

Carahsoft Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Revised 20160504

- 1. Scope.** This Carahsoft Rider and the Manufacturer's Commercial Supplier Agreement (CSA) 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's CSA 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 CSA is inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's Multiple Award Schedule 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 Government contracts as set forth in Government Order 4800.2H 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 General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of 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 CSA: (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 CSA. 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 CSA.
- (e) Termination.** Clauses in the Manufacturer's CSA referencing termination or cancellation of the Manufacturer's CSA are hereby deemed to be deleted. Termination shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:
- Carahsoft may request cancellation or termination of the CSA 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 and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) Force Majeure.** Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.
- (h) Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA 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 (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All of the Manufacturer's CSA 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 of the Manufacturer's CSA 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 of the Manufacturer's CSA 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 GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w)(1)(x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).
- (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's CSA, 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's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w)(1)(iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.

(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 CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA 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. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).

OSIsoft Agreement # _____

U.S. Federal Software License and Services Agreement

("Effective Date")

OSIsoft, LLC ("**OSIsoft**")

Legal Department

Creekside Plaza Bldg A

1100 San Leandro Blvd, 2nd Floor Suite 200

San Leandro, CA 94577

Phone: (510) 297-5800

("Licensee")

Contacts:

Business:

Name: Steve Sarnecki

Email: ssarnecki@osisoft.com

Phone: 1-410-455-0915

Contacts:

Business:

Name: _____

Email: _____

Phone: _____

Legal:

Name: Legal Department

Email: legal@osisoft.com

Facsimile: (510) 295-2444

Legal:

Name: _____

Email: _____

Phone: _____

OSIsoft and Licensee hereby agree as follows:

1. **License**

1.1 **License Grant.** Subject to the terms and conditions of this U.S. Federal Software License and Services Agreement (this "**Agreement**"), OSIsoft grants to Licensee a perpetual nonexclusive, nontransferable (except as specified in Section 10.1) license to use in accordance with **Exhibit A** the OSIsoft products and related documentation ordered by Licensee (the "**OSIsoft Products**"). Licensee may make a reasonable number of copies of any OSIsoft Product documentation for internal business use. Any OSIsoft Software received by Licensee via FTP or other electronic delivery method will be governed by this Agreement even if no reference to this Agreement is made in connection with such electronic delivery.

1.2 **License Restrictions.** Except as expressly provided in this Agreement, Licensee agrees that it has no right to: (i) modify the OSIsoft Products or to permit any third party to do so; (ii) copy the OSIsoft Products, except as strictly required to install the OSIsoft Software and make a reasonable number of copies for archival or backup purposes, or (iii) use the OSIsoft

Products to provide service-bureau, software rental, time-sharing or any data services to any third party. Any OSIsoft Products ordered by Licensee and licensed by OSIsoft as a bundled unit must be used by Licensee as a bundled unit. Licensee acknowledges that OSIsoft Products contain trade secrets of OSIsoft, and in order to protect such trade secrets, Licensee agrees not to disassemble, decompile or reverse engineer the OSIsoft Products, nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable law. Licensee may only write programs that make calls to OSIsoft's Data Access Software under the following circumstances: (i) pursuant to an appropriate development license from OSIsoft (e.g. OSIsoft Virtual Campus); (ii) to extend the functionality of an OSIsoft Product that is designated by OSIsoft as including "Programmatic Extensions", or a similar designation, and only as expressly permitted by the accompanying documentation; or (iii) as expressly permitted by a previously purchased OSIsoft Product license.

1.3 **Limited Rights.** Licensee's rights in the OSIsoft Products will be limited to those expressly granted in this Section 1, and OSIsoft reserves all other rights, title, interest and

Mod - 0844 - OSIsoft US Federal Software License and Services

licenses therein. All OSIssoft Products provided to the U.S. Government are provided with the commercial license rights and restrictions described in this Agreement. Further, all OSIssoft Products provided to the U.S. Government are provided with Restricted Rights as provided for in FAR 52.227-19 (DEC 2007) and DFARS 227-7202 or their successors, as applicable.

1.4. **Audit Rights.** Upon OSIssoft's written request, Licensee shall furnish OSIssoft with a certification signed by the Contracting Officer of Licensee verifying that the OSIssoft Products are being used pursuant to the terms of this Agreement. In addition, upon prior written notice, OSIssoft may audit Licensee's use of the OSIssoft Products to ensure that Licensee is in compliance with the terms of this Agreement. Any such audit shall be conducted during regular business hours remotely and shall not unreasonably interfere with Licensee's business activities. Licensee shall provide OSIssoft access to the relevant Licensee records and sufficient remote access to enable OSIssoft to conduct its audit activities. If an audit reveals that Licensee has underpaid fees to OSIssoft, Licensee shall have the right to pursue a claim for unpaid fees. All claims arising from audits conducted by OSIssoft shall be resolved pursuant to FAR 52.233-1 (Disputes).. .

