

Includes Changes through Modification P00003

Carahsoft (Adobe Server) BPA
N00104-09-A-ZF31
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ADOBE SYSTEMS INCORPORATED
345 Park Avenue
San Jose, California 95110-2704 USA

SOFTWARE LICENSE AND SUPPORT ADDENDUM

This Software License and Support Addendum (the Agreement) is entered into by and between Adobe Systems Incorporated (“Adobe”) and the Department of Defense (DoD) (the “Customer”) as executed by their duly authorized representative, the Department of the Navy, NAVSUP Weapon Systems Support, 5450 Carlisle Pike, Mechanicsburg, PA 17055.

In consideration of the mutual covenants and undertakings herein contained, the adequacy of which is acknowledged by the parties hereto, Adobe and the Customer hereby agree to the terms and conditions stated below.

SOFTWARE LICENSE TERMS AND CONDITIONS

1. Definitions

1.1 "Authorized Users" means any component of the Department of Defense (DoD), the Coast Guard, and the Intelligence Community. For the purposes of this agreement, a DoD component is defined as: the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense (DoD IG), the Defense Agencies, the DoD Field Activities, the U. S. Coast Guard, NATO and the Intelligence Community and FMS with a Letter of Authorization and contractors authorized in accordance with FAR Part 51 and all other organizations/agencies authorized to place orders on behalf of DoD end users.

1.2 "Computer" means one or more central processing units (“CPU”) in a hardware device (including hardware devices accessed by multiple users through a network (“Server”)) that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.

1.3 "Deploy" shall have the meaning assigned to it, if any, in the End User License Agreement applicable to a particular Adobe software application.

1.4 "Development Software" means Software licensed for use in a technical environment solely for internal development and testing with respect to licensed Production Software.

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1.5 "Disaster Recovery Environment" means Customer's technical environment designed solely to allow Customer to respond to an interruption in service due to an event beyond Customer's control that creates an inability on Customer's part to provide critical business functions for a material period of time.

1.6 "Documentation" means the user manuals and/or technical publications as applicable, relating to installation, use and administration of the Software.

1.7 "DoD ESA" means the DoD Enterprise Software Agreement (ESA) Blanket Purchase Agreement (BPA) issued against Carahsoft Technology Corporation's GSA Schedule contract. As of the date of execution of this Agreement, Carahsoft Technology is Adobe's sole authorized GSA schedule holder and government distributor of the Forms Licensing Program (FLP) products listed in Adobe's Government FLP products list, which includes but is not limited to the Adobe LiveCycle, LiveCycle Data Services, Connect (Formerly known as Breeze), Flex Builder, Flex Data Services, ColdFusion Enterprise and Flash Media Server product lines.

1.8 "End User License Agreement" means the Adobe software product end user license agreement which accompanies the Software.

1.9 "Internal Network" means Customer's private, proprietary network resource accessible only by Authorized Users. "Internal Network" specifically excludes the Internet (as such term is commonly defined) or any other network community open to the public, including membership or subscription driven groups, associations or similar organizations. Connection by secure links such as VPN or dial up to Customer's Internal Network for the purpose of allowing Authorized Users to use the Software is deemed use over an Internal Network.

1.10 "License Metric" means each of the per-unit metrics used by Adobe in connection with the licensed quantities identified in a delivery order issued against the DoD ESA to describe the scope of Licensee's right to use the Software. One or more of the following types of License Metrics applies to each Software Product:

(a) Per-CPU. The total number of CPUs on the Computers used to operate the Software may not exceed the licensed quantity of CPUs. For purposes of this definition, all CPUs on a Computer on which the Software is installed shall be deemed to operate the Software unless Customer configures that Computer (using a reliable and verifiable means of hardware or software partitioning) such that the total number of CPUs that actually operate the Software is less than the total number on that Computer.

(b) Per-User. The total number of Authorized Users that use the Software may not exceed the licensed quantity of Authorized Users.

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(c) Per-Document. The total number of unique Documents that are deployed at any point in time may not exceed the licensed quantity of Documents. "Document" shall have the meaning assigned to it in the applicable End User License Agreement.

(d) Per-Recipient. The total number of Recipients that receive Deployed Documents may not exceed the licensed quantity of Recipients. "Recipient" shall have the meaning assigned to it in the applicable End User License Agreement.

(e) Per-Server. The total number of Servers on which the Software is installed may not exceed the licensed quantity of Servers.

1.11 "Production Software" means Software licensed for productive business use.

1.12 "SDK Components" means the sample software code, application programming interface, header files and related information, and the file format specifications, if any, included as part of the Software as described in the Documentation or a "Read Me" file accompanying the applicable Software.

1.13 "Software" means the object code version of the software program(s) specified in the delivery order issued against the DoD ESA, including all Documentation and other materials provided by Adobe to Customer, via the reseller, under this Agreement. The term "Software Product" may also be used to indicate a particular product, and otherwise has the same meaning as Software. For purposes herein, Software Product shall not include Connect hosted services.

1.14 "Support Services" means the optional maintenance and support services offered by Adobe under the terms of the Platinum Support Addendum, included as Exhibit A herein.

