

CONTRACT NUMBER: XXXXXXXX

Active Risk, Inc.
13221 Woodland Park Road
Suite 440
Herndon, VA 20171
www.sword-activerisk.com

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 Agreements 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 4800.2H 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 2000) (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.

CUSTOMER AGREEMENT



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- (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.

CUSTOMER AGREEMENT



CONTRACT NUMBER: XXXXXXXX

Standard Terms and Conditions

October 2014 USA Edition

Customer Agreement between:

**ACTIVE RISK INC.
13221 Woodland Park Road
Suite 440
Herndon, VA 20171**

AND

[CUSTOMER]
[Address]

("the Customer")

This Customer Agreement together with the Transaction Documents attached to it will form a valid contract when signed by both parties (this "Contract").

The term of this Contract begins on the date of signature of this Contract and shall continue for the term detailed in the relevant Transaction Document.

CUSTOMER AGREEMENT



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CONTACT DETAILS

FOR INVOICING:

Customer: [contact addressee, address, email address, telephone number].

ADDRESS FOR CONTRACTUAL NOTICES

Active Risk Inc.
13221 Woodland Park Road
Suite 440
Herndon, VA 20171
UNITED STATES

Switchboard: +1 (703) 673 9580

Fax: +1 (703) 673 9581

Customer:

FAO: [Contracts Manager] **OR** [As above]

[Address]

[Telephone Number] **OR** [As above]

[email address] **OR** [As above]

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Part 1 – General

1.1 Definitions

Unless otherwise stipulated herein, the following terms, words and phrases shall have the following meanings.

Confidential Information means 1) the commercial terms of any Contract, 2) trade secrets and know-how (including the source code of and the concepts, techniques and ideas embodied in the Software and the structure, sequence and organization of the Software), 3) technical data and specifications and all non-public commercial information, data and ideas belonging or relating to the disclosing party or to a person with whom it has a business relationship and 4) any other information which would be considered to be confidential by a reasonable person based on the nature of the information and the circumstances in which it is communicated, in each case regardless of the method by which it is communicated (for example, orally or in writing).

Contract means these Standard Terms and Conditions together with all the Transaction Documents for a particular transaction.

Customer means an Ordering Activity, an entity entitled to order under GSA Schedule contracts as defined in GSA Order ADM 4800.2H, as may be revised from time to time.

Deliverables means the deliverables expressly required to be provided in the course of Professional Services as detailed in the relevant SOW.

Documentation means the documentation (whether in electronic or hard copy format) which accompanies the Software when we deliver it to you.

FAR means the Federal Acquisition Regulation.

A **Group Company** is a company:

- a) in which the relevant party holds a majority of the voting rights; or
- b) of which the relevant party has the right, directly or indirectly, to appoint or remove a majority of its board of directors; or
- c) of which the relevant party is a shareholder and controls alone, pursuant to an agreement with other shareholders, a majority of the voting rights in it; or
- d) if it is a subsidiary of a company which is itself a subsidiary of the relevant party.

Hosting Services means the Software hosting service described in Part 4 of this Agreement.

Intellectual Property Rights means any and all 1) rights which arise by virtue of or in relation to copyright, databases, patents, right to inventions, trade secrets, and trade marks (registered or unregistered), 2) rights which arise as a result of any applications which have been made to register or to secure any of the foregoing rights, 3) moral rights, 4) rights in relation to Confidential Information and 5) any other similar or equivalent rights in any country.

Professional Services means services to be performed by us under an SOW.

Software means 1) the software detailed in the relevant Transaction Documents and 2) any Upgrades to that software provided as part of warranty service and Support Services.

Services means Support Services and/or Professional Services and/or Hosting Services, as appropriate in the context.

SOW means a statement of work relating to the provision of implementation or other professional services by us. Each SOW will contain a description of the required services and the commercial terms plus other relevant terms, such as Customer resources required.

Standard Terms and Conditions means the terms and conditions of this document, having a "Contract Number" identified on the cover page that matches the number referenced in the Transaction Documents into which these terms and conditions have been incorporated.

Support Services means the Software support services described in section 3.1 of these Standard Terms and Conditions.

Active Risk means Active Risk , Inc., a company incorporated under the laws of the State of Delaware.

Transaction Documents are the documents that contain order-specific information (such as license order forms, SOWs, addenda or change authorisations), and that, by their express terms incorporate these Standard Terms and Conditions.

Upgrade means a release of a Software product which contains bug fixes and/or some functional enhancements of the relevant product. Upgrades do not include new product releases.

we, us and **our** refer to Active Risk .

you and **your** refer to the Customer.

1.2 Interpretation

The headings in these Standard Terms and Conditions and in the Transaction Documents are for ease of reference only and are not intended to have any influence on interpretation.

Any phrase that starts with 'including', 'in particular', 'for example', 'such as' or any similar expression is just giving examples and is not a complete list.

Use of any gender includes the other gender.

Any reference to **persons** includes natural persons, firms, partnerships, companies, corporations, associations, organizations, governments, states, foundations and trusts (in each case whether or not having separate legal personality).

Any reference to a **company** includes any body corporate, wherever and however incorporated or established.