2. **Ordering and Delivery.**

2.1 **Order Process.** Licensee may submit written orders containing the information and in the format reasonably requested by OSIssoft ("**Orders**") to OSIssoft or OSIssoft's authorized distributor for the purchase of new or additional licenses of OSIssoft Products or for Software Reliance Program services (as described in Section 4). Any OSIssoft Software received by Licensee via FTP or other electronic delivery method will be governed by this Agreement even if no reference to this Agreement is made in connection with such electronic delivery. Any "click-wrap" or other terms or conditions which are presented to Licensee's users during the FTP or other electronic delivery process will be superseded by this Agreement, unless such software is designated as trial, test or beta software. All OSIssoft Products will be delivered DAP Licensee location.

2.2 **Contractor.** Licensee may designate one or more contractors that may interact with OSIssoft on its behalf for purposes of accessing Licensee's OSIssoft technical support account, ("**Contractors**"). Licensee's initial Contractors are listed in the attached **Exhibit B**. Licensee may also add or subtract Contractors from this Agreement by providing OSIssoft with written or electronic notice containing the contact information for each Contractor. Licensee may permit Contractors to access and use the OSIssoft Products, without notice to OSIssoft, in accordance with

this Agreement and so long as the Contractor is subject to confidentiality obligations no less protective than this Agreement. All Contractors shall be bound by this Agreement, and shall only have the right to act for the sole benefit of the Licensee. Licensee is obligated to promptly notify OSIssoft of any change in status of Contractors. Licensee shall be jointly and severally liable for any breach of this Agreement by the Contractor.

2.3 **Order Submission and Acceptance.** Orders submitted directly to OSIssoft will not be deemed binding on OSIssoft until an authorized representative of OSIssoft expressly accepts such Order in writing or until Licensee receives the OSIssoft Products, whichever first occurs. Licensee must notify OSIssoft prior to using any OSIssoft Product at a location other than the one specified in the applicable Order. Except for information necessary to place an Order, such as identification of the OSIssoft Product, quantity and other similar information, any terms and conditions of any Order that are inconsistent with or in addition to the terms and conditions of this Agreement will be deemed stricken from such Order, and OSIssoft hereby expressly rejects such terms and conditions even if OSIssoft fulfills such Order. Licensee will be responsible for any contractors submitting Orders to OSIssoft on Licensee's behalf. OSIssoft reserves the right to refuse, cancel or delay shipment to Licensee if Licensee (i) fails to make any payment as provided herein or under the terms of payment set forth in any invoice or otherwise agreed to by OSIssoft and Licensee, (ii) fails to meet the credit or financial requirements established by OSIssoft, or (iii) otherwise fails to comply with the terms and conditions of this Agreement. Without interference with the licenses to OSIssoft Products previously ordered by and delivered to Licensee under this Agreement, OSIssoft, reserves the right to discontinue the distribution of any or all OSIssoft Products at any time and to cancel any orders therefor without liability of any kind to Licensee or any other person. No such cancellation, refusal or delay will be deemed a termination (unless OSIssoft so advises Licensee) or breach of this Agreement by OSIssoft.

3. **Payment of OSIssoft Invoices.** Provided that Licensee meets OSIssoft's then-current credit standards and policies, payment of all fees and expenses pursuant to OSIssoft's invoices will be due and payable within thirty (30) days of the date of invoice, otherwise invoices will be due upon receipt. All fees are non-cancelable, non-contingent and non-refundable except as expressly stated in this Agreement. Licensee will pay all amounts due under OSIssoft's invoices in U.S. currency, free of any and all currency controls or other restrictions. All past due amounts under OSIssoft's invoices will incur interest at a rate equal to the lower of 1.5% per month or the highest rate permitted by law, beginning as of forty (40) days after the applicable due date. Except for taxes

paid by OSIssoft on its net income, all amounts due pursuant to OSIssoft's invoices are net of, and Licensee will be solely responsible for, any shipping charges, withholding, use, sales, value-added, import and any other taxes, fees, tariffs or duties associated with this Agreement or Licensee's use of the OSIssoft Products and Software Reliance Program. This section will not apply when an authorized OSIssoft distributor invoices Licensee for Orders submitted to such distributor. However, Licensee will comply with any payment terms agreement Licensee may have with such distributor.