2. Software License.

2.1 Adobe grants to Customer a perpetual, non-exclusive license to install and use the Software delivered hereunder according to the terms and conditions of this Agreement and the applicable Software Product End User License Agreement (the "EULA"), on Computers connected to Customer's Internal Network, on the licensed platforms and configurations, in the manner and for the purposes described in the Documentation. The following additional terms also apply to Customer's use of the Software.

2.2 License Metric. Customer's right to install and use the Software is limited based on the License Metrics applicable to the particular Software Product licensed.

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2.3 SDK Components. Customer's Authorized Users may install and use the SDK Components for purposes of facilitating use of the Software in accordance with this Agreement.

2.4 Backup and Disaster Recovery. Customer may make and install a reasonable number of copies of the Software for backup and archival purposes and use such copies solely in the event that the primary copy has failed or is destroyed, but in no event may Customer use such copies concurrently with Production Software or Development Software. Customer may also install copies of the Software in a Disaster Recovery Environment for use solely in disaster recovery and not for production, development, evaluation or testing purposes other than to ensure that the Software is capable of replacing the primary usage of the Software in case of a disaster.

2.5 Documentation. Customer may make copies of the Documentation for use by Authorized Users in connection with use of the Software in accordance with this Agreement, but no more than the amount reasonably necessary. Any permitted copy of the Documentation that Customer makes must contain the same copyright and other proprietary notices that appear on or in the Documentation.

2.6 Outsourcing. Customer may sub-license use of the Software to a third party outsourcing or facilities management contractor to operate the Software on Customer's behalf, provided that (a) Customer provides Adobe with prior written notice in accordance with Section 10.6 of this Agreement; (b) Customer is responsible for ensuring that any such contractor agrees to abide by and fully complies with the terms of this Agreement as they relate to the use of the Software on the same basis as applies to Customer; (c) such use is only in relation to Customer's direct beneficial business purposes as restricted herein; (d) such use does not represent or constitute an increase in the scope or number of licenses provided hereunder; and (e) Customer shall remain fully liable for any and all acts or omissions by the contractor related to this Agreement.

2.7 Font Software. If the Software includes font software, then Customer may (a) use the font software on Customer's Computers in connection with Customer's use of the Software as permitted under this Agreement; (b) output such font software on any output devices connected to Customer's Computers; (c) convert and install the font software into another format for use in other environments provided that the converted font software is only for Customer's internal business use and may not be distributed or transferred for any purpose except in accordance with the transfer section in this Agreement; and (d) embed copies of the font software into Customer's electronic documents for the purpose of printing and viewing the document, provided that if the font software Customer is embedding is identified as "licensed for editable embedding" on Adobe's website at <http://www.adobe.com/type/browser/legal/embeddingeula.html>, Customer may also embed copies of that font software for the additional limited purpose of editing Customer's electronic documents.

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2.8 Restrictions.

(a) No Modifications No Reverse Engineering. Customer shall not modify, port, adapt or translate the Software. Customer shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software. Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of Customer's jurisdiction give Customer the right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, that Customer must first request such information from Adobe and Adobe may, in its discretion, either provide such information to Customer or impose reasonable conditions, including a reasonable fee, on such use of the source code to ensure that Adobe's and its suppliers' proprietary rights in the source code for the Software are protected.

(b) No Unbundling. The Software may include various applications, utilities and components, may support multiple platforms and languages and may be provided to Customer on multiple media or in multiple copies. Nonetheless, the Software is designed and provided to Customer as a single product to be used as a single product on Computers and platforms as permitted herein. Customer is not required to use all component parts of the Software, but Customer shall not unbundle the component parts of the Software for use on different Computers. Customer shall not unbundle or repackage the Software for distribution, transfer or resale.

(c) Transfer. Customer's Authorized Users as defined above include various agencies and components of the Department of Defense, the Coast Guard and the Intelligence Community. Customer shall not sublicense, assign or transfer the Software or Customer's rights in the Software, and such prohibition would include sublicensing, assignment or transfer among or between Authorized Users or authorize any portion of the Software to be copied onto or accessed from another individual's or entity's Computer, except as may be explicitly provided in this Agreement. In the event that an Authorized User has purchased a license under the BPA and that Authorized User is reorganized or restructured such that its responsibilities and operations are transferred to another Customer agency, the agency shall have the right to assign the affected program licenses to a successor. An example of a reorganization or restructure includes but is not limited to Base Realignment and Closure (BRAC) actions. Such assignment shall only be effective if (1) the licensed agency provides advanced written notice to Adobe; (2) the licensed agency has continuously maintained the software under an Adobe maintenance plan; (3) the licensed agency and the successor agency agree to be bound in writing to the EULA and this Agreement; and (4) any such assignment or transfer shall not increase the total number of licenses granted to Customer. The transferee shall be bound by the license metrics and limitations in the

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transferor's license. All other transfer requests will be considered by Adobe on a case by case basis.

(d) Prohibited Use. Except as expressly authorized under this Agreement, Customer is prohibited from: (i) using the Software on behalf of third parties; (ii) renting, leasing, lending or granting other rights in the Software including rights on a membership or subscription basis; and (iii) providing use of the Software in a computer service business, third party outsourcing facility or service, service bureau arrangement, network, or time sharing basis.

