

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

- 1. Scope.** This Carahsoft Rider and the Manufacturer's Commercial Supplier Agreement (CSA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").
- 2. Applicability.** The terms and conditions in the attached Manufacturer's CSA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a) (1) (B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's CSA is inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's Multiple Award Schedule Contract, GS-35F-0119Y, including, but not limited to the following:
 - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", defined as an entity authorized to order under Government contracts as set forth in General Services Administration Order OGP 4800.2I, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
 - (b) Changes to Work and Delays.** Subject to General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of the GSAR and the FAR provisions shall take precedence.
 - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

(d) Audit. During the term of this CSA: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this CSA. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this CSA.

(e) Termination. Clauses in the Manufacturer's CSA referencing suspension, termination or cancellation of the Manufacturer's CSA, the License, or the Customer's Account are hereby deemed to be deleted. Termination, suspension or cancellation shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

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

(f) Consent to Government Law / Consent to Jurisdiction. Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

(g) Force Majeure. Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.

(h) Assignment. All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA are hereby deemed to be deleted.

(i) Waiver of Jury Trial. All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All of the Manufacturer's CSA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) **Renewals.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) **Future Fees or Penalties.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) **Taxes.** Taxes are subject to GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w) (1) (x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).
- (o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer's CSA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w) (1) (iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.

(r) Limitation of Liability: Subject to the following:

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

(s) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

(t) Public Access to Information. Manufacturer agrees that the CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA and this Rider will be available to the public.

(u) Confidentiality. Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).



CYBERLEDGER APPLICATION SERVICES AGREEMENT (Customer)

This Application Services Agreement (the “**Agreement**”) is entered into and made effective as of the date set forth in the Order Form of similar document (the “**Effective Date**”), by and between **Trusted.com LLC**, a Virginia limited liability company with principal place of business at 11990 Market Street, Suite #201, Reston, VA 20190 (“**Trusted.com**”), and the Government Ordering Activity, (“**Customer**”). Each of Trusted.com and Customer a “**Party**.”

1. DEFINITIONS. Capitalized terms, not otherwise defined, shall have the meanings set forth or cross-referenced in this Section 1.

“**CyberLedger**” means Trusted.com proprietary technology and application software in machine-readable form, and including Updates, as further set forth and described on **Schedule A**, and through which Trusted.com provides Cybersecurity risk management and decision support services.

“**Authentication Data**” means all data submitted to, uploaded in, and obtained by, the Cybersecurity system (“**CyberLedger**”) for risk management and decision support, including security controls, spending, Plans of Action and Milestones (POAMs), risk assessments and all related data that end users or Customer may enter into the CyberLedger in order to facilitate risk management and decision support.

“**Authorized User**” shall mean, collectively, any individual employees, agents or contractors of Customer, that are acting within the scope of written employment agreements or contract relationships with Customer, and are authorized by Customer to access or utilize the CyberLedger solely for Customer’s business purposes in connection with Cybersecurity risk management, subject to the terms and conditions of this Agreement.

“**Confidential Information**” will mean all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential.

“**Documentation**” will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of CyberLedger, which materials are designed to facilitate use of the System and which are provided by Trusted.com to Customer in accordance with the terms of this Agreement.

“**Intellectual Property Rights**” are the exclusive rights held by the owner of a copyright, patent,

trademark, or trade secret, including (i) the rights to copy, public perform, public display, distribute, adapt, translate, modify and create derivative works of copyrighted subject matter; (ii) the right to exclude another from using, making, having made, selling, offering to sell, and importing patented subject matter and from practicing patented methods, (iii) the rights to use and display any marks in association with businesses, products or services as an indication of ownership, origin, affiliation, endorsement, or sponsorship; and (iv) the rights to apply for any of the foregoing rights, and all rights in those applications. Intellectual Property Rights also include any and all rights associated with particular information that are granted by law and that give the owner, independent of contract, exclusive authority to control use or disclosure of the information, including enforceable privacy rights and any rights in databases recognized by applicable law.

“**Maintenance and Support Services**” means the technical support and maintenance services that Trusted.com provides in accordance with its then-current Support and Maintenance Policy, as may be modified from time to time. The current Support and Maintenance Policy is attached in **Schedule B**.

“**Marks**” refer to the proprietary trademarks and service marks, trade names, domain names, business and product names, logos, slogans, and registrations and applications for registration thereof owned by a Party hereunder.

“**Pre-packaged Services**” means collectively the standard configuration, implementation and training services that Trusted.com may provide upon agreement with Customer as set forth in the attached Schedules.

“**Professional Services**” means those consulting services, including customizations or additional development of CyberLedger, that are beyond the standard configuration or implementation of CyberLedger and that Trusted.com provides under contract terms separately executed (including statements of work) as further agreed under

Schedule C, and that Trusted.com charges on a time and materials basis.

“Customer Data” means the data, media and content related to the Customer’s security posture, spend, assets and threats.

“Services” in the collective may refer to Trusted.com services provided under the terms of this Agreement, including CyberLedger services, Maintenance, Pre-packaged and/or Professional services.

“Updates” means the updates, fixes, solutions to problems or bugs, workarounds or other enhancements or modifications to the CyberLedger, the Web Interface and/or the Documentation that Trusted.com may issue from time to time and that it makes generally available to its licensees and customers as part of its support services. Updates do not include new functionality or software features that are made available by Trusted.com for additional incremental fees.

“Web Interface” means the website or websites in a production environment through which Trusted.com gives Customer’s Authorized Users access to CyberLedger, either directly or through an authorized affiliate or third party.

2. LICENSE GRANT AND SCOPE OF SERVICES.

2.1 CyberLedger License. Subject to the terms and conditions of this Agreement, Trusted.com grants to Customer a nonexclusive, nontransferable license during the Term (as defined below) (i) to use or access, and permit Authorized Users to use or access, CyberLedger, solely through the Trusted.com Web Interface, solely for use in connection with its Cybersecurity posture and (ii) to load or download, as the case may be, Updates, as well as (iii) to upload Customer Data into CyberLedger, to update the same and to view all corresponding data generated by the software associated with Customer Data (and not for or on behalf of any third party or as a service bureau). Trusted.com may impose limits on the number of Authorized Users, or otherwise limit Customer’s access to CyberLedger and Web Interface as further set forth in **Schedule A**.

2.2 Documentation License. Trusted.com grants to Customer a non-transferable, non-exclusive, limited license (without right of sublicense) to make copies of the Documentation solely for purposes of training Customer’s internal personnel regarding use and support of CyberLedger and for purposes or providing technical support to Authorized Users. Customer acknowledges that the Documentation is Trusted.com’s Confidential Information, and Customer agrees to ensure that all proprietary notices placed on the original copies by Trusted.com, like copyright notices, trademark notices, and confidentiality notices, will be replicated in all copies.

Copies of the Documentation may not be distributed to persons who are not Customer’s Authorized Users.

2.3 License Restrictions; Exclusive Use of CyberLedger. Customer has no right to assign, transfer, sublicense or otherwise distribute CyberLedger or access thereto, and/or to the Web Interface to any third party other than as expressly permitted under this Agreement. In addition, Customer shall not, and shall not permit an Authorized User, to

(a) modify, disassemble, decompile or reverse engineer or otherwise attempt to determine the source code (or the underlying ideas, algorithms, structure or organization) of CyberLedger (or any portion thereof), or the Web Interface, nor permit any third party to do so; or

(b) copy, modify or attempt to modify CyberLedger and/or Web Interface.

2.4 Trusted.com Services.

(a) Pre-packaged Services. Trusted.com may make available, and Customer may purchase, certain pre-set services in the nature of installation, configuration, implementation or training with respect to the standard CyberLedger, as may be more fully described in **Schedule A**. Such Pre-Packaged Services shall be provided in a professional and workmanlike manner and shall be subject to the limitations, dependencies, and disclaimers set forth in this Agreement and the applicable referenced documentation for such Pre-Packaged Services. Pre-packaged Services may be further detailed in separate statements of work. Implementation services may include importing the Customer Data into the CyberLedger, while training services may include training on the use of the CyberLedger, the Web Interface, and uploading Customer Data into the CyberLedger.

(b) Maintenance and Support Services. If contracted, Trusted.com shall respond to Customer inquiries or error reports in accordance with its then-current Support and Maintenance Policy, as set forth in **Schedule B**. Trusted.com shall also incorporate generally available Updates to the specific CyberLedger licensed to Customer and provide Customer with any associated documentation made generally available to other Customers at no additional charge. Customer agrees to transition to Updates as required.

(c) Professional Services. Customer may also request additional Professional Services from Trusted.com, that are beyond standard configuration services (including customizations or additional development of the system) and which services, if agreed to by Trusted.com, shall be provided pursuant to a mutually agreed Professional Services

Addendum (PSA), under separately executed statements of work and subject to additional fees.

3. OWNERSHIP RIGHTS

3.1 No implied licenses. Customer acknowledges that there are no licenses granted by implication under this Agreement. Trusted.com reserves all rights that are not expressly granted to Customer under this Agreement. Customer will have no right to receive any source code with respect to any Trusted.com software or technology.

3.2 Proprietary Rights.

(a) Ownership. Customer acknowledges that, as between the Parties, Trusted.com (and its licensors) retain all right, title, and interest in and to all the Intellectual Property Rights and proprietary interests that are embodied in, or practiced by, the CyberLedger (including any customizations, Updates and upgrades), the Web Interface, the Documentation and the Trusted.com Marks. Customer agrees to notify Trusted.com of any known or suspected violation, infringement or misappropriation of Trusted.com's proprietary rights, which may come to Customer's attention during the Term. As between Trusted.com and Customer, Customer shall retain sole and exclusive ownership of all Intellectual Property Rights, in and to the Customer Marks. Each Party agrees to use commercially reasonable efforts to protect the proprietary rights of, and to cooperate, without charge, in the other Party's efforts to protect its proprietary rights. Customer shall not delete or alter the copyright, trademark, and other proprietary rights notices of Trusted.com and its licensors appearing on the Web Interface or CyberLedger.

(b) 'Look and Feel'. The "look and feel" of the Trusted.com Web Interface or CyberLedger, meaning, the structure, sequence and layout of the audiovisual components of the Trusted.com offerings as perceived by Customer, including, but not limited to, the color combinations, button shapes, and all other graphical and navigational elements, the design for which was dictated by artistic and aesthetic considerations and not by utilitarian or mechanical ones, are also proprietary to Trusted.com and fully protected under U.S. and international copyright and trademark laws.

3.3 Work Product. Trusted.com (or its suppliers or licensors) shall retain all right, title, and interest in and to any works of authorship, work product, concepts, inventions, ideas or know-how Trusted.com creates and delivers to Customer, or uses in the course of providing the CyberLedger to Customer or rendering its Services hereunder as well as in and to any other information developed or provided by Trusted.com under this Agreement. Such Work Product includes any methodologies, equipment or processes used by Trusted.com to

provide the CyberLedger and the Services to Customer, (collectively, the "**Trusted.com Intellectual Property**"). No portion of such Trusted.com Intellectual Property shall be deemed a "work for hire". To the extent that, by operation of law or otherwise, rights to such Trusted.com Intellectual Property do not vest in Trusted.com, Customer agrees to assign to Trusted.com all of Customer's rights, title, and interest, if any, in and to such Trusted.com Intellectual Property. Customer acknowledges that Trusted.com is in the business of providing CyberLedger and related Services and that Trusted.com shall have the right to use Trusted.com Intellectual Property in connection with providing CyberLedger and related Services to third parties. Notwithstanding anything to the contrary in this Agreement, Trusted.com will not be prohibited or restricted at any time by Customer from utilizing any skills or knowledge and information of a general nature acquired during the course of providing the CyberLedger and related Services or otherwise during the Term, not uniquely applicable to Customer.