4. **Support, Maintenance and Services**

4.1 **Software Reliance Program.** Subject to Licensee's advance payment of the applicable Software Reliance Program subscription fees, Licensee will be enrolled in OSIssoft's then-current Software Reliance Program ("***Software Reliance Program***"). OSIssoft's current terms of the Software Reliance Program are attached as Exhibit C.

4.2 **Replacement Software.** Promptly following its use of any Updates, Bug Fixes or other replacement software as designated by OSIssoft and accepted by Licensee ("***Replacement Software***"), except for archival copies, Licensee will return or destroy the OSIssoft Software replaced by the Replacement Software. Licensee will not receive any credit for software replaced by Replacement Software.

4.3 **Services.** If Licensee purchases OSIssoft's services, OSIssoft warrants that the results of such services will comply with mutually agreed upon specifications for a period of 90-days following delivery of the services by OSIssoft. Licensee agrees to supply OSIssoft with access to and use of all information and facilities reasonably necessary for OSIssoft to render any on-site services pursuant to this Agreement. OSIssoft will comply with all reasonable safety rules and procedures provided by Licensee to OSIssoft personnel in advance.

5. **Warranties.**

5.1 **Limited Warranty.** OSIssoft warrants that, for a period of one (1) year after delivery of the OSIssoft Products, the OSIssoft Products will function in accordance with OSIssoft's accompanying documentation in all material respects. As Licensee's sole and exclusive remedy and OSIssoft's entire liability for any breach of the foregoing warranty, OSIssoft will repair or replace, at no additional charge to Licensee, any OSIssoft Products that fail to meet this limited warranty. The limited warranty set forth herein shall automatically become null and void if a party other

than OSIssoft modifies the OSIssoft Products in any way. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, OSIssoft MAKES NO WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, AND OSIssoft EXPRESSLY DISCLAIMS ANY AND ALL SUCH OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NONINFRINGEMENT.

5.2 **Insurance Requirements.** During the term of this Agreement, OSIssoft will obtain and maintain in force insurance with the following policy limits:

(a) Worker's Compensation as required by statutory regulations in the applicable state and Employer's Liability Insurance with limits not less than \$1,000,000;

(b) General Liability Insurance with limits not less than \$1,000,000 per occurrence for bodily injury or property damage; \$2,000,000 in the aggregate.

(c) Automobile Liability with a combined single limit of \$1,000,000.

(d) Excess liability with a limit of at least \$20,000,000.

5.3 **Proof of Coverage and Additional Insured.** At Licensee's request, OSIssoft will furnish Licensee with Certificates of Insurance evidencing the insurance described above, including a notice that no change in, or cancellation of, any such policy or policies shall be made without notice to Licensee at least ten (10) days prior to such change or cancellation. At Licensee's request, OSIssoft will add Licensee as an additional insured to such insurance policies. OSIssoft will have the right to pass through any actual charges incurred by OSIssoft in doing so. OSIssoft will notify Licensee in advance if any charges may be incurred.

6. **Indemnity**

6.1 **OSIssoft Indemnity Obligation.** The parties understand that the U.S. Department of Justice may defend any action brought against Licensee to the extent that it is based upon a claim that the OSIssoft Products infringe any U.S. patent, copyright or trade secret, OSIssoft will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded or paid in settlement in any such action, provided that: (i) Licensee promptly notifies OSIssoft in writing of the claim; (ii) Licensee grants OSIssoft an opportunity to participate in the

defense and settlement of the claim; and (iii) Licensee and its counsel take actions that are reasonably required for the defense and settlement of the claim.

6.2 **Injunction.** If Licensee's use of any of the OSIssoft Products hereunder is, or in OSIssoft's opinion is likely to be, subject to the type of infringement claim specified in Section 6.1, OSIssoft may, at its sole option and expense: (i) procure for Licensee the right to continue using such OSIssoft Products, as applicable under the terms of this Agreement; (ii) replace or modify such OSIssoft Products so that it is non-infringing, but retains substantially the same functionality; or (iii) if options (i) and (ii) above cannot be accomplished despite OSIssoft's reasonable efforts, then OSIssoft may terminate Licensee's rights and OSIssoft's obligations hereunder with respect to such OSIssoft Products and refund to Licensee the unamortized portion of the fees paid for such OSIssoft Products, based upon a straight-line three (3) year depreciation commencing as of the date Licensee received such OSIssoft Products.

