

Boundless

50 Broad St., Suite 703

New York, NY 10004

www.boundlessgeo.com

**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 ADM 4800.2H, 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.

OPENGEO SUITE ENTERPRISE END USER LICENSE AGREEMENT

The accompanying executable code version of OpenGeo Suite Enterprise and related documentation (the "Product") is made available to you under the terms of the OpenGeo Suite Enterprise End-User Software License Agreement (the "Agreement").

IMPORTANT -- READ CAREFULLY BEFORE INSTALLING OR USING THIS PRODUCT (DEFINED BELOW): THIS IS A LEGAL AGREEMENT BETWEEN YOU AND BOUNDLESS SPATIAL, INC ("BOUNDLESS") COVERING YOUR USE OF THE PRODUCT THAT YOU HAVE ACQUIRED. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT INSTALL OR USE THE PRODUCT. IF YOU HAVE ALREADY INSTALLED THIS PRODUCT AND DO NOT AGREE TO THESE TERMS AND CONDITIONS, PLEASE UNINSTALL THE PRODUCT AND IMMEDIATELY DISCONTINUE ITS USE. YOU AGREE THAT YOUR USE OF THE PRODUCT ACKNOWLEDGES THAT YOU HAVE READ THIS LICENSE, UNDERSTAND IT, AND AGREE TO COMPLY WITH ITS TERMS AND CONDITIONS. SUBJECT TO FAR SECTIONS 1.601(a) AND 43.102, ACCEPTANCE MUST BE MADE BY A DULY WARRANTED CONTRACTING OFFICER.

DURING THE OPENGEO SUITE ENTERPRISE INSTALLATION PROCESS, AND AT LATER TIMES, YOU MAY BE GIVEN THE OPTION OF INSTALLING ADDITIONAL COMPONENTS FROM BOUNDLESS OR THIRD-PARTY SOFTWARE PROVIDERS. THE INSTALLATION AND USE OF THOSE COMPONENTS MAY BE GOVERNED BY ADDITIONAL LICENSE AGREEMENTS.

OPENGEO SUITE ENTERPRISE INCLUDES OPENGEO SUITE. A SOURCE CODE VERSION OF OPENGEO SUITE THAT YOU MAY USE, MODIFY AND DISTRIBUTE IS AVAILABLE TO YOU FREE-OF-CHARGE AT BOUNDLESSGEO.COM.

1. License Grant. Subject to Section 3, Boundless Spatial, Inc. ("Boundless") grants you a limited, non-exclusive, nontransferable, nonsublicensable, revocable, license to Use the executable code version of OpenGeo Suite Enterprise (the "Product"). For purposes of this Agreement, "Use" shall mean accessing, installing, downloading, copying or otherwise benefiting from the functionality of the Product and any documentation. This Agreement will also govern any software upgrades provided by Boundless that replace and/or supplement the original Product, unless such upgrades are accompanied by a separate license, in which case the GSA Customer will have the opportunity to review and accept the written terms of that license, which would then govern.

2. Termination. Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

3. Proprietary Rights.

(a) Subject to the foregoing, Boundless hereby reserves all intellectual property rights in the Product, except for the rights expressly granted in this Agreement.

(b) You may not remove or alter any trademark, logo, copyright or other proprietary notice in or on the Product. This license does not grant you any right to use the trademarks, service marks or logos of Boundless or any third party licensors.

4. DISCLAIMER OF WARRANTY. YOU UNDERSTAND AND AGREE THAT BOUNDLESS MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PRODUCT, WHICH IS PROVIDED "AS IS" AND "AS AVAILABLE." TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, BOUNDLESS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS

FOR A PARTICULAR PURPOSE, AVAILABILITY, ACCURACY, COMPLETENESS, SECURITY, COMPATABILITY, RELIABILITY, OR OTHERWISE, WITH RESPECT TO THE PRODUCT AND ANY SOFTWARE TO WHICH IT IS LINKED, AND THE USE OR THE RESULTS OF THE USE OF ANY CONTENT OBTAINED THROUGH THE PRODUCT. BOUNDLESS DOES NOT WARRANT THAT THE PRODUCT OR ANY CONTENT WILL BE ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE PRODUCT IS FREE OF VIRUSES, WORMS OR OTHER POTENTIALLY DAMAGING COMPUTER PROGRAMS OR FILES. YOU EXPRESSLY AGREE THAT THE ENTIRE RISK AS TO YOUR USE OF THE PRODUCT IS ASSUMED SOLELY BY YOU. MOREOVER, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

5. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BOUNDLESS OR ITS DIRECTORS, COLLECTIVELY, THE "BOUNDLESS PARTIES") BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, OR LOST PROFITS, COST OF COVER, LOSS OF DATA, DISCLOSURE OF DATA, INTERRUPTION OF BUSINESS, RESULTING FROM THIS AGREEMENT, THE PRODUCT, ACTIONS REGARDING YOUR CONTENT, OR ACTIONS REGARDING THIRD PARTIES, REGARDLESS OF THE THEORY OF LIABILITY, INCLUDING EXPRESS CONTRACT, IMPLIED CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, OR MISREPRESENTATION, AND WHETHER OR NOT BOUNDLESS OR AN BOUNDLESS PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BOUNDLESS'S AND THE BOUNDLESS PARTIES' TOTAL LIABILITY TO YOU WILL BE LIMITED TO THE AMOUNTS YOU HAVE PAID BOUNDLESS FOR THE PRODUCT.

BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF DAMAGES, THE LIABILITY OF BOUNDLESS AND THE BOUNDLESS PARTIES SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW.

THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM BOUNDLESS'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

6.. Export Controls. This Agreement is subject to all applicable export restrictions. You must comply with all export and import laws and restrictions and regulations of any United States or foreign agency or authority relating to the Product and its use.

7. U.S. Government End-Users. The Product is a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 and 48 C.F.R. 227.7202. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202, all U.S. Government End Users acquire the Product with only those rights as set forth herein.

8. Open Source Undertaking. Notwithstanding Section 6, if a third party makes a claim against You that Your use of the Product as provided in this Agreement infringes its intellectual property rights, Boundless, at its sole cost and expense, will defend You against the claim and indemnify you from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Boundless up to the amounts you have paid Boundless for the Product, if you (i) notify Boundless promptly in writing, not later than 30 days after you receive notice of the claim, (ii) afford Boundless the opportunity to intervene in any suit or claim filed against the GSA Customer, at its own expense, through counsel of its choosing. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. § 516.

If Boundless believes or it is determined that the Product may have violated a third party's intellectual property rights, Boundless may choose to either modify the Product to be non-infringing (while

substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Boundless may end the license for, and require return of, the Product and refund any fees you may have paid for it.

Boundless will not indemnify you if you alter the Product or use it outside the scope of use identified in the Product's user documentation or if you use a version of the Product which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Product. Boundless will not indemnify you to the extent that an infringement claim is based upon any material not furnished by Boundless. Boundless will not indemnify you to the extent that an infringement claim is based upon the combination of the Product with any products or services not provided by Boundless. Boundless will not indemnify you for infringement caused by your actions against any third party if the Product as delivered to you and used in accordance with the terms of this Agreement would not otherwise infringe any third party intellectual property rights. This section provides your exclusive remedy for any infringement claims or damages.

9. Miscellaneous.

(a) This Agreement together with the underlying GSA Schedule Contract, the GSA Schedule Price List, and any applicable GSA Customer Purchase Orders constitutes the entire agreement between Boundless and you concerning the subject matter hereof, and it may only be modified by a written amendment signed by an authorized representative of the GSA Customer and an authorized executive of Boundless.

(b) Except to the extent applicable law, if any, provides otherwise, this Agreement will be governed by United States Federal law.

(c) This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

(d) If any part of this Agreement is held invalid or unenforceable, that part will be construed to reflect the parties' original intent, and the remaining portions will remain in full force and effect.

(e) A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof.

(f) Except as required by law, the controlling language of this Agreement is English.

(g) You may not assign your rights under this Agreement to any party without the express written consent of Boundless; Assignment by Boundless is subject to FAR 52.232-23 "Assignment of Claims" (May 2014) and FAR subpart 42.12 "Novation and Change-of-Name Agreements."

(h) You agree that you shall only use the Product in a manner that complies with all applicable laws in the jurisdictions in which you use the Product.

(i) This Agreement will be binding upon and will inure to the benefit of the parties, their successors and permitted assigns.