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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 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.



TOUCHSHARE SOFTWARE LICENSE AGREEMENT

(This Agreement is to be completed and signed by both Licensor and Licensee, unless this Agreement is incorporated as an integral part of a separate sales/purchase agreement, in which case the signatures on or other acknowledgment of the parties regarding such sales/purchase agreement shall also constitute both Licensor's and Licensee's acknowledgment of and agreement to the terms of this Agreement.)

This Agreement is made this ___ day of _____, 201__ ("Effective Date"), between (i) TouchShare, Inc. ("Licensor"), a Delaware corporation, with its principal place of business at 46 Smith Alley, Suite 230, Pasadena, Ca. 91103, and (ii) _____ ("Licensee"), a corporation of _____, or a federal, state, or local governmental unit, with its principal place of business at _____, which, intending to be legally bound, hereby agrees as follows:

1. INTRODUCTION

- 1.1 Licensor owns proprietary commercial computer software products that operate TouchShare® hardware systems or operate in conjunction with other electronic devices.
- 1.2 Licensee desires to obtain a license from Licensor to use such software solely in object code form and in accordance with the Documentation and the terms and conditions of this agreement ("Agreement").
- 1.3 Licensor is willing to issue a license to Licensee on these terms.

2. DEFINITIONS

- 2.1 "Documentation" shall mean available functional specifications, reference manuals, user guides, system operation guides and other materials supplied by Licensor to Licensee in written or machine readable form.
- 2.2 "TouchShare Software" shall mean the Licensor's proprietary commercial computer software products that operate TouchShare hardware systems or operate in conjunction with other electronic devices as described in Licensor's Documentation, together with related Documentation and including, at any given time, all previously released Standard Enhancements and any Optional Enhancements which may be furnished to Licensee by Licensor. The term "TouchShare Software" includes, without limitation, all software identified with TouchShare trademarks, and any TouchShare Software Development Kits (SDK) or Application Programming Interfaces (API). It excludes all other applications, operating systems, and software, whether or not accessed or used with the aid of TouchShare Software.
- 2.3 "Standard Enhancements" shall mean those minor improvements, additions and revisions to the TouchShare Software and/or Documentation that are furnished to Licensee at no additional fee.
- 2.4 "Optional Enhancements" shall mean those major improvements, additions and market-specific modules to the TouchShare Software and/or Documentation that are furnished to Licensee at an additional fee.
- 2.5 "Licensor Service Rate" shall mean the applicable hourly rates charged by Licensor for specific professional services, as specified pursuant to the Schedule 70 Contract.



2.6 “Specifications” shall mean the description of the functions performed by the TouchShare Software as set forth in the Documentation.

2.7 “Warranty Period” Warranty Period” shall mean a 90 day period after customer licensing of the TouchShare Software product, which should occur no later than 60 days from the initial delivery to the customer; or such other period of time as set forth and agreed to by both parties in the applicable purchase order accompanying this Agreement.

3. LICENSED RIGHTS

3.1 License Grant. Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, a nonexclusive, nontransferable license to use the TouchShare Software solely in object code form and in conjunction with the TouchShare hardware systems or other electronic devices furnished or approved in writing by Licensor in connection with this License. As to each element of TouchShare Software, this license is conditioned on the payment of the applicable fees per Section 4 and shall terminate upon the expiration of the subscription term set forth in the applicable sales/purchase order accompanying this Agreement. Any further limitations applicable to particular TouchShare Software products, such as limitation on the number of seats or users or duration of license term, will be referenced in the applicable sales/purchase order accompanying this Agreement.

3.2 License Restrictions. Licensee will not copy or modify the TouchShare Software or Documentation, directly or through others, in whole or in part, provided, however, that Licensee shall be permitted to make reasonable numbers of back-up copies of the Documentation.

4. PAYMENTS

4.1 License Fee. In return for the license granted in Section 3 and delivery of the TouchShare Software in object code form, Licensee shall pay the license fee(s) in the amount(s), and in accordance with Schedule 70 Contract executed between Licensee and Licensor. Nothing in this Agreement (including any documents or provisions incorporated by reference) entitles Licensor to delivery of any TouchShare Software source code.

4.2 Payment Terms. All amounts due and payable to Licensor or under a related sales/purchase agreement shall be invoiced and paid in U.S. Dollars and per the terms of the Schedule 70 Contract.