3.4 Ownership of Data.

(a) As between the parties, all Customer Data uploaded, stored and/or updated in the Web Interface or local instance of CyberLedger, shall be the property of Customer. Customer hereby grants to Trusted.com a royalty-free, unlimited, perpetual, worldwide, license to use this Customer Data for the provision of Services hereunder. Notwithstanding the foregoing, Trusted.com agrees that it won't disclose any Customer-identifying data to third parties, and specifically Trusted.com won't package or sell statistics of Customers' information.

4. PAYMENT

4.1 License and Services Fees. In consideration for the rights granted to Customer and the promises made by Trusted.com under this Agreement, Customer will pay to Trusted.com, without offset or deduction, all fees required in U.S.A. currency. Trusted.com will submit invoices to Customer with respect to such fees according to the relevant payment schedules and each invoiced amount will be due and payable within thirty (30) days of receipt of the relevant invoice by Customer, unless otherwise agreed between the Parties. Customer shall additionally pay any amounts payable under any separately executed addendum or statement of work by the Parties and attached to this Agreement. Unless otherwise expressly required by such addenda, payments thereunder shall be due within thirty (30) days after the date the relevant invoice is received. Trusted.com reserves the right to adjust its pricing under this Agreement at any time upon reasonable written notice to Customer.

4.2 Incidental Expenses. Trusted.com shall invoice Customer for any reasonable and pre-approved out-of-pocket expenses incurred by Trusted.com in connection with performing any Services under this Agreement, within thirty (30) days after the date of Trusted.com's invoice for such expenses. Trusted.com will provide reasonable documentation supporting such expenses.

4.3 Taxes and Late Fees. Any overdue fees shall accrue interest at the lesser of 1.5% per month or the maximum rate permitted by law. Customer shall be responsible and shall promptly pay or reimburse Trusted.com for all taxes of any kind (including but not limited to sales and use taxes) associated with Customer's receipt of access to the Trusted.com Services under this Agreement, except for taxes based on Trusted.com's income.

5. OBLIGATIONS OF CUSTOMER.

5.1 Customer Obligations.

Customer acknowledges that Trusted.com is not responsible for failures, such as, for example, Customer's or its Authorized Users' inability to access the Web Interface, caused by problems with Customer's computer system, network, Internet connectivity, or other factors that are outside of Trusted.com's control, including, without limitation, any Force Majeure Event (as defined below).

5.2 Data Transmission; Security Options.

Customer acknowledges that transmission of data over the Internet involves unique transmission risks that cannot be fully secured against access by third parties. Customer further acknowledges that Trusted.com recommends use of various security options available with CyberLedger, but that Trusted.com has no duty or responsibility to ensure Customer complies with its recommendations. Customer agrees that Trusted.com shall not be responsible for any loss, alteration or corruption of Customer Data that occurs during or as a result of transmitting Customer Data via the Internet. Customer shall be responsible for any loss, alteration or damage to Customer Data, CyberLedger, or the Web Interface to the extent caused by (a) the actions of Customer's Authorized Users or other employees, consultants or agents to whom Customer has provided access to the Web Interface; or (b) the conduct of any third party that has accessed the Web Interface using Customer's passwords through no fault of Trusted.com.

5.3 Monitoring Authorized Users. Customer shall assign, maintain, and regularly monitor Authorized User accounts to ensure that CyberLedger and Web Interface are being used in accordance with the terms of this Agreement and shall immediately terminate access and use by any person who is not an Authorized User or who violates the terms of this Agreement. Trusted.com reserves the right to

terminate access to any individual in the event of such violation, in addition to its other remedies. Customer shall remove Authorized User access as appropriate when such users no longer need access.

5.4 Authorized Support Contacts. Customer shall appoint the number of Authorized Support Contacts set forth in Schedule B for all matters related to CyberLedger and Web Interface, a completion of implementation services. Additional Authorized Support Contacts, if any, shall be communicated in writing to Trusted.com.

6. REPRESENTATIONS AND WARRANTIES

6.1 Mutual Representations, Warranties and Covenants. Each party represents, warrants and covenants that: (a) it has all necessary right, power and authority to enter into this Agreement and to perform its obligations hereunder, (b) the execution of this Agreement and the performance of its obligations hereunder does not and will not conflict with or result in a breach of any other agreement to which it is a party or by which any of its assets or properties is bound or affected, and (c) this Agreement has been duly executed and delivered by such party and constitutes the valid and binding agreement of such party, enforceable against such party in accordance with its terms.

6.2 Limited Warranty. Trusted.com warrants to Customer for a period of ninety (90) days from the launch of CyberLedger in production mode, that CyberLedger will perform in substantial conformance with the applicable Documentation; provided any non-conformance is not the result of Customer's actions or inactions. Customer's exclusive remedy in the event of a warranty claim under this Section 6.2, is that Trusted.com will: (i) use reasonable commercial efforts to repair or replace the affected portion of CyberLedger; or (ii) provide a work around solution that is substantially similar in all material functional respects to CyberLedger, or (iii) if Trusted.com determines that none of the foregoing remedies are reasonably available, Customer may terminate this Agreement and Trusted.com will refund all fees paid to Trusted.com in connection with CyberLedger under this Agreement.

6.3 Notice of Warranty Breach and Cure Period. If Customer believes that Trusted.com has committed a material breach of the warranty in Section 6.2, Customer shall provide immediate written notice to Trusted.com and Trusted.com shall have thirty (30) days following its receipt of notice to cure any material breach.

6.4 Breach; Remedies. If the breach is not cured as provided under Section 6.3, Customer's sole and exclusive remedy and Trusted.com's entire liability with respect to any Trusted.com breach of this Agreement shall be to terminate this Agreement, cease use of CyberLedger and the Web Interface

and receive a refund of the fees paid for Trusted.com's unperformed Services prior to such termination and any prepaid fees for the post-termination period remaining in the Term.

6.5 Disclaimer of Warranties. THE WARRANTIES SET FORTH IN THIS SECTION 6 ARE IN LIEU OF, AND TRUSTED.COM DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY, NON-INFRINGEMENT, ACCURACY, ERROR-FREE OR UNINTERRUPTED SERVICE, AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPLICITLY PROVIDED HEREIN, THE SOFTWARE AND THE SERVICES ARE PROVIDED "AS IS." **TRUSTED.COM IS NOT RESPONSIBLE FOR ANY HUMAN OR MECHANICAL ERRORS OR OMISSIONS, OR FOR ANY INFORMATION OR DATA, OR ANY RESULTS OR CERTIFICATIONS BASED ON SUCH INFORMATION OR DATA, WHETHER RELATED TO ANY PURCHASE INFORMATION OR ANY OTHER INFORMATION RELATED TO THE AUTHENTICITY, TITLE OR OWNERSHIP OF ANY PRODUCTS THAT IS PROVIDED TO THE CYBERLEDGER AND THAT IS INACCURATE, MISREPRESENTED, FALSE, OUTDATED OR INCOMPLETE.**

7. CONFIDENTIALITY

7.1 Inclusions. The Confidential Information of Trusted.com includes (i) CyberLedger; (ii) the Documentation. The Confidential Information of the Parties includes (iii) all information relating to Trusted.com's or Customer's current or future product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, sales data, personnel, Customer employee data, research, development or know-how and (iv) Customer Data maintained by Trusted.com in the Web Interface.

7.2 Exclusions. Confidential Information does not include information that: (a) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (b) is known to the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure; or (e) is disclosed with the prior written approval of the disclosing party.

7.3 Use and Disclosure Restrictions. Neither party shall use the other party's Confidential Information except for internal purposes related to the performance of this Agreement, and neither party shall disclose such Confidential Information to any third party except to officers, directors, employees,

agents, consultants and advisors as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees and consultants). However, each party may disclose Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other US governmental body, provided that the disclosing party gives reasonable notice to the other party to contest such order or requirement; and (b) on a confidential basis to legal or financial advisors who agree to be bound by this Section 7. Within seven (7) days of the disclosing party's request, the receiving party shall cease to use and shall return all originals, copies, summaries, notes and extracts of the Confidential Information, to the extent such materials are in the control or possession of the receiving party.

8. INDEMNIFICATION

8.1 Trusted.com Indemnity. Trusted.com shall defend any action brought against Customer by a third party to the extent that it is based upon a third party claim that the then current version of CyberLedger, as utilized by Customer under this Agreement and used within the scope of this Agreement, infringe the registered trademarks or copyrights of a third party under the laws of the United States of America (an "**Indemnity Claim**"), and shall pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer subject to the terms of this Agreement.

8.2 Remedies; Injunctions. If Customer's use of the Web Interface or CyberLedger hereunder is, or in Trusted.com's opinion is likely to be, enjoined as an infringement or misappropriation of any third party intellectual property right under the laws of the United States, Customer's sole and exclusive remedy, and Trusted.com's entire liability shall be, at Trusted.com's sole option and expense, either: (a) to procure for Customer the right to continue to use the Web Interface and CyberLedger under the terms of this Agreement; (b) replacement or modification of the Web Interface or CyberLedger so that they are non-infringing and substantially equivalent in function to the enjoined CyberLedger; or, if neither of the foregoing options is commercially reasonable, or (c) terminate this Agreement in whole or in part and refund to Customer the fees paid by Customer under this Agreement for the six (6) month period immediately preceding the termination date.

8.3 Exclusions. Notwithstanding the terms of Section 8.1, Trusted.com shall have no liability for any claim of any kind to the extent it results from: (a) modification of CyberLedger made other than by Trusted.com; (b) the combination, operation or use

by Customer of any CyberLedger component supplied by Trusted.com with equipment, devices or software not supplied by Trusted.com to the extent such a claim would have been avoided if CyberLedger was not used in such combination; (c) failure of Customer to use updated or modified CyberLedger provided by Trusted.com, including, without limitation, those provided to avoid infringement; or (d) compliance by Trusted.com with directions, designs, plans or specifications furnished by or on behalf of Customer.

8.4 Sole Remedy. The foregoing provisions of this section 8 set forth Trusted.com's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement of intellectual property rights of any kind.

8.5 Customer Indemnity. Customer agrees to indemnify, defend and hold Trusted.com, its employees, stockholders, affiliates and officers harmless from any cost, liability or loss relating to (i) any breach of Customer's representations and warranties under this Agreement; (ii) obligations or responsibilities under Sections 2 or 5; or (iii) Customer's and its Authorized Users' use of the CyberLedger and Services under this Agreement other than as authorized herein, (iv) any use of Customer Data pursuant to and in accordance with this Agreement; (iv) any actions by Authorized Users unauthorized by Customer in uploading, storing and/or updating Customer Data or other data into the CyberLedger and/or Web Interface; (vii) any data inaccuracies (viii) any breach of data stored in CyberLedger not negligently or willfully caused by Trusted.com.

8.6 Procedure. Promptly after receipt by an indemnified party ("**Indemnified Party**") of notice of commencement of any action involving the subject matter of the foregoing indemnity provisions under Section 8.1 and 8.5, such Indemnified Party will promptly notify the indemnifying party ("**Indemnifying Party**") of the commencement thereof. Upon proper notification, the Indemnifying Party shall have the right, but not the obligation, to control the defense of the Indemnified Party against any such third-party claims, utilizing counsel chosen in Indemnifying Party's sole discretion, provided that the Indemnified Party may participate in any such defense, at its own expense, by separate counsel of its choice, and further provided that any such participation shall not limit Indemnifying Party's right to control such defense. Notwithstanding anything contained in the foregoing sentence to the contrary, the Indemnifying Party (i) shall not be entitled to have sole control over any third party claim that seeks an order, injunction or other equitable relief against any Indemnified Party; or any action that is the subject of such third party indemnification claim in which both the Indemnifying Party and Indemnified Party are

named as parties and either the Indemnifying Party or Indemnified Party determines with advice of counsel that there may be one or more legal defenses available to it that are different from or additional to those available to the other party or that a conflict of interest between such parties may exist in respect of such action, and (ii) shall obtain the prior written approval of the Indemnified Party before ceasing to defend against any third party indemnification claim or entering into any settlement, adjustment or compromise of such claim involving injunctive or similar equitable relief being asserted against any Indemnified Party. The Indemnified Party shall cooperate with the Indemnifying Party in the provision of any such defense by providing to the Indemnifying Party all such information, assistance and authority as may reasonably be requested by the Indemnifying Party.

