

**Carahsoft Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Revised 20161213**

- 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 General Services Administration Order OGP 4800.2I, 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 suspension, termination or cancellation of the Manufacturer's CSA, the License, or the Customer's Account are hereby deemed to be deleted. Termination, suspension or cancellation 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.).

Gimmel Software License Agreement- Public Sector Version

Your use of the Software is subject to the terms and conditions of the Gimmel Software License Agreement- Public Sector Version, but only to the extent that all terms and conditions in the Gimmel Software License Agreement- Public Sector Version are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341 and 41 U.S.C. §6301), the Contracts Disputes Act of 1978 (41. U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (41 § U.S.C.6405), 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 Gimmel Software License Agreement- Public Sector Version or these Service Specific Terms are inconsistent with Federal Law (See FAR 12.212(a)), they shall be deemed deleted and unenforceable as applied to any Orders under these Service Specific Terms.

NOTICE: Use of the Software that is the subject of this Agreement requires a valid Client Access License for Microsoft SharePoint Server 2010 or later (Standard License).

This Gimmel Software License Agreement- Public Sector Version (this “Agreement”), effective as of the Effective Date identified on the Cover Sheet which is specifically incorporated into this Agreement, is between Gimmel LLC (“Gimmel LLC”), a Texas limited liability company, and the Licensee identified on the Cover Sheet. The parties agree as follows.

1. Definitions

Licensed Users: “Licensed Users” means employees and contractors of Licensee who are authorized by Licensee to use the Software installed on Permitted Computers owned or leased by Licensee. Contractors of Licensee: (1) are only authorized to utilize the Software for specific governmental purposes; and (2) are not authorized to use and may not use the Software for any other purpose.

Maximum Number of Client Access Licensed Users: The “Maximum Number of Client Access Users” identified on the Cover Sheet of this Agreement is the maximum number of Licensed Users, using any Permitted Computer to access the Software, at any one time.

Permitted Computers: “Permitted Computers” means (1) computers owned or leased by Licensee located at the Site, (2) laptop or portable computers owned or leased by Licensee, and (3) portable or home computers for secondary use by a Licensed User who is a principal user of the Software on a primary computer owned or leased by Licensee located at the Site.

Site: “Site” means offices owned or controlled by Licensee.

Software: The “Software” is identified on the Cover Sheet of this Agreement. The term “Software” means (a) the object code and executable code versions of the computer program(s) identified on the Cover Sheet, and (b) any Updates of such computer program(s), add-on components, web services and/or supplements provided by Gimmel LLC from time to time in its sole discretion. The term “Software” for purposes of this Agreement does not include software licensed by Microsoft Corporation.

Software Documentation: The term "Software Documentation" means printed and electronic user manuals and documentation accompanying or published for the Software that may be provided to Licensee by Gimmel LLC in its sole discretion.

Warranty Period: The "Warranty Period" means the sixty (60) day period after delivery of the Software to an authorized representative of the Licensee.

2. License

Subject to the terms and conditions of this Agreement, Gimmel LLC grants to Licensee a non-exclusive, non-transferable, license for the Maximum Number of Client Access Licensed Users to use the Software during the Term on Permitted Computers. The license granted is a Client Access License ("CAL") and is specific to each person or device accessing a Microsoft SharePoint Server.

3. License Conditions and Restrictions

- 3.1 Conditions and Restrictions: Each of the provisions of this Section 3 is a material term.
- 3.2 Licensee's Internal Use: Licensee shall not use or permit others to use the Software for any purpose other than Licensee's own internal governmental purposes.
- 3.3 Licensed Users: Licensee shall not permit use of the Software by any person other than Licensed Users.
- 3.4 Permitted Computers: Licensee shall not install or use the Software or permit installation or use of the Software on any devices other than Permitted Computers.
- 3.5 Copies and Derivative Works: Licensee shall not copy, modify, or create any derivative works of the Software and shall not permit others to do so, except that Licensee may make a reasonable number of back-up copies of the Software.
- 3.6 Reverse Engineering: Licensee shall not decompile, disassemble, reverse engineer, or attempt to derive the source code for the Software, and shall not permit others to do so.
- 3.7 Transfer: Licensee shall not distribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Software, and shall not permit others to do so.
- 3.8 Marks and Notices: Licensee shall not remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols, or labels on the Software, and shall not permit others to do so.
- 3.9 Compliance with Laws: Licensee shall comply with all export laws and regulations of the Country in which the software is deployed.