5. OWNERSHIP

5.1 TouchShare Software; Documentation. The components of the TouchShare Software are subject to copyrights and other proprietary rights of Licensor. All rights, title and interest in and to the TouchShare Software, the Documentation and any and all modifications to the foregoing which are prepared by or for Licensor shall not pass to Licensee, but shall be the exclusive property of Licensor. Licensor shall be the sole owner of all inventions, discoveries, improvements, or enhancements relating to the TouchShare Software (including without limitation Standard Enhancements, Optional Enhancements and any other computer program that constitutes a “derivative work” of the TouchShare Software within the meaning of the definition set forth in Section 101 of the U.S. Copyright Act) whether in written or unwritten form and which are developed by or for Licensor or Licensee, and of all methodologies, techniques and know-how resulting from the use of the TouchShare Software by Licensee. Licensor shall retain the exclusive right to reproduce, publish, patent, copyright, sell, license and otherwise make use of the TouchShare Software and all such inventions, discoveries, improvements, enhancements and methodologies with respect thereto except as expressly set forth in this Agreement. Licensee shall keep each and every item to which Licensor retains title free and clear of all claims, liens and encumbrances except those of Licensor, and any act of Licensee, voluntary or involuntary, purporting to create a claim, lien or encumbrance on any such item shall be void.

5.2 Other Software. The parties acknowledge and agree that the terms and conditions of this Agreement are not intended to apply to other software, including any applications or operating systems that may be accessed or used with the



aid of TouchShare Software. All rights, title and interest in and to other software shall be owned, as applicable, by Licensee or the respective licensors of such other software.

5.3 Unauthorized Use. Licensee agrees to notify Licensor immediately of the unauthorized possession, use, or knowledge of any item supplied under this Agreement and of other information made available to Licensee under this Agreement, by any person or organization not authorized by this Agreement to have such possession, use or knowledge. Licensee will promptly furnish full details of such possession, use or knowledge to Licensor, will assist in preventing the recurrence of such possession, use or knowledge, and will cooperate with Licensor in any litigation against third parties deemed necessary by Licensor to protect its proprietary rights.

5.4 No Reverse Engineering. Licensee shall not (i) attempt to decompile TouchShare Software or reverse-engineer TouchShare hardware systems; (ii) use TouchShare Software or TouchShare hardware systems for the purpose of developing or improving a competing device, program, or product; nor (iii) permit others to do any of the foregoing.

6. PROPRIETARY RIGHTS

6.1 Infringement. In the event of a determination that the TouchShare Software or Licensee's use of the TouchShare Software in accordance with the terms of this Agreement infringes any proprietary right of any third party, Licensor shall have the option, at its own expense, to (a) obtain for Licensee the right to continue using the infringing item, (b) replace the infringing item or modify it so that it becomes non-infringing, or (c) terminate the licensed rights granted herein and grant Licensee a refund of all amounts theretofore paid by Licensee, including without limitation license fees and implementation charges, less reasonable depreciation based on usage, which shall in no event be less than the result of a straight-line computation based upon the duration of the license term.

6.2 Exclusions. Licensor shall not be liable for any alleged infringement based upon modification of the TouchShare Software by anyone other than Licensor or use of the TouchShare Software in combination with other software or any other products or devices if such claim would have been avoided but for such modification or combination.

7. CONFIDENTIAL INFORMATION

7.1 Obligations. Licensee acknowledges that the TouchShare Software contains valuable trade secrets of Licensor, and agrees that it shall not under any circumstances disassemble, decompile, or reverse engineer the TouchShare Software. Licensee agrees that it will not disclose or, except as expressly permitted in this Agreement, use any TouchShare Software, Documentation, or other technical information disclosed to it by Licensor ("Confidential Information") and that it will take all reasonable measures to maintain the confidentiality of all Confidential Information in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of equal importance.

7.2 Exceptions. Confidential Information will not include information that (a) is in or enters the public domain without breach of this Agreement, (b) Licensee receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation or (c) Licensee develops independently, which it can prove with written evidence, (d) Information required to be released pursuant to the Freedom of Information Act, or (e) information required to be disclosed pursuant to a court order.

8. LIMITED WARRANTY; EXCLUSIVE REMEDY

8.1 Limited Warranty. Licensor warrants that, during the Warranty Period, the performance of the TouchShare Software will not deviate materially from the Specifications.

8.2 Exclusions. The foregoing warranty does not apply to any software other than the TouchShare Software. In addition, such warranty does not apply to any material deviation which results from (a) modification of the TouchShare



Software by anyone other than Licensor, (b) use of the TouchShare Software for any purpose other than intended, (c) use of any other software, (d) failure by Licensee to install any Standard Enhancement, in accordance with Section 9.3, or any operating system release, (e) any willful or negligent action or omission of Licensee, and (f) any misuse or incorrect use of the TouchShare Software.

8.3 **Exclusive Remedy.** In the event of any failure by the TouchShare Software to perform, in any material respect, in accordance with the warranty set forth herein, the only liability of Licensor to Licensee, and Licensee's sole and exclusive remedy, shall be use by Licensor of commercially reasonable efforts to correct or avoid the deviation.

