

Datawatch Corp.
271 Mill Road
Quorum OfficePark
Chemsford, MA 01824

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.

Datawatch Corporation Software License and Services Agreement Terms and Conditions

The Datawatch Corporation Software License and Services Agreement Terms and Conditions as set forth below ("Terms and Conditions") is an addendum to and forms part of the Datawatch Corporation Software License and Services Agreement ("Agreement"), attached hereto, and is entered into and effective as of the date of the last signature thereto, between Datawatch Corporation, 271 Mill Road, Quorum Office Park, Chelmsford, Massachusetts 01824 ("Datawatch"), and the Licensee, and governs the use by Licensee of computer software specified in the Agreement, as such software may be updated from time to time (the "Software").

1. **LICENSE** Datawatch hereby grants to Licensee and Licensee accepts from Datawatch a perpetual, non-exclusive right to install and use the Software for its internal operations within Licensee's institution on the number of Servers or Workstations and for the number of users and CPU's specified in this Agreement ("License"). Licensee has the right to copy the Software and its associated documentation in whole or in part as necessary to operate the Software on the stated number of Servers or Workstations and to make one archival copy for back-up purposes only. Licensee agrees that additional licenses from Datawatch are required to install or use the Software on more than the number of Servers or Workstations or for more than the number of users or CPU's specified in the Agreement. **FULL TITLE TO AND OWNERSHIP OF THE SOFTWARE AND ITS ASSOCIATED DOCUMENTATION AND ANY AND ALL COPIES MADE THEREOF IS AND SHALL REMAIN IN DATAWATCH OR ITS DEVELOPERS.**

2. **PAYMENT** Licensee shall pay all invoices according to schedule outlined on page 1 of this document. Datawatch will invoice one hundred percent (100%) of the License fees and, Maintenance fees, upon shipment of the Software to Licensee. If Professional Services are to be provided as part of this order, such services shall be invoiced as outlined in the Agreement. Any late payments to Datawatch will accrue interest at the lesser of (i) eighteen percent (18%) per annum, or (ii) the maximum interest allowable by law.

3. **TERM AND TERMINATION** In the event of a default in the performance of any obligation under the Agreement or a breach of any provisions of the Agreement that is not cured within forty-five (45) days after delivery of written notice by the aggrieved party (ten (10) days in respect to payment of License fees), an aggrieved party to this Agreement may, in addition to the other remedies set forth herein, terminate this Agreement by written notice to the other party. In the event that either party ceases its business operations, makes a general assignment for the benefit of creditors, is adjudged bankrupt, or becomes insolvent, then the other party may, at its sole discretion, immediately terminate this Agreement upon giving written notice to the other party. Licensee agrees that, in the event of termination of the Agreement, Licensee shall within fifteen (15) days from the date Licensee receives written notification of such termination, return or destroy all copies of the Software and Documentation provided to or made by the Licensee under this Agreement and promptly certify in writing to Datawatch that the same have been returned or destroyed. Termination of this Agreement shall not relieve either party of any payment or other obligation under this Agreement which was to have been performed by such party prior to termination.

4. **DELIVERY** Datawatch shall deliver, FOB Shipping Point, the Software as set forth in this Agreement to an address specified by the Licensee. Software delivered shall consist of media containing, together, one copy of the Software and one copy of such user manuals and other printed material which may be included with the Software, which is sometimes called "Documentation".

5. **PROFESSIONAL SERVICES** Licensor will make available to the Licensee, Project Management, Consulting, Training and Implementation Services ("Professional Services") as indicated in this order or as otherwise mutually agreed. Such Professional Services are available to assist the Licensee, under its direction and at its responsibility, in the implementation of the product, or in various post-implementation projects or tasks that may occur from time to time. Such Professional Services shall be made available to Licensee at Licensor's prevailing rates. If Professional Services are included as part of this order, Datawatch shall make commercially reasonable efforts to schedule such Professional Services in accordance with the Licensee's request. When Datawatch does schedule an appointment ("Appointment") with the Licensee for the commencement of one or more such Professional Services and the Licensee, at its own volition for whatever reason, postpones or cancels such Appointment within five working days of the Appointment date, Datawatch may, at its discretion, invoke a penalty charge for breaking the Appointment of 100% of the normal billing rate for such Service which would have commenced at the time of the Appointment. If the Licensee breaks an Appointment between six and ten working days prior to such an Appointment, Datawatch may, at its discretion, invoke a penalty charge of 50% of the billing charge for such Professional Service which would have commenced at the time of the Appointment. Consultancy days ordered must be performed within three (3) months of the date of order or they will be invoiced and must be paid for as if they have been performed by Datawatch; these consultancy days invoiced will remain available to be used for a further three (3) months, after which they will lapse. For each training day provided by Datawatch up to six sets of documentation will be provided for training purposes, additional sets of documentation will be provided to the Licensee at a reasonable additional cost.