9. LIMITATION OF LIABILITY

9.1 Total Liability. TRUSTED.COM'S CUMULATIVE LIABILITY TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY SHALL BE LIMITED TO AND SHALL NOT EXCEED THE AMOUNTS PAID OR REQUIRED TO BE PAID TO TRUSTED.COM BY CUSTOMER PURSUANT TO THIS AGREEMENT FOR THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE ACCRUAL OF THE CLAIM.

9.2 Exclusion of Damages. IN NO EVENT SHALL EITHER PARTY OR ITS LICENSORS BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE WEB INTERFACE, THE CYBERLEDGER OR SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

9.3 No Limitation; Essential Basis.

(a) Notwithstanding the preceding portions of this Section, nothing in this Agreement is intended or may be interpreted as a limitation of either Party's rights or liabilities associated with infringement by one Party of the other Party's Intellectual Property Rights or misappropriation of the other Party's Confidential Information.

(b) Both Parties acknowledge that the provisions of this Section 9 are an essential part of this Agreement, absent which the economic terms and other provisions of this Agreement would be substantially different.

10. TERM AND TERMINATION

10.1 Term. This Agreement shall begin on the Effective Date and continue for Two (2) years (the “**Term**”). If the Agreement has not been terminated prior to the end of that initial Term, the duration of the Agreement will be extended one (1) year at a time, successively (each a “**Renewal Term**”), unless one of the Parties delivers a notice at least thirty (30) days prior to commencement of the next extension, stating that it does not wish to extend the duration of this Agreement any longer, or unless during an extension period either Party terminates the Agreement in one of the situations permitting termination as described below. Pre-packaged Services, Maintenance Services and/or Professional Services, if any, may have a separate term as identified on the applicable schedule and statements of work for those services.

10.2 Termination for Breach. Each party shall have the right to terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice, except in the case of Customer’s failure to pay fees when due, which must be cured within ten (10) business days after the date when due. If Customer has not cured a breach for nonpayment within ten (10) days, Trusted.com may, at its option and at any time, either terminate this Agreement or temporarily discontinue any or all services and online access until all fees are paid.

10.3 Termination for Insolvency. Trusted.com may terminate this Agreement if Customer becomes the subject of any voluntary or involuntary petition in bankruptcy or any voluntary or involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing. Upon the occurrence of any of the foregoing events, Customer shall provide Trusted.com with written notice of such petition and/or proceeding within ten (10) days of the filing of such petition (the “**Notice Period**”). In the event Customer fails to provide Trusted.com with such notice within the Notice Period regardless of Customer’s knowledge of such petition and/or proceeding, this Agreement shall terminate automatically and immediately upon expiration of such Notice Period.

10.4 Early Termination Charges. If Customer terminates this Agreement before the end of its Term, which can only be done on thirty (30) day prior written notice, Customer will pay an early termination charge of one hundred percent (100%) of its recurring charges for the remainder of the Term except if (i) Customer terminates the Agreement as a result of Trusted.com’s uncured material breach, or Trusted.com terminates the Agreement for reasons other than for Customer’s breach.

10.5 Effect of Termination. Upon any termination of this Agreement: (i) all licenses and rights granted by Trusted.com hereunder shall terminate and Trusted.com shall no longer provide access to the CyberLedger and related services to Customer, (ii) Customer shall cease and cause its Authorized Users to cease using the Web Interface and CyberLedger; (iii) each Party shall promptly return to the other or, at a Party’s request, destroy any Confidential Information of the other Party still in its possession, in all forms and types of media, and provide an officer’s written certification, certifying compliance with the foregoing; and (iv) Customer shall promptly pay all fees then outstanding. Upon receipt of all outstanding fees, Trusted.com shall return to Customer text files of all Customer Data stored in the Web Interface. Customer acknowledges that if Trusted.com receives Customer Data after the expiration or termination of this Agreement, Trusted.com shall destroy such data in a secure manner.

10.6 Suspension of Access. At its election, Trusted.com may suspend access to the CyberLedger and Web Interface in the event any amount due under this Agreement is not received by Trusted.com within ten (10) days after it was due. The exercise of Trusted.com’s right to suspend access under this Section 10.6 shall in no way affect Trusted.com’s right to terminate this Agreement in accordance with the terms of this Section 10.

10.7 Nonexclusive Remedy. Except as may be specifically set forth in this Agreement, termination of this Agreement by either party shall be a nonexclusive remedy for breach and shall be without prejudice to any other right or remedy of such party.

10.8 Survival. The rights and obligations of the parties that by their sense and context are intended to survive termination shall so survive.

11. GENERAL

11.1 Assignment. Customer shall not assign or otherwise transfer this Agreement, in whole or in part, without Trusted.com’s prior written consent. Any attempt to assign this Agreement without such consent shall be null and void.

11.2 Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Virginia, excluding its principles relating to conflicts of laws. The parties consent to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Virginia.

11.3 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of this Agreement shall be enforced to the maximum extent permissible and the other provisions of this Agreement shall remain in full force and effect.

11.4 Waiver. The failure by either party to enforce any provision of this Agreement shall not constitute a waiver of future enforcement of that or any other provision.

11.5 Notices. All notices required or permitted under this Agreement shall be in writing and delivered by courier, overnight delivery service, or by certified mail, and in each instance shall be deemed given upon receipt or rejection. All notices shall be sent to the addresses set forth below or to such other address as may be specified by either party to the other in accordance with this Section. All notices shall be sent as follows:

To Trusted.com:

Trusted.com
12930 Worldgate Drive, Suite 300
Herndon, VA 20170
Attn.: Account Services
Tel: (800)708-6431 / Fax: (703)991-2336

To Customer:

As identified in the Order Form, Statement of Work, or similar document

Either party may change its address for notices under this Agreement by giving written notice to the other party by the means specified in this Section.

11.6 Force Majeure. Neither party shall be responsible for any failure or delay in its performance under this Agreement (except payment obligations) due to causes beyond its reasonable control that makes performance commercially impractical ("Force Majeure Event"); provided that either party may terminate this Agreement if such Force Majeure Event still exists after ninety (90) days of notification thereof. A Force Majeure Event must be notified in writing to the other party within five days from its occurrence.

11.7 Relationship of Parties. The parties to this Agreement are independent contractors and this Agreement shall not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

11.8 Entire Agreement. References to the Agreement include the terms and conditions of Carahsoft Technology Corporation's Multiple Award Schedule Contract, all schedules, exhibits, addenda and attachments. This Agreement contains the complete understanding and agreement of the parties and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to the subject matter herein. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and

signed by duly authorized representatives of the parties. In the event of any inconsistency or conflict between the terms and conditions of this Agreement and any transactional or other document issued in connection herewith (including, without limitation, statements of work, purchase orders, invoices, RFPs, bills of lading, etc.), the terms and conditions of this Agreement shall, in all instances, govern and control.

Customer agrees to the terms set forth above, and to the terms in the following documents, which are attached to, and form a part of, this Agreement:

Schedule A	Description of CyberLedger and Pre-Packaged Services
Schedule B	Support and Maintenance Policy
Schedule C	Professional Services Addendum

Each Statement of Work, if any, executed by Customer and Trusted.com shall be governed by the terms of this Agreement and its applicable addenda.



CYBERLEDGER SERVICES AGREEMENT

SCHEDULE A

DESCRIPTION OF CYBERLEDGER

I. Software

LongView has created an end-to-end, Cybersecurity decision support tool: CyberLedger. CyberLedger is an end-to-end, Cybersecurity decision support tool which uses data driven risk management to close security gaps; measure security within an organization; evaluate assets, threats, vulnerabilities, and countermeasures to determine the activities that are critical to service delivery; and prioritize expenditures to maximize the impact of investment.

CyberLedger acts as a decision support reporting system that provides a platform for Federal executives to continuously track and report how well they are spending Cyber funds in relation to their security posture, risk management, and NIST compliance. Specifically, it helps visualize and allows for better decision making on:

- ✔ How well the NIST RMF security controls are implemented and functioning on demand
- ✔ Where to focus Cybersecurity efforts to improve data quality of reporting metrics
- ✔ How to find efficiencies in cyber costs to be more effective in addressing highest risk areas in terms of continuous monitoring of people, process, and technology
- ✔ Where your Cybersecurity investments map effectively to actual threat and risk profiles

CyberLedger features a purpose-built software as a service (SAAS) offering for Federal Agencies to achieve immediate visibility into its enterprise Cybersecurity risk posture and compliance maturity. In doing so, it has the capability to explain the effectiveness of how well Cybersecurity investments are operating and where to focus additional investment spending to fix security gaps and provide the best value with the greatest impact. CyberLedger is currently available for 90-day pilot deployments with early-adopter price incentives that enable a low risk solution for its substantial benefits and value in becoming your ultimate Cybersecurity risk management decision support tool.

Its modular design ingests: risk, threats, vulnerabilities, compliance, and Cybersecurity spending data from your environment to create immediate dashboard views and on-demand reporting at the system, organization, and agency level for:

- ✔ Cybersecurity compliance posture
- ✔ Ongoing cyber residual risk
- ✔ Cyber risk and threat profiles
- ✔ Cybersecurity Framework (CSF) profiles
- ✔ Cybersecurity spending prioritization



CYBERLEDGER SERVICES AGREEMENT

SCHEDULE B

Support and Maintenance Policy

1. Maintenance Services

1.1 *Maintenance.* For purposes of the Agreement, "**Maintenance**" shall mean any work provided by Trusted.com to improve the scalability of Trusted.com's CyberLedger or Web Interface, which typically occurs during Regular Maintenance, but may occur during Critical or Emergency Maintenance. Such maintenance activities include, but are not limited to: storage or backup upgrade, disaster recovery testing and upgrades or repairs to the Web Interface or the CyberLedger software.

1.2 *Regular Maintenance.* Regular Maintenance is regularly scheduled, reserved time for working on non-critical, non-emergency maintenance, upgrades and repairs. Trusted.com shall schedule Regular Maintenance during non-business hours.

1.3 *Critical Maintenance.* Critical maintenance involves upgrades and repairs related to preventing potential short-term problems that do not require emergency measures. Critical Maintenance shall continue until completed. Trusted.com shall attempt to schedule Critical Maintenance during non-business or lower user-traffic hours where reasonably practicable but cannot guarantee any particular scheduling.

1.4 *Emergency Maintenance.* Emergency maintenance is performed when upgrades and repairs are necessary to resolve immediate problems causing system instability. Trusted.com shall make reasonable attempts to provide Customer with prior notice of Emergency Maintenance to the extent and in the manner practicable or shall provide current notice of the ongoing work. Emergency Maintenance may commence at any time and shall continue until completed. Where reasonably practicable, Trusted.com shall attempt to schedule Emergency Maintenance during non-business or lower user-traffic hours but cannot guarantee any particular scheduling.

1.5 *Third Party Maintenance.* Third party maintenance involves upgrades and repairs related to third party hosting or software used in the CyberLedger or Web Interface. Scheduling of Third Party Maintenance is subject to the sole discretion of such third party providers. Trusted.com will maintain support contracts with such third party providers in order to minimize response time.