6.3 **OSIssoft Indemnity Exclusions.** OSIssoft will have no liability for infringement claims of any kind arising from: (i) any use of the OSIssoft Products beyond the scope of this Agreement; (ii) Licensee's use of the OSIssoft Products in combination with any products not developed by OSIssoft, if the basis for the claim is such combined use; (iii) Licensee's failure to use updated or modified versions of the OSIssoft Products provided or made available by OSIssoft without additional charge; or (iv) OSIssoft's compliance with designs or specifications of a published standard or as provided by Licensee. UNLESS IN CONFLICT WITH THE FEDERAL ACQUISITION REGULATION ("FAR") OR OTHER APPLICABLE FEDERAL LAWS, THE PROVISIONS OF THIS SECTION 6 SET FORTH OSIssoft's SOLE AND EXCLUSIVE OBLIGATIONS AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

7. **Limitations of Liability.** UNLESS OTHERWISE PROHIBITED BY THE FAR OR OTHER APPLICABLE FEDERAL LAWS, EVEN IF ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE AND REGARDLESS OF WHETHER A CLAIM ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT OSIssoft HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, IN NO EVENT SHALL OSIssoft BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) NOR SHALL OSIssoft's TOTAL CUMULATIVE LIABILITY HEREUNDER EXCEED THE TOTAL LICENSE FEES

PAID BY LICENSEE TO OSIssoft UNDER THIS AGREEMENT DURING THE TRAILING 12 MONTH PERIOD OR TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), WHICHEVER IS GREATER. The parties expressly agree that the allocation of risk contained in this Section is an essential basis of this Agreement.

8. **Confidential Information.** "*Confidential Information*" means the OSIssoft Products and any business or technical information that is marked by a disclosing party as "confidential" or "proprietary" at the time of disclosure. Licensee's Confidential Information shall also include information related to Licensee's operations that Licensee discloses to OSIssoft in connection with this Agreement in whatever form. OSIssoft's Confidential Information shall also include, without limitation, any interfaces developed using OSIssoft's Software. The receiving party will not use or disclose any Confidential Information of the other party except as expressly permitted herein and will use all reasonable measures to maintain the confidence of all such Confidential Information, which measure will in no event be less than the measures that the receiving party takes to protect its own confidential information of similar importance. Confidential Information will not include information which: (i) is or becomes publicly available without fault of the receiving party; (ii) is independently developed by the receiving party without use or access to the Confidential Information; or (iii) was known to the receiving party prior to its receipt of the Confidential Information from the disclosing party and is not subject to other restrictions on disclosure or use.

9. **Term and Termination.** This Agreement will remain in effect perpetually unless and until terminated pursuant to this Section. Either party may terminate this Agreement if the other party breaches any material term, and such breach remains uncured for thirty (30) days after receiving notice thereof. In the event of any termination of this Agreement, the parties agree to return or at the other party's request destroy all of the other party's Confidential Information within three (3) business days, and without limiting the foregoing, Licensee will return or at OSIssoft's request destroy all copies of the OSIssoft Products within its possession or control. Licensee may terminate its license to the OSIssoft Products under this Agreement at any time by destroying all copies of the OSIssoft Products and Confidential Information associated with the OSIssoft Products within its possession or control. Termination of this Agreement by either party will be a nonexclusive remedy for breach without prejudice to any other right or remedy of such party. The rights and obligations of the parties contained in Sections 3, and 6 through 10 will survive the termination of this Agreement.

10. General

10.1 Assignment, Independent Contractors, Notices and Force Majeure.

Licensee must obtain OSIssoft's written consent prior to: (i) moving the OSIssoft Software from the location designated in the corresponding Order or (ii) assigning this Agreement or any licenses to OSIssoft Products granted hereunder to any third party. Licensee hereby acknowledges that as a condition to such consent OSIssoft may require Licensee or the proposed assignee, if applicable, to agree to update the OSIssoft Software to the then-current version, pay OSIssoft's then-current license fees and purchase a one year subscription of Software Reliance Program services at OSIssoft's then-current rate. In the case of an assignment or transfer to a third party, OSIssoft may require the assignee to execute its then-current Software License and Services Agreement. Except as otherwise specified in writing by OSIssoft in its consent, Orders submitted by any assignee will be in accordance with OSIssoft's then-current list price. Any attempted assignment, whether by operation of law, as a result of any change in control (as control is defined in Section 2) of Licensee or otherwise without complying with this Section shall be null and void. The parties to this Agreement are independent contractors and neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. All notices required or permitted under this Agreement will be sent to the address specified above (or such other address specified by the receiving party) in writing and will be deemed effective upon receipt. OSIssoft will not be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control.

10.2 Disputes and Governing Law. A dispute regarding this Agreement, including without limitation its existence, validity or termination, shall be resolved pursuant to FAR 52.233-1 (Disputes) and/or applicable U.S. federal laws.

