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

1. **Scope.** This Carahsoft Rider and the Manufacturer Agreement 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 Agreement 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 Agreement's are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft' s contract #GS-35F-0119Y, including, but not limited to the following:

(a) **Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under Government contracts as set forth in Government Order 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

(b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81 Modification (Federal Supply Schedule) Alternate I (Apr 2014), and FAR Clause 52.212-4 (f) Excusable delays. (May 2015) regarding which the GSAR and the FAR provisions shall take precedence.

(c) **Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

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

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

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

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

(g) Force Majeure. Subject to FAR 52.212-4 (f) Excusable delays. (May 2015). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer Agreement referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

(h) Assignment. All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (May 2014) and FAR 42.12 Novation and Change-of-Name Agreements,

and all clauses governing Assignment in the Manufacturer Agreement 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 Agreement are hereby deemed to be deleted.

(j) **Customer Indemnities.** All Manufacturer Agreement clauses referencin**g** Customer Indemnities are hereby deemed to be deleted.

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

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

(m) **Future Fees or Penalties.** All Manufacturer Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

(n) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.

(o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.

(p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer Agreement, 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 Agreement and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

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

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

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

(t) Public Access to Information. Manufacturer agrees that the Agreement and this Rider contain no confidential or proprietary information and acknowledges the Agreement 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.

CyVision Cauldron

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6. Third Party Rights: Any software provided along with the Software Product that is associated with a separate license agreement is licensed to you under the terms of that license agreement. This license does not apply to those portions of the Software Product.

7. Limited Warranty: You have ensured the Software Product works according to your requirements and the advertised features. CyVision disclaims all warranties for deficiencies that are reasonably discoverable through evaluation of the software cannot be completely error-free. CyVision disclaims all warranties regarding non-severe deviations of the advertised features of the Software Product. To the maximum extent permitted by applicable law, CyVision and its third party suppliers and licensors disclaim all other representations, warranties, and conditions, expressed, implied, statutory, or otherwise, including, but not limited to, implied warranties or conditions of merchantability, satisfactory quality, fitness for a particular purpose, title, and non-infringement. The entire risk arising out of use or performance of the software product remains with you.

8. General: Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The CyVision shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. This EULA, and the underlying GSA Schedule Contract and related order, are the entire agreement between CyVision and you, with respect to the Software Product; this EULA may be modified only by written agreement signed by authorized representatives of you and CyVision. If any provision of this EULA is held invalid, the remainder of this EULA shall continue in full force and effect. All rights not expressly granted in this agreement are retained by CyVision.

9. Contact Information: If you have any questions about this EULA, or if you want to contact CyVision for any reason, please direct correspondence to CyVision, Inc., 8619 Irvington Ave., Bethesda, MD 20817, or send email to johnrw@cyvisiontechnologies.com.