1.6 *Notice.* Trusted.com shall provide notice in advance of Regular Maintenance, and, to the extent reasonably practicable, for Critical and Emergency Maintenance. The notice shall include a description of the nature of the work being performed, identification of the affected systems, and an estimate of the approximate level of outage(s) (partial or full) anticipated during the particular Maintenance period. Any notice will be sent through e-mail communication to Customer designated personnel (the "**Authorized Support Contacts**").

2. Program Errors and Response Times

2.1 *Program Errors.* Trusted.com shall make corrections and modifications to material program errors in the CyberLedger or Web Interface in accordance with this Section 2. For the purposes of the Agreement, a "**Program Error**" shall mean a reproducible deviation or defect in the Web Interface or CyberLedger that causes the CyberLedger application to malfunction. Program Errors are classified by the following Severity Levels:

2.2 *Severity Level 1 - Emergency/Critical.* A Severity Level 1 Program Error is defined as one where a total system failure or outage occurs and all Authorized Users are wholly unable to access one or more of the CyberLedger applications and/or the Web Interface and Customer is consequently unable to

conduct business. Trusted.com's target response time to acknowledge receipt of a Severity Level 1 Customer call is one (1) hour. Trusted.com shall work to provide an immediate fix or temporary work-around for Severity Level 1 Program Errors.

2.3 *Severity Level 2 - High/Urgent.* A Severity Level 2 Program Error is defined as one where a partial system failure or outage occurs and one or more, but not all, Authorized Users are unable to access one or more of the CyberLedger applications and/or the Web Interface and Customer is able to conduct business through a workaround or incremental resource for a short period of time before business stops. Trusted.com's target response time to acknowledge receipt of a Severity Level 2 Customer call is five (5) hours.

2.4 *Severity Level 3 - Medium/Low.* A Severity Level 3 Program Error occurs when one or more Authorized Users are unable to perform standard system functionality or system functionality is not operating in conformance with required levels, and there is a reasonable alternative solution available, or Customer has a standard question or request for assistance. Trusted.com shall respond to Severity Level 3 Program Errors within forty-eight (48) hours of such Customer call.

2.5 *Help Desk.* In order to facilitate resolution of Program Errors, Trusted.com shall provide Customer with access to a partially dedicated Customer technical support response telephone line established by Trusted.com at a telephone number to be provided to Customer promptly following the Effective Date.

2.6 *Authorized Support Contact.* Customer shall appoint at least two (2) Authorized Support Contacts to act as primary liaison between Customer and Trusted.com for all matters relating to Trusted.com's provision of Support and Maintenance Services. Such Authorized Support Contacts shall have sufficient authority to grant or communicate the granting of all necessary Customer approvals regarding Support and Maintenance Services.

3. Quality Commitments and Constraints

3.1 *Reasonable Efforts; Reports.* Trusted.com will use commercially reasonable efforts to meet the Severity 1, 2 and 3 targeted response and resolution times. Customer acknowledges that there are circumstances when there are unusual, complex issues that may take longer than the average targeted time reflected above for Severity 1, 2 and 3 issues. In some cases, issues may require assistance of the Customer's system user and/or technology department in reproducing or diagnosing an issue in order to correctly identify the appropriate resolution. There are also certain issues that may require additional levels of testing to ensure product quality and stability, and these efforts may impact target resolution times.



CYBERLEDGER SERVICES AGREEMENT SCHEDULE C

Professional Services Addendum

This **PROFESSIONAL SERVICES ADDENDUM** (the "**Addendum**") is an addendum to, and is hereby incorporated into, the **Application Services Agreement** between Trusted.com and Customer, including the agreement and any other addenda incorporated therein (collectively, the "**Agreement**").

1. ADDITIONAL DEFINITIONS. Certain capitalized terms used in this Addendum, not otherwise defined above, shall have the meanings set forth or cross-referenced below. Capitalized terms used in this Addendum that are not otherwise defined in this Addendum have the meaning set forth in the Agreement.

1.1 "Addendum Effective Date" has the meaning set forth in Section 7.1.

1.2 "Professional Services" has the meaning set forth in Section 2.1.

1.3 "Statement of Work" has the meaning set forth in Section 2.2.

2. PROFESSIONAL SERVICES

2.1 Professional Services. The Parties anticipate that Customer may desire to engage Trusted.com to perform certain services in connection with this Agreement, including, by way of example, installation, configuration, training or customization of the CyberLedger. Subject to the terms and conditions set forth in this Addendum, Trusted.com shall use commercially reasonable efforts to perform the services as set forth in Statements of Work (as defined below) separately executed by the Parties (the "**Professional Services**"). Trusted.com shall perform the Professional Services in a professional manner in accordance with industry standards.

2.2 Issuance of Statements of Work. Customer may request that Trusted.com perform services by delivering a written request describing the proposed Professional Services. Trusted.com shall prepare a draft Statement of Work as an exhibit to this Addendum (each, a "**Statement of Work**"). Such Statement of Work shall describe the fees, costs and expenses payable by Customer to Trusted.com in connection with the performance of such services. Customer, within five (5) business days after receipt of the proposed Statement of Work, shall notify Trusted.com of its acceptance of such Statement of Work. Until mutual acceptance in writing of the proposed Statement of Work, Trusted.com shall have no obligation to perform the proposed Professional

Services, provided that this Addendum shall remain in full force and effect in accordance with Section 7.1. Each Statement of Work, regardless of whether it relates to the same subject matter as any previously executed Statement of Work(s), shall become effective upon execution by authorized representatives of both Parties. All services and deliverables delivered under a Statement of Work are deemed accepted upon performance or delivery, as applicable.

2.3 Modifications. Customer may at any time request a modification to the Professional Services to be performed pursuant to any particular Statement of Work by written request to Trusted.com specifying the desired modifications. Trusted.com shall, within a reasonable time following receipt of such request, submit an estimate of the cost for such modifications and a revised estimate of the time for performance of the Professional Services pursuant to the Statement of Work. If accepted in writing by Customer, such modifications in the Statement of Work shall be performed under the terms of this Addendum. Modifications in any Statement of Work shall become effective only when a written change request is executed by authorized representatives of both parties.

3. PERSONNEL

3.1 Suitability. Trusted.com shall assign employees and subcontractors with qualifications suitable for the work described in the relevant Statement of Work. Trusted.com may replace or change employees and subcontractors in its sole discretion with other suitably qualified employees or subcontractors.

3.2 Customer Responsibilities. Customer shall make available in a timely manner at no charge to Trusted.com all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources of Customer required by Trusted.com for the performance of the Professional Services. Customer shall be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Customer. Customer shall provide, at no charge to Trusted.com, office space, services and equipment (such as copiers, fax machines and modems) as Trusted.com reasonably requires to perform the Professional Services.

4. FEES AND PAYMENTS. Trusted.com shall invoice Customer at Trusted.com's then standard hourly rates

provided to Customer as well as any other fees required by the applicable Statement of Work. Additionally, Trusted.com shall invoice Customer for the following charges, provided they are pre-approved with original receipts provided to Customer within thirty (30) business days of the occurrence: (i) reasonable travel and living expenses incurred by Trusted.com's employees and contractors for travel from Trusted.com's offices in connection with the performance of the Professional Services; (ii) international telephone charges (if applicable); and (iii) any other expenses for which reimbursement is contemplated in the applicable Statement of Work. Except as provided above, each Party will be responsible for its own expenses incurred in rendering performance under this Addendum and each applicable Statement of Work. Unless otherwise contemplated in a particular Statement of Work, Trusted.com will issue invoices to Customer on a monthly basis for amounts due under this Addendum, and payment of such amounts shall be due within thirty (30) days of the date the invoice is received. Notwithstanding the foregoing, any Trusted.com travel required in performance of services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) travel is performed. Established Federal Government per diem rates will apply to all Trusted.com travel.

5. PROPRIETARY RIGHTS. Unless otherwise expressly agreed in any particular Statement of Work, ownership of all work product, developments, inventions, technology or materials provided under this Addendum shall be solely owned by Trusted.com, subject to the usage rights granted to Customer under the relevant Statement of Work.

6. LIMITATION OF WARRANTIES AND LIABILITY. *Trusted.com makes no representations or warranties under this Addendum, and Customer acknowledges that this Addendum is subject to all disclaimers and limitations or liability set forth in the Agreement.*

7. TERM; TERMINATION

7.1 Term. This Addendum shall commence on the date of execution by both Parties (the "**Addendum Effective Date**") and shall remain in effect until the

earlier to occur of (i) completion of all outstanding Statements of Work hereunder; or (ii) termination in accordance with Section 7.2. Notwithstanding the foregoing, this Addendum shall remain in effect for a period of not less than one (1) year from the Addendum Effective Date unless earlier terminated in accordance with Section 7.2. Unless otherwise stated in the applicable Statement of Work, the term of each Statement of Work shall last until performance thereunder is completed.

7.2 Termination for Breach. Either Party may, at its option, terminate this Addendum in the event of a material breach by the other Party. Such termination may be effected only through a written notice to the breaching Party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching Party will have a right to cure such breach or breaches within thirty (30) days of receipt of such notice, and this Addendum shall terminate in the event that such cure is not made within such thirty (30)-day period. Without limiting the foregoing, Trusted.com may immediately terminate this Addendum upon written notice in the event that Customer becomes insolvent or enters bankruptcy during the term of this Addendum.

7.3 Termination of Individual Statements of Work. Either Party may, at its sole option and for its own convenience, terminate any or all Statements of Work in effect upon fifteen (15) days prior written notice. Upon such termination, the Parties shall inform each other of the extent to which performance has been completed through such date, and collect and deliver all work in process. In the event of termination, the Parties agree to wind up their work in a commercially reasonable manner and to preserve and deliver items of value created prior to termination. Trusted.com shall be paid for all work performed and expenses incurred through the date of termination.

7.4 Effect of Termination. In the event of termination or expiration of this Addendum, Customer shall promptly pay to Trusted.com all amounts due and outstanding.

7.5 Survival. The provisions of Sections 3.3, 4, 5, 6, 7.4 and 7.5 will survive the termination or expiration of this Addendum.



eTITLE SERVICES AGREEMENT (Retailer)

This eTitle Services Agreement (the “**Agreement**”) is entered into and made effective as of the date set forth in the Order Form or similar document (the “**Effective Date**”), by and between **Trusted.com LLC** a Virginia limited liability company with principal place of business at 12930 Worldgate Dr. Suite #300, Herndon, VA 20170 (“**Trusted.com**”), and the Government Ordering Activity (“**Retailer**”). Each of Trusted.com and Retailer a “**Party**.”

1. DEFINITIONS. Capitalized terms, not otherwise defined, shall have the meanings set forth or cross-referenced in this Section 1.

“**eTitle System**” means Trusted.com proprietary technology and application software in machine-readable form, and including Updates, as further set forth and described on **Schedule A**, and through which Trusted.com provides authentication validation (i.e. “**eTitle**”) services.

“**Authentication Data**” means all data submitted to, uploaded in, and obtained by, the authentication validation system (the “**eTitle System**”) for obtaining an authenticity certificate (“**eTitle**”), including authentication registration information related to Products, and which may include without limitation, serial number, description, model, manufacturer, chain of ownership, purchaser information (including personally identifiable information), commercial transactions with retailers, and all related data that end users or purchasers of products or Retailer may submit to the Service in order to facilitate the issuance or transfer of eTitles.

“**Authorized User**” shall mean, collectively, any individual employees, agents or contractors of Retailer, that are acting within the scope of written employment agreements or contract relationships with Retailer, and are authorized by Retailer to access or utilize the eTitle System solely for Retailer’s business purposes in connection with the sale and resale of Products, subject to the terms and conditions of this Agreement.

