any obligation and fails to cure such breach within thirty (30) days after receiving notice. Termination of this Agreement automatically terminates all Service Proposals. Termination of one Service Proposal has no effect on any other Service Proposal or the Agreement so long as the defaulting party complies with the Agreement and other Service Proposals. Notwithstanding anything to the contrary, either party shall have the right to terminate this Agreement in the event the other party **(a)** terminates or suspends its business, **(b)** becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute which is not dismissed within 60 days, **(c)** becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority, or **(d)** has wound up or liquidated, voluntarily or otherwise. After termination by MC, MC may terminate the license and take possession of all copies of the CenterStone Services. Within ten (10) days after termination, Client shall return to MC all tangible portions of the CenterStone Services, including any Hardware, Software Applications and Documentation provided by MC and MC shall return to Client all Client Content.

10.3 Effect of Termination

Termination of this Agreement due to Client's termination under Section 10.1 or termination for breach or under Section 10.2 (a-d) does not affect any sums due to MC or any legal or equitable remedies available to either party. All Client's rights to use the CenterStone Services will immediately terminate, and all unpaid undisputed charges will become immediately due and demandable. Sections 3.1(b) (MC ownership), 3.2 (Client Content Ownership) 3.3 (Restrictions) 5 (Payment), 8 (Indemnity), 9 (Limitation of Liability), and 11 (General Terms) survive termination. Client is responsible for immediate payment to MC of all monies due for the remainder of the Term of each of the Service Proposals in effect at the effective date of such termination if this Agreement is terminated by Client or the remainder of the Term of a specific Service Proposal if such Service Proposal is terminated by

Client under Section 10.1 or if terminated by MC under Section 10.2. In the event of termination of this Agreement by Client in accordance with Section 10.2 as a result of breach by MC or other causes related to MC as set forth in 10.2 (a-d), Client shall be entitled to the pro-rata return of any payments previously made which pertain to remaining periods on the Term of each Service Proposal in effect on the effective date of termination of this Agreement or which pertains to the remaining period on the Term of the specific Service Proposal which is terminated. All pro-rata refund will become immediately due and demandable.

10.4 Return of Property Upon Termination

Upon termination of this Agreement or any Service Proposal, at no additional cost to Client, and in a format and on a date mutually agreed, MC shall deliver to Client all Client Content. The Parties will also return to one another, within sixty (60) days of a request, any property or confidential information, in whatever form or media to a disclosing party. After termination, MC will retain the IP addresses or address blocks assigned by MC.

11. GENERAL

11.1 Confidentiality.

Each party shall retain in confidence all proprietary information transmitted to the receiving party which the receiving party should know from markings or the nature of the material is proprietary, and will make no use of such information except as permitted by this Agreement. Client will use all reasonable precautions and take all necessary steps to prevent the CenterStone Service from being acquired by unauthorized persons, and to take appropriate action, by instruction, agreement, or otherwise, with regard to all persons permitted access to the CenterStone Service to ensure the CenterStone Service is protected. Client shall not disclose the CenterStone Service to any person other than as provided in this Agreement. Neither party shall have an obligation to maintain the confidentiality of information that **(a)** it has rightfully received from another party prior to its receipt from the disclosing party or **(b)** enters the public domain by some action other than breach of this Agreement by the receiving party; or **(c)** is independently developed by the receiving party. Each party shall safeguard confidential information disclosed by the other using the same degree of care it uses to safeguard its own confidential information and, in no event, less than a reasonable degree of care. Each party's obligation under this paragraph shall extend for a period of three (3) years following termination of this Agreement.

11.2 Miscellaneous

(a) Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned, or otherwise transferred by Client, and any such

attempted transfer shall be void without the advance written consent of MC, such consent not to be unreasonably withheld or delayed; *provided, however*, that such consent shall not be required if Client assigns this Agreement to a wholly owned subsidiary or in connection with a merger, acquisition, or sale of all or substantially all of its assets, unless the surviving entity is a competitor of MC in MC's sole opinion. MC may assign its right to collect payments without Client's consent. **(b)** This Agreement is governed by Massachusetts law, without respect to conflicts of law principles. The parties consent to the exclusive jurisdiction and venue of the state and federal courts sitting in and for Suffolk County, Massachusetts. **(c)** No waiver of any breach of this Agreement shall constitute a waiver of any other breach or any other provision of the Agreement, and no waiver shall be effective unless made in writing. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be restated to reflect, as nearly as possible, the original intentions of the parties in accordance with applicable law and the remainder of this Agreement shall remain in full force. **(d)** A party will pay all reasonable costs the other party incurs in successfully enforcing this Agreement, including reasonable attorneys' fees. **(e)** Neither party shall be liable for any delay or failure due to acts of God, natural disaster, labor disputes, changes in government policy/law, riots, war, epidemics, acts or omissions of vendors or suppliers, transportation difficulties, or other occurrences which are beyond either party's reasonable control (collectively, "Force Majeure"). If MC is delayed in the installation of the CenterStone Service for reasons beyond its control, such installation shall take place as soon as is reasonably possible. This provision shall not apply to any Client payment obligations. **(f)** Any notice shall be in writing and delivered by hand or mailed by overnight express charges prepaid or certified mail with return receipt requested to this Agreement's signatories at the above addresses. Notices shall be deemed received when delivered with receipt confirmed. **(g)** During the term of this Agreement and for one (1) year thereafter, neither party will solicit or cause to solicit the employees or representatives of the other party. Further, neither party will employ, make an employment offer to, or otherwise engage any candidate or consultant who is considered for services and/or interviewed as a candidate to work for

the other party. Notwithstanding the foregoing, either party may hire a candidate who responds to a general advertisement (in any medium). **(h)** This Agreement is solely for the benefit of the parties and not for the benefit of any Third Parties. **(i)** This Agreement (including all mutually executed Service Proposals and Addenda) contains the full understanding between the parties and supersedes all prior representations or agreements, whether oral or written. The Agreement (including all Service Proposals and Addendum (a), if any) may only be changed by a mutually executed document. **(j)** To the extent of any inconsistencies between the Agreement, any Addenda to this Agreement and the Service Proposal, the Agreement shall control. **(k)** No provision of this Agreement will be construed against a party because it drafted the provision. **(l)** This Agreement may be signed in counterparts.

By their authorized signature below, the parties represent their understanding of and assent to this Agreement.

Client: _____
Address: _____
City, State, Zip: _____
State of Incorporation _____

SIGNATURE: _____
NAME: _____
TITLE: _____
DATE: _____

Manhattan Software, Inc.
425 Fortune Blvd., Suite 200
Milford, MA 01757

SIGNATURE: _____
NAME: _____
TITLE: _____
DATE: _____