- 3.10 Licensed Use of Microsoft SharePoint: Prior to using the Software, (1) Licensee must possess a standard license to use Microsoft SharePoint 2010 or greater products, and (2) Licensee shall not use the Software except with authorized copies and uses of Microsoft SharePoint Server 2010 (Standard License) or greater.

4. Fees

License Fee: Fees, expenses and charges shall be paid in accordance with the Prompt Payment Act and the terms of the government contract associated with this Agreement. The fees shall include a minimum of one year of Software Maintenance as a Product.

5. WARRANTIES, REMEDIES, LIMITATIONS, INDEMNITIES

5.1 LIMITED WARRANTY: Gimmel LLC warrants that, during the Warranty Period, if used in accordance with this Agreement, operated as directed, and used in the environment described in the Software Documentation accompanying the Software, the Software will substantially achieve the functionality described in the Software Documentation. This limited warranty shall not apply if Licensee alters, modifies, or misuses the Software or is in breach of this Agreement.

5.2 EXCLUSION OF WARRANTIES: EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5.1, GIMMAL LLC AND ITS AFFILIATES AND AGENTS MAKE NO WARRANTY OF ANY KIND AS TO THE INSTALLATION, USE, OR PERFORMANCE OF THE SOFTWARE OR THE RESULTS OBTAINED FROM USE OF THE SOFTWARE. EXCEPT AS EXPRESSLY PROVIDED, GIMMAL LLC AND ITS AFFILIATES AND AGENTS DO NOT WARRANT THAT THE SOFTWARE IS FREE OF DEFECTS, MERCHANTABILITY, OR FIT FOR A PARTICULAR PURPOSE AND DISCLAIM AND EXCLUDE ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SOFTWARE, ITS USE, PERFORMANCE, RESULTS, OR APPLICATION; THE DISKETTE OR OTHER TANGIBLE MEDIA ON WHICH THE SOFTWARE IS DELIVERED; OR ANY INFORMATION PROVIDED REGARDING THE SOFTWARE.

5.3 Sole and Exclusive Remedy. This section provides Licensee's sole and exclusive remedy for any breach of the limited warranty set forth in Section 5.1 or for any other failure of or defect or nonconformity in the Software. Licensee must provide to Gimmel LLC written notice of any claim of breach of warranty no later than the end of the Warranty Period. Licensee shall have no remedy if

Licensee fails to provide timely notice or if Licensee fails to describe the breach of warranty in a timely notice. Upon receipt of a timely and proper notice, then, at Gimmel LLC's sole discretion, Gimmel LLC shall:

1. provide repaired or corrected Software or Software Documentation; or

2. provide instructions as to how Licensee may achieve substantially the same functionality with the Software as described in the Software Documentation accompanying the Software; or
3. terminate this Agreement and provide a refund of the License Fee paid by Licensee.

Licensee shall have no other rights or remedies against Gimmel LLC for any breach of the limited warranty set forth in Section 5.1 or for any other failure of or defect or nonconformity in the Software.

5.4 LIMITATION OF LIABILITY: GIMMAL LLC AND ITS AFFILIATES AND AGENTS WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE POSSESSION OF, USE OF, FAILURE OF, OR INABILITY TO USE THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, DATA LOSS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS WHETHER THE CLAIM OR LIABILITY IS BASED UPON ANY CONTRACT, TORT, BREACH OF WARRANTY, OR OTHER LEGAL OR EQUITABLE THEORY, AND NOTWITHSTANDING THAT ANY REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE MAXIMUM LIABILITY OF GIMMAL LLC AND ITS AFFILIATES AND AGENTS TO LICENSEE SHALL IN ANY EVENT NOT EXCEED THE SUM OF THE LICENSE FEE PAID BY LICENSEE FOR THE SOFTWARE (REGARDLESS WHETHER LIABILITY ARISES FROM BREACH OF THE LIMITED WARRANTY OR BREACH OF THIS AGREEMENT, OR BASED ON CONTRACT, TORT, BREACH OF WARRANTY, OR OTHER LEGAL OR EQUITABLE THEORIES).

5.5 Intellectual Property Indemnification: Subject to the limitations in Section 5.4 (including the maximum liability of Gimmel LLC to Licensee), Gimmel LLC shall defend, indemnify, and hold Licensee harmless from all damages, costs, and expenses (including reasonable attorneys' fees and costs) relating to any third party claims against Licensee alleging that the Software infringes the third party's intellectual property rights. Licensee shall provide written notice to Gimmel LLC of any claim for which indemnity is sought, promptly upon becoming aware of such claim or lawsuit and in any event within ten (10) days after receiving written notice of the claim.