(e) Export Rules. Customer agrees that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as an export controlled item under the Export Laws, Customer represents and warrants that Customer is not a citizen of, or located within, an embargoed or otherwise restricted nation (including Iran, Iraq, Syria, Sudan, Libya, Cuba and North Korea) and that Customer is not otherwise prohibited under the Export Laws from receiving the Software. All rights to install and use the Software are granted on condition that such rights are forfeited if Customer fails to comply with the terms of this Agreement.

2.9 Evaluation Software. This Section 2.9 applies only if Customer has obtained a valid license to evaluate Software by way of a separate writing between Adobe and Customer, or by Customer installing an evaluation version and accepting the electronic installer EULA.

(a) License. In addition to the other terms contained herein, Customer's license to evaluate the Software is limited to use strictly for Customer's own internal evaluation purposes and not for use as Production Software or Development Software, and is further limited to a period not to exceed sixty (60) days from the date Customer obtains the Software unless extended by Adobe in writing. Customer may (i) install the Software on one (1) Computer connected to Customer's Internal Network, and (ii) permit Authorized Users to use the Software to process and deliver content within Customer's Internal Network. Customer's rights with respect to the Software are further limited as described in Section 2.9(b).

(b) Limitations. Customer's rights to install and use Software under this Section 2.9 will terminate immediately upon the earlier of (i) the expiration of the evaluation period described herein, or (ii) such time that Customer purchases a license to a non-evaluation version of such Software. Adobe reserves the right to terminate Customer's license to evaluate Software at any time in its sole discretion. Customer agrees to return or destroy Customer's copy of the Software upon termination of this Agreement for any reason. To the extent that any provision in this Section 2.9 is in conflict with any

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other term or condition in this Agreement, this Section 2.9 shall supersede such other term(s) and condition(s) with respect to the evaluation of Software, but only to the extent necessary to resolve the conflict.

3. Support Services Renewal

a. If Support Services are to be renewed, Customer shall place an order with Carahsoft Technology, or the Adobe authorized reseller at the time, prior to each additional renewal term for Support Services. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, Support Services shall terminate for failure of Customer to place an order within 10 days from expiration date of support services after Adobe gives Customer written notice of such failure. If Support Services lapse due to any inaction on the part of Customer, Customer may still elect to renew Support Services provided that the lapse does not exceed twelve (12) months and further provided, that additional fees for reinstatement and/or to cover the lapsed period of Support Services may apply provided the Support Services reinstatement charges do not exceed the amount payable had a lapse not occurred.

b. Continuing Resolution. Notwithstanding the foregoing, subject to Customer's Continuing Resolution status, provided that Customer has submitted an order for Support Services renewal with Carahsoft Technology, or the Adobe authorized reseller within 10 days from such Support Services expiration date, Adobe agrees to hold the applicable Support Services renewal price for a six (6) month period from the expiration date of such Support Services pending actual payment from Customer to Carahsoft Technology, or the Adobe authorized reseller. For the purposes of clarity, Customer shall be entitled to any benefits of Support Services during said six (6) month period provided that a Purchase Order has been submitted to Carahsoft Technology, or the Adobe authorized reseller for renewal of Support Services.

4. Warranty

4.1 Warranty. Adobe warrants to Customer that the Software will perform substantially in accordance with the Documentation for the ninety (90) day period following shipment of the Software when used on the recommended operating system, platform and hardware configuration. THIS LIMITED WARRANTY DOES NOT APPLY TO EVALUATION VERSIONS OF THE SOFTWARE, PATCHES, SAMPLE CODE, SAMPLE FILES AND FONT SOFTWARE CONVERTED INTO OTHER FORMATS. All warranty claims must be made within such ninety (90) day period. If the Software does not perform substantially in accordance with the Documentation, the entire liability of Adobe and Customer's exclusive remedy shall be limited to either, at Adobe's option, the replacement of the Software or the refund of the license fee paid to Adobe for the Software.

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4.2 **DISCLAIMER.** THE FOREGOING LIMITED WARRANTY IS THE ONLY WARRANTY MADE BY ADOBE AND STATES THE SOLE AND EXCLUSIVE REMEDIES FOR ADOBE'S, ITS AFFILIATES' OR ITS SUPPLIERS' BREACH OF WARRANTY. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, AND FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE IN CUSTOMER'S JURISDICTION, ADOBE, ITS AFFILIATES AND ITS SUPPLIERS PROVIDE THE SOFTWARE **AS-IS** AND **WITH ALL FAULTS** AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY OTHER MATTERS, INCLUDING PERFORMANCE, SECURITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, MERCHANTABILITY, QUIET ENJOYMENT, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

5. Proprietary Rights

The Software is licensed, not sold. All intellectual property rights, including all copyrights and patent rights, in and to the Software shall, at all times, remain with Adobe or its licensors. Adobe and its licensors reserve all rights not expressly granted to Customer. Physical copies of the Software remain the property of Adobe. Customer must fully reproduce any copyright or other notice marked on any part of the Software on all authorized copies and must not alter or remove any such copyright or other notice.

6. Verification

In lieu of any audit provisions in the End User License Agreement (EULA), Customer may perform an internal audit and will use its best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of licenses in use. Customer may permit Adobe or a third party representative to have access to Customer's records and computer system and the right to audit such systems to ensure Software use is in accordance with its license terms. All Adobe personnel or third party representatives must have appropriate security clearances to gain access to Customer's site or data. In no event shall audit be made more than once per annum. Customer shall promptly correct any errors and omissions disclosed by such audit.