10.3 Compliance with Laws; Government Approvals and Severability. Licensee's use of the OSIssoft Products will comply with all laws, rules, and regulations of the United States and other countries that may be applicable to the OSIssoft Products. Without limiting the generality of the foregoing, Licensee acknowledges that the distribution and use of OSIssoft Products and any technical data related thereto (collectively "*OSIssoft Technology*") may be subject to U.S. export control laws and regulations including, but not limited to, the U.S. Export Administration Act of 1979, as amended, and the regulations promulgated there under. Licensee will not export or re-export, directly or indirectly, any OSIssoft Technology, to any destination for

any use that is restricted by U.S. export control laws and regulations including, without limitation, to any party that is involved in sensitive or unguarded nuclear activities, or activities related to chemical or biological weapons or missiles, unless Licensee first obtains the required authorizations from the U.S. Department of Commerce or other appropriate governmental agencies. Licensee may not use the OSIssoft Products to operate or control any inherently dangerous application. Notwithstanding the preceding sentence, Licensee may use the OSIssoft Products in a commercial nuclear power facility so long as Licensee does not use the OSIssoft Products: (i) in any manner where failure of the OSIssoft Products would affect the operability of Licensee's facility or affect Licensee's ability to safely cease all operations of the facility; (ii) to control any safety related system or in any safety related application; or (iii) in any manner that would violate applicable laws or regulations. Licensee shall indemnify and hold OSIssoft harmless from any and all claims, liability, costs, damages and losses arising out of or related use of the OSIssoft Products in violation of this section. OSIssoft shall have no responsibility to test, certify, validate or to take any other action regarding the OSIssoft Products with the Nuclear Regulatory Commission or any other governmental agency. Obtaining such approvals, if any, will be the sole responsibility of Licensee. Within ninety (90) days of the Effective Date, Licensee must, at Licensee's expense, obtain and arrange for the maintenance of all government approvals, if any that may be necessary to make this Agreement effective in the locations where the OSIssoft Products are used by Licensee. If for any reason any part of this Agreement is found unenforceable, the remainder of this Agreement will be enforced to the maximum extent permissible.

10.4 Use of Name in Customer List. Upon Licensee's prior written consent, OSIssoft may use Licensee's non-stylized corporate name in its marketing literature and customer lists. Licensee may withdraw such consent at any time with reasonable notice.

10.5 Entire Agreement, Waiver and Language. Other than the underlying applicable federal government procurement contract and/or delivery order(s) between the parties, this Agreement is the entire agreement between OSIssoft and Licensee with respect to all OSIssoft products and services and their use, superseding any prior agreements (except for agreements which pertain to trial or beta software) or understandings related to any OSIssoft products or services. This Agreement cannot be amended except by a writing which specifically references this Agreement and is signed by both parties. In no event will any purported amendment or agreement

be binding on OSIssoft, unless executed by an OSIssoft officer. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. This Agreement may be executed in counterparts,

each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date through their duly authorized representatives. Each individual signatory below hereby represents and warrants that they have full corporate power and authority to execute this agreement and bind the respective parties to the terms and conditions of this Agreement.

OSIssoft, LLC

Licensee:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
U.S. Federal Software License and Services Agreement

OSIsoft Products Usage Terms

The following usage terms will apply only to the extent that Licensee orders each type of OSIsoft Product as specified by OSIsoft. Additional usage terms may be included in the accompanying documentation.

OSIsoft Software Categories and Applicable License Metrics:

Client and Server Products (Currently includes PI System Software, High Availability Servers, PI ProcessBook, PI DataLink, PI Integrators, PI WebParts, PSA)

Licensee's use of Client Software cannot exceed the number of Individual License, Named User or Concurrent Users using the Client Software to access any Server Software as specified in accepted Orders and licensed pursuant to this Agreement.

Licensee's use of Server Software cannot exceed the number of Datastream Points created in such Server Software (as measured by the OSIsoft Software), Nodes on which the Server Software is installed, Data or Connections as applicable and specified in accepted Orders and licensed under this Agreement. Client Software may also be licensed by OSIsoft to Licensee to interoperate with identified Server Software. Such Client Software may only be used to interoperate with the identified Server Software, however, there are no Individual License, Named User or Concurrent User limitations.

Except to the extent that a user is properly accessing Server Software through direct use of properly licensed Client Software, Licensee must acquire the appropriate PSA license to access data directly or indirectly from the Server Software. Indirect access shall include, but not be limited to, accessing data from the Server Software through a third party application, use of extract transfer and load (ETL) applications, and using Client Software through a terminal or other program. In all events, reducing the number of users who access the Server or use the Client Software directly through the use of an intermediary software program or hardware does not reduce the number of PSAs required. This is called multiplexing or pooling. All users who access the multiplexing or pooling system and all Servers that transmit data to such a system must have an appropriate PSA license, even if such users are not directly using the Client Software or accessing data directly from Server Software.

