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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 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.
 - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - (d) Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-

assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.

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

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

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer 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. (JUN 2010). 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 (JAN 1986) 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 (JUL. 2002), 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 referencing 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.

PERNIXDATA FVP™

End User License Agreement

BY ENTERING INTO THIS AGREEMENT, YOU REPRESENT THAT YOU AGREE OR HAVE AGREED TO THE TERMS SET FORTH IN ANY PURCHASE ORDER (THE "PURCHASE ORDER") COVERING THE SOFTWARE AND SERVICES TO BE PROVIDED HEREUNDER.

YOUR USE OF THE FVP™ PRODUCT IS EXPRESSLY CONDITIONED ON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, (ii) YOU MAY NOT INSTALL OR USE THE FVP™ PRODUCT.

1. **About This Agreement.** This Agreement applies to all Software and Documentation made available by PernixData, Inc. ("PernixData") to you. "Software" means the PernixData FVP™ computer program, in object code format, including without limitation firmware. The term "Software" also includes any updates, upgrades or other new features, functionality or enhancements to the Software made available to you. "Documentation" means any on-line read me, help files, or other related explanatory materials that accompany the Software.

2. **License.** The Software and Documentation are licensed, not sold, to you by PernixData. Subject to the terms and conditions of this Agreement, you are hereby granted a perpetual (subject to your evaluation period, if any), worldwide, non-exclusive, non-sublicensable and nontransferable right to run one copy of the object code version of the Software on a on a single machine (which may manage multiple hosts). You agree to use your best efforts to prevent and protect the contents of the Software and Documentation from unauthorized disclosure or use. PernixData and its licensors reserve all rights, including but not limited to ownership and intellectual property rights, not expressly granted to you. PernixData's licensors are the intended third party beneficiaries of this Agreement and have the express right to rely upon and directly enforce the terms set forth herein. There are no implied licenses granted by PernixData under this Agreement. Except as specified above, you shall have no rights to the Software.

3. **Use.**

3.1 **Limitation on Use:** You may not use the Software or Documentation except as permitted in this Agreement. Except with PernixData's prior written consent, you may not: (i) alter, modify or create any derivative works of the Software, the underlying source code, or the Documentation in any way, including without limitation customization, translation or localization; (ii) port, reverse compile, reverse assemble, reverse engineer, or otherwise attempt to separate any of the components of the Software or derive the source code for the Software (except to the extent applicable laws specifically prohibit such restriction); (iii) copy, redistribute, encumber, sell, rent, lease, sublicense, or otherwise transfer rights to the Software or Documentation; (iv) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Software or Documentation; (v) block, disable or otherwise affect any advertising, advertisement banner window, links to other sites and services, or other features that constitute an integral part of the Software. You may not release the results of any performance or functional evaluation of any of the Software to any third party without prior written approval of PernixData for each such release. You may not cause or permit any third party to do any of the foregoing.

3.2 **Third Party Software.** You acknowledge that the Software may contain copyrighted software of PernixData's suppliers which are obtained under a license from such suppliers ("Third Party Software"). All third party licensors and suppliers retain all right, title and interest in and to such Third Party Software and all copies thereof, including all copyright and other intellectual property rights. Your use of any Third Party Software shall be subject to, and you shall comply with, the terms and conditions of this Agreement, and the applicable restrictions and other terms and conditions set forth in any Third Party Software documentation or printed materials, including without limitation an end user license agreement.

3.3 **Minimum Requirements.** Use of the Software requires that you maintain certain minimum system requirements as described in the on-line documentation on PernixData's Support Webpage.