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7. Term and Termination

7.1 Term and Termination. Unless earlier terminated in accordance with Section 7.2, this Agreement shall expire concurrently with the DOD ESA and/or Carahsoft Technology's GSA Schedule contract.

7.2 This Agreement may be terminated in the event of the following: breach of License or Proprietary Rights. Immediately after Adobe gives written notice to Customer of Customer's breach of Section 2 (License), or of the license rights and restrictions contained in the applicable End User License Agreement, or Section 5 (Proprietary Rights).

7.3 Termination Obligations.

(a) Breach of License or Proprietary Rights. If Adobe terminates this Agreement as a result of a breach of Section 2 (License), or of the license rights and restrictions of the applicable End User License Agreement or of Section 5 (Proprietary Rights), Customer shall immediately cease use of the Software, delete the Software from all computer systems on which it resides, and return to Adobe any media containing the Software as well as any related materials.

(b) Survival. The following sections shall survive the expiration or termination of this Agreement: Section 2, unless termination is under Section 7.2; Sections 4, provided that surviving warranty periods if not expired at time of termination or expiration survive only for the duration of the remaining warranty period specified; Section 8; Section 9, 10.17 and the relevant portions of Section 10 which by their nature should survive; and the license rights and restrictions set forth in any applicable End User License Agreement unless termination is under Section 7.2.

(c) Continued Use of Licenses. Unless this Agreement is terminated under Section 7.2, Customer shall be entitled to continue using licenses acquired hereunder, subject to the continued adherence to the terms and conditions of this Agreement and the applicable End User License Agreement by Customer, including any license rights and restrictions in this Agreement and the applicable End User License Agreement which shall survive termination or expiration of this Agreement. This section is without prejudice to Adobe's right to terminate licenses post-expiry for breach by Customer of surviving license restrictions.

8. Indemnity for Infringement

8.1 Indemnification. Subject to the limitations set forth below, Adobe will defend Customer against any claims, suits or proceedings brought by a third party against Customer to the extent that each such claim, suit or proceeding is based upon an allegation that the Software ordered under this Agreement and paid for by Customer

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directly infringes any U.S. copyright or any U.S. patent issued as of the Effective Date (an "Infringement Claim"). Adobe shall pay Customer the damages, costs, and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction (or settlements agreed to in writing by Adobe), directly attributable to such Infringement Claim. Adobe's obligations under this Section are conditioned on Customer (i) notifying Adobe in writing promptly after Customer becomes aware of an Infringement Claim, (ii) allowing Adobe the right to have sole control of the investigation, defense and settlement of the Infringement Claim, (iii) cooperating fully with Adobe in the investigation, defense and settlement of the Infringement Claim (at Adobe's reasonable expense), and (iv) making no admission of liability or fault on behalf of itself or Adobe. In the event any Infringement Claim is made or, in Adobe's sole judgment, is likely to be made, Adobe may, at its discretion, either (I) procure for Customer the right to continue to use the Software, as such use is specifically provided for in this Agreement, (II) replace or modify the Software to avoid infringement, or (III) terminate Customer's license to the Software upon written notice to Customer and pay to Customer an amount equal to the pro-rata value of the Software, calculated by depreciating the license fee paid by Customer, whether directly to Adobe, or to a third-party, for such Software on a straight-line basis using a useful life of thirty-six (36) months from the date of initial delivery of the Software to Customer, provided that Customer purges all copies of the Software and related materials from all computer systems on which it was stored and returns to Adobe all physical copies of the Software and related materials.

8.2 Limitations. Notwithstanding the foregoing, Adobe shall have no obligation under this Section 8.2 with respect to any Infringement Claim arising in whole or in part from (a) modification of the Software by anyone other than Adobe, (b) use of the applicable Software in combination or conjunction with any equipment, data, devices or software where in the absence of such combination the applicable Software would not have been infringing, (c) use of the Software in a manner other than for which it was intended, (d) use of other than the then-most current release of the Software, provided that such release was made available to Customer, if such infringement or claim would have been prevented by the use of such current release. Adobe's cumulative maximum liability with respect to all Infringement Claims shall be the license fees paid by Customer for the Software that is the subject of the Infringement Claim, or (e) use of an evaluation version of the Software. All Infringement Claims shall be aggregated for purposes of this limit and the existence of one or more claims shall not enlarge this limit. THIS SECTION STATES ADOBE'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT OR MISAPPROPRIATION CLAIMS AND ACTIONS.