Licensee may only write programs that make calls to OSIsoft's Data Access Software under the following circumstances: (i) pursuant to an appropriate development license from OSIsoft (e.g. OSIsoft Virtual Campus); (ii) to extend the functionality of an OSIsoft Product that is designated by OSIsoft as including "Programmatic Extensions", or a similar designation, and only as expressly permitted by the accompanying documentation; or (iii) as expressly permitted by a previously purchased OSIsoft Product license.

Server Software modules and Datastream Points designated by Licensee in an Order for use with one "PI" Server Software module cannot be moved to or otherwise used with any other "PI" Server Software module without OSIsoft's express consent. Except as otherwise expressly provided in this Agreement, once Datastream Points have been designated by Licensee in an Order for use with a PI Server Software module, Licensee cannot return such Datastream Points to OSIsoft for any credit or refund of any kind.

Interfaces and Connectors

Interface products licensed by the Connection may not exceed the number of Connections specified in accepted orders. All other Interfaces are licensed on an Node or Server basis. Interfaces licensed on a Node basis may only be used on the number of Nodes specified in accepted orders. Interfaces licensed on a Server basis may be used on an unlimited number of Nodes, provided that they are only interoperating with the number of Servers specified in accepted orders.

Integrators

Integrators are a piece of software that connects the OSIsoft Software to visualization, reporting and analytics systems. Integrators may be licensed based on server size, instance or data usage. Integrators licensed based on the corresponding Server size may only be used to interoperate with the Servers specified in accepted orders. Integrators may also be licensed based on total Unique Output DataStream Points.

Test Servers

This type of OSIsoft Software is licensed solely for testing purposes. Such OSIsoft Software cannot be used in production or otherwise used to process any data generated from Licensee's business operations.

Ancillary Servers

An ancillary server is a PI Server that plays a supporting role to a corresponding properly licensed production PI server for testing or network architecture reasons.

Third Party Software

Software designated as "Third Party Software" on OSIsoft's price list is not subject to this Agreement. OSIsoft acts only as a distributor for Third Party Software and all licensing terms, support and warranty service, if any, will be provided by the third party vendor for this type of software. Except for OSIsoft's failure to deliver the Third Party Software in accordance with Licensee's accepted Orders, notwithstanding any provision in this Agreement, in no event will OSIsoft be liable to Licensee or to any third party for damages of any kind arising from or related to the Third Party Software.

License Usage Definitions

"OSIsoft Software" means all those software products delivered to Licensee or licensee's designee including without limitation, (i) those that are designed and designated by OSIsoft to operate on a network server computer ("***Server Software***"), a client device ("***Client Software***"), or as an interface with certain hardware monitoring devices, third party software and multiple copies of Server Software ("***Interface***"); and (ii) all related documentation, bug fixes and updates delivered to Licensee by OSIsoft or its designee. For purposes of Sections 4, 5 and 6, OSIsoft Software shall in no event include any software or source code that is designated as "sample", "example", "beta" or with some other similar designator by OSIsoft. Use of such software or source code is at Licensee's sole risk and OSIsoft shall in no way be liable for any damages that may result.

"PSA" stands for PI System Access license. PSA licenses sold on a Named User basis permit the licensed user to access data from any licensed Server Software. PSA licenses sold on a server basis permit Licensee's users to access data from the Server Software licensed even if they are not a Named User.

"Concurrent Users" mean individuals who are accessing the same copy of Server Software at the same time.

"Data Access Software" means certain software as designated by OSIsoft that enables Server Software to interoperate with Client Software and non-OSIsoft software systems and devices. Data Access Software includes, API, PI SDK, AF SDK, PI OLEDB Provider, PI OLEDB Enterprise, PI ODBC Client, OPC, PI JDBC Driver and PI Web Services and such other software as OSIsoft may designate from time to time.

"DataStream Point" means a tag or module that is created and exists in certain Server Software modules that is used to setup, configure or store data-points or data structures.

"Connection" means a link between the data generated from one copy of OSIsoft Software and another copy of OSIsoft Software or a third party data source. Unless otherwise indicated in an OSIsoft quote, each Connection is unidirectional.

"Individual Licenses" means the number of client devices onto which Licensee may install Client Software. One Individual License may be used on up to two client devices to facilitate home office use or remote access so long as one Individual License is not used by two individuals at the same time. Individual Licensed Software cannot be used to export data from the OSIsoft Software and serve such data directly or indirectly to another client or device.

"Named User" means an individual who is authorized to access the OSIsoft Software.

"Node" means a single computer. Any virtualization of a Node shall be counted as an additional instance.