6. **MAINTENANCE** Maintenance is available for the current software version and the prior version. Upon the release of a new version, the former current version is supported and its prior version will be supported for approximately six (6) months before it is discontinued. Any maintenance contract purchased prior to the version being discontinued will be honored for the maintenance contract term. Once a product version is discontinued, maintenance is no longer available for that version. Maintenance provides the Licensee with the following services: (1) Telephone or email Support from Monday through Friday during Datawatch's normal business hours, except public holidays, (2) Dedicated telephone lines for all incoming support calls, (3) Supply of maintenance releases as described below, and (4) Notification of product problems and solutions. Maintenance will be purchased for the a minimum of one (1) year, commencing upon shipment of the Software in accordance with clause 4 above ("Initial Maintenance Period or IMP"), in exchange for payment of the appropriate Maintenance fees. Approximately sixty (60) days prior to expiration of the Initial Maintenance Period or any Renewal Period, a maintenance renewal quotation will be sent to renew for a successive one (1) year period ("Renewal Period"). If the maintenance quotation is not approved and paid prior to the expiration date, then maintenance will terminate. Datawatch shall have no obligation to provide Maintenance if the Maintenance fee is not paid prior to expiration. Licensees wishing to reinstate lapsed Maintenance will be required to pay Maintenance for the full period in which they were lapsed, plus the annual period going forward from the renewal date at the maintenance price current at the time of the reinstatement and a reinstatement fee. Provided that Licensee's Maintenance has not lapsed, Datawatch agrees to provide Licensee, free of charge, with such maintenance releases and bug fixes to the Software as Datawatch may release during the Initial Maintenance Period and any subsequent Renewal Period. The contents of all releases shall be decided upon by Datawatch at its sole discretion and nothing herein shall obligate Datawatch to develop specific maintenance releases or bug fixes to the Software. Grant of License to use such maintenance releases and bug fixes is subject to the same terms and conditions as the License to the Software as set forth in this Agreement. Any maintenance services requested which are not included in Maintenance, as defined herein, will be invoiced to Licensee at an additional charge based on Datawatch then current rates. Software upgrades are included in Maintenance. Professional services required to

install and implement Software bug fixes, updates and upgrades are not included in Maintenance and must be purchased separately.

7. **LICENSEE'S RESPONSIBILITIES** Licensee acknowledges and agrees that all rights in and to the Software (and any corrections, enhancements, revisions or modifications thereto) and its associated Documentation belong to, and shall remain in, Datawatch or its developers, including, but not limited to, patent, copyright, trademark and trade secret rights. Licensee agrees to reproduce and include the copyright notices on any copies of the Software or Documentation which Licensee is permitted to make. Furthermore, Licensee agrees not to modify or alter the Software or any part thereof, including, but not limited to, any copyright, patent and/or trademark notices contained therein. Licensee agrees that it is solely responsible for the selection of the Software to achieve Licensee's intended results.

8. **RESTRICTIONS** Licensee will not, nor will it allow others to: (a) reverse engineer, decompile, disassemble, modify, translate, rent, lease, loan, resell, transfer or otherwise distribute the Software or Documentation in whole or in part; (b) make or have made any unauthorized copies; (c) allow anyone to use the Software obtained hereunder for any purpose not directly related to the internal operations of Licensee; or (d) allow anyone other than an employee or agent of Licensee to use or access any copy of the Software or Documentation, except as allowed under this Agreement or as specifically agreed to in writing by Datawatch. In the event that the Software is licensed for an unlimited number of users, and Licensee takes part in a merger, acquisition or other reorganization which increases the number of users of the Software by greater than five percent (5%) of the then-existing total, Licensee's rights to the Software shall extend to additional computers subject to the parties' mutual agreement on the additional license fees to be paid, which agreement shall take the form of an amendment to the Agreement.

