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**Carahsoft Rider to Manufacturer End User License Agreements  
(for U.S. Government End Users)**

- 1. Scope.** This Carahsoft Rider and the Application Security, Inc. ('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
    - (a) Error! Unknown document property name.**

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.

**APPLICATION SECURITY, INC. LICENSE  
AGREEMENT**

CAUTION: Application Security, Inc. is willing to license the Application Security, Inc. software and related documentation (collectively "Programs") which you ("Customer") have received only upon the condition that you accept all of the terms contained in this License Agreement ("Agreement"). Read the terms and conditions of the Agreement carefully. Receiving the license key establishes a binding agreement between you as the Customer and Application Security, Inc.

APPLICATION SECURITY, INC. ("AppSecInc") GRANTS CUSTOMER A LIMITED LICENSE TO USE PROGRAMS AS INDICATED BELOW.

1. **RIGHT TO USE LICENSE:** Subject to the terms and conditions of this Agreement, AppSecInc grants Customer a nonexclusive, nontransferable limited license to use the Programs in the indicated operating environment identified by AppSecInc in writing (e.g. in the applicable purchase order, Master License Agreement or purchase confirmatory e-mail). Unless specified in another agreement, Customer may use the Programs only for Customer's internal business operations. Customers may not use the Programs in connection with any other commercial or production use purposes unless specifically authorized by AppSecInc. For the avoidance of doubt, "internal business operations" is limited to internal use of the Programs by Customer's employees, agents, and/or subcontractors for the sole requirements of Customer's business; provided that such employees, agents, and/or subcontractors are bound by terms and conditions which are no less protective of the Programs as those contained in this Agreement. If Customer desires to use the Programs for any use other than the use allowed under this Agreement or applicable Master License Agreement, Customer must contact AppSecInc, or an authorized AppSecInc reseller, to obtain the appropriate licenses. Customer may make one copy of each licensed Program for backup, marked with every notice on the original. No other copies shall be made without AppSecInc's prior written consent. Customer shall not: (a) remove any product identification, copyright notices, or other notices or proprietary restrictions from Programs; (b) use Programs for commercial timesharing, rental, or service bureau use; (c) transfer, sell, assign or otherwise convey Programs to another party without AppSecInc's prior written consent; (d) cause or permit reverse engineering, disassembly, or decompilation of Programs, except to the extent required for interoperability or to the extent that the foregoing restriction is expressly prohibited by law; or (e) disclose results of any benchmark tests of any Program to any third party without AppSecInc's prior written approval. This Agreement does not authorize Customer to use any AppSecInc name, trademark or logo.
2. **COPYRIGHT/OWNERSHIP OF PROGRAMS:** Programs are the confidential and proprietary products of AppSecInc and are protected by copyright and other intellectual property laws. Customer acquires only the right to use Programs and does not acquire any rights, express or implied, in Programs and all copies and portions thereof other than those specified in this License. AppSecInc, and/or its licensors, shall at all times exclusively retain all rights, title, interest, including intellectual property rights, in Programs.
3. **LIMITATION OF LIABILITY:** IN NO EVENT SHALL APPSECINC OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR DATA USE, INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE, EVEN IF APPSECINC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL APPSECINC'S LIABILITY FOR DAMAGES HEREUNDER, WHETHER IN AN ACTION IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE, SHALL EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO APPSECINC FOR THE PROGRAMS, EVEN IF APPSECINC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4. **TERMINATION:** The term of this Agreement shall begin on the date Customer receives the license key for the Programs and shall continue until the date identified in writing by AppSecInc in the applicable documentation provided to Customer confirming Customer's license of the Programs (the "Term"). This Agreement is effective until the earlier of (a) the end of the Term, or (b) termination in accordance with the provisions of this Section 4. Customer may terminate this license at any time by destroying all copies of the Programs. AppSecInc shall have the right at its discretion to terminate Customer's right to use the Programs at any time if Customer fails to comply with any of the terms or conditions of this Agreement. Upon such termination, Customer must destroy all copies of the Programs. The Disclaimer of Warranty and Limitation of Liability Sections above shall survive termination of this Agreement.