"Unique Output DataStream Point" means a previously unpublished DataStream Point being exported out from the PI Server that has been previously selected for integration.

"Users" means the number of individuals who are authorized to access a copy of Server Software.

EXHIBIT B
U.S. Federal Software License and Services Agreement

Schedule of Contractors

1) Contractor's Legal Name:	
Contact Name, phone & email:	
Physical Street Address:	
City, State, Zip Code:	
Country:	

2) Contractor's Legal Name:	
Contact Name, phone & email:	
Physical Street Address:	
City, State, Zip Code:	
Country:	

3) Contractor's Legal Name:	
Contact Name, phone & email:	
Physical Street Address:	
City, State, Zip Code:	
Country:	

a4) Contractor's Legal Name:	
Contact Name, phone & email:	
Physical Street Address:	
City, State, Zip Code:	
Country:	

(Use additional sheets as necessary)

EXHIBIT C
Software Reliance Program Terms

1. Services

1.1 **Designated System Manager.** As a condition to OS/soft's performance of the Software Reliance Program, Licensee must designate one or more "System Manager(s)" as the individual(s) responsible for maintaining the integrity of the hardware and software of the system of which the OS/soft Products are a part (the "System"). Licensee is responsible for maintaining individual(s) trained as System Manager(s).

1.2 **Software Reliance Program Services.**

(a) **Technical Support.** OS/soft will provide the System Manager with the contact information for the designated OS/soft Technical Support. The System Manager will be entitled to contact the OS/soft Technical Support 7 days a week, 24 hours a day (except for ProcessPoint for which such support will be available on business days between 9am to 6pm Eastern Standard Time) to ask questions or seek advice regarding the use of the OS/soft Products. OS/soft will assist the System Manager in using the OS/soft Products and in identifying and providing workarounds, if possible, for problems with the OS/soft Products. Such assistance may include computer communications to Licensee's facilities. OS/soft will use its best efforts to respond to all Technical Support queries within four (4) hours (for ProcessPoint response times only apply during support hours).

(b) **Product Suggestions.** Licensee may submit product suggestions to OS/soft identifying desired improvements in the OS/soft Products. OS/soft retains the right to determine the final disposition of all such suggestions and Licensee recognizes that OS/soft is free to use such suggestions in any manner. If OS/soft decides in its sole judgment to incorporate any such suggestion, it will do so by providing Licensee with an Update, as described in subsection (d) below.

(c) **Bug Fixes.** OS/soft will use reasonable efforts to provide Licensee with an avoidance procedure for and a correction of each material defect in the OS/soft Products that cause the OS/soft Products not to conform in all material respects with the OS/soft Documentation (a "Bug Fix").

(d) **Software Updates.** As OS/soft develops permanent solutions for known OS/soft Products problems, OS/soft will, from time to time, incorporate such solutions into planned updates to the OS/soft Products, as applicable, ("Updates"). Such Updates may also include those minor enhancements and extensions or other changes to the OS/soft Products as are determined by OS/soft to be suitable to the uses made of the OS/soft Products by OS/soft's licensees and are

made available by OS/soft to its other licensees without additional charge. OS/soft will provide Licensee's whose Software Reliance Program fees are current with such Updates as they are released. OS/soft will provide Licensee with such instructions and/or documentation that OS/soft considers reasonably necessary to assist in a smooth transition to use of such Updates. Use of some Updates may require Licensee's agreement to additional usage terms. In the event OS/soft decides in its discretion to update the appropriate software reference manual or to issue release notes or other documentation corresponding to Updates, OS/soft will provide one copy of the same to Licensee at no charge as they become available.

(e) **Interface Exchanges.** Licensee may exchange one standard interface for another if the only difference between the two interfaces is the operating system with which the interface is compatible. These exchanges will be processed free of any licensing fees. For example, Fisher Chip on VMS may be exchanged for Fisher Chip on NT, for no license fee. OS/soft will have the right to charge any shipping, handling, tariffs or other OS/soft costs related to delivering any replacement interface.

1.3 **Remote Support Service.** Remote Support Service for OS/soft Products involves the use of remote data links from OS/soft to Licensee's System to render the services to Licensee described in Section 1.2 above. OS/soft will maintain compatible equipment or emulators to be able to remotely operate on Licensee's System. In order to receive Remote Support Service for OS/soft Products, Licensee must meet the following prerequisites:

(a) Licensee must allow an OS/soft approved 3rd Party remote control tool or another OS/soft approved connection to the System, which, at a minimum, will accept reports, messages, and file transfers and a separate telephone line for simultaneous voice communication located with the System.

(b) Licensee's System must be available to OS/soft when required, and OS/soft must have a logon, password, and sufficient priority to access the System when needed.