9. **LIMITED WARRANTY AND LIMITATION OF LIABILITY** Datawatch warrants that for a period of thirty (30) days from delivery by Datawatch of media containing the Software, the media will not be defective, and provided Datawatch receives written notice from Licensee, Datawatch will as Licensee's sole remedy replace the media containing the Software if such media is found to be defective under conditions of normal use during such thirty (30) day period and is returned to Datawatch at Licensee's expense. Replaced media will bear the same warranty period of thirty (30) days from their delivery. **EXCEPT AS EXPRESSLY SET FORTH ABOVE, (1) THE SOFTWARE AND ITS ASSOCIATED DOCUMENTATION IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND BY DATAWATCH, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NONINFRINGEMENT, TITLE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, (2) DATAWATCH DOES NOT WARRANT THAT THE SOFTWARE AND ITS ASSOCIATED DOCUMENTATION WILL MEET LICENSEE'S REQUIREMENTS, BE ERROR FREE, OR OPERATE WITHOUT INTERRUPTION, AND THE LICENSEE ASSUMES THE ENTIRE RISK AS TO ITS QUALITY AND PERFORMANCE. IN NO EVENT WILL DATAWATCH BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR OTHER PECUNIARY LOSS) EVEN IF DATAWATCH HAS BEEN ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES ARISE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY. THIS WARRANTY GRANTS RIGHTS WHICH MAY VARY FROM STATE TO STATE. LICENSEE AND DATAWATCH AGREE THAT THE SOFTWARE AND DOCUMENTATION ARE NOT INTENDED AS "CONSUMER GOODS" UNDER STATE OR FEDERAL WARRANTY LAWS. Datawatch's liability to Licensee under or in connection with this Agreement or the Software shall not in any circumstances exceed the amount paid for the License by the Licensee in the preceding twelve months, provided that this limit shall not apply to liability for death or personal injury arising out of Datawatch's negligence.**

10. **INDEMNIFICATION** Datawatch shall indemnify, defend and hold harmless Licensee, its officers, agents, authorized users, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorneys' fees) resulting from any action or threatened action, suit, claim, demand, or proceeding, whether or not well grounded, or any judgment or proceeding in which it is determined, or any settlement agreement arising out of the allegation, that the Software or Documentation or use thereof infringes or misappropriates any US patent, copyright, trademark, trade name, trade secret, or other US intellectual property right of any third party. The foregoing shall not apply unless Licensee (1) has informed Datawatch as soon as practicable of the suit or action alleging such infringement, (2) allows Datawatch to control the defense of such suit or action or any related negotiations or settlement, and (3) cooperates with Datawatch in such defense or settlement.

11. **DEFAULT** Licensee agrees that should it default in any of the covenants or agreements herein, Licensee shall pay all costs and expenses, which may arise from Datawatch's enforcement of this Agreement against Licensee.

12. **NOTICE** All notices or other communications made pursuant to this Agreement shall be in writing, sent to the address of either Licensee or Datawatch set forth in this Agreement or such other address as the parties may indicate, and shall be mailed certified or registered mail with postage prepaid. All notices shall be deemed effective upon their receipt.

13. **SEVERABILITY** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of the Agreement shall remain in full force and effect.

14. **OTHER ITEMS AND CONDITIONS** This Agreement constitutes the entire, complete and exclusive statement of the agreement between the parties with respect to the License and its associated Documentation, Professional Services, and Maintenance, and supersedes all prior proposals, understandings or agreements, written or oral, with respect thereto (without prejudice to either party's rights in respect of any fraudulent misrepresentation or warranty made by the other). This Agreement may not be altered, amended or modified except by a written instrument signed by the Licensee and the CEO or CFO of Datawatch. This Agreement is a legal, binding contract and any other Customer paperwork is deemed only for their internal purposes, and is not a modification to this Agreement. Licensee may not sublicense, assign or transfer this license or the Software by operation of law or otherwise without the written consent of DATAWATCH, which consent shall not be unreasonably withheld. Any attempt to unilaterally sublicense, assign or transfer any of the rights, duties or obligations hereunder shall render such assignment null and void and shall automatically terminate this Agreement. This Agreement shall be binding upon and inure to the benefit of Datawatch and Licensee, their respective heirs, successors and representatives, and any assignee of Datawatch. This Agreement is governed by and construed in accordance with the laws of the State of Massachusetts.

Initials: _____