6. Records; Audit; Certification of Compliance

6.1 Licensee must keep records relating to the Software. Gimmel LLC has the right to verify compliance with this Agreement, at Gimmel LLC expense, during the term of the Agreement and for a period of one year thereafter.

6.2 To verify compliance, Gimmel LLC will engage an independent accountant from an internationally recognized public accounting firm, which will be subject to a confidentiality obligation.

Verification will take place upon not fewer than 30 days' notice, during normal business hours and in a manner that does not interfere unreasonably with Licensee operations. Licensee must promptly provide the accountant with any information it reasonably requests in furtherance of the verification. As an alternative, Gimmel LLC can require Licensee to complete Gimmel LLC's self-audit questionnaire relating to the use of the Software, but reserve the right to use a verification process as set out above.

If Gimmel LLC undertakes a verification and does not find material unlicensed use (license shortage of 5% or more), Gimmel LLC will not undertake another verification of the Licensee for at least one year. Gimmel LLC and our auditors will use the information obtained in compliance verification only to enforce Gimmel LLC rights and to determine whether the Licensee is in compliance with the terms of the Agreement. By invoking the rights and procedures described above, Gimmel LLC does not waive its rights to enforce this Agreement or to protect Gimmel LLC's intellectual property by any other means permitted by law.

7. Ownership and Confidentiality

Except for the license rights granted to Licensee hereunder, Gimmel LLC retains all right, title, and interest in the Software, including any rights under patent, trademark, copyright, trade secrets, and other intellectual property laws, and this Agreement does not grant to Licensee any intellectual property rights in the Software. The structure, organization, and code underlying the Software are the valuable trade secrets of Gimmel LLC. Licensee shall not take any action to jeopardize, limit, or interfere in any manner with Gimmel LLC's rights, shall not disclose or permit others to disclose any of Gimmel LLC's trade secrets, and shall take all reasonable precautions necessary to protect the confidentiality of Gimmel LLC's trade secrets.

8. Term and Termination

8.1 Effective Date: This Agreement is effective as of date of contract award for a period identified in the Purchase Order, Statement of Work, or similar document.

8.2 Surviving Terms: Sections 5 and 7 shall survive termination of this Agreement.

9. General

9.1 Modifications: No modification, amendment, or waiver of any provision of this Agreement shall be effective unless signed by authorized representatives of Carahsoft Technology Corporation and the General Services Administration (GSA).

9.2 Public Sector End-Users: The Software is a "commercial item," consisting of "commercial computer software" and "commercial computer software documentation," all public sector end-users acquire the Software only as a "commercial item" and only

with those rights that are granted to all other end-users pursuant to the terms and conditions of this Agreement.

9.3 Severability: If any provision in this Agreement should be held invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect.

9.4 No Assignment by Licensee: Licensee may not assign its rights or delegate its obligations under this Agreement without the prior written consent of Gimmel LLC, which consent may be withheld in the sole discretion of Gimmel LLC. This Agreement shall be binding on and inure to the benefit of the parties and their successors and assigns.

Gimmel LLC Software Maintenance as a Product Agreement - Public Sector Version

This Gimmel LLC Software Maintenance as A Product Agreement-Public Sector Version ("Maintenance Agreement"), effective as of the date of execution of the applicable government contract or Task/Delivery Order, whichever is later (the "Effective Date"), is between Gimmel LLC ("Gimmel LLC"), a Texas limited liability company, and the Government Ordering Activity. Carahsoft Technology Corporation is a "Reseller" for provisioning of Software maintenance and Support to a Licensee of the Software. The parties agree as follows.

1. Definitions

The definitions contained in the Gimmel Software License Agreement-Government Version are hereby incorporated by reference.

Annual Maintenance Fee: The "Annual Maintenance Fee" is 20% of the Software license fee.

Contract Year: A "Contract Year" means any twelve-month period beginning on the Effective Date or an anniversary of the Effective Date during the Term.

Initial Term: The "Initial Term" is in accordance with the Task Order.

Standard Business Hours: "Standard Business Hours" means 8:00 am to 5:00 pm, Central Time, Monday through Friday, excluding federal holidays.

Term: The "Term" means the Initial Term and any renewal term.