“**Confidential Information**” will mean all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential.

“**Documentation**” will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the eTitle System, which materials are designed to facilitate use of the System and which

are provided by Trusted.com to Retailer in accordance with the terms of this Agreement.

“**Intellectual Property Rights**” are the exclusive rights held by the owner of a copyright, patent, trademark, or trade secret, including (i) the rights to copy, public perform, public display, distribute, adapt, translate, modify and create derivative works of copyrighted subject matter; (ii) the right to exclude another from using, making, having made, selling, offering to sell, and importing patented subject matter and from practicing patented methods, (iii) the rights to use and display any marks in association with businesses, products or services as an indication of ownership, origin, affiliation, endorsement, or sponsorship; and (iv) the rights to apply for any of the foregoing rights, and all rights in those applications. Intellectual Property Rights also include any and all rights associated with particular information that are granted by law and that give the owner, independent of contract, exclusive authority to control use or disclosure of the information, including enforceable privacy rights and any rights in databases recognized by applicable law.

“**Maintenance and Support Services**” means the technical support and maintenance services that Trusted.com provides in accordance with its then-current Support and Maintenance Policy, as may be modified from time to time. The current Support and Maintenance Policy is attached in **Schedule C**.

“**Marks**” refer to the proprietary trademarks and service marks, trade names, domain names, business and product names, logos, slogans, and registrations and applications for registration thereof owned by a Party hereunder.

“**Pre-packaged Services**” means collectively the standard configuration, implementation and training services that Trusted.com may provide upon agreement with Retailer as set forth in the attached Schedules.

“**Professional Services**” means those consulting services, including customizations or additional development of the eTitle System, that are beyond the standard configuration or implementation of the eTitle System and that Trusted.com provides under

contract terms separately executed (including statements of work) as further agreed under **Schedule D**, and that Trusted.com charges on a time and materials basis.

“Products” means the authentic (and authenticated) products sold by Retailer.

“Retailer Data” means the data, media and content related to the Products, sales and customers provided by Retailer through the eTitle System.

“Services” in the collective may refer to Trusted.com services provided under the terms of this Agreement, including eTitle services, Maintenance, Pre-packaged and/or Professional services.

“Trusted.com Terminal” means an electronic-transaction terminal (or point-of-sale (**“POS”**) terminal) that includes the Trusted.com authentication validation software.

“Updates” means the updates, fixes, solutions to problems or bugs, workarounds or other enhancements or modifications to the eTitle System, the Web Interface and/or the Documentation that Trusted.com may issue from time to time and that it makes generally available to its licensees and customers as part of its support services. Updates do not include new functionality or software features that are made available by Trusted.com for additional incremental fees.

“Web Interface” means the website or websites in a production environment through which Trusted.com gives Retailer’s Authorized Users access to the eTitle System, either directly or through an authorized affiliate or third party.

2. LICENSE GRANT AND SCOPE OF SERVICES.

2.1 eTitle System License. Subject to the terms and conditions of this Agreement, Trusted.com grants to Retailer a nonexclusive, nontransferable license during the Term (as defined below) (i) to use or access, and permit Authorized Users to use or access, the eTitle System, solely through the Trusted.com Terminal and/or the Web Interface, solely for use in connection with its Products, and (ii) to load or download, as the case may be, Updates, as well as (iii) to upload Retailer Data into the eTitle System, to update the same and to view all corresponding data generated by the software associated with Retailer Data (and not for or on behalf of any third party or as a service bureau). Trusted.com may impose limits on the number of Authorized Users, or otherwise limit Retailer’s access to the eTitle System and Web Interface as further set forth in **Schedule A**.

2.2 Documentation License. Trusted.com grants to Retailer a non-transferable, non-exclusive, limited license (without right of sublicense) to make copies of the Documentation solely for purposes of training

Retailer’s internal personnel regarding use and support of the eTitle System and for purposes or providing technical support to Authorized Users. Retailer acknowledges that the Documentation is Trusted.com’s Confidential Information, and Retailer agrees to ensure that all proprietary notices placed on the original copies by Trusted.com, like copyright notices, trademark notices, and confidentiality notices, will be replicated in all copies. Copies of the Documentation may not be distributed to persons who are not Retailer’s Authorized Users.

2.3 License Restrictions; Exclusive Use of eTitle System. Retailer has no right to assign, transfer, sublicense or otherwise distribute the eTitle System or access thereto, and/or to the Trusted.com Terminal and Web Interface to any third party other than as expressly permitted under this Agreement. In addition, Retailer shall not, and shall not permit an Authorized User, to

(a) modify, disassemble, decompile or reverse engineer or otherwise attempt to determine the source code (or the underlying ideas, algorithms, structure or organization) of the eTitle System (or any portion thereof), the Trusted.com Terminal or the Web Interface, nor permit any third party to do so; or

(b) copy, modify or attempt to modify the eTitle System and/or Web Interface.

2.4 Trusted.com Services.

(a) Pre-packaged Services. Trusted.com may make available, and Retailer may purchase, certain pre-set services in the nature of installation, configuration, implementation or training with respect to the standard eTitle System, as may be more fully described in **Schedule A**. Such Pre-Packaged Services shall be provided in a professional and workmanlike manner and shall be subject to the limitations, dependencies, and disclaimers set forth in this Agreement and the applicable referenced documentation for such Pre-Packaged Services. Pre-packaged Services may be further detailed in separate statements of work. Implementation services may include importing the Retailer Data into the eTitle System, while training services may include training on the use of the eTitle System, the Trusted.com Terminals, Web Interface and uploading Retailer Data into the eTitle System.

(b) Maintenance and Support Services. If contracted, Trusted.com shall respond to Retailer inquiries or error reports in accordance with its then-current Support and Maintenance Policy, as set forth in **Schedule C**. Trusted.com shall also incorporate generally available Updates to the specific eTitle System licensed to Retailer and provide Retailer with any associated documentation made generally available to other retailers at no additional charge. Retailer agrees to transition to Updates as required.

(c) **Professional Services.** Retailer may also request additional Professional Services from Trusted.com, that are beyond standard configuration services (including customizations or additional development of the system) and which services, if agreed to by Trusted.com, shall be provided pursuant to a mutually agreed Professional Services Addendum (PSA), under separately executed statements of work and subject to additional fees.

3. OWNERSHIP RIGHTS

3.1 No implied licenses. Retailer acknowledges that there are no licenses granted by implication under this Agreement. Trusted.com reserves all rights that are not expressly granted to Retailer under this Agreement. Retailer will have no right to receive any source code with respect to any Trusted.com software or technology.

3.2 Proprietary Rights.

(a) **Ownership.** Retailer acknowledges that, as between the Parties, Trusted.com (and its licensors) retain all right, title, and interest in and to all the Intellectual Property Rights and proprietary interests that are embodied in, or practiced by, the eTitle System (including any customizations, Updates and upgrades), the Trusted.com Terminals, the Web Interface, the Documentation and the Trusted.com Marks. Retailer agrees to notify Trusted.com of any known or suspected violation, infringement or misappropriation of Trusted.com's proprietary rights, which may come to Retailer's attention during the Term. As between Trusted.com and Retailer, Retailer shall retain sole and exclusive ownership of all Intellectual Property Rights, in and to the Retailer Marks. Each Party agrees to use commercially reasonable efforts to protect the proprietary rights of, and to cooperate, without charge, in the other Party's efforts to protect its proprietary rights. Retailer shall not delete or alter the copyright, trademark, and other proprietary rights notices of Trusted.com and its licensors appearing on the Web Interface or eTitle System.

(b) **'Look and Feel'.** The "look and feel" of the Trusted.com Web Interface or eTitle System, meaning, the structure, sequence and layout of the audiovisual components of the Trusted.com offerings as perceived by Retailer, including, but not limited to, the color combinations, button shapes, and all other graphical and navigational elements, the design for which was dictated by artistic and aesthetic considerations and not by utilitarian or mechanical ones, are also proprietary to Trusted.com and fully protected under U.S. and international copyright and trademark laws.

3.3 Work Product. Trusted.com (or its suppliers or licensors) shall retain all right, title, and interest in and to any works of authorship, work product, concepts, inventions, ideas or know-how

Trusted.com creates and delivers to Retailer, or uses in the course of providing the eTitle System to Retailer or rendering its Services hereunder as well as in and to any other information developed or provided by Trusted.com under this Agreement. Such Work Product includes any methodologies, equipment or processes used by Trusted.com to provide the eTitle System and the Services to Retailer, (collectively, the "**Trusted.com Intellectual Property**"). No portion of such Trusted.com Intellectual Property shall be deemed a "work for hire". To the extent that, by operation of law or otherwise, rights to such Trusted.com Intellectual Property do not vest in Trusted.com, Retailer agrees to assign to Trusted.com all of Retailer's rights, title, and interest, if any, in and to such Trusted.com Intellectual Property. Retailer acknowledges that Trusted.com is in the business of providing eTitle System and related Services and that Trusted.com shall have the right to use Trusted.com Intellectual Property in connection with providing eTitle System and related Services to third parties. Notwithstanding anything to the contrary in this Agreement, Trusted.com will not be prohibited or restricted at any time by Retailer from utilizing any skills or knowledge and information of a general nature acquired during the course of providing the eTitle System and related Services or otherwise during the Term, not uniquely applicable to Retailer.

3.4 Ownership of Data.

(a) As between the parties, all Retailer Data uploaded, stored and/or updated in the Web Interface by means of the eTitle System or Website, other than the Authentication Data, shall be the property of Retailer. Retailer hereby grants to Trusted.com a royalty-free, unlimited, perpetual, worldwide, license to use this Retailer Data for the provision of Services hereunder. Notwithstanding the foregoing, Trusted.com agrees that it won't disclose any retailer-identifying data to third parties except as necessary to establish a chain of authenticity for Products, and specifically Trusted.com won't package or sell statistics of Retailers' purchase information or inventory levels as it relates to authenticated Products.

(b) As between the parties, Trusted.com shall be the sole owner of all Authentication Data, as well as all the Trusted.com data that Trusted.com may load, store, update and/or obtain through the Web Interface and in the eTitle System, including all technical data, statistical data related to or gathered from users' use of the eTitle System and Web Interface, and other information and resources of Trusted.com ("**Trusted.com Data**")

4. PAYMENT

4.1 License and Services Fees. In consideration for the rights granted to Retailer and the promises made

by Trusted.com under this Agreement, Retailer will pay to Trusted.com, without offset or deduction, all fees required by **Schedule B**, in U.S.A. currency. Trusted.com will submit invoices to Retailer with respect to such fees according to the relevant payment schedules indicated in **Schedule B**, and each invoiced amount will be due and payable within thirty (30) days of receipt of the relevant invoice by Retailer, unless otherwise agreed between the Parties. Retailer shall additionally pay any amounts payable under any separately executed addendum or statement of work by the Parties and attached to this Agreement. Unless otherwise expressly required by such addenda, payments thereunder shall be due within thirty (30) days after the date the relevant invoice is received. Trusted.com reserves the right to adjust its pricing under this Agreement at any time upon reasonable written notice to Retailer.

4.2 Incidental Expenses. Trusted.com shall invoice Customer for any reasonable and pre-approved out-of-pocket expenses incurred by Trusted.com in connection with performing any Services under this Agreement, within thirty (30) days after the date of Trusted.com's invoice for such expenses. Trusted.com will provide reasonable documentation supporting such expenses.

