

**Carahsoft Rider to Manufacturer End User License Agreements
(for U.S. Government End Users)**

- 1. Scope.** This Carahsoft Rider and the Information Security Corporation ('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
- (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.

SOFTWARE LICENSE AGREEMENT

This license agreement only grants you limited rights to the use of this software and its documentation (the "Software"). If you do not wish to agree to the terms and conditions of this license agreement, return the unopened diskette package and documentation to your authorized dealer or ISC within ten (10) days after purchase with your receipt or charge card voucher and your money will be refunded. No refunds will be given for products which have opened diskette packages or missing components.

PERMITTED USES

Information Security Corporation (ISC) is granting you a restricted license to use the Software in accordance with the following terms. The terms "Software" includes programs and related documentation supplied herewith.

1. You have the personal, non-exclusive restricted right to use the Software. Only one user may use the Software at a time. A separate license agreement and fee are required for any additional concurrent users.
2. You may merge the Software with other software and such merged software will be subject to the same restrictions as the original software.
3. You may transfer the Software to a third party other than the U.S. Government provided the third party: (i) notifies ISC that it agrees in writing to be bound by the terms and conditions of this Agreement prior to the transfer of the Software; and (ii) all copies of the Software are delivered the third party with none being retained by you. You may make a reasonable number of copies of the Software for operation and backup purposes, provided that each copy is labeled to show the Software name, version number, and the copyright and trademark notices in the same form as they appear on the original licensed copy.

You may not use, copy, modify, transfer, decompile, or disassemble the Software, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this Software License Agreement. If you fail to comply with any of the terms or conditions as set forth above, your license is automatically terminated.

OWNERSHIP

Title to the Software and its related documentation, and all copies thereof shall at all times remain with ISC or its licensor. You acknowledge and agree that the Software constitutes and incorporates proprietary information and trade secrets of ISC and its licensor and is protected by copyrights owned by ISC or its licensor(s). You shall treat the Software as confidential and proprietary.

TERM

The license is effective until terminated. You may terminate it any time by destroying the Software and documentation together with all copies. The license will also terminate if you fail to comply with any restriction on usage or transfer set forth above. Upon such termination, you agree to destroy the Software and documentation, together with all copies, modifications and merged portions in any form.

LIMITED WARRANTY

ISC warrants for a period of ninety (90) days from the date of purchase that (i) the Software will perform substantially in accordance with its user's guide when properly installed and operated; and (ii) the media upon which the software is recorded will be free from defects in materials and workmanship.

You must notify ISC in writing of any warranty claim not later than thirty (30) days after expiration of the warranty period.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND ISC MAKES NO OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE IMPLIED WARRANTIES OF MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. YOU ASSUME ALL RISK AS TO SELECTION, QUALITY, INSTALLATION, RESULTS AND PERFORMANCE. ISC DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. SOME STATES DO NOT ALLOW EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, SO THE ABOVE IMITATION MAY NOT APPLY TO YOU.

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE

If this Agreement is with a civilian agency of the U.S. Government, the following provisions shall apply. Notwithstanding any other provisions of this Agreement, ISC is not required to furnish technical data or computer software developed at private expense except for that listed in the Purchase Order.

The Government requires delivery in accordance with FAR 52.227-14, Alternate III, and/or FAR 52.227-19, of the items of computer software, including related documentation, which shall be delivered in human-readable form or stored on magnetic tape, magnetic disk, semiconductor circuit device, or other appropriate storage medium; shall be received by the Government only with Restricted Rights. The computer software shall not be copied, except the Government may make a temporary copy in the memory of a single computer for the purpose of using the Licensed Materials and a single archive copy of the Licensed Materials, but no other whole or partial copy may be made of such Licensed materials; the computer software shall not be disassembled or reverse engineered; and shall be returned or destroyed when no longer needed by the Government. The items of computer software listed above are unpublished - all rights reserved under the copyright laws of the United States.

ISC shall not receive or be given access to any data requiring treatment by ISC in accordance with FAR 52.337-14(d)(2).

ISC's standard marking procedures regarding the protection of technical data and licensed computer software shall be acceptable.

If this Agreement is with a military agency of the U.S. Government, the following provisions shall apply. Notwithstanding any other provisions of this Agreement, ISC is not required to furnish technical data or computer software developed at private expense except for that listed in the Purchase Order.

These categories herewith constitute a listing of licensed computer software that will be furnished with Restricted Rights.

The only items of licensed computer software that ISC is required to deliver to the Government pursuant to this Agreement are identified and specified in herewith. Such items of licensed computer software shall be received by the Government only with Restricted Rights - Commercial Computer Software under DFARS 52.227-7013(c)(1)(ii)(OCT 1988), and shall be subject to this LICENSE AGREEMENT.

ISC has a large body of background technical data which was developed wholly at private expense. In performing under this Agreement, ISC intends to make use of as much of this background technical data as would benefit the Government. This constitutes a full and complete notice and representation in response to Paragraph (j), DFARS 52.227-7013(OCT 1988).

ISC's standard marking procedure regarding the protection of technical data and licensed computer software shall be acceptable.

FEDERAL ACQUISITION REGULATIONS CLAUSES

This Agreement incorporates the following clauses by reference with the same force and effect as if they were given herein in full text:

CLAUSE	TITLE
52.227-1	Authorization and Consent (APR 1984)
52.227-14	ALT.3 Restricted Rights Notice, Rights in Data General (JUN 1987)
52.227-19	Restricted Rights Notice
252.227-7013	Rights in Technical Data and Computer Software (OCT 1988)
52.232-1	Payments (APR 1984)
52.232-17	Interest (APR 1984)
52.223-1	Disputes (APR 1984)
52-249-1	Termination for Convenience of the Government
52.249-18	Excusable Delays (APR 1984) (Fixed Price)(Short Form) (APR 1984)

LIMITATION OF REMEDIES

ISC's entire liability and your sole and exclusive remedy under this license and related to your use of the Software shall be:

1. The replacement of any diskette not meeting ISC's limited warranty and which is returned to ISC or an authorized ISC dealer with a copy of your receipt; or
2. If ISC or the authorized dealer is unable to deliver a replacement diskette which is free from defects in material or workmanship for the stated purpose, you may terminate this license agreement by returning the Software, and your money will be refunded.

IN NO EVENT WILL ISC BE LIABLE FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE SUCH SOFTWARE EVEN IF ISC OR AN AUTHORIZED ISC DEALER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY.

GENERAL

1. This License Agreement will be governed by the laws of the State of Illinois. You hereby agree to submit any disputes arising hereunder to mediation by the American Arbitration Association.
2. You may not sublicense, assign or transfer the Software except as expressly provided for in this Agreement. Any attempt otherwise to sublicense, assign or transfer any of the rights, duties or obligations hereunder is void. If you have any questions concerning this Agreement, you may contact ISC by writing to Information Security Corporation, 1011 Lake Street, Suite 425, Oak Park, IL 60301.
3. You also agree to comply with all applicable U.S. Export Control Regulations.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS LICENSE AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND ISC AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN YOU AND ISC RELATING TO THE SUBJECT MATTER OF THIS LICENSE AGREEMENT.