2. Maintenance

2.1 Maintenance: For Licensees with a valid license for the Software, will provide Licensee with the following maintenance ("Maintenance") during Standard Business Hours:

- (1) User support by telephone, email, and through an Internet support portal;
- (2) Updates as defined in Section 2.2; and
- (3) Technical support as described in Section 2.3.

"Maintenance" does not include:

- A. on-site support, training, custom programming services, the creation, design, implementation, integration, etc. of the software and hardware and related supplies; or
- B. any services for computers that are not Permitted Computers at a location other than at the Site or for computers not owned or leased by Customer; or
- C. any services for any person who is not a Licensed User under a valid license for the Software.

2.2 Updates: This Section 2.2 shall apply only as provided in Section 2.1. Gimmel LLC may from time to time and at its sole discretion develop updates to the Software within the version licensed by Licensee ("Updates"). Gimmel LLC will supply Licensee with such Updates as they become available, at no additional cost to Licensee. All Updates shall become part of the Software and shall be subject to the Gimmel License Agreement- Government Version. Gimmel

LLC will not be obligated to support any prior version of the Software more than two [2] years after a new or Updated version is made available to Licensee. Upgrades, which are new version releases of the Software and generally identified by a new sequential whole number, are not included in Maintenance. Licensee may acquire Upgraded Software by payment of the applicable license fee or Upgrade fee.

2.3 Technical Support: This Section 2.3 shall apply only as provided in Section 2.1.

Upon receipt of a request for technical support for a problem or error that produces an emergency situation in which Licensee is unable to use the Software on its internal system which has a critical effect on Licensee's governmental operations, Gimmel LLC will begin working on an acceptable work-around, remedy or cure for the problem or error consistent with the standards in the industry within six (6) business hours after Licensee's notification during Standard Business Hours. If an acceptable work-around or cure for the Software error is not found within eight (8) business hours after Licensee's notification, the parties will refer the problem or error to senior executives of Gimmel LLC and Licensee for resolution.

Gimmel LLC shall assist Licensee with understanding when there are problems or errors relating to SharePoint, but such problems or errors shall not be included in the Technical Support described above and in the case of a known deficiency may have dependencies on Microsoft Corporation for correction. Gimmel LLC shall, consistent with the standards in the software industry, assist Licensee to obtain support from Microsoft Corporation in connection with any such SharePoint problem or error.

2.4 On-Site Support: On-site support is not included in Maintenance or in the Annual Maintenance Fee. On-site support is available from Gimmel LLC through its Reseller at the fixed hourly rates listed in the Reseller's contract. Approved travel and per diem is to be reimbursed pursuant to Federal Travel Regulations.

Licensee Responsibility: Licensee shall be responsible for:

1. properly using and controlling access to the Permitted Computers running the Software;
2. permitting Gimmel LLC with the necessary access to the Software (including remote access); For problems or errors requiring Gimmel LLC access to the Software, when access is not provided by Licensee, Gimmel LLC shall have no liability for resolving the problem or error;
3. complying with all applicable laws and regulations;
4. providing detailed and accurate descriptions of maintenance related issues to allow Gimmel LLC to fulfill its maintenance obligations;
5. problems resulting from Licensee not operating the Software on the computer hardware specified by Gimmel LLC in the Software Documentation at the time the License Agreement was executed or specified in Software Documentation provided with Updates;

6. any third party products (including, without limitation, Microsoft SharePoint) whether or not such products are running with the Software;
7. service related to reconstruction of data or restoration of data integrity;
8. service required as a result of hardware failure, software other than the Software, catastrophe, fault or negligence of Licensee or its Licensed Users, operator error, improper use of hardware or misuse of the Software;
9. repair or restoration of Licensee's data; and
10. installation, setup and configuration of the Software unless separately contracted for pursuant to Section 2.4.

Licensee must use and maintain the recommended hardware and other equipment specified by Gimmel LLC at the time the Software was licensed or Updates provided. The list of recommended hardware and other equipment for the current version of the Software is listed at Attachment A. If an Update requires additional hardware or other equipment as identified by Gimmel LLC at the time of the release of the Update, it is Licensee's responsibility to purchase and install such hardware or equipment.

2.5 Requests for Maintenance: Licensee shall designate no more than three (3) contact persons for all communications relating to Maintenance. All requests for Maintenance must be by Licensee's contact persons.

3. Payments

3.1 Annual Maintenance Fee: The Annual Maintenance Fee for the Software shall be paid in accordance with the Prompt Payment Act and the terms of the government contract associated with this Agreement.

