



Carahsoft Rider for Public Sector Agencies

- 1. Applicability.** The terms and conditions in the Manufacturer Agreement and Commercial Supplier Agreement are hereby incorporated by reference to the extent that they are consistent with applicable public sector 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, 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 Agreements or Commercial Supplier Agreement are inconsistent with applicable public sector law (i.e. See FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders or contracts with Carahsoft.
- 2. Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Commercial Supplier Agreement must be signed by a duly warranted contracting officer, in writing. The same requirement applies to Commercial Supplier Agreement modifications affecting the rights of the parties. All terms and conditions intended to bind the Public Sector Entity must be included within the contract signed by the Public Sector Entity
- 3. Termination.** If a Public Sector Entity cancels or terminates its corresponding order with Carahsoft, Carahsoft's reseller partner or a higher tier prime or subcontractor, as applicable, then Carahsoft will have the right to cancel the related order with Manufacturer in the same manner as the cancellation or termination is presented by the Public Sector Entity. In such a cancellation event, Carahsoft will notify Manufacturer as soon as reasonably possible on the specific details of the order cancellation.

 - Carahsoft may request cancellation or termination of the Commercial Supplier Agreement and applicable Public Sector Entity purchase order on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions (or applicable dispute resolutions process) or if such remedy is otherwise ordered by applicable jurisdictional court.
- 4. Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109), Federal Tort Claims Act (28 U.S.C. §1346(b)), or applicable dispute resolution process.
- 5. Dispute Resolution and Venue.** Any disputes relating to the Commercial Supplier Agreement shall be resolved in accordance with the FAR, the Contract Disputes Act, 41 U.S.C. §§ 7101-7109, or applicable dispute resolutions process.
- 6. Customer Indemnities.** All Commercial Supplier Agreement clauses referencing Customer Indemnities are hereby deemed to be deleted.
- 7. Contractor Indemnities.** All Commercial Supplier Agreement clauses that (1) violate applicable judicial department's right (i.e. 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.



8. Renewals. All Manufacturer Agreement and Commercial Supplier Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban (or similar/applicable ban) on automatic renewal are hereby deemed to be deleted.

9. Future Fees or Penalties. All Commercial Supplier Agreement 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.

10. Travel and Expenses. Out-of-pocket expenses identified in a quote, statement of work, professional services agreement (or similar agreement) must be submitted for payment no more than sixty (60) days after completion of Services or such payment may be denied. Manufacturer shall ensure that travel expenses are incurred in accordance with the limitations set forth in FAR 31.205-46. Manufacturer will provide budgetary estimates for all travel and expense fees on its quotes (or Statement of Works/Professional Service Agreements) to Carahsoft.

11. Limitation of Liability: Subject to the following:

- Public Sector Entity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Public Sector Entity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the Public Sector Entity's right to recover for fraud or crimes under applicable fraud statute, such as the False Claims Act, 31 U.S.C. §§ 3729-3733.

12. Public Access to Information. Manufacturer agrees that the Commercial Supplier Agreement contains no confidential or proprietary information and acknowledges the Commercial Supplier Agreement will be available to the public.

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



Master Services Agreement ("Agreement") is made between PSSC Labs, Inc. ("PSSC Labs"), a CA Corporation, having its principal place of business located at 20432 North Sea Circle, Lake Forest, CA 92630 and _____ ("Customer"), a _____ corporation/Government agency or instrumentality with its principal place of business at _____.

1. WARRANTY PERIOD

PSSC Labs shall provide warranty service for a period of 3 years (36 months) from the date of the individual systems delivery.

2. SERVICE HOURS

Maintenance services include help desk (email and phone) availability for a period of eight (8) hours between 9:00AM and 5:00PM Pacific Standard Time, Monday through Friday. Onsite availability for a period of nine (9) hours between 8:00AM and 5:00PM (Customer site's local time), Monday through Friday, exclusive of PSSC Labs holidays (New Years Day, Memorial Day, 4th of July, Labor Day, Thanksgiving Day & Christmas Day). PSSC Labs does regularly check email during non standard business and may respond at any point to help expedite service calls.

3. SERVICE RESPONSE TIME

Email / Telephone Response Time: PSSC Labs will normally respond for requests for services by telephone and email within four (4) hours or less of the request by the CUSTOMER, during the service hours specified above. PSSC Labs and its service subcontractors will make every reasonable effort to respond in the time frame specified above. PSSC Labs shall not be liable for any delay or failure to perform its obligations due to any cause beyond its reasonable control. Such acts will include, but not limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental action or inaction, trade embargoes, fire, unavailability of power, communication line failures, earthquakes, or other disasters. PSSC Labs will not be liable for failure to perform any obligation hereunder in event it's prohibited from doing so by virtue of the enforcement of any security measures or other measures restricting access to the equipment. All security issues that may limit the ability of PSSC Labs or it's subcontractors to perform warranty service must be documented and sent to PSSC Labs prior to scheduling an onsite service call.

On-Site Service Response Time: On-Site Service (if purchased) may be provided by PSSC Labs personnel or third party contractors selected by PSSC Labs. PSSC Labs will make final determination if an on-site technician is required for service. Only hardware related services will be covered by on-site service technician. PSSC Labs (and sub-contractors) will normally respond to request for hardware maintenance on-site within the next Contract day, or Next Business Day (NBD) for CUSTOMER's site (s) located within fifty (50) miles of a service office. PSSC Labs will normally respond to requests for hardware maintenance onsite within one and a half (1 1/2) days, during normal service hours, for the CUSTOMER's site (s) located greater than fifty (50) miles but within one hundred (100) miles of a service office. PSSC Labs will normally respond to requests for hardware maintenance on-site within two (2) days, during normal service hours, for the CUSTOMER's site (s) located greater than one hundred (100) miles but within one hundred fifty (150) miles of a service office. The CUSTOMER's site (s) located beyond one hundred fifty (150) miles of a service office will be serviced in accordance with mutually agreeable terms &



conditions. PSSC Labs will check out geographical location of all new systems placed under warranty to ensure there are no issues regarding coverage requested by CUSTOMER .