9. Limitation of Liability

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EXCEPT FOR CUSTOMER'S BREACH OF SECTIONS 2 OR 5, OR EITHER PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS, NONE OF THE PARTIES TO THIS AGREEMENT SHALL BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF SUCH ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR OTHERWISE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE. THE MAXIMUM AGGREGATE LIABILITY OF ADOBE AND ITS AGENTS, REPRESENTATIVES AND LICENSORS IN ANY CONNECTION WITH THIS AGREEMENT OR THE SOFTWARE, WHETHER IN TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), CONTRACT OR OTHERWISE SHALL NOT EXCEED THE LICENSE FEES PAID BY CUSTOMER. THIS LIMITATION SHALL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL BREACH OR A BREACH OF THE FUNDAMENTAL TERMS OF THIS MASTER AGREEMENT. CUSTOMER ACKNOWLEDGES THAT THE ECONOMIC TERMS SET FORTH IN THIS MASTER AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH HEREIN AND THAT ADOBE WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

10. General

10.1 Name Change. If Customer changes its legal name, Customer shall notify Adobe and its authorized reseller in writing of the change prior to submitting any purchase orders and payments and before entering into further changes to this Agreement. Any delays in accepting purchase orders or crediting payments because of Customer's failure to notify Adobe and its reseller of a name change shall not constitute a breach on the part of Adobe.

10.2 Use of Name. Customer consents to publication of its name by Adobe as an end user of the Software and/or services in a factual listing of Adobe customers to be published on media and on its Web site. Adobe shall not use Customer's name in any manner except as specified herein without the prior written consent of Customer.

10.3 Relationship. The parties to this Agreement are independent entities. No relationship of principal to agent, master or servant, employer to employee or franchiser to franchisee is established hereby between the parties. Neither party has the authority to bind the other or incur any obligation on behalf of the other.

10.4 Governing Law. This Agreement will be governed by the Federal Acquisition Regulations and the applicable Federal Government Contract laws of the United States. The Software is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (OCT 1995), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and

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is provided to the U. S. Government (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 (JUN 1995) and 227.7202-4 (JUN 1995). The Software is furnished under and is subject to the terms and conditions of this Agreement and the applicable End User License Agreement.

10.5 Force Majeure. Nonperformance of either party shall be excused to the extent that performance is rendered impossible by fire, flood, earthquake, governmental acts or orders or restrictions, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

10.6 Notices. All notices or reports permitted or required under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission or by certified or registered mail, returned receipt requested, and deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgement of receipt of electronic transmission respectively. Notices shall be sent to each party at the address specified above, or as either party may specify in writing. If notice is sent to Adobe, it shall be sent to the attention of Associate General Counsel-WW Sales, Legal Dept., Adobe Systems Incorporated A17, 345 Park Avenue, San Jose, CA 95110-2704 USA and if sent by fax, shall be addressed to Associate General Counsel-WW Sales, Legal Dept., Adobe Systems Incorporated using fax number 408-537-4060.

10.7 Severability. Any provision of this Agreement found to be illegal or unenforceable shall be deemed severed, and the balance of this Agreement shall remain in full force and effect.

10.8 Waiver. Neither party's right to require performance of the other party's obligations hereunder shall be affected by any previous waiver, forbearance or course of dealing, unless or only to the extent of any waiver given in writing. Failure or delay by either party to exercise any of its rights, powers or remedies hereunder shall not constitute a waiver of those rights, powers or remedies.

10.9 Counterparts. This Agreement may be executed and delivered by email and/or facsimile and in counterparts, and shall be considered as original and whole if so executed and delivered.

10.10 Headings. The division of this Agreement into sections and the insertion of headings are for convenient reference only, and shall affect neither the construction nor the interpretation of this Agreement.

10.11 Assignment of Agreement. Except as otherwise specifically provided in this Agreement, Customer shall not transfer or assign this Agreement or Customer's rights

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to use the Software, by operation of law or otherwise, without the prior written consent of Adobe. For purposes of this Section 10.11, "transfer or assignment" includes a consolidation, merger, acquisition, sale or other transaction that results in a change of the majority ownership of voting power in Customer's business enterprise, or change in ownership of all or substantially all of the assets of Customer's business enterprise. The parties agree that Adobe is hereby entitled to assign and/or transfer all or part of its rights and obligations under this Agreement to any third party. Any attempted transfer or assignment in violation of the foregoing shall be null and void.

10.12 Precedence. The Order of Precedence for resolving any inconsistency between this Agreement, the Commercial License, the DoD ESA and Carahsoft's GSA schedule contract terms shall be as specified in the GSA contract's Commercial Item clause, FAR 52.212-4, and the provisions of FAR 52.212-4 specified in FAR 12.302, as required by Federal law, shall prevail over any terms of the commercial license.

If there is a conflict between the terms of the any "shrinkwrap" or "clickwrap" End User License Agreement (EULA) included in any package, media, or electronic version of any Adobe Software purchased under the DoD ESA and the terms of this Agreement, the terms of this Agreement shall prevail.

10.13 Functionality Replacement and Sustaining Engineering.

10.13.1 Without prejudice to Adobe's right to determine product planning and product lifecycles, in the event that Adobe merely rebrands, renames or repackages the Software, Adobe agrees that it will grant the Customer a license under the terms of this Agreement to use the rebranded, renamed or repackaged Software to the same extent the customer is permitted to use the initially licensed version of the Software for no additional fee. For the purposes of this Agreement, "rebrand, rename or repackage" means a new product name or package without additional functionalities including renaming or re-packing as a result of mergers or acquisition of products that carry forward the same or similar function of the Software.

10.13.2 In the event that Adobe announces the End of Life ("EOL") of a Software product, it shall make such announcement by posting the information on its website ninety (90) days prior to the EOL event. During the ninety (90) days between the date of the announcement and the EOL event, Adobe shall undertake sustaining engineering (provide patches) in accordance with its normal practice. In the event that a Software product is to be upgraded (a new version released), the old version shall enjoy sustaining engineering for a period of up to ninety (90) days after the ship date of the new version, all in accordance with Adobe's normal practice.

