

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

- 1. Scope.** This Carahsoft Rider and the Precise Software Solutions, 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 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.
 - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - (d) Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to

verify Ordering Activity's compliance with this Agreement.

- (e) **Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court..

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.

- (i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.

- (k) **Contractor Indemnities.** All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

- (l) **Renewals.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.

- (m) **Future Fees or Penalties.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To

Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

- (n) Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (o) Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) Dispute Resolution and Venue.** Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (r) Limitation of Liability: Subject to the following:**

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.
- (s) Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.
- (t) Public Access to Information.** Manufacturer agrees that the EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA and this Rider will be available to the public.
- (u) Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.

PRECISE SOFTWARE END USER LICENSE AGREEMENT

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15. SURVIVAL. The following provisions of this License Agreement shall survive termination of this License Agreement: Section 1 (Definitions), Section 3 (License Restrictions), Section 4 (Ownership/Title), Section 8 (Warranty Disclaimers), Section 9 (Limitation of Liability), Section 12 (U.S. Government Restricted Rights), Section 13 (Export Regulation), Section 15 (Survival), Section 16 (General), Section 17.1 (A) and (B), and Section 17. 2 (C), (D) and (E).

16. GENERAL.

16.1 ASSIGNMENT. You may not assign the rights granted hereunder or this License Agreement, in whole or in part and whether by operation of contract, law or otherwise, without Precise's prior express written consent.

16.2 COMPLIANCE WITH APPLICABLE LAW. You are solely responsible for Your compliance with, and You agree to comply with, all applicable laws, rules, and regulations in connection with Your use of the Licensed Software.

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16.4 GOVERNING LAW; SEVERABILITY; WAIVER. If You are located in North America or Latin America, this License Agreement will be governed by the laws of the State of California, United States of America. If You are located in any other region, this License Agreement will be governed by the laws of England and Wales. Such governing law is exclusive of any provisions of the United Nations Convention on Contracts for Sale of Goods, including any amendments thereto, and without regard to principles of conflicts of law. If any provision of this License Agreement is found partly or wholly illegal or unenforceable, such provision shall be enforced to the maximum extent permissible, and remaining provisions of this License Agreement shall remain in full force and effect. A waiver of any breach or default under this License Agreement shall not constitute a waiver of any other subsequent breach or default.

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17. ADDITIONAL TERMS AND CONDITIONS. Your use of the Licensed Software is subject to the terms and conditions below in addition to those stated above.

17.1 CPU Licenses.

- A. The Licensed Software is licensed by the number of CPUs in both non-virtual and virtual environments pursuant to this Section 17.1(A). "Processor" also referred to as a "CPU" is defined as the logic circuitry that responds to and processes the instructions that run a computer and/or that access or runs the software. Each processor may be comprised of multiple processing cores which may each

independently act as individual processors. In non-virtual environments, the Licensed Software is licensed by both (i) the number of physical CPU sockets on the system motherboard that are populated with physical CPUs, and (ii) the number of aggregated cores of all physical CPU sockets in excess of four (4) cores per licensed physical CPU socket. Each CPU license unit is limited to four (4) cores. For example, if there is a two-socket server with each CPU socket populated with an eight-core processor, four (4) CPU license units of the Licensed Software need to be purchased. If there is a two-socket server with each CPU socket populated with a six-core processor, three (3) CPU license units of the Licensed Software need to be purchased. In virtual environments, the Licensed Software is licensed by the number of virtual CPUs. A virtual CPU is defined as a processor in a virtual (or otherwise emulated) hardware system. For example, if two (2) CPUs are allocated to a virtual machine, two (2) CPU license units of the Licensed Software need to be purchased.

- B. "Tier" is a Precise defined classification of a server or processor. The server or processor tier defines the type of hardware on which the software may be deployed.

17.2 Additional Kit.

- A. In this Section 17 "Kit" means either (i) an Application Programming Interface ("API") or (ii) a Software Development Kit ("SDK"), as the case may be.
- B. **Development License.** If the Licensed Software that You acquire includes a Kit that is:
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