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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 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
 - (a) Error! Unknown document property name.**

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.

This Software Agreement is made between **ANDREWS CONSULTING GROUP INC.**, located at 700 West Johnson Avenue, Cheshire, Connecticut 06410 (hereinafter "Licensor") and **LICENSEE**, the person or entity which is the end user of the Software (as defined herein) (hereinafter "Licensee").

This Software Agreement, including any Schedule or addendum hereto and any Andrews Consulting Group software order form (an "Order Form") (together, the "Agreement") governs the use by Licensee of the Andrews Consulting Group software products indicated on an Order Form, related documentation and any related software provided by Andrews Consulting Group to Licensee.

Grant of License

1.1 In consideration of Licensee's payment of applicable license fees ("License Fees"), Licensor hereby grants to Licensee a non-exclusive license to use the Software product or products indicated in an Order Form or in any addendum hereto, subject to the terms and conditions of this Agreement.

Licensee may install, access and use each licensed copy of Software on a single designated computer identified to Licensor on an Order Form or otherwise (the "Licensed Platform") solely for Licensee's own internal data processing only. The Software may not execute until Licensee has obtained and entered a correct authorization code, which will key the Software to Licensee's CPU hardware and operating system. If Licensee wishes to use additional copies of Software, or use Software on a computer other than the Licensed Platform, Licensee must purchase additional licenses and/or pay applicable fees. Notwithstanding the foregoing provisions, if the Order Form indicates that the Software includes a client component then Licensee shall be restricted to running such client component on the number of machines designated in the Order Form and no more, and for greater certainty, the foregoing provisions shall continue to apply to all non-client components of the Software.

Licensee acknowledges that the Software is designed to be used with other software programs and Licensee agrees that it is solely responsible for obtaining and complying with all licenses to use such other programs from the relevant owners or licensors thereof. Licensee shall be fully liable for any claims arising as a result of its failure to obtain or comply with such licenses.

2.0 Fees and Payment Terms

2.1 Applicable License Fees for Software license(s) purchased from Licensor directly will be set out on an Order Form or in a Schedule or addendum hereto. Licensee is responsible for the payment of applicable sales and/or use taxes. All fees payable hereunder including under any Schedules are payable in full to Licensor within thirty (30) days of Licensor's invoice date. Late payments shall be subject to a late payment charge of one and one half percent (1.5%) per month (18% per annum). All fees are payable in U.S. Dollars unless otherwise indicated on the invoice. Where a Software license is purchased through a third party, such as a Andrews Consulting Group authorized re-marketer, applicable license fees and payment terms will be determined between Licensee and such third party.

3.0 Use of Software - Restrictions and Limitations

3.1 Licensee shall not, except as expressly provided herein, disclose, sublicense, lease, rent, redistribute or transfer the Software, in whole or in part, to any third party nor make the Software available for use by any third party or to process data or work of a third party in a service bureau or other rental or fee for service arrangement.

3.2 Licensee may make one copy of the Software provided it is kept solely for archival use in the event of loss of the production copy. Licensee shall not remove, cover or otherwise alter any name, copyright notice or other identifying or proprietary marks on the Software.

4.0 Proprietary Rights

4.1 The Software and all proprietary rights with respect thereto shall at all times be and remain the exclusive property of Licensor. Any rights with respect to Software not expressly granted herein shall be reserved for Licensor. Licensee acknowledges that the Software

contains trade secrets of Licensor and that the Software is protected by United States and international copyright and other intellectual property laws and treaties. Licensee bears all risk of loss of the Software while it is in Licensee's possession or under Licensee's care and control. Licensee agrees to notify Licensor immediately of the unauthorized possession or use of the Software. Licensee will promptly furnish full details of such possession or use to Licensor, will assist in preventing the recurrence of such possession or use and will cooperate with Licensor to protect Licensor's proprietary rights. Licensee's compliance with this provision shall not be construed as a waiver of any right of Licensor to recover damages from, or obtain other relief against, Licensee.

4.2 Licensee acknowledges and agrees that the Software is of an extraordinary and unique character and that the injury which would be suffered by Licensor in the event of a breach by Licensee of any of its obligations hereunder would be irreparable and otherwise of a character which could not be fully compensated for solely by recovery of monetary damages. Accordingly, Licensee agrees that, without in any way limiting other rights or remedies of Licensor, Licensor shall be entitled to an injunction or other equitable relief in respect of any breach or threatened breach of this Agreement.

5.0 US Government End Users

5.1 The Software is commercial computer software and commercial computer software documentation and was developed exclusively at private expense. The Software and related services are "commercial items" as defined in 48 CFR 2.101. Use, duplication and disclosure by the US Government (including any agency or department thereof) is subject to restricted rights as set forth herein and in applicable regulations. US Government end users acquire Software as a commercial item under and subject to the terms and conditions of this Agreement, as set forth in 48 CFR 12.212 and 48 CFR 227.7202-1 through 227.7202-4, as applicable and as amended.