10.14 Rights of Survivorship of the Agreement. This Agreement shall survive unto Adobe, its Successor, rights and assigns. The Software and agreement terms and

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conditions as covered under this Agreement shall survive this Agreement notwithstanding the acquisition or merger of Adobe by or with another entity.

10.15 Temporary Use of Software during Times of Conflict. During Temporary Expeditionary Deployments (“TEDs”), customer, during the term of this Agreement may temporarily deploy and install or use on, or access from qualified desktops or servers, Adobe Software Products previously licensed pursuant to this Agreement on an unlimited number of qualified desktops or servers being used as part of the TEDs (“Temporary Use”). For purposes of this subsection, the term “Temporary Expeditionary Deployments” or “TEDs” shall refer to any number of software licensed products made available under this Agreement where the Customer has already purchased licenses and has installed copies of the Software, which may be used at no additional cost by the customer. The coverage will extend to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), deployment locations in support of war games, exercises, real world contingencies, and emergency situations similar to the terrorist attacks on 9/11/01 where temporary duty stations were needed due to the destruction of government offices. Customer will make a record of the count of each category of license used while deployed and the period of use. After the TED and upon request, the count and duration information, but not the deployed location information, will be provided to the contractor for auditing purposes. Such Temporary Use of the Software is limited to a period equal to the length of the TED or twelve (12) calendar months, whichever is shorter (“Temporary Use Period”), unless a different time period is agreed to in writing by the contractor. At the end of the twelve (12) month period or as mutually agreed to, the customer will provide a written certification that the licenses have either been destroyed or payment has been made under this Agreement. The customer agrees to use the products in accordance with the terms contained in this Agreement and the Applicable version of the EULA – Product Use Rights. If the customer requires use of the Software beyond the Temporary Use Period and Adobe has not approved such extended use, the customer shall purchase the products in accordance with the pricing terms of this DoD ESA.

10.16 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter described in this Agreement and supersedes all oral or written prior or contemporaneous statements, representations, discussions, negotiations and agreements. Any amendment or modification to the Agreement must be in writing signed by both parties.

10.17 Confidential Information. All materials marked as confidential and distributed with the Software shall be deemed Confidential Information. If Customer and Adobe have executed a non-disclosure agreement or another written agreement governing the confidentiality of information that is in effect at the time the parties execute this Agreement, then that non-disclosure agreement will govern the rights and obligations of

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the parties with respect to use and disclosure of Confidential Information under this Agreement and the remainder of this Section 10.17 will have no effect. If the parties have not entered into a non-disclosure agreement, then the following terms regarding the use and disclosure of Confidential Information apply:

(a) Definition. In addition to the information identified above as Confidential Information, "Confidential Information" includes business or technical information of Adobe or Customer such as financial, purchasing, sales, personnel and marketing information, and trade secrets, product specifications, functional requirements, design details and other proprietary information, but only when such information is legended as confidential if disclosed in writing, or identified as confidential at the time of disclosure if disclosed orally or visually.

(b) Use and Disclosure Restrictions. Each party will treat the Confidential Information of the other party with the same degree of care to prevent unauthorized disclosure to anyone other than those of its employees and contractors with a need to know such information as that party accords to its own Confidential Information, but in no event less than reasonable care. The obligations of a party receiving Confidential Information ("Recipient") from the disclosing party ("Discloser") under this Section 10.17 shall terminate when the Recipient can document that the Confidential Information (a) was in the public domain at the time or entered the public domain subsequent to the time it was communicated to the Recipient by the Discloser through no fault of the Recipient; (b) was in the Recipient's possession free of any obligation of confidence at the time or was rightfully communicated to the Recipient free of any obligation of confidence subsequent to the time it was communicated to the Recipient by the Discloser; (c) was developed by employees or agents of the Recipient independently of and without reference to any information communicated to the Recipient by the Discloser; or (d) was not legended as Confidential Information of the Discloser and if disclosed orally or visually, it was not identified as Confidential Information of the Discloser at the time of such communication. Notwithstanding anything to the contrary in this paragraph, a Recipient may disclose the Confidential Information of the Discloser to the extent necessary to respond to a valid order by a court or other governmental body, when otherwise required by law, or when necessary to establish the rights of either party under this Agreement, provided the Recipient provides reasonable notice to the Discloser to contest such disclosure. The obligations of this Section 10.17 shall survive the termination or expiration of this Agreement.

CUSTOMER ACKNOWLEDGES HAVING READ THE TERMS AND CONDITIONS SET FORTH ON THIS PAGE AND THOSE ATTACHED HERETO.

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ADOBE SYSTEMS INCORPORATED

CUSTOMER

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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Exhibit A

PLATINUM MAINTENANCE AND SUPPORT ADDENDUM **("Support Addendum")**

In addition to the terms and conditions set forth in this Agreement, Adobe and Customer agree to the following terms and conditions, which shall apply to Customer's orders for Platinum Support Services under a duly executed DoD ESA delivery order:

1. Platinum Maintenance and Support

Platinum Maintenance and Support is not available for all Adobe software titles. The Adobe software for which Platinum Support is available is listed on:

<http://www.adobe.com/support/products/enterprise/eol/index.html>.