4.3 Taxes and Late Fees. Any overdue fees shall accrue interest at the lesser of 1.5% per month or the maximum rate permitted by law. Retailer shall be responsible and shall promptly pay or reimburse Trusted.com for all taxes of any kind (including but not limited to sales and use taxes) associated with Retailer's receipt of access to the Trusted.com Services under this Agreement, except for taxes based on Trusted.com's income.

5. OBLIGATIONS OF RETAILER.

5.1 Retailer Obligations.

(a) In addition to its payment and other obligations set forth elsewhere in this Agreement, Retailer may: (i) purchase or lease, as applicable, under a separate Purchase Order or lease from Trusted.com (or its authorized resellers or designee(s)) the Trusted.com Terminal loaded with the eTitle System software (as further set forth in the Schedules); (ii) ensure Authorized Users properly record all item transactions in the Trusted.com Authentication POS devices; (iii) monitor authorized user activity and immediately identify data corruption, whether intentional or not, to Trusted.com (iv) be solely responsible for all Retailer Data and authentication content it uploads on the eTitle System and/or in the Web Interface and any person's reliance thereon; (v) be solely responsible for all cost associated with data corruption; (vi) be solely responsible to load or download, as the case may be, all Updates made available by Trusted.com promptly after they become available but no later than thirty (30) days thereafter;

(vii) co-market the use of the eTitle System on its web properties and in marketing materials, including, without limitation, any such marketing or advertising materials prepared for manufacturers which are Trusted.com customers, subject to the terms of Section 2.4 and display pamphlets at the Retailer's retail location(s) at cash registers in sufficient quantities for all customers to take with them; (viii) display Trusted.com's Mark, in accordance with the terms of Section 2.4 herein; (ix) allow Trusted.com, for the purpose of its performance hereunder, to copy, display, distribute, load onto the eTitle System and in the Web Interface the Retailer Data, and otherwise use such Retailer Data and any other content submitted by Retailer to Trusted.com under this Agreement; (x) use Trusted.com's eTitle System for transactions involving Products and register the sale of all Products at the time of their sale at Retailer's point of sale location; and (xi) provide, maintain in good working order and support the Trusted.com Terminal and any other minimum hardware and software configuration and peripheral equipment, lines and connections as necessary for Authorized Users to connect to the Internet and access the Web Interface.

(b) In addition to the above, Retailer agrees and covenants that, in its retail locations and online sales, will follow the following procedures: (x) verify that the authentication certificate (eTitle) provided for a Product matches the serial number of the item being sold; (y) at all times, Retailer will ensure and maintain the authenticity of Products and items in their showcases, including ensuring that only authentic Products are sold with an eTitles; (z) upon Products return, Retailer will ensure that the Product serial number being returned matches the serial number of the eTitle given for that Product and that the certificate of eTitle is also returned at time of return.

(c) Retailer acknowledges that Trusted.com is not responsible for failures, such as, for example, an inability of the Trusted.com Terminal to connect or Retailer's or its Authorized Users' inability to access the Web Interface, caused by problems with Retailer's computer system, network, Internet connectivity, or other factors that are outside of Trusted.com's control, including, without limitation, any Force Majeure Event (as defined below).

5.2 Data Transmission; Security Options.

Retailer acknowledges that transmission of data over the Internet involves unique transmission risks that cannot be fully secured against access by third parties. Retailer further acknowledges that Trusted.com recommends use of various security options available with the eTitle System, but that Trusted.com has no duty or responsibility to ensure Retailer complies with its recommendations. Retailer agrees that Trusted.com shall not be responsible for any loss, alteration or corruption of Retailer Data that

occurs during or as a result of transmitting Retailer Data via the Internet. Retailer shall be responsible for any loss, alteration or damage to Retailer Data, eTitle System, the Trusted.com Terminal or the Web Interface to the extent caused by (a) the actions of Retailer's Authorized Users or other employees, consultants or agents to whom Retailer has provided access to the Web Interface; or (b) the conduct of any third party that has accessed the Web Interface using Retailer's passwords through no fault of Trusted.com.

5.3 Monitoring Authorized Users. Retailer shall assign, maintain, and regularly monitor Authorized User accounts to ensure that the eTitle System and Web Interface are being used in accordance with the terms of this Agreement and shall immediately terminate access and use by any person who is not an Authorized User or who violates the terms of this Agreement. Trusted.com reserves the right to terminate access to any individual in the event of such violation, in addition to its other remedies. Retailer shall remove Authorized User access as appropriate when such users no longer need access.

5.4 Authorized Support Contacts. Retailer shall appoint the number of Authorized Support Contacts set forth in Schedule C for all matters related to the eTitle System and Web Interface, a completion of implementation services. Additional Authorized Support Contacts, if any, shall be communicated in writing to Trusted.com.

6. REPRESENTATIONS AND WARRANTIES

6.1 Mutual Representations, Warranties and Covenants. Each party represents, warrants and covenants that: (a) it has all necessary right, power and authority to enter into this Agreement and to perform its obligations hereunder, (b) the execution of this Agreement and the performance of its obligations hereunder does not and will not conflict with or result in a breach of any other agreement to which it is a party or by which any of its assets or properties is bound or affected, and (c) this Agreement has been duly executed and delivered by such party and constitutes the valid and binding agreement of such party, enforceable against such party in accordance with its terms.

6.2 Limited Warranty. Trusted.com warrants to Retailer for a period of ninety (90) days from the launch of the eTitle System in production mode, that the eTitle System will perform in substantial conformance with the applicable Documentation; provided any non-conformance is not the result of Retailer's actions or inactions. Retailer's exclusive remedy in the event of a warranty claim under this Section 6.2, is that Trusted.com will: (i) use reasonable commercial efforts to repair or replace the affected portion of the eTitle System; or (ii) provide a work around solution that is substantially similar in all

material functional respects to the eTitle System, or (iii) if Trusted.com determines that none of the foregoing remedies are reasonably available, Retailer may terminate this Agreement and Trusted.com will refund all fees paid to Trusted.com in connection with the eTitle System under this Agreement.

6.3 Notice of Warranty Breach and Cure Period. If Retailer believes that Trusted.com has committed a material breach of the warranty in Section 6.2, Retailer shall provide immediate written notice to Trusted.com and Trusted.com shall have thirty (30) days following its receipt of notice to cure any material breach.

6.4 Breach; Remedies. If the breach is not cured as provided under Section 6.3, Retailer's sole and exclusive remedy and Trusted.com's entire liability with respect to any Trusted.com breach of this Agreement shall be to terminate this Agreement, cease use of the eTitle System and the Web Interface and receive a refund of the fees paid for Trusted.com's unperformed Services prior to such termination and any prepaid fees for the post-termination period remaining in the Term.

6.5 Disclaimer of Warranties. THE WARRANTIES SET FORTH IN THIS SECTION 6 ARE IN LIEU OF, AND TRUSTED.COM DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY, NON-INFRINGEMENT, ACCURACY, ERROR-FREE OR UNINTERRUPTED SERVICE, AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPLICITLY PROVIDED HEREIN, THE SOFTWARE AND THE SERVICES ARE PROVIDED "AS IS." **TRUSTED.COM IS NOT RESPONSIBLE FOR ANY HUMAN OR MECHANICAL ERRORS OR OMISSIONS, OR FOR ANY INFORMATION OR DATA, OR ANY RESULTS OR CERTIFICATIONS BASED ON SUCH INFORMATION OR DATA, WHETHER RELATED TO ANY PURCHASE INFORMATION OR ANY OTHER INFORMATION RELATED TO THE AUTHENTICITY, TITLE OR OWNERSHIP OF ANY PRODUCTS THAT IS PROVIDED TO THE ETITLE SYSTEM AND THAT IS INACCURATE, MISREPRESENTED, FALSE, OUTDATED OR INCOMPLETE. TRUSTED.COM DOES NOT WARRANT THAT PRODUCTS ACTUALLY PROVIDED BY RETAILER TO THEIR CUSTOMERS ARE PRODUCTS VALIDLY AUTHENTICATED.**

7. CONFIDENTIALITY

7.1 Inclusions. The Confidential Information of Trusted.com includes (i) the eTitle System; (ii) the Authentication Data; and (iii) the Documentation. The Confidential Information of the Parties includes (iv) all information relating to Trusted.com's or Retailer's current or future product plans, designs, costs,

product prices and names, finances, marketing plans, business opportunities, sales data, personnel, Retailer employee data, research, development or know-how and (v) Retailer Data maintained by Trusted.com in the Web Interface.

7.2 Exclusions. Confidential Information does not include information that: (a) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (b) is known to the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure; or (e) is disclosed with the prior written approval of the disclosing party.

7.3 Use and Disclosure Restrictions. Neither party shall use the other party's Confidential Information except for internal purposes related to the performance of this Agreement, and neither party shall disclose such Confidential Information to any third party except to officers, directors, employees, agents, consultants and advisors as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees and consultants). However, each party may disclose Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the disclosing party gives reasonable notice to the other party to contest such order or requirement; and (b) on a confidential basis to legal or financial advisors who agree to be bound by this Section 7. Within seven (7) days of the disclosing party's request, the receiving party shall cease to use and shall return all originals, copies, summaries, notes and extracts of the Confidential Information, to the extent such materials are in the control or possession of the receiving party.

8. INDEMNIFICATION

8.1 Trusted.com Indemnity. Trusted.com shall defend any action brought against Retailer by a third party to the extent that it is based upon a third party claim that the then current version of the eTitle System, as utilized by Retailer under this Agreement and used within the scope of this Agreement, infringe the registered trademarks or copyrights of a third party under the laws of the United States of America (an "**Indemnity Claim**"), and shall pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Retailer subject to the terms of this Agreement.

8.2 Remedies; Injunctions. If Retailer's use of the Web Interface or eTitle System hereunder is, or in Trusted.com's opinion is likely to be, enjoined as an infringement or misappropriation of any third party intellectual property right under the laws of the United States, Retailer's sole and exclusive remedy, and Trusted.com's entire liability shall be, at Trusted.com's sole option and expense, either: (a) to procure for Retailer the right to continue to use the Web Interface and eTitle System under the terms of this Agreement; (b) replacement or modification of the Web Interface or eTitle System so that they are non-infringing and substantially equivalent in function to the enjoined eTitle System; or, if neither of the foregoing options is commercially reasonable, or (c) terminate this Agreement in whole or in part and refund to Retailer the fees paid by Retailer under this Agreement for the six (6) month period immediately preceding the termination date.

8.3 Exclusions. Notwithstanding the terms of Section 8.1, Trusted.com shall have no liability for any claim of any kind to the extent it results from: (a) modification of the eTitle System made other than by Trusted.com; (b) the combination, operation or use by Retailer of any eTitle System component supplied by Trusted.com with equipment, devices or software not supplied by Trusted.com to the extent such a claim would have been avoided if the eTitle System was not used in such combination; (c) failure of Retailer to use updated or modified eTitle System provided by Trusted.com, including, without limitation, those provided to avoid infringement; or (d) compliance by Trusted.com with directions, designs, plans or specifications furnished by or on behalf of Retailer.

8.4 Sole Remedy. The foregoing provisions of this section 8 set forth Trusted.com's sole and exclusive obligations, and Retailer's sole and exclusive remedies, with respect to infringement of intellectual property rights of any kind.

8.5 Retailer Indemnity. Retailer agrees to indemnify, defend and hold Trusted.com, its employees, stockholders, affiliates and officers harmless from any cost, liability or loss relating to (i) any breach of Retailer's representations and warranties under this Agreement; (ii) obligations or responsibilities under Sections 2 or 5; or (iii) Retailer's and its Authorized Users' use of the eTitle System and Services under this Agreement other than as authorized herein, including authentication errors and sale of counterfeit goods by misuse of the system; (iv) any use of Retailer Data pursuant to and in accordance with this Agreement; (iv) any actions by Authorized Users unauthorized by Retailer in uploading, storing and/or updating Retailer Data or other data into the eTitle System and/or Web Interface; (vii) any data inaccuracies; and (viii) any

Retailer customer claims relating in any way to the sale and related processing of Products.