4. STANDARD SOFTWARE WARRANTY

PSSC Labs Cluster Technicians may include software that is licensed free of charge. Because the software is licensed free of charge, there is no warranty for the software. PSSC Labs Cluster Technicians may include software that is commercially available from third parties. Any warranty or support for these commercial software packages are the responsibility of the third parties. PSSC Labs takes no responsibility for any CUSTOMER developed software application. If required by CUSTOMER, PSSC Labs will thoroughly test all CUSTOMER software applications.

5. STANDARD HARDWARE WARRANTY

The standard services coverage is limited to PSSC Labs manufactured systems specified under a quotation or system specification ordered by CUSTOMER. Under no circumstances will the hardware warranty be extended to peripherals or other components added by CUSTOMER. Adding any hardware items to the manufactured systems specified under a quotation or system specification ordered by CUSTOMER may result in voiding the warranty. Any negligent or malicious treatment of manufactured systems including but not limited to improper computing environment, unacceptable operating room temperatures as specified by PSSC Labs are considered grounds for voiding warranty service.

PSSC Labs shall provide labor and parts for all hardware related service calls. PSSC Labs shall respond to requests for remedial maintenance to such hardware in a prompt and commercially reasonable manner. If during the onsite service call, a PSSC Labs or subcontracted technician notices negligent or malicious treatment of hardware, PSSC Labs will notify CUSTOMER immediately.

6. RETURN SHIPPING FEES

PSSC Labs agrees to pay all return shipping charges for all hardware located within the continental United States. CUSTOMER is responsible for all return shipping fees for systems delivered outside continental United States. All packaging and labeling of return shipments are the responsibility of PSSC Labs and its subcontractors.

7. SITE PREPARATION & MAINTENANCE.

CUSTOMER shall, at CUSTOMER expense, prepare and maintain the hardware installation site in accordance with the PSSC Lab's specifications for operating environments (as noted in Site Preparation Guide or other PSSC Labs provided documents). CUSTOMER assumes the full responsibility to back-up and/or otherwise protect its data against loss, damage, or destruction before Services are performed. CUSTOMER also agrees to permit prompt access to hardware and/or software consistent with CUSTOMER's standard security requirements and to provide reasonable access to the facilities so as to expedite the performance of services. Failure by CUSTOMER to comply with the conditions of this paragraph shall allow PSSC Labs to void warranty service.

8. ADDITIONAL CHARGES

Services performed as a result of any of the following conditions shall be subject to additional charges for labor, transportation, and parts; damage resulting from improper use, neglect, power



surge or failure, acts of nature, operating environment or the use of supplies or accessories which are not in conformance with the PSSC Labs published operating environment guidelines.

Billable Services

Upon prior approval from CUSTOMER, PSSC Labs may invoice the CUSTOMER for parts, labor, and freight charges for service calls, which do not fall under the scope of the Master Services Agreement. PSSC Labs will make every reasonable effort to provide advance notice to CUSTOMER, when possible, that work performed may fall outside the scope of their contracted services and therefore generate an invoice for additional services. Examples include, but are not limited to:

- a) Power surge, or lightning damage.
- b) Damage caused by improper use or handling

Billable / Time and Materials Pricing

The following pricing represents PSSC Labs Services charge for any and all "Time and Material" (T&M) hardware maintenance on-site calls. These are standard hardware break/fix on-site service calls outside of normal warranty calls.

Standard Business Hours (Mon-Fri 8/5 site's local time) T&M and Rate:

- 1) Within Continental United States: \$165/hour with 2 hour minimum (1st hour being travel time)
- 2) Outside Continental United States: \$275.00/hour with 2 hour minimum (1st hour being travel time) + any applicable VAT tax charge

9. MOVING SYSTEM LOCATION

If at any time a system under coverage with PSSC Labs is moved from its original location, PSSC Labs must be notified in order to verify on-site coverage capability at the new location. If not notified, PSSC Labs will make every effort, but can not commit to next business day or same business day on-site response, and has the right to refuse coverage and/or increase the warranty price of that system at the new location. If a system is moved, any failure or damage done as part of the move, is not covered under the PSSC Labs warranty and the system must be up and running for 21 days at the new site before warranty coverage resumes.

10. LIMITATION OF LIABILITY

IN NO EVENT SHALL PSSC LABS NOR ITS SUBCONTRACTORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, OR FOR LOSS OF PROFITS, REVENUE, DATA, OR USE, BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, IN CONNECTION WITH THIS AGREEMENT, OR ARISING OUT OF THE PRODUCTS, PARTS, OR SERVICES PROVIDED BY PSSC LABS. PSSC Labs maximum liability shall be limited in any event to the actual direct damages incurred by CUSTOMER which are caused solely by the negligent acts or omissions of PSSC Labs subject to a maximum liability of the amount paid for the Services performed under the applicable Warranty Order, subject to a maximum of twelve (12) months duration. CUSTOMER agrees to provide PSSC Labs with prompt written notification as to the specifics of any claim for damages and to provide PSSC Labs with a reasonable opportunity to investigate.