

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
**CONTRACT FOR PRODUCTS AND RELATED SERVICES**  
**CARAHSOFT TECHNOLOGY CORPORATION**

**1. Introduction**

**A. Parties**

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Carahsoft Technology Corporation (hereinafter "Vendor"), with its principal place of business at 12369 Sunrise Valley Drive, Suite D2, Reston, Virginia 20191.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-172, on July 27, 2011, for BMC Software Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-172 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Product and Pricing Index; Appendix D, BMC Subscription Service Agreement; Appendix E, Service Level Agreement- BMC Remedy OnDemand; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-172, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-172, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms.

**3. Product and Service Offerings**

**A. Products**

Products available under this Contract are limited to those specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer’s product line which was not included in the Vendor’s response to the solicitation described in Section 1.B above.

**B. Services**

Services available under this Contract are limited to those specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

**4. Pricing**

**A. Manufacturer’s Suggested Retail Price (MSRP)**

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product.

**B. Customer Discount**

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index. Customer Discount includes the DIR administrative Fee specified in Section 5.

Software	Customer Discount
BMC Software	12.25% - 22.25%
Services	Customer Discount
Services	0% - 20.90%

**C. Customer Price**

1) The price to the Customer shall be calculated as follows:

**Customer Price = MSRP – Customer Discount**

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas

law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

**D. DIR Administrative Fee**

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**E. Shipping and Handling Fees**

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

**F. Tax-Exempt**

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

**G. Travel Expense Reimbursement**

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

**H. Changes to Prices**

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

**5. DIR Administrative Fee**

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is one half of one percent (.50%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$500.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Dan Contreras, Director  
ICT Cooperative Contracts  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Facsimile: (512) 475-4759  
Email: [dan.contreras@dir.texas.gov](mailto:dan.contreras@dir.texas.gov)

If sent to the Vendor:

Patrick Gallagher  
Carahsoft Technology Corp.  
12369 Sunrise Valley Drive, Suite D2  
Reston, VA 20191  
Phone: (703) 871-8583  
Facsimile: (703) 871-8505  
Email: [patrick.gallagher@carahsoft.com](mailto:patrick.gallagher@carahsoft.com)

**7. Software License and Service Agreements**

**A. BMC Subscription Service Agreement**

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the BMC Subscription Service Agreement set forth in Appendix D of this Contract. No changes to the BMC Subscription Service Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D. Order Fulfiller shall make the BMC Subscription Service Agreement terms and conditions available to all Customers at all times.

2) Compliance with the BMC Subscription Service Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the BMC Subscription Service Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software License Agreement terms and conditions.

**B. Shrink/Click-wrap License Agreement**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

**C. Service Agreement**

Services provided under this Contract shall be in accordance with the Service Level Agreement as set forth in Appendix E of this Contract. No changes to the Service Level Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

**9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.**

No exceptions have been agreed to by DIR and Vendor.

This Contract is executed to be effective as of the date of last signature.

**Carahsoft Technology Corporation**

**Authorized By: Signature on File**

**Name: Ellen Lord**

**Title: Contracts Manager**

**Date: 9/29/11**

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By: Signature on File**

**Name: Karen Robinson**

**Title: Executive Director of DIR**

**Date: 9/29/11**

**Legal: Signature on File 9/29/11**