1.4 **On-Site Assistance.**

(a) In the event that OS/soft is unable to resolve a problem with the OS/soft Products through telephone assistance pursuant to Section 1.2(a) above or through Remote Support Services pursuant to Section 1.3 above, the System Manager may request OS/soft to provide on-site assistance. After verifying the need for on-site assistance, including without limitation that Licensee has complied with the terms of Section 1.3(a), OS/soft will use its best efforts, subject to the reasonable

availability of its personnel, to commence travel for such on-site assistance within one business day for travel of less than 1000 miles from OSISOFT's facilities, and within two business days otherwise. OSISOFT will render on-site assistance to Licensee until resolution of the problems identified or for so long as reasonable progress is, in OSISOFT's judgment, being made. OSISOFT may suspend the performance of on-site assistance as required to obtain additional resources, but will resume such assistance when such resources become available.

(b) OSISOFT's obligation with respect to on-site assistance is limited to isolating, identifying, and reporting problems associated with OSISOFT Products. If problems are isolated to OSISOFT Products, OSISOFT will provide Licensee with Bug Fixes, as available. As an interim solution, until a Bug Fix is available, OSISOFT will use reasonable efforts to assist Licensee in finding an avoidance procedure, if possible, which allows use of the System. Licensee has sole responsibility and liability for implementation of OSISOFT's recommended interim solution.

(c) OSISOFT will invoice and Licensee will pay OSISOFT's out of pocket expenses incurred in providing on-site assistance. If on-site assistance is necessary because Licensee has failed to allow OSISOFT to provide Remote Support Service, then OSISOFT will invoice and Licensee will pay for the time spent by OSISOFT personnel in connection with providing such on-site assistance, in accordance with OSISOFT's then-current custom software services rates. The origin of any problems associated with the OSISOFT Products will not affect any amounts invoiced for on-site services, even if such problems are caused by Nonqualified Products (as defined below).

1.5 **U.S. Person Requirement.** Notwithstanding the foregoing, if Licensee is required to restrict access to its technology, information or premises to only U.S. citizens and/or permanent residents by applicable U.S. laws and regulations ("U.S. Person Requirement"), then Licensee agrees to:

(a) inform OSISOFT of such U.S. Person Requirement when initiating a Technical Support request pursuant to Section 1.2(a) above or Remote Support Service request pursuant to Section 1.3 above;

(b) inform OSISOFT of the U.S. Person Requirement when initiating on-site assistance request pursuant to Section 1.4 above; and

(c) accept that due to the U.S. Person Requirement, Technical Support and Remote Support Service are available only on business days between 7am and 6pm Pacific Standard Time, and that on-site assistance may be delayed.

1.6 **Subscription Term.** Unless otherwise agreed, each Software Reliance Program subscription shall be for a term of 12 months.

2. **Conditions to the Software Reliance Program**

All Software Reliance Program services to be rendered by OSISOFT hereunder are subject to the following conditions:

2.1 **Nonqualified Products.** OSISOFT shall have no obligations or responsibilities of any kind hereunder with respect to any hardware or software product other than the OSISOFT Products ("Nonqualified Products"). Nonqualified Products shall also include any custom application programs or other software developed by OSISOFT for Licensee. If the performance by OSISOFT of the Software Reliance Program is made more difficult or impaired because of Nonqualified Products, OSISOFT shall so notify Licensee, and Licensee will immediately remove the Nonqualified Product at its own risk and expense during any efforts to render services under this Agreement. Licensee shall be solely responsible for the compatibility and functioning of Nonqualified Products with the OSISOFT Products or the OSISOFT Remote Application.

2.2 **System Versions.** All Licensee System hardware and software must be maintained at the revision level deemed necessary by OSISOFT for proper operation of the OSISOFT Products.

2.3 **Backup Procedures.** Licensee is solely responsible for maintaining a procedure external to the OSISOFT Products for reconstruction of lost or altered files, data, or programs to the extent deemed necessary by Licensee and for actually reconstructing any lost or altered files, data or programs.

2.4 **Operator Procedures.** Licensee shall at all times follow routine operator procedures as specified in OSISOFT operating manuals or other operating manuals for the OSISOFT Products.

2.5 **Licensee Representative.** A designated representative of Licensee shall be present at all times OSISOFT is performing services on Licensee's premises or the premises of Licensee's Client. OSISOFT personnel will not enter or remain at Licensee's premises or the premises of Licensee's Client in the absence of such Licensee representative.

2.6 **Isolation.** Licensee is solely responsible for ensuring that the System is isolated from any process links or anything else that could cause harm before requesting or receiving Remote Support Service or on-site assistance.