If Customer subscribes for Platinum Support Services and pays the Annual Support Fee, Adobe shall provide the following Support Services:

(a) Adobe will provide Customer technical support to a maximum of four (4) named Customer technical support contacts ("Customer's Technical Support Contacts") per each individually duly executed DoD ESA delivery order. The Customer can augment the number of contacts at the individual order level by purchasing additional designated contact(s) in accordance GSA or DoD ESA established pricing. Upon order processing Adobe will notify customer via e-mail requesting customer to provide Adobe the four (4) named customer technical support contacts. These names may be changed, using the same process.

(b) Adobe will provide prioritized, toll-free Support Services for the Software to be accessed by Customer's Technical Support Contacts between the hours of 07.00 and 20.00 Eastern Time Monday through Friday (excluding holidays) via telephone, facsimile, e-mail and Adobe's web site.

(c) Adobe will provide prioritized Support Services for critical issues 24 hours a day, 7 days a week. Priority definitions are available at <http://www.adobe.com/support/programs/policies/sla.html>. Adobe's 24 x 7 Support is designed to provide emergency coverage for production systems outside of the core hours of support. It is accessible to deal with critical (priority 1) cases, which consist of any of the following: (a) where the problem results in extremely serious interruptions to a customer's production system and has affected, or could affect, the entire user community; (b) where tasks that should be executed immediately cannot be executed because of a complete crash of the system; or (c) where interruptions in main functions of the production system result in a compromise of Data integrity that requires immediate attention.

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(d) Adobe will provide code corrections as required to correct Software malfunctions in order to bring the Software Products into substantial conformity with applicable documentation. If Customer encounters a problem in the usage of the Software, Customer will provide Adobe with sufficient detail to permit Adobe to understand and reproduce the problem. Adobe will use reasonable efforts to diagnose the problem and if it is mutually determined by Customer and Adobe that the problem represents an error in the Software that causes it to not operate in substantial conformity with applicable documentation, Adobe will use commercially reasonable efforts to provide a fix release to Customer. In addition, Adobe may, at its sole discretion and from time to time, make fix releases generally available to users of the Software Products.

(e) Adobe shall provide to Customer, at no additional charge, all upgrades for the Software Products to make the Software Products current, provided that Adobe's obligations under this Section 1(e) with respect to each major version (defined by a x.0 version number) of a specific Software Product shall continue for a maximum of five (5) years (or seven (7) years if Customer also orders extended support) after the first commercial release of that major version of that Software Product. If Customer requires an upgrade from a major version of a particular Software Product that was first commercially released more than five (5) years (or more than seven (7) years if Customer also orders extended support) earlier, additional fees may apply. "Upgrades" mean those versions of the Software Products that Adobe, at its discretion, deems to be logical improvements or extensions to the Software Products and that have been released for general commercial distribution. In particular, upgrades are designated point releases by Adobe (e.g., 4.2 to 4.3 or 4.3 to 5.0 if 5.0 is the next version release in the series). Releases designated by Adobe as third digit releases (e.g., 4.2.2 to 4.2.3) are not considered upgrades for the purposes of this Addendum, but rather they are considered as fix releases which must be requested by Customer. Fix releases provided to Customer pursuant to this Support Addendum will only be for the current version of each Software product.

(f) Customer shall have unlimited secure access to Adobe's on-line support facility on Adobe's web site at "www.adobe.com."

(g) Customer shall have access to Adobe's eSupport services via remote computer access. Remote troubleshooting services are optional, and up to the customer's discretion provided access complies with any applicable customer network security policies and requirements. Should Customer choose to access such services, Customer hereby grants permission to Adobe to remotely access the Software from an external computer controlled by Adobe, including any and all of Customer's systems on which the Software resides, for the sole purpose of providing Support Services to Customer. **CUSTOMER ACKNOWLEDGES THAT IT MAY CONTROL ALL ADOBE ACCESS TO THE SOFTWARE AND TO CUSTOMER'S SYSTEMS BY SELECTING A "HIGH" SECURITY SETTING AND MONITORING ALL SUCH ACCESS.**

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2. Software License

The Software is licensed to Customer for use subject to all the terms and conditions of this Software License and Support Addendum, including disclaimers of warranties and limitation of liabilities. Customer agrees and acknowledges that any and all new or upgraded copies of the complete Software provided hereunder are for replacement of the copies of the Software previously licensed to Customer and are not provided as additional copies. Copies of the Software that are replaced must be destroyed. Nothing in this Support Addendum shall be construed as increasing the number of copies of the Software licensed to Customer.

3. Annual Support Fee/ Initial Term and Renewals

(a) **Initial Term.** The initial term for Support Services if ordered in a duly executed delivery order under the DoD ESA, shall be one (1) year from date of software license delivery, unless otherwise stated. Adobe will provide Customer with a renewal reminder **60 days** in advance of expiration of the then-current term for Support Services, so that Customer can order a further one year period for Support Services. Upon receiving Customer's executed delivery order, Adobe or its Authorized Reseller shall invoice Customer for the next renewal term in accordance with the authorized reseller's GSA schedule terms and conditions. The Annual Support Fee for the Initial Term is the amount set forth in the duly executed delivery order under the DoD ESA.