8.4 **Disclaimers.** THE LIMITED WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND IN LIEU OF, AND LICENSEE HEREBY WAIVES, ALL OTHER REPRESENTATIONS, WARRANTIES AND GUARANTEES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE TOUCH TABLE SOFTWARE FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR COURSE OF PERFORMANCE. LICENSEE EXPRESSLY ACKNOWLEDGES THAT BECAUSE OF THE COMPLEX NATURE OF COMPUTER SOFTWARE, LICENSOR CANNOT AND DOES NOT WARRANT THAT THE OPERATION OF THE TOUCH TABLE SOFTWARE WILL BE WITHOUT INTERRUPTION OR ERROR-FREE.

9. SOFTWARE SUPPORT

Licensor shall furnish the following services throughout the Warranty Period; provided, however, that Licensor shall not be obligated to furnish any such services in circumstances described in Section 9.4:

9.1 **Error Correction.** In the event that the operation of the TouchShare Software deviates materially from the Specifications and such deviation can be replicated by Licensee using the unmodified TouchShare Software maintained by Licensee in accordance with Section 3.4, Licensee shall give Licensor written notification of the deviation in sufficient detail to permit replication and analysis, and shall provide Licensor with all printouts and other information reasonably requested. Upon receipt of notice from Licensee of any deviation, Licensor shall use commercially reasonable efforts, first via telephone access and subsequently (as necessary) by onsite visit, to diagnose the cause of the deviation. Upon completion of the diagnosis, Licensor shall advise Licensee of the source of the deviation. Unless the deviation falls within the exclusions set forth in Section 9.4, Licensor shall use commercially reasonable efforts to correct or avoid the deviation.

9.2 **Telephone Support.** Telephone support will be available to the persons designated in writing by Licensee and approved by Licensor. Such services shall be provided by Licensor during the Warranty Period during the business hours of 9 AM – 5 PM Pacific time. In connection with any request by Licensee for telephone support, Licensee shall provide Licensor with all printouts and other information reasonably requested.

9.3 **Standard Enhancements.** Licensor shall make available all Standard Enhancements to Licensee at no additional charge, by download or other means determined by Licensor. Licensee shall be responsible for installation of each Standard Enhancement in accordance with Licensor's installation instructions within six (6) months after the date of its release and for merging each Standard Enhancement with any modification of the TouchShare Software other than an Optional Enhancement and with any other software. Any assistance (other than telephone support) requested by Licensee shall be provided to Licensee in accordance with the applicable Licensor Service Rate.

9.4 **Exclusions.** Licensor shall not be required to provide any support services described in this Section which are necessitated by, with respect to, or otherwise in connection with: (a) modification of the TouchShare Software by anyone other than Licensor (b) use of the TouchShare Software for any purpose other than intended; (c) use of any other software; (d) failure by Licensee to install any Standard Enhancement, in accordance with Section 9.3, or any operating system release; (e) any willful or negligent action or omission of Licensee; (f) any misuse or incorrect use of the TouchShare Software; or (g) failure to register the software to enable email notifications and online support.



10. POST WARRANTY SUPPORT

Licensee shall be given the opportunity to purchase Software maintenance as described in the applicable sales/purchase order accompanying this Agreement to extend the software support described in Section 9 beyond the Warranty Period for the TouchShare Software.

11. DISPUTES

11.1 The Contract Disputes Act, 41 USC § 601 *et seq.*, shall apply.

12. TERM AND TERMINATION

12.1 Term. The term of this Agreement shall commence upon the Effective Date hereof and shall remain in effect per the terms of the Schedule 70 Contract.

12.2 Subsequent Obligations. Upon any termination of this Agreement, Licensee shall promptly return to Licensor the Documentation for the TouchShare Software, including all copies prepared by or for Licensee. Within sixty (60) days after the effective date of termination, Licensee shall certify in writing that all such materials have been returned.

13. INDEMNIFICATION

13.1 By Licensor. Licensor shall indemnify and hold Licensee harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) arising from any claim, demand, action or proceeding initiated by any third party based upon infringement of a copyright or trade secret as a result of Licensee's use of the TouchShare Software if (a) Licensee has installed any Standard Enhancement supplied by Licensor which results in total or partial avoidance of the alleged infringement; (b) the claim does not arise out of modification of the TouchShare Software by anyone other than Licensor or use of the TouchShare Software with any other software and (c) Licensee has complied with all of the terms and conditions of this Agreement.

13.2 Conditions to Obligation. Licensee shall promptly notify Licensor in the event of the threat or initiation of any claim, demand, action or proceeding to which the indemnification obligation set forth herein may apply.

14. LIMITATION OF LIABILITY

14.1 Limitations and Exclusions. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOSS OF PROFITS OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCURRED BY THE OTHER PARTY AND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. LICENSOR SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN THE DELIVERY, INSTALLATION OR FURNISHING OF ANY DELIVERABLE HEREUNDER.