5. **LIMITED WARRANTY:** AppSecInc warrants that for a period of ninety (90) days following the date the Programs are downloaded by Customer, the Programs will be free from material defects in materials and workmanship. In the event of a breach of such limited warranty, Customer's sole and exclusive remedy shall be to have AppSecInc use commercially reasonable efforts to correct any nonconformity in the Programs computer code, either by modification to such Programs computer code, or via workaround. AppSecInc's obligation to so use commercially reasonable efforts shall be Customer's sole and exclusive remedy for any such operational defect or error in such Programs, and such obligation shall constitute AppSecInc's entire liability therefore in contract, tort, negligence or otherwise. AppSecInc shall have no obligation to use commercially reasonable efforts to correct nonconformities resulting from (i) any modifications of such Programs not authorized by AppSecInc; (ii) any use or misuse thereof contrary to AppSecInc's specifications; (iii) AppSecInc Programs that has been installed or operated in contravention of requirements contained in such specifications; (iv) AppSecInc Programs that has been superseded by later versions, updates, upgrades or releases lacking such nonconformity; (v) AppSecInc Programs which operates properly in combination with third party software or hardware recommended by AppSecInc; or (vi) AppSecInc Programs which has been modified by Customer or other user not in accordance with the AppSecInc's specifications or applicable guidelines (collectively, the items referred to in Sections 5(i) – (vi), "Warranty Exclusions").
6. **RESTRICTED RIGHTS:** The Programs and Documentation are provided with Restricted Rights. Use, duplication or disclosure by the United States government is subject to the restrictions as set forth in the Rights in Technical Data and Computer Software Clauses in DFARS 252.227-7013(c) (1) (ii) and FAR 52.227-19(c) (2) as applicable. Manufacturer is Application Security, Inc., 350 Madison Avenue, Sixth Floor, New York, NY 10017.
7. **EXPORT ADMINISTRATION:** The Programs, including technical data, 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 Programs, nor any direct products thereof are (1) exported, directly or indirectly, in violation of Export Laws, either to any countries that are subject to U.S.A export restrictions or to any end user who has been prohibited from participating in the U.S.A. export transactions by any federal agency of the U.S.A. government. or (2) intended to be used for any purpose prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation. Customer further acknowledges that the Programs may include technical data subject to export and re-export restrictions imposed by U.S.A. law.
8. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTY IN SECTION 5, THE PROGRAMS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND APPSECINC DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED WITH RESPECT TO THE PROGRAMS, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. **CONFIDENTIALITY:** Customer hereby acknowledges that the Programs are Confidential Information of AppSecInc. Confidential Information also includes, without limitation, trade secrets, documentation, specifications, designs, development plans, business plans, sales projections, business records, prices and customer lists of AppSecInc. The terms of this Agreement shall not be considered Confidential Information. Customer shall maintain the Confidential Information in strict confidence and prevent disclosure of the Confidential Information using reasonable measures. Customer shall not use the Confidential Information for any purpose other than for the purpose of exercising the rights expressly granted under this Agreement. The obligations of confidentiality set forth in this Section 9 shall survive any termination of this Agreement. In the event of any breach of the provisions of this Section 9, Customer agrees that AppSecInc would suffer irreparable harm and shall therefore be entitled to obtain injunctive relief against Customer in addition to any other rights and remedies available to AppSecInc at law or in equity, or otherwise.
10. **CHOICE OF LAW; JURISDICTION:** This Agreement will be governed by and construed and enforced in accordance with the substantive law of the State of New York, without regard to its conflict of laws provisions, and any and all claims arising hereunder shall be subject to the exclusive jurisdiction of courts residing in that jurisdiction.
11. **WAIVERS:** No term or provision shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. The waiver of either party hereto of any right hereunder or of the failure to perform or of a breach by the other party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by such other party whether of a similar nature or otherwise.
12. **LICENSED SOFTWARE:** The Programs may contain software licensed by one or more third parties ("3<sup>rd</sup> Party Software"). Terms and conditions applicable to 3<sup>rd</sup> Party Software are located within the product's installation directory ("3<sup>rd</sup> Party Terms") and are expressly incorporated herein. In the event of a conflict between the terms of this Agreement and those in the 3<sup>rd</sup> Party Terms, with respect to AppSecInc.'s Programs, the terms in this Agreement shall prevail.
13. **MISCELLANEOUS:** This Agreement contains the entire understanding of the parties and supersedes all other agreements, oral or written, with respect to the subject matter covered in this Agreement. This Agreement may be modified only by a writing executed by duly authorized representatives of AppSecInc and Customer. If there is any conflict between the terms and the conditions herein, the most current AppSecInc Master License Agreement shall govern. The Master License Agreement supersedes and replaces all prior or contemporaneous understandings and agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgements, or quotations. Customer may not assign, pledge, or otherwise transfer this Agreement, nor any rights or obligations hereunder in whole or in part to any entity, without AppSecInc's prior written consent. In the event that it is necessary to undertake legal action to collect any amounts payable hereunder, AppSecInc shall be entitled to recover its costs and expenses including, without limitation, reasonable attorneys' fees.

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