6.0 Termination of License

6.1 This Agreement shall continue in perpetuity unless terminated as provided herein. If Licensee breaches any provision of this Agreement, such as failure to satisfy payment terms, Licensor may immediately terminate the Agreement or any particular Software license(s) granted hereunder and all of Licensee's rights thereunder shall immediately cease. Upon termination Licensee shall promptly: (i) destroy all copies of the Software; (ii) provide Licensor forthwith with certification that all copies have been destroyed; and (iii) return all of Licensor's Confidential Information to Licensor. The termination of this Agreement shall not prejudice or affect the accrued rights or claims of Licensor. The following sections shall survive any termination of this Agreement: 2.1, 3.1, 4.1, 4.2, 5.1, 6.1, 7.5, 9.1, 9.2, 9.3, 11.1, 12.1, 12.2, 12.3, 13.1, 14.1, 16.1 and the payment provisions of any Schedules hereto.

7.0 Limited Warranty

7.1 Upon purchase of license(s) for Software, Licensor warrants that the Software will substantially conform in all material respects, as to operational features, to Licensor's current specifications as published in Licensor's documentation for the Software, and that the media on which the Software is delivered, if any, will be free from defects in materials and workmanship under normal use and service, in each case for a period of sixty (60) days from the date the license for such Software is purchased by Licensee.

7.2 Licensee's exclusive remedy for breach of warranty shall be, at Licensor's option, either (a) refund of purchase price; or (b)

replacement of the Software or media. These remedies are not available unless the Software was licensed through Andrews Consulting Group or another authorized source, or if the failure of the Software or media has resulted from accident, abuse, or misapplication. Licensee shall provide Licensor with reasonable notice of any alleged breach of warranty and a reasonable opportunity to remedy same. Any replacement Software or media will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

7.3 THE WARRANTIES SET FORTH IN THIS ARTICLE 7.0 ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR DOES NOT WARRANT THAT THE FUNCTIONALITY OF LICENSOR'S SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS, NOR THAT LICENSOR'S SOFTWARE WILL RUN UNINTERRUPTED OR ERROR FREE. LICENSOR IS NOT RESPONSIBLE FOR THE RESULTS OF LICENSEE'S USE OF LICENSOR'S SOFTWARE OR FOR ANY ACTION TAKEN BY LICENSEE ON THE BASIS THEREOF.

8.0 Intellectual Property Infringement

8.1 Licensor shall hold Licensee harmless from any damages or liabilities resulting from third-party claims that the Software or its use infringe U.S. patents, copyrights or similar intangible rights, provided that Licensee will promptly notify Licensor of the matter, cooperate with Licensor as requested, and permit Licensor to control the investigation, defence and disposition of the claims. This is provided that the alleged third party claims do not result from: (a) an alteration or modification of the Software carried out by Licensee or on its behalf by a third party that would have been avoided by the use of the unaltered version thereof in accordance with the terms hereof; or (b) the combination, operation or use of the Software with non-Licensor software that would have been avoided by the use of the non-combination version thereof in accordance with the terms hereof. The foregoing states the entire obligation of Licensor with respect to any infringement, interference with, or misappropriation of the intellectual property rights of any third party and shall be Licensee's sole remedy in the event of such infringement, interference with, or misappropriation.

9.0 Limitation of Liability

9.1 THE MAXIMUM AGGREGATE LIABILITY OF LICENSOR FOR ALL LOSSES, DAMAGES, EXPENSES OR INJURIES, WHETHER UNDER CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY), BY STATUTE, OTHER LEGAL THEORY OR OTHERWISE, HOWSOEVER ARISING, IN CONNECTION WITH THIS AGREEMENT, LICENSOR'S SOFTWARE SHALL BE LIMITED TO THE FEES PAID HEREUNDER BY LICENSEE, REGARDLESS OF A BREACH OF ANY FUNDAMENTAL TERM OR A FINDING THAT THE REMEDIES HEREIN FAILED WITH RESPECT TO THEIR ESSENTIAL PURPOSE. NO ACTION OR PROCEEDING RELATING TO THIS AGREEMENT MAY BE COMMENCED BY LICENSEE MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION ARISES.

9.2 IN NO EVENT SHALL LICENSOR BE LIABLE TO LICENSEE OR TO ANY THIRD PARTY FOR (1) LOSS OF PROFITS OR REVENUES, LOSS OF GOODWILL, FAILURE TO REALIZE EXPECTED SAVINGS, COMMERCIAL OR ECONOMIC LOSS, OR LOST OR DAMAGED DATA, HOWSOEVER ARISING; (2) SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF SAME; (3) DAMAGES OR EXPENSES ARISING FROM CHANGES IN OPERATING CHARACTERISTICS OF HARDWARE OR SOFTWARE WHICH ARE MADE AFTER THE RELEASE OF LICENSOR'S SOFTWARE; OR (4) DAMAGES ARISING FROM THE USE OF LICENSOR'S SOFTWARE WITH OTHER SOFTWARE.