14.2 Maximum Aggregate Liability. EXCEPT AS PROVIDED IN PARAGRAPH 13, INDEMNIFICATION, THE LIABILITY OF LICENSOR UNDER THIS AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT (INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY) OR TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY), SHALL IN NO EVENT EXCEED (a) WITH RESPECT TO OBLIGATIONS OF LICENSOR UNDER THIS AGREEMENT, THE TOTAL LICENSE FEE ACTUALLY PAID TO LICENSOR BY LICENSEE IN ACCORDANCE WITH SECTION 4.1 HEREOF AND (b) WITH RESPECT TO ANY OPTIONAL ENHANCEMENT DEVELOPED, THE AMOUNT OF THE CHARGE FOR SUCH OPTIONAL ENHANCEMENT ACTUALLY PAID TO LICENSOR BY LICENSEE.

14.3 Acknowledgement. Licensee acknowledges that the limitations of liability and disclaimers of warranty set forth in this Agreement will apply regardless of whether Licensor has tendered delivery of the TouchShare Software, any Optional Enhancement or any other optional services. Licensee acknowledges that Licensor has set its license fees and other prices in reliance on the disclaimers of warranty and limitations and exclusions of liability set forth in this



Agreement and that the same form an essential basis of the bargain between the parties.

15. NON EXPORT

Licensor makes no representations of any kind whatsoever to Licensee that any of the TouchShare Software provided hereunder either is or is not subject to licensing requirements or restrictions on use or disclosure by the United States Government or by any state or foreign government(s), and Licensee expressly agrees that it will independently undertake, at its expense, to determine and obtain all licenses, permissions, and releases, required by the United States Government or any state or foreign government(s). Licensee agrees that it will not export directly or indirectly, the TouchShare Software or any technical data pertaining to the TouchShare Software to any country for which the United States Government or any agency thereof at the time of export requires an export license or other Government approval, (or make it available to a national of such a foreign country), without ensuring compliance with such export requirements.

16. GENERAL TERMS

16.1 Assignment. Neither this Agreement nor any rights granted hereby may be assigned by Licensee without the prior written consent of Licensor. Any attempt by Licensee to assign any rights, duties or obligations without such consent shall be void and without force or effect.

16.2 Modification. This Agreement can only be modified by a written agreement signed by persons authorized to sign agreements on behalf of Licensee and of Licensor, and variance from the terms and conditions of this Agreement in any written notification given by either party shall have no force or effect.

16.3 Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

16.4 Relationship of Parties. Licensor and Licensee each will be and shall act as independent contractors, and no party is authorized to act as an agent or partner of, or joint venture with, the any other party for any purpose. No party by virtue of this Agreement shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

16.5 Notices. All notices shall be in writing and shall be deemed to be delivered when deposited in the United States registered mails, postage prepaid, return receipt requested. All notices shall be directed to Licensee or Licensor at the respective addresses first set forth above or to such other address as either party may, from time to time, designate by notice to the other party.

16.6 Governing Law. Licensee is a U.S. government agency, and Federal law applicable to government contracts and to tort claims against the Federal government shall apply.

16.7 Force Majeure. Neither party shall be liable for any damages or penalty for any delay in performance of, or failure to perform, any obligation hereunder or for failure to give the other party prior notice thereof when such delay or failure is due to the elements, acts of God, delays in transportation, delays in delivery by vendors or other causes beyond that party's reasonable control.

16.8 Non-Waivers. No express or implied waiver by either party of any event of default hereunder shall in any way be, or be construed as, a waiver of any future or subsequent event of default.

16.9 Survival. The respective rights and obligations of the parties under Sections 5, 6, 7, 15 and 16 shall survive the termination of this Agreement.

16.10 Entire Agreement. The parties acknowledge that the Schedule 70 Contract, this Agreement, together with Exhibits A and B hereto, set forth the complete, exclusive and integrated understanding of the parties which supersedes all



proposals or prior agreements, oral or written, and all other prior communications between the parties relating to the subject matter of this Agreement.

16.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

16.12 Federal Customers. The parties agree that the TouchShare Software is commercial computer software, which is licensed pursuant to this Agreement in accordance with Federal Acquisition Regulation (FAR) 12.212. If this Agreement is incorporated in a Federal contract containing the clause FAR 52.227-19, that clause shall be deemed incorporated herein.

16.13 Execution. The parties may indicate their assent to this Agreement either by executing it in the spaces provided below, or by incorporating it by reference or by attachment in a separate duly-executed agreement.

LICENSOR , or Value Added Reseller, on behalf of LICENSOR

By: _____

Title: _____

Date: _____

LICENSEE

By: _____

Title: _____

Date: _____