8.6 Procedure. Promptly after receipt by an indemnified party ("**Indemnified Party**") of notice of commencement of any action involving the subject matter of the foregoing indemnity provisions under Section 8.1 and 8.5, such Indemnified Party will promptly notify the indemnifying party ("**Indemnifying Party**") of the commencement thereof. Upon proper notification, the Indemnifying Party shall have the right, but not the obligation, to control the defense of the Indemnified Party against any such third-party claims, utilizing counsel chosen in Indemnifying Party's sole discretion, provided that the Indemnified Party may participate in any such defense, at its own expense, by separate counsel of its choice, and further provided that any such participation shall not limit Indemnifying Party's right to control such defense. Notwithstanding anything contained in the foregoing sentence to the contrary, the Indemnifying Party (i) shall not be entitled to have sole control over any third party claim that seeks an order, injunction or other equitable relief against any Indemnified Party; or any action that is the subject of such third party indemnification claim in which both the Indemnifying Party and Indemnified Party are named as parties and either the Indemnifying Party or Indemnified Party determines with advice of counsel that there may be one or more legal defenses available to it that are different from or additional to those available to the other party or that a conflict of interest between such parties may exist in respect of such action, and (ii) shall obtain the prior written approval of the Indemnified Party before ceasing to defend against any third party indemnification claim or entering into any settlement, adjustment or compromise of such claim involving injunctive or similar equitable relief being asserted against any Indemnified Party. The Indemnified Party shall cooperate with the Indemnifying Party in the provision of any such defense by providing to the Indemnifying Party all such information, assistance and authority as may reasonably be requested by the Indemnifying Party.

9. LIMITATION OF LIABILITY

9.1 Total Liability. TRUSTED.COM'S CUMULATIVE LIABILITY TO RETAILER IN CONNECTION WITH THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY SHALL BE LIMITED TO AND SHALL NOT EXCEED THE AMOUNTS PAID OR REQUIRED TO BE PAID TO TRUSTED.COM BY RETAILER PURSUANT TO THIS AGREEMENT FOR THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE ACCRUAL OF THE CLAIM.

9.2 Exclusion of Damages. IN NO EVENT SHALL EITHER PARTY OR ITS LICENSORS BE LIABLE TO THE OTHER PARTY FOR ANY

INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE WEB INTERFACE, THE ETITLE SYSTEM OR SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

9.3 No Limitation; Essential Basis.

(a) Notwithstanding the preceding portions of this Section, nothing in this Agreement is intended or may be interpreted as a limitation of either Party's rights or liabilities associated with infringement by one Party of the other Party's Intellectual Property Rights or misappropriation of the other Party's Confidential Information.

(b) Both Parties acknowledge that the provisions of this Section 9 are an essential part of this Agreement, absent which the economic terms and other provisions of this Agreement would be substantially different.

10. TERM AND TERMINATION

10.1 Term. This Agreement shall begin on the Effective Date and continue until the date set forth in the Order Form or similar document (the "**Term**"). If the Agreement has not been terminated prior to the end of that initial Term, the duration of the Agreement will be extended one (1) year at a time, successively (each a "**Renewal Term**"), unless one of the Parties delivers a notice at least thirty (30) days prior to commencement of the next extension, stating that it does not wish to extend the duration of this Agreement any longer, or unless during an extension period either Party terminates the Agreement in one of the situations permitting termination as described below. Pre-packaged Services, Maintenance Services and/or Professional Services, if any, may have a separate term as identified on the applicable schedule and statements of work for those services.

10.2 Termination for Breach. Each party shall have the right to terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice, except in the case of Retailer's failure to pay fees when due, which must be cured within ten (10) business days after the date when due. If Retailer has not cured a breach for nonpayment within ten (10) days, Trusted.com may, at its option and at any time, either terminate this Agreement or temporarily discontinue any or all services and online access until all fees are paid.

10.3 Termination for Insolvency. Trusted.com may terminate this Agreement if Retailer becomes the subject of any voluntary or involuntary petition in bankruptcy or any voluntary or involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing. Upon the occurrence of any of the foregoing events, Retailer shall provide Trusted.com with written notice of such petition and/or proceeding within ten (10) days of the filing of such petition (the **"Notice Period"**). In the event Retailer fails to provide Trusted.com with such notice within the Notice Period regardless of Retailer's knowledge of such petition and/or proceeding, this Agreement shall terminate automatically and immediately upon expiration of such Notice Period.

10.4 Early Termination Charges. If Retailer terminates this Agreement before the end of its Term, which can only be done on thirty (30) day prior written notice, Retailer will pay an early termination charge of one hundred percent (100%) of its recurring charges for the remainder of the Term except if (i) Retailer terminates the Agreement as a result of Trusted.com's uncured material breach, or Trusted.com terminates the Agreement for reasons other than for Retailer's breach.

10.5 Effect of Termination. Upon any termination of this Agreement: (i) all licenses and rights granted by Trusted.com hereunder shall terminate and Trusted.com shall no longer provide access to the eTitle System and related services to Retailer, (ii) Retailer shall cease and cause its Authorized Users to cease using the Web Interface and eTitle System; (iii) each Party shall promptly return to the other or, at a Party's request, destroy any Confidential Information of the other Party still in its possession, in all forms and types of media, and provide an officer's written certification, certifying compliance with the foregoing; and (iv) Retailer shall promptly pay all fees then outstanding. Upon receipt of all outstanding fees, Trusted.com shall return to Retailer text files of all Retailer Data stored in the Web Interface. Retailer acknowledges that if Trusted.com receives Retailer Data after the expiration or termination of this Agreement, Trusted.com shall destroy such data in a secure manner.

10.6 Suspension of Access. At its election, Trusted.com may suspend access to the eTitle System and Web Interface in the event any amount due under this Agreement is not received by Trusted.com within ten (10) days after it was due. The exercise of Trusted.com's right to suspend access under this Section 10.6 shall in no way affect Trusted.com's right to terminate this Agreement in accordance with the terms of this Section 10.

10.7 Nonexclusive Remedy. Except as may be specifically set forth in this Agreement, termination of

this Agreement by either party shall be a nonexclusive remedy for breach and shall be without prejudice to any other right or remedy of such party.

10.8 Survival. The rights and obligations of the parties that by their sense and context are intended to survive termination shall so survive.

11. GENERAL

11.1 Assignment. Retailer shall not assign or otherwise transfer this Agreement, in whole or in part, without Trusted.com's prior written consent. Any attempt to assign this Agreement without such consent shall be null and void.

11.2 Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Virginia, excluding its principles relating to conflicts of laws. The parties consent to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Virginia.

11.3 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of this Agreement shall be enforced to the maximum extent permissible and the other provisions of this Agreement shall remain in full force and effect.

11.4 Waiver. The failure by either party to enforce any provision of this Agreement shall not constitute a waiver of future enforcement of that or any other provision.

11.5 Notices. All notices required or permitted under this Agreement shall be in writing and delivered by courier, overnight delivery service, or by certified mail, and in each instance shall be deemed given upon receipt or rejection. All notices shall be sent to the addresses set forth below or to such other address as may be specified by either party to the other in accordance with this Section. All notices shall be sent as follows:

To Trusted.com:

Trusted.com
11950 Democracy Drive, Suite #300
Reston, VA 20190
Attn.: Account Services
Tel: (800)708-6431 / Fax: (703)991-2336

To Retailer: As identified in the Order Form, Statement of Work, or similar document

Either party may change its address for notices under this Agreement by giving written notice to the other party by the means specified in this Section.

11.6 Force Majeure. Neither party shall be responsible for any failure or delay in its performance under this Agreement (except payment obligations) due to causes beyond its reasonable control that makes performance commercially impractical ("Force

Majeure Event"); provided that either party may terminate this Agreement if such Force Majeure Event still exists after ninety (90) days of notification thereof. A Force Majeure Event must be notified in writing to the other party within five days from its occurrence.

11.7 Relationship of Parties. The parties to this Agreement are independent contractors and this Agreement shall not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

11.8 Entire Agreement. References to the Agreement include the terms and conditions of Carahsoft Technology Corporation's Multiple Award

Schedule Contract, all schedules, exhibits, addenda and attachments. This Agreement contains the complete understanding and agreement of the parties and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to the subject matter herein. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by duly authorized representatives of the parties. In the event of any inconsistency or conflict between the terms and conditions of this Agreement and any transactional or other document issued in connection herewith (including, without limitation, statements of work, purchase orders, invoices, RFPs, bills of lading, etc.), the terms and conditions of this Agreement shall, in all instances, govern and control.

Retailer agrees to the terms set forth above, and to the terms in the following documents, which are attached to, and form a part of, this Agreement:

Schedule A	Description of eTitle System and Pre-Packaged Services
Schedule B	Fees
Schedule C	Support and Maintenance Policy
Schedule D	Professional Services Addendum

Each Statement of Work, if any, executed by Retailer and Trusted.com shall be governed by the terms of this Agreement and its applicable addenda.



eTITLE SERVICES AGREEMENT

SCHEDULE A

DESCRIPTION OF eTITLE SYSTEM

I. Software

Trusted.com provides a point of sale (POS) and web based authentication system that allows for the tracking, sale, and resale of authentic products. Trusted.com eliminates the flood of counterfeit items in the marketplace, ensures authentic purchases from retailers and individuals, and increases the retention of value for unique products. With our solution:

- ✔ Individuals are ensured of authentic ownership and benefited with retention of value for unique products.
- ✔ Retailers ensure sale of authentic products and eliminate unknowingly being involved with fraudulent suppliers.
- ✔ Manufacturers control and track the retailers selling their goods and take ownership in the reduction of fraudulent products.

The key to Trusted.com's authentication process is validation of authenticity at the time of sale. Numerous studies have shown customers are unwilling to buy counterfeit items due to the perceived poor quality associated with these items. However, customers are typically unaware of product authenticity at the time of purchase and are still paying full retail price.

Trusted.com's solution provides the following functionality:

- ✔ POS Item Authenticity Validation Service; allows customers to know item authenticity at time of purchase.
- ✔ Public Verification of Authenticity via our website; allows customer to check authenticity before purchase.
- ✔ Item Ownership Status; allows customers and manufacturers to know if an item was available, sold or resold.
- ✔ Item Owner History Tracking; allows customers and manufacturers to know an items historical ownership.
- ✔ Multi-Industry Awareness; solution covers multiple industries increasing customer awareness.

Trusted.com Point of Sale (POS) validation system is a simple solution that has minimal impact on manufacturers and their valid retailers. The solution requires manufacturers to implement a simple serialization solution and retailers to utilize tablets to access Trusted.com validation software or API to transmit purchase information. At the time of sale, retailers enter the item's serial number into the tablet or send purchase info via API, which validates product authenticity against the Trusted.com database. The customer registers their ownership at the time of sale or indicates that they decline to register for the eTitle.

In addition to tracking the sale of an item at the original time of purchase, Trusted.com also tracks the ownership status of an item in the aftermarket. Our system allows users to post valid items for aftermarket sales on popular sites, such as eBay. Following the successful sale of the item, ownership of the item will be transferred from the current registered Trusted.com owner to the new owner of the item.



eTITLE SERVICES AGREEMENT

SCHEDULE C

Support and Maintenance Policy

1. Maintenance Services

1.1 *Maintenance.* For purposes of the Agreement, "**Maintenance**" shall mean any work provided by Trusted.com to improve the scalability of Trusted.com's eTitle System or Web Interface, which typically occurs during Regular Maintenance, but may occur during Critical or Emergency Maintenance. Such maintenance activities include, but are not limited to: storage or backup upgrade, disaster recovery testing and upgrades or repairs to the Web Interface or the eTitle System.