References to the Software, Documentation or Deliverables should be interpreted as references to the whole or any part of them, depending on the context.

Any reference to a statute, or to a particular section of a statute, is meant to include any modification or re-enactment of that statute or section which is in force from time to time and also any statutory instrument or regulations made under that statute or section. This will not be the case, however, if it would impose on us or on you any new or extended obligation, liability or restriction or adversely affect our rights or yours.

1.3 Contract structure

These Standard Terms and Conditions govern transactions by which you license Software and procure Services from us. All transactions will have one or more associated Transaction Documents. The provisions of these Standard Terms and Conditions are incorporated into each Transaction Document which references them. These Standard Terms and Conditions and the applicable Transaction Documents shall constitute the complete agreement (the **Contract**) regarding each such transaction and replace any prior oral or written communications between us relating to that transaction.

Each transaction represents a separate Contract which is legally independent from any other.

If there is a conflict between the terms of these Standard Terms and Conditions and the terms of any Transaction Document, the terms of the Transaction Document shall prevail.

When you make a request for Software licenses or the provision of Services, we will provide you with the relevant Transaction Documents. There is a binding order only once you have accepted the terms in all of the relevant Transaction Documents.

Each of us grants the other only the licenses and rights expressly specified. No other licenses or rights are being granted.

1.4 Fees, expenses, payment terms, taxes

In consideration for our performance of each Contract, you agree to pay us, without offset or deduction, the fees set out in the GSA Schedule contract.

1.5 General obligations of Customer

In order for us to fulfil our obligations, you agree to 1) provide us with sufficient, free and safe access to your facilities and systems (including remote access to Software and the platform on which it functions, such access will always be exercised in accordance with security measures we have agreed with you), 2) provide us with such information and documentation as we may reasonably require, 3) ensure that your staff co-operate fully with our staff, 4) arrange the timely and competent input of third parties (for example, hardware vendors) where, in our reasonable opinion, this is required and 5) remain responsible for system administration, security (including virus-checking rules), back-ups, restores and recovery actions unless we have agreed in writing to perform such actions as part of our Services.

1.6 Staff

While a Contract is in force and for a period of six (6) months after it has come to an end, neither party may, directly or indirectly, seek to employ or otherwise engage the services of any member of the other party's personnel who has been involved in the performance of that Contract during the preceding six (6)-month period. Any waiver of this prohibition will only be effective if it is made in writing and signed by an authorized representative of the party making the waiver and once it has received payment from the other party of a sum equal to six (6) months' basic salary for the relevant personnel at the rate he or she is being paid when he or she gives notice; this is considered by the parties to be a genuine pre-estimate of the loss that would be suffered in these circumstances. This paragraph is not intended to prevent either party from undertaking recruitment advertising in good faith and then offering employment or engagement to any person who responds in good faith to that advertising, and, in such circumstances, no payment will be due.

Each party will ensure that its personnel comply with all lawful and reasonable instructions that may be given to them when they are at the other party's premises relating to health and safety, security and similar requirements.

1.7 Intellectual Property Rights indemnity

If the use or possession of any Software or Deliverables is held to infringe, or in our reasonable opinion may be held to infringe, the Intellectual Property Rights of a third party, we will at our expense either obtain for you the right to continue to use the affected item in the manner permitted under the relevant Contract or adapt or replace it to avoid the infringement without detracting from its functionality in any material way. If we determine that none of these options can be accomplished on reasonable terms, we may require you to stop using the affected item, in which case we will refund to you 1) for a claim affecting Software, an amount equal to the license fees paid for the relevant Software depreciated on a five (5)-year straight line basis from the date of the relevant Contract and 2) for a claim affecting a Deliverable, an amount equal to the fees payable for that Deliverable depreciated on a five (5)-year straight line basis from the date of the relevant Contract. You must immediately cease use of the affected item and then return or destroy all copies of it and certify in writing to us that you have done so.

This section 1.7 sets out our entire obligations and liability to you regarding any claim of infringement of a third party's Intellectual Property Rights.

We have no obligation to the extent that any claim arises from any of the following: 1) any use of the Software or Deliverables in a manner not authorized by the relevant Contract, 2) the use of the Software or Deliverables in combination with items not provided by us, or in an operating environment not compatible with the specifications in our Documentation, and 3) any misuse, damage, or modification of the Software or Deliverables by someone other than us.

1.8 Limitations and exclusions of liability

This section sets out the extent of each party's liability to the other. Notwithstanding the foregoing, nothing in this section 1.8 will limit or modify any rights or liabilities of the parties arising 1) under section 1.7, 2) from breach of a party's obligations regarding confidentiality, or 3) by virtue of a party's infringement of the other party's Intellectual Property Rights.

IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY IN CONNECTION WITH ANY CONTRACT FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, WHETHER OR NOT THE PARTY FROM WHOM DAMAGES ARE SOUGHT WAS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY IN CONNECTION WITH ANY PARTICULAR CONTRACT EXCEED THE FEES PAID TO US BY YOU UNDER THAT CONTRACT. FOR SAKE OF CLARITY, IN THE CASE OF ANNUALLY RENEWABLE CONTRACTS, THE AGGREGATE LIABILITY OF EITHER PARTY MAY NOT EXCEED