4. **Proprietary Rights.** You acknowledge and agree that the Software belongs to PernixData or its licensors. You agree that you neither own nor hereby acquire any claim or right of ownership to the Software and Documentation or to any related patents, copyrights, trademarks or other intellectual property. PernixData and its licensors retain all right, title and interest in and to all copies of the Documentation and the Software at all times, regardless of the form or media in or on which the original or other copies may subsequently exist. This license is not a sale of the original or any subsequent copy. The Software and Documentation are protected by copyright and other intellectual property laws and by international treaties. You may not make any copies of the Software. Any and all other copies of the Software or Documentation made by you are in violation of this license. All content accessed through the Software is the property of the applicable content owner and may be protected by applicable copyright law. This license gives you no rights to such content. All trademarks used in connection with the Software and Documentation are owned by PernixData, its affiliates and/or its licensors and other suppliers, and no license to use any such trademarks is provided hereunder. All suggestions or feedback provided by you to PernixData, either manually or through automatic transmission, with respect to the Software shall be PernixData's property and deemed Confidential Information of PernixData.

5. **Support Services.** PernixData may provide you with product support services or additional features related to the Software. Use of any such support services or features is governed by PernixData's policies and programs as described in the on-line documentation on PernixData's Support Webpage. Any Software PernixData may provide to you as part of the support services are governed by this Agreement, unless separate terms and conditions are provided by PernixData. Except as specifically provided, this Agreement does not obligate PernixData to provide any support or services for the Software.

6. **Term and Termination.** This Agreement is effective until terminated in accordance with the terms and conditions of the GSA Schedule contract. Immediately upon termination, you shall return or destroy all copies of the Software and Documentation in your possession, custody or control and if requested you shall certify to PernixData in writing that such return or destruction has occurred. The following sections of this Agreement survive any expiration or termination hereof: 1 and 4 - 14.

7. **Confidentiality.** "Confidential Information" shall mean the Software and Documentation and all other information disclosed to you that PernixData characterizes as confidential at the time of its disclosure either in writing or orally, except for information which you can demonstrate: (a) is previously rightfully known to you without restriction on disclosure; (b) is or becomes, from no act or failure to act on your part, generally known in the relevant industry or public domain; (c) is disclosed

to you by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by you without access to the Confidential Information. You shall use your best efforts to preserve and protect the confidentiality of the Confidential Information at all times, both during the term hereof and for a period of at least three years after termination of this Agreement, provided, however, that any source code you receive shall be held in confidence in perpetuity. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of PernixData. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify PernixData in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with PernixData in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If you are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, you will (i) immediately notify PernixData prior to such disclosure to allow PernixData an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with PernixData in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, you shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements.

9. **Export Controls.** The Software and Documentation and the underlying information and technology may not be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) any country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the Software and/or Documentation, you are agreeing to the foregoing and you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list and you agree to comply with all export laws and other applicable laws.

10. **U.S. Government End Users.** The Software and Documentation each were developed by private financing and constitute "Commercial Items," as that term is defined at 48 C.F.R. §2.101. The Software consists of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §227.7202-1 through 227.7202-4, all U.S. Government End Users acquire only those rights in the Software and the Documentation that are specifically provided by this Agreement. Consistent with 48 C.F.R. §12.211, all U.S. Government End Users acquire only technical data and the rights in that data customarily as specifically provided in this Agreement.

11. **Miscellaneous.** (a) This Agreement, as well as the GSA Schedule contract and applicable orders thereunder, constitute the entire agreement between the parties concerning the subject matter hereof, which may only be modified by a written amendment signed by an authorized executive of PernixData. (b) Except to the extent applicable law, if any, provides otherwise, this agreement will be subject to the federal laws of the United States, and the federal courts of competent jurisdiction. (c) If any part of this Agreement is held invalid or unenforceable, that part shall be construed to reflect the parties' original intent, and the remaining portions remain in full force and effect, or PernixData may at its option terminate this Agreement. (d) The controlling language of this Agreement is English. If you have received a translation into another language, it has been provided for your convenience only. (e) A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any

subsequent breach thereof. (f) You may not assign or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein. PernixData may assign this Agreement to any entity at its sole discretion. (g) This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and permitted assigns.

12. **User Outside the U.S.** If you are using the Software or Documentation outside the U.S.A., then the following shall apply: (a) You confirm that this Agreement and all related documentation is and will be in the English language; (b) you are responsible for complying with any local laws in your jurisdiction which might impact your right to import, export or use the Software and Documentation, and you represent that you have complied with any regulations or registration procedures required by applicable law to make this license enforceable.