3.2 Payment: The first Annual Maintenance Fee is due on the Effective Date and shall be paid in accordance with the Prompt Payment Act and the terms of the government contract associated with this Agreement.

4. Warranties, Remedies, Limitations, Indemnities

4.1 Limited Warranty: Gimmel LLC shall perform all services under this Agreement in a good and workmanlike manner.

4.2 Exclusion of Other Warranties: Except as provided in Section 4.1, GIMMAL LLC AND ITS AFFILIATES MAKE NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO CORRECTIONS OR MODIFICATIONS TO THE LICENSED SOFTWARE, OR THE PERFORMANCE OF ANY OTHER OBLIGATIONS UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED, GIMMAL LLC AND ITS AFFILIATES MAKE NO WARRANTY OF ANY KIND AS TO THE INSTALLATION, USE, OR PERFORMANCE OF THE SOFTWARE OR THE RESULTS OBTAINED FROM USE OF THE SOFTWARE. EXCEPT AS EXPRESSLY PROVIDED, GIMMAL LLC AND ITS AFFILIATES,

SUPPLIERS, AND RESELLERS DO NOT WARRANT THAT THE SOFTWARE IS FREE OF DEFECTS, MERCHANTABILITY, OR FIT FOR A PARTICULAR PURPOSE, AND DISCLAIM AND EXCLUDE ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SOFTWARE, ITS USE, PERFORMANCE, RESULTS, OR APPLICATION; THE DISKETTE OR OTHER TANGIBLE MEDIA ON WHICH THE SOFTWARE IS DELIVERED; OR ANY INFORMATION PROVIDED REGARDING THE SOFTWARE.

4.3 LIMITATION OF LIABILITY: GIMMAL LLC AND ITS AFFILIATES AND AGENTS WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE POSSESSION OF, USE OF, FAILURE OF, OR INABILITY TO USE THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, DATA LOSS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER THE CLAIM OR LIABILITY IS BASED UPON ANY CONTRACT, TORT, BREACH OF WARRANTY, OR OTHER LEGAL OR EQUITABLE THEORY, AND NOTWITHSTANDING THAT ANY REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE MAXIMUM LIABILITY OF GIMMAL LLC AND ITS AFFILIATES, SUPPLIERS, AND RESELLERS TO CUSTOMER SHALL IN ANY EVENT NOT EXCEED THE LAST ANNUAL MAINTENANCE FEE PAID BY CUSTOMER.

5. Termination:

5.1 Nonrenewal: Unless terminated earlier as expressly permitted, this Maintenance Agreement shall remain in full force and effect for the Initial Term.

5.2 Breach: Either party may cancel this Maintenance Agreement by written notice to the other party if the other party fails to cure a breach of this Maintenance Agreement within thirty days after receipt of written notice describing the breach. Such cancellation shall not affect the other legal rights of either party with regard to the breach and any resulting damages.

5.3 Cancellation of the Software License: This Maintenance Agreement shall end 30 days after written notification by one party to the other.

5.4 Termination of Support: Gimmel LLC may terminate Maintenance by providing at least one hundred twenty (120) days prior written notice of termination to Licensee. Upon such termination of Maintenance, Gimmel LLC will refund any unused pro rata portion of the Annual Maintenance Fee paid by Licensee.

5.5 Surviving Terms: Section 4 shall survive termination of this Agreement.

5.6 Notwithstanding the foregoing, termination of this Maintenance Agreement shall be in accordance with General Services Administration Acquisition Regulation (GSAR) 552.212-4 (l) Termination for the Ordering Activity's Convenience, GSAR 552.212-4(m) Termination for Cause, GSAR 552.212-4(d) Disputes, and the Contract Disputes Act.

6. General

6.1 Modifications: No modification, amendment, or waiver of any provision of this Maintenance Agreement shall be effective unless signed by authorized representatives of Carahsoft Technology Corporation and the GSA.

6.2 Severability: If any provision in this Maintenance Agreement should be held invalid or unenforceable, the other provisions of this Maintenance Agreement shall remain in full force and effect.

6.3 No Assignment by Licensee: Licensee may not assign its rights or delegate its obligations under this Maintenance Agreement without the prior written consent of Gimmel LLC, which consent may be withheld in the sole discretion of Gimmel LLC. This Maintenance Agreement shall be binding on and inure to the benefit of the parties and their successors and assigns.