1.2 *Regular Maintenance.* Regular Maintenance is regularly scheduled, reserved time for working on non-critical, non-emergency maintenance, upgrades and repairs. Trusted.com shall schedule Regular Maintenance during non-business hours.

1.3 *Critical Maintenance.* Critical maintenance involves upgrades and repairs related to preventing potential short-term problems that do not require emergency measures. Critical Maintenance shall continue until completed. Trusted.com shall attempt to schedule Critical Maintenance during non-business or lower user-traffic hours where reasonably practicable but cannot guarantee any particular scheduling.

1.4 *Emergency Maintenance.* Emergency maintenance is performed when upgrades and repairs are necessary to resolve immediate problems causing system instability. Trusted.com shall make reasonable attempts to provide Retailer with prior notice of Emergency Maintenance to the extent and in the manner practicable or shall provide current notice of the ongoing work. Emergency Maintenance may commence at any time and shall continue until completed. Where reasonably practicable, Trusted.com shall attempt to schedule Emergency Maintenance during non-business or lower user-traffic hours but cannot guarantee any particular scheduling.

1.5 *Third Party Maintenance.* Third party maintenance involves upgrades and repairs related to third party tools used in the eTitle System or Web Interface. Scheduling of Third Party Maintenance is subject to the sole discretion of such third party providers. Trusted.com will maintain support contracts with such third party providers in order to minimize response time.

1.6 *Notice.* Trusted.com shall provide notice in advance of Regular Maintenance, and, to the extent reasonably practicable, for Critical and Emergency Maintenance. The notice shall include a description of the nature of the work being performed, identification of the affected systems, and an estimate of the approximate level of outage(s) (partial or full) anticipated during the particular Maintenance period. Any notice will be sent through e-mail communication to Retailer designated personnel (the "**Authorized Support Contacts**").

2. Program Errors and Response Times

2.1 *Program Errors.* Trusted.com shall make corrections and modifications to material program errors in the eTitle System or Web Interface in accordance with this Section 2. For the purposes of the Agreement, a "**Program Error**" shall mean a reproducible deviation or defect in the Web Interface or eTitle System that causes the eTitle System application to malfunction. Program Errors are classified by the following Severity Levels:

2.2 *Severity Level 1 - Emergency/Critical.* A Severity Level 1 Program Error is defined as one where a total system failure or outage occurs and all Authorized Users are wholly unable to access one or more of the eTitle System applications and/or the Web Interface and Retailer is consequently unable to

conduct business. Trusted.com's target response time to acknowledge receipt of a Severity Level 1 Retailer call is **one (1) hour**. Trusted.com shall work to provide an immediate fix or temporary work-around for Severity Level 1 Program Errors.

2.3 *Severity Level 2 - High/Urgent.* A Severity Level 2 Program Error is defined as one where a partial system failure or outage occurs and one or more, but not all, Authorized Users are unable to access one or more of the eTitle System applications and/or the Web Interface and Retailer is able to conduct business through a workaround or incremental resource for a short period of time before business stops. Trusted.com's target response time to acknowledge receipt of a Severity Level 2 Retailer call is **five (5) hours**.

2.4 *Severity Level 3 - Medium/Low.* A Severity Level 3 Program Error occurs when one or more Authorized Users are unable to perform standard system functionality or system functionality is not operating in conformance with required levels, and there is a reasonable alternative solution available, or Retailer has a standard question or request for assistance. Trusted.com shall respond to Severity Level 3 Program Errors within forty-eight (48) hours of such Retailer call.

2.5 *Help Desk.* In order to facilitate resolution of Program Errors, Trusted.com shall provide Retailer with access to a partially dedicated Retailer technical support response telephone line established by Trusted.com at a telephone number to be provided to Retailer promptly following the Effective Date.

2.6 *Authorized Support Contact.* Retailer shall appoint at least two (2) Authorized Support Contacts to act as primary liaison between Retailer and Trusted.com for all matters relating to Trusted.com's provision of Support and Maintenance Services. Such Authorized Support Contacts shall have sufficient authority to grant or communicate the granting of all necessary Retailer approvals regarding Support and Maintenance Services.

3. Quality Commitments and Constraints

3.1 *Reasonable Efforts; Reports.* Trusted.com will use commercially reasonable efforts to meet the Severity 1, 2 and 3 targeted response and resolution times. Retailer acknowledges that there are circumstances when there are unusual, complex issues that may take longer than the average targeted time reflected above for Severity 1, 2 and 3 issues. In some cases, issues may require assistance of the Retailer's system user and/or technology department in reproducing or diagnosing an issue in order to correctly identify the appropriate resolution. There are also certain issues that may require additional levels of testing to ensure product quality and stability, and these efforts may impact target resolution times.



eTITLE SERVICES AGREEMENT

SCHEDULE D

Professional Services Addendum

This **PROFESSIONAL SERVICES ADDENDUM** (the "**Addendum**") is an addendum to, and is hereby incorporated into, the **Application Services Agreement** between Trusted.com and Retailer, including the agreement and any other addenda incorporated therein (collectively, the "**Agreement**").

1. ADDITIONAL DEFINITIONS. Certain capitalized terms used in this Addendum, not otherwise defined above, shall have the meanings set forth or cross-referenced below. Capitalized terms used in this Addendum that are not otherwise defined in this Addendum have the meaning set forth in the Agreement.

1.1 "Addendum Effective Date" has the meaning set forth in Section 7.1.

1.2 "Professional Services" has the meaning set forth in Section 2.1.

1.3 "Statement of Work" has the meaning set forth in Section 2.2.

2. PROFESSIONAL SERVICES

2.1 Professional Services. The Parties anticipate that Retailer may desire to engage Trusted.com to perform certain services in connection with this Agreement, including, by way of example, installation, configuration, training or customization of the eTitle System. Subject to the terms and conditions set forth in this Addendum, Trusted.com shall use commercially reasonable efforts to perform the services as set forth in Statements of Work (as defined below) separately executed by the Parties (the "**Professional Services**"). Trusted.com shall perform the Professional Services in a professional manner in accordance with industry standards.

2.2 Issuance of Statements of Work. Retailer may request that Trusted.com perform services by delivering a written request describing the proposed Professional Services. Trusted.com shall prepare a draft Statement of Work as an exhibit to this Addendum (each, a "**Statement of Work**"). Such Statement of Work shall describe the fees, costs and expenses payable by Retailer to Trusted.com in connection with the performance of such services. Retailer, within five (5) business days after receipt of the proposed Statement of Work, shall notify Trusted.com of its acceptance of such Statement of Work. Until mutual acceptance in writing of the proposed Statement of Work, Trusted.com shall have no obligation to perform the proposed Professional

Services, provided that this Addendum shall remain in full force and effect in accordance with Section 7.1. Each Statement of Work, regardless of whether it relates to the same subject matter as any previously executed Statement of Work(s), shall become effective upon execution by authorized representatives of both Parties. All services and deliverables delivered under a Statement of Work are deemed accepted upon performance or delivery, as applicable.

2.3 Modifications. Retailer may at any time request a modification to the Professional Services to be performed pursuant to any particular Statement of Work by written request to Trusted.com specifying the desired modifications. Trusted.com shall, within a reasonable time following receipt of such request, submit an estimate of the cost for such modifications and a revised estimate of the time for performance of the Professional Services pursuant to the Statement of Work. If accepted in writing by Retailer, such modifications in the Statement of Work shall be performed under the terms of this Addendum. Modifications in any Statement of Work shall become effective only when a written change request is executed by authorized representatives of both parties.

3. PERSONNEL

3.1 Suitability. Trusted.com shall assign employees and subcontractors with qualifications suitable for the work described in the relevant Statement of Work. Trusted.com may replace or change employees and subcontractors in its sole discretion with other suitably qualified employees or subcontractors.

3.2 Retailer Responsibilities. Retailer shall make available in a timely manner at no charge to Trusted.com all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources of Retailer required by Trusted.com for the performance of the Professional Services. Retailer shall be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Retailer. Retailer shall provide, at no charge to Trusted.com, office space, services and equipment (such as copiers, fax machines and modems) as Trusted.com reasonably requires to perform the Professional Services.

4. FEES AND PAYMENTS. Trusted.com shall invoice Retailer at Trusted.com's then standard hourly rates

provided to Retailer as well as any other fees required by the applicable Statement of Work. Additionally, Trusted.com shall invoice Retailer for the following charges, provided they are pre-approved with original receipts provided to Retailer within thirty (30) business days of the occurrence: (i) reasonable travel and living expenses incurred by Trusted.com's employees and contractors for travel from Trusted.com's offices in connection with the performance of the Professional Services; (ii) international telephone charges (if applicable); and (iii) any other expenses for which reimbursement is contemplated in the applicable Statement of Work. Except as provided above, each Party will be responsible for its own expenses incurred in rendering performance under this Addendum and each applicable Statement of Work. Unless otherwise contemplated in a particular Statement of Work, Trusted.com will issue invoices to Retailer on a monthly basis for amounts due under this Addendum, and payment of such amounts shall be due within thirty (30) days of the date the invoice is received. Notwithstanding the foregoing, any Trusted.com travel required in performance of services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) travel is performed. Established Federal Government per diem rates will apply to all Trusted.com travel.

5. PROPRIETARY RIGHTS. Unless otherwise expressly agreed in any particular Statement of Work, ownership of all work product, developments, inventions, technology or materials provided under this Addendum shall be solely owned by Trusted.com, subject to the usage rights granted to Retailer under the relevant Statement of Work.

6. LIMITATION OF WARRANTIES AND LIABILITY. *Trusted.com makes no representations or warranties under this Addendum, and Retailer acknowledges that this Addendum is subject to all disclaimers and limitations or liability set forth in the Agreement.*

7. TERM; TERMINATION

7.1 Term. This Addendum shall commence on the date of execution by both Parties (the "**Addendum Effective Date**") and shall remain in effect until the

earlier to occur of (i) completion of all outstanding Statements of Work hereunder; or (ii) termination in accordance with Section 7.2. Notwithstanding the foregoing, this Addendum shall remain in effect for a period of not less than one (1) year from the Addendum Effective Date unless earlier terminated in accordance with Section 7.2. Unless otherwise stated in the applicable Statement of Work, the term of each Statement of Work shall last until performance thereunder is completed.

7.2 Termination for Breach. Either Party may, at its option, terminate this Addendum in the event of a material breach by the other Party. Such termination may be effected only through a written notice to the breaching Party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching Party will have a right to cure such breach or breaches within thirty (30) days of receipt of such notice, and this Addendum shall terminate in the event that such cure is not made within such thirty (30)-day period. Without limiting the foregoing, Trusted.com may immediately terminate this Addendum upon written notice in the event that Retailer becomes insolvent or enters bankruptcy during the term of this Addendum.

7.3 Termination of Individual Statements of Work. Either Party may, at its sole option and for its own convenience, terminate any or all Statements of Work in effect upon fifteen (15) days prior written notice. Upon such termination, the Parties shall inform each other of the extent to which performance has been completed through such date, and collect and deliver all work in process. In the event of termination, the Parties agree to wind up their work in a commercially reasonable manner and to preserve and deliver items of value created prior to termination. Trusted.com shall be paid for all work performed and expenses incurred through the date of termination.

7.4 Effect of Termination. In the event of termination or expiration of this Addendum, Retailer shall promptly pay to Trusted.com all amounts due and outstanding.

7.5 Survival. The provisions of Sections 3.3, 4, 5, 6, 7.4 and 7.5 will survive the termination or expiration of this Addendum.