(b) **Renewals.** If Customer elects to renew Support Services for any Commercial Adobe Software licensed hereunder provided that version of software then held by Customer has not been end-of-lifed, the term "Annual Support Fee" as used in this Support Addendum means, (i) for the Initial Term, the Annual Support Fee set forth on Customer's duly executed delivery order under the DoD ESA, (ii) for the first renewal term, if so renewed, the Annual Support Fee set forth on a Customer's duly executed delivery order under the DoD ESA increased by three percent (3%), and (iii) for the second and each subsequent renewal term(s), the Annual Support Fee for the immediately preceding renewal term increased by the lesser of (a) three percent (3%) or (b) the then-current GSA Schedule price or established DoD ESA price for the applicable Support Services.

NOTE: The Annual Support fee in any given renewal term shall not exceed at any time the lesser of then-current GSA Schedule price or established DoD ESI price for the applicable Support Services.

(c) **Extended Support.** If version of software held by Customer at time of renewal has been end-of-lifed during the next renewal term, Customer may renew to Extended Support, provided that Extended Support is available for such software version. Information about Software that has been or soon will be end-of-lifed and Extended

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Support availability dates by product version are published at www.adobe.com/support. If Customer elects to purchase Extended Support, the Annual Support Fee shall be twenty-five (25%) percent of the original license fee paid for the Software (if such fee cannot be established, the percentage would be based on the lesser of the then-current GSA or established DoD ESA price of the license fee for the Software).

If extended support is renewed, the renewal fee would be the Annual Support Fee paid for the prior year increased by the lesser of (a) three percent (3%) or (b) the then-current GSA Schedule price or established DoD ESA price for the applicable Support Services. Should Customer upgrade to the next major version of the Software (e.g., upgrade from 4.0 to 5.0), the Annual Support Fee for the upgraded version shall be the lesser of twenty percent (20%) of the then current GSA or established DoD ESA price of the license fee for such upgraded version, or the Annual Support Fee for the last renewal prior to renewing under Extended Support increased by three percent (3%) or the then-current GSA Schedule price or established DoD ESA price for the applicable Support Services.

4. Right to Discontinue or Modify Services

Customer acknowledges that Adobe has the right to discontinue the manufacture and development of any of the Software and the support for that Software, including the distribution of older Software versions, at any time in its sole discretion, provided that Adobe agrees not to discontinue the support for that Software during the current annual term of this Support Addendum, subject to the termination provisions herein. Support Services shall not automatically renew if Adobe discontinues Support Services for all of the Software covered by this Support Addendum. Notwithstanding the foregoing, if Adobe discontinues the manufacture and support for a particular piece of Software, Support Services for any remaining Software covered by this Support Addendum shall not be adversely affected. Adobe reserves the right to alter the Support Services, from time to time, using reasonable discretion but in no event shall such alterations result in: (a) diminished support from the level of support set forth herein; (b) materially diminished obligations for Adobe; or (c) materially diminished rights of Customer. Adobe shall provide Customer with sixty (60) days prior written notice of any material changes to the Support Services contemplated herein.

5. Limitation of Liability

ADOBE DOES NOT GUARANTEE, REPRESENT OR WARRANT CONSULTATION RESULTS, IDENTIFICATION OF ALL VIRUSES, OR THAT ALL ERRORS AND BUGS WILL BE CORRECTED. IN NO EVENT SHALL ADOBE'S OR ADOBE'S LICENSORS' TOTAL CUMULATIVE LIABILITY TO CUSTOMER (FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATED TO THE SUPPORT SERVICES PROVIDED UNDER THIS SUPPORT

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ADDENDUM EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO ADOBE FOR THE SUPPORT SERVICES IN THE SUPPORT TERM IN WHICH SUCH LIABILITY AROSE.

6. Service Requests. The priority or severity of the Service Request (which consists of the error or question reported to Adobe by one of Customer's Technical Support Contacts based on a material failure of the Adobe Software to conform to the published product specifications) will be established based on Adobe's published Case Priority definitions which are currently available online at <http://www.adobe.com/support/programs/policies/sla.html#platinum> (the "Support Site").

- a) Adobe shall undertake reasonable efforts to:
 - i) Acknowledge receipt of a Service Request from a Technical Support Contact within the time allotted ("Response Time"). This will generally be via the same medium of communication by which the Service Request was reported;
 - ii) Provide a short status report to Customer within a reasonable time; and
 - iii) Solve the Service Request by providing a remedy that could take the form of eliminating the defect, providing updates, or demonstrating how to avoid the effects of the defect with reasonable commercial effort. The remedy may also include error corrections, patches, bug fixes, workarounds (i.e. temporary solutions used to complete a task that would not otherwise be possible due to a problem or limitation in the affected Adobe Software product), replacement deliveries or any other type of software or documentation corrections or modifications. Each party acknowledges that despite a party's reasonable efforts, not all problems may be solvable.

- b) Processing time for Adobe starts from the date and time when Adobe Enterprise Support acknowledges receipt of a Service Request. If the Service Request cannot be solved within the timeframe agreed to in this Platinum Support Agreement, the Service Request may be escalated within the Adobe Enterprise Support organization.