9.3 EVERY RIGHT, EXEMPTION FROM LIABILITY, DEFENCE AND IMMUNITY APPLICABLE TO LICENSOR OR TO WHICH

LICENSOR IS ENTITLED HEREUNDER SHALL EXTEND AND BE AVAILABLE TO PROTECT EVERY SUBSIDIARY, AFFILIATE, OFFICER, DIRECTOR, EMPLOYEE AND AGENT, DISTRIBUTOR OR RE-MARKETER OF LICENSOR.

10.0 Transfer or Assignment of Rights

10.1 Licensee shall not transfer, assign or encumber any of its rights and obligations under this Agreement or in the Software without Licensor's prior written consent. Licensor may require certain conditions to be met prior to giving any consent, including (i) notification of the name and address of the proposed transferee, (ii) payment of a license transfer fee, and (iii) agreement in writing by the transferee to be bound by the terms of this Agreement. Licensor may assign its rights and obligations under this Agreement and upon such assignment shall be released from its obligations hereunder.

11.0 Interpretation and Governing Law

11.1 This Agreement shall be governed by and construed in accordance with the laws in force in the State of Connecticut, except its choice of law rules. The parties hereby expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

12.0 Confidentiality

12.1 Except with the consent of the other party, neither party hereto shall disclose, copy or use, other than in conjunction with the purposes of this Agreement, any trade or professional secrets or other confidential business, technical or financial information of the other party, which shall be deemed to include the Software, its source code and related documentation and information regarding the operation, functionality or testing of the Software (hereinafter "Confidential Information"). Each party will use at least the same degree of care to protect the Confidential Information of the other party as it would use to protect its own Confidential Information of a similar nature, but in no event less than reasonable care. Each party shall ensure that its employees, agents and subcontractors observe these conditions.

12.2 "Confidential Information" shall not include information which: (i) was previously known to the receiving party if the receiving party did not learn such information from the disclosing party or a person whom the receiving party knew was under a duty not to disclose the information; (ii) is or becomes part of the public domain without breach of this Agreement; (iii) the receiving party receives from an independent third party who is not under an obligation not to disclose it; (iv) is independently developed by the receiving party; or (v) is required to be disclosed pursuant to the order of a court, governmental agency or legislative body, provided reasonable prior notice of the intended disclosure is provided to the other party.

12.3 Notwithstanding the foregoing, Licensee consents to the publication of its name by Licensor as a customer of Licensor, and to the disclosure or transfer of Licensee information between Licensor and its subsidiaries, affiliates and business partners, wherever located, for the purposes of this Agreement.

13.0 Force Majeure

13.1 Licensor shall not be liable to Licensee for non-performance or delay in performance caused by anything beyond its reasonable control, including without limitation, acts of God, acts or omissions of Licensee, telecommunications failures, acts of government, war, strikes, lockouts or embargoes.

14.0 Severability

15.1 Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective only to the extent of such invalidity or unenforceability and shall be severed from the balance of

this Agreement and the remaining provisions of this Agreement shall continue in full force and effect.

15.0 Export Laws

15.1 Licensee shall not export the Software from Licensee's jurisdiction except in compliance with applicable laws and with the prior consent of Licensor.

16.0 Entire Agreement

16.1 This Agreement, including any Order Form or any Schedule or addendum hereto, constitutes the entire agreement and understanding between the parties with respect to the matters dealt with herein. The provisions of an Order Form or addendum may add to any of the provisions hereof; and may (to the extent they expressly indicate an intention to do so) change or delete any of the provisions hereof, otherwise the provisions hereof shall prevail. Otherwise, this Agreement may not be amended except by a written agreement signed by the parties and no provision of this Agreement may be waived except in writing signed by the party providing the waiver. All previous agreements, understandings and representations, whether written or oral, between the parties with respect to such matters have been superseded by this Agreement. If a customer or other purchase order is submitted to Licensor with respect to Software licenses, such purchase order shall only constitute confirmation of the order and any terms and conditions of such purchase order shall be null and void and of no force or effect. The division of this Agreement into Articles, Sections and Schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

Notice

Any notice or other communication required or permitted hereunder shall be sent to the address of the party specified on Order Form or the shipping address for orders received through a reseller, or such other places as a party may from time to time specify by notice in writing to the other party. Any such notice or other communication shall be in writing and unless delivered personally to a responsible officer of the addressee, shall be sent by registered mail, receipted courier, or facsimile and shall be deemed to have been given when received.

18.0 Acceptance and Execution

18.1 In the case of licenses sold directly by Licensor to Licensee, this Agreement may be executed in any number of counterparts including by Licensee signing and returning an Order Form to Licensor. Each executed counterpart shall be deemed to be an original; all executed counterparts taken together shall constitute one agreement. In the case of downloaded Software or Software distributed for evaluation, this Agreement may also be accepted and agreed to by the on-line agreement of the Licensee to be bound by the terms hereof. In the case of Software distributed through a reseller or other indirect channel, this Agreement may also be accepted and agreed to by the Licensee continuing to install, copy, open or otherwise use the Software after being made aware that such installation, copying, opening or other use constituted acceptance and agreement to the terms hereof. In the case of any inconsistencies between the provisions of an executed version of this Agreement and a version accepted and agreed to in any other manner, the terms of the executed version shall prevail.