

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

1. Scope. This Carahsoft Rider and the Application Security, Inc. ("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 2000) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.
  - (c) Contract Formation. Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - (d) Audit. During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.
  - (e) Termination. Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:  
Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court..
  - (f) Consent to Government Law / Consent to Jurisdiction. Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
  - (g) Force Majeure. Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
  - (h) Assignment. All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.
  - (i) Waiver of Jury Trial. All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.

- (j) Customer Indemnities. All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) Contractor Indemnities. All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) Renewals. All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) Future Fees or Penalties. All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (o) Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) Installation and Use of the Software. Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) Dispute Resolution and Venue. Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (r) Limitation of Liability: Subject to the following:  
Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.
- (s) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.
- (t) Public Access to Information. Manufacturer agrees that the EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA and this Rider will be available to the public.
- (u) Confidentiality. Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.

## DREAMFACTORY SUBSCRIPTION AGREEMENT

This is a legal agreement ("Agreement") between Customer ("Customer"), and DreamFactory Software, Inc. ("DreamFactory"), for use of the DreamFactory product subscriptions which Customer has licensed, which may include DreamTeam, Carousel, SnapShot, OrgView, FormFactory or other products provided by DreamFactory, including any updates, upgrades and documentation made available to and acquired by Customer ("Products"). "End User" refers to an individual authorized by Customer to use the Products. The Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. This Agreement is dated \_\_\_\_\_ 2008 ("Effective Date").

1. **LICENSE.** DreamFactory hereby grants to Customer a non-exclusive, non-transferable, worldwide right for End Users to use the Products, subject to the terms and conditions of this Agreement. Customer is responsible for use of the Products by End Users and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with each End Users use of the Products. Customer shall notify DreamFactory immediately of any unauthorized use of any password or account or any other known or suspected breach of security or misuse of the Products. All rights not expressly granted herein are reserved by DreamFactory and its licensors.

2. **PRICES AND FULFILLMENT.** For each Product license acquired by Customer, Customer will be billed at prices agreed to in the attached price list "Exhibit A". The prices agreed to in Exhibit A include all charges for the right to use, standard support as specified by DreamFactory and updates made commercially available, but not for customization, sales taxes, and duties unless called out separately on the DreamFactory invoice. Customer may acquire additional Product licenses which will have a co-terminus expiration with the pre-existing Product licenses acquired under this Agreement (whether initial term or renewal term). Licenses added prior to the middle of a billing month will be charged for that billing month. Fulfillment and provisioning of licenses is done automatically after Customer invokes and completes the transaction through the DreamFactory license manager. For each renewal term, DreamFactory reserves the right to modify its fees and charges and to introduce new charges. All pricing terms are confidential, and Customer agrees not to disclose them to any third party.

3. **INVOICES & PAYMENTS.** Customer will be invoiced for Products that have been provisioned through the DreamFactory license manager. Customer shall pay the invoice within 30 days of the date of receipt of such invoice from DreamFactory. Except as explicitly provided in this Agreement, all payment obligations are non-cancelable and all amounts paid are non-refundable. The fees paid by Customer are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on DreamFactory's income. Customer agrees the billing and contact information provided to DreamFactory is complete and accurate. If Customer believes their bill is incorrect, Customer must contact DreamFactory in writing within 30 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

4. **NO COMMERCIAL USE.** Other than using the Products with salesforce.com, and as permitted under the terms and conditions of this Agreement or other written agreements between Customer and DreamFactory, Customer may not sublicense, sell, resell, transfer, assign, distribute, make any commercial use of, use on a timeshare or service bureau basis, or use to operate a Web-site or otherwise generate income from the Products.

5. **PROPRIETARY RIGHTS.** DreamFactory or its licensors own and shall retain all proprietary rights, including all copyright, patent, trade secret, trademark and all other intellectual property rights, in and to the Products. DreamFactory shall retain ownership of any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the Products. Customer acknowledges that the licenses granted under this Agreement do not provide Customer with title to or ownership of the Products, but only a right to use under the terms and conditions of this Agreement. Customer shall not cause or permit the modification, disassembly, decompilation or reverse engineering of the Products or otherwise attempt to gain access to the source code to the Products. Customer may not modify, adapt, translate or create derivative works based on all or any part of the Products. Customer shall not use the Products in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Products.

6. **TERM AND TERMINATION.** The term of this Agreement shall be for one (1) year and shall automatically renew unless either party provides the other thirty (30) days written notice prior to the applicable Effective Date anniversary. If either party fails to comply with any provision of this Agreement, this Agreement may be terminated immediately if such breach has not been cured within thirty (30) days of notice of such breach. Sections 2 through 11, inclusive, shall survive any termination of this Agreement. Upon any termination of this Agreement, Customer shall cease any further use of the Products and destroy any copies of associated software within Customer's possession and control.

### 7. WARRANTIES.

7.1 **LIMITED WARRANTY.** DreamFactory warrants to Customer during the Term of this Agreement that the Products will, in all material respects, conform to the functionality described in the DreamFactory documentation, and that such functionality will be maintained in all material respects in subsequent upgrades to the Products. DreamFactory's sole and exclusive obligation, and Customer's sole and exclusive remedy for a breach of this warranty shall be that DreamFactory shall be required to use commercially reasonable efforts to modify the Products to conform in all material respects the DreamFactory documentation, and if DreamFactory is unable to materially restore such functionality within thirty (30) days from the date of written notice of said breach, Customer shall be entitled to terminate the Agreement upon written notice and shall be entitled to receive a pro-rata refund of the unused license fees which have been paid in advance (if any) under this Agreement. This warranty shall be in effect for the first thirty (30) days ("Warranty Period") from the date the applicable Products are first provided to the Customer. In the event of any material non-conformance reported after the Warranty Period, DreamFactory's sole and exclusive obligation and Customer's sole and exclusive

remedy shall be to obtain error corrections through DreamFactory's technical support services.

7.2 WARRANTY DISCLAIMER. EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT, DREAMFACTORY AND ITS LICENSORS EXPRESSLY DISCLAIM ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT THERETO, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR THE CONTINUOUS, UNINTERRUPTED, ERROR-FREE, VIRUS-FREE, OR SECURE ACCESS TO OR OPERATION OF THE PRODUCTS AND/OR DREAMFACTORY SERVICES. DREAMFACTORY EXPRESSLY DISCLAIMS ANY WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION OR DATA ACCESSED OR USED IN CONNECTION WITH THE PRODUCTS.

## 8. INDEMNIFICATION.

8.1 DreamFactory agrees to indemnify, defend and hold harmless Customer from any third party suits, losses, claims, demands, liabilities, costs and expenses (including reasonable attorney and accounting fees) that Customer may sustain or incur arising from infringement or misappropriation by DreamFactory of any copyright, trademark or trade secret of a third party, or any US patent issued or existing on or before the Effective Date; provided that Customer complies with the terms of Section 7.3 below. In the event that the licensed Products are, or in DreamFactory's sole opinion is likely to be, enjoined due to the type of infringement described in this Section 8, DreamFactory, at its option and expense, may (a) replace the applicable Products with functionally equivalent non-infringing technology or (b) obtain a license for Customer's continued use of the applicable Products, or, if the foregoing alternatives are not reasonably available to DreamFactory (c) terminate this Agreement and refund any sums prepaid for the unused Term, if any. THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF DREAMFACTORY AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADE SECRETS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS BY THE PRODUCTS.

8.2 Provided that DreamFactory complies with the terms of Section 8.3 below Customer agree to indemnify, defend and hold harmless DreamFactory, its affiliates, officers, directors, employees, consultants, agents, suppliers and resellers from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys fees) arising from End Users use of the Products, Customer's violation of this Agreement or the infringement or violation by Customer or any End User, of any intellectual property or other right of any person or entity.

8.3 In claiming any indemnification under this Section 8, the indemnified party shall promptly provide the indemnifying party with notice of any claim that the indemnified party believes is within the scope of the obligation to indemnify. The indemnified party may, at its own expense, assist in the defense if it so chooses, but the indemnifying party shall control the defense and all

negotiations relative to the settlement of any such claim. Any settlement intended to bind the indemnified party shall not be final without the indemnified party's written consent, which consent shall not be unreasonably withheld or delayed.

## 9. LIMITATION OF LIABILITY.

9.1 DREAMFACTORY SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR (i) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (ii) ANY UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF THE WEB SITE, ANY CONTENT, CUSTOMER DATA, SYSTEM DATA, OTHER DATA FILES, PROGRAMS OR INFORMATION THROUGH ERROR, OMISSION, ACCIDENT OR FRAUDULENT MEANS OR DEVICES NOT DIRECTLY ATTRIBUTABLE TO DREAMFACTORY'S NEGLIGENT ACTS OR OMISSIONS, OR FOR OTHER CIRCUMSTANCES OUTSIDE OF DREAMFACTORY'S REASONABLE CONTROL, OR (iii) ANY MALFUNCTION OR CESSATION OF INTERNET SERVICES BY INTERNET SERVICE PROVIDER OR OF ANY OF THE NETWORKS THAT FORM THE INTERNET WHICH MAY AFFECT THE OPERATION OF THE DREAMFACTORY SOLUTION.

9.2 IN NO EVENT SHALL EITHER PARTY OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF REVENUES OR PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY AGREES TO TAKE REASONABLE ACTION TO MITIGATE ITS DAMAGES.

9.3 EXCEPT FOR LIABILITY ARISING OUT OF BREACH OF SECTION 1 (LICENSE), SECTION 4(NO COMMERCIAL USE), SECTION 5 (PROPRIETARY RIGHTS), AND EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7 (INDEMNITY), NEITHER PARTY'S OR ITS LICENSORS' LIABILITY FOR ANY DAMAGES SHALL EXCEED AN AMOUNT EQUAL TO THE TOTAL FEES PAID AND OWED TO DREAMFACTORY UNDER THIS AGREEMENT OR \$50,000.00, WHICHEVER IS GREATER. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, MISREPRESENTATIONS, NEGLIGENCE, STRICT LIABILITY AND OTHER TORTS. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

10. FORCE MAJEURE. Neither party hereto will be liable for defaults or delays due to Acts of God, or the public enemy, acts or demands of any government or governmental agency, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence.

## 11. MISCELLANEOUS

11.1 Choice of Law and Forum. This Agreement shall be governed by and construed under the laws of the State of California, U.S.A.,



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1999 South Bascom Avenue
Suite 928
Campbell, CA 95008

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as applied to agreements entered into and to be performed in California. The parties consent to the exclusive jurisdiction and venue of the courts located in and serving Santa Clara County, California.

11.2 Waiver and Severability. Failure by either party to exercise any of its rights under, or to enforce any provision of, this Agreement will not be deemed a waiver or forfeiture of such rights or ability to enforce such provision. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be amended to achieve as nearly as possible the same economic effect of the original provision and the remainder of this Agreement will remain in full force and effect.

11.3 General Provisions. This Agreement embodies the entire understanding and agreement between the parties respecting the subject matter of this Agreement and supersedes any and all prior understandings and agreements between the parties respecting such subject matter. This Agreement has been prepared in the English Language and such version shall be controlling in all respects and any non-English version of this Agreement is solely for accommodation purposes. Any and all rights and remedies of either parties upon breach or other default under this Agreement will be deemed cumulative and not exclusive of any other right or remedy conferred by this Agreement or by law or equity on either party, and the exercise of any one remedy will not preclude the exercise of any other. The captions and headings appearing in this Agreement are for reference only and will not be considered in construing this Agreement. No text or information set forth on any other purchase order, preprinted form or document shall add to or vary the terms and conditions of this Agreement. No joint venture, partnership, employment, or agency relationship exists between the parties as a result of this agreement or use of the Products.

11.4 Assignment; Change in Control. This Agreement may not be assigned by either party without the prior written approval of the other but may be assigned without such consent to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.

11.5 Marketing. Customer agrees that DreamFactory may refer to Customer by trade name and logo, and may briefly describe Customer's business in DreamFactory's marketing materials and web site. DreamFactory and Customer may, upon the parties' mutual agreement, issue a joint press release to announce the relationship of the parties hereunder. Neither party will issue any separate press release related to this Agreement without obtaining the other party's prior approval, which shall not be unreasonably withheld.

11.6 Notice. DreamFactory may give notice by means of a general Product notices, electronic mail to Customer's e-mail address on record in Customer's account information, or by written communication sent by first class mail or pre-paid post to Customer's address on record in Customer's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). Customer may give notice to DreamFactory (such notice shall be deemed given when received by DreamFactory) at any time by any of the following: letter sent by confirmed facsimile to DreamFactory at (650) 898-1718; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to DreamFactory at the following: 1999 South Bascom Avenue, Suite 928 Campbell, CA 95008 addressed to the attention of: Legal Department.

11.7 Modifications. Any modification to this agreement must be in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by duly authorized officers or representatives as of the date first above written.

CUSTOMER: \_\_\_\_\_

DREAMFACTORY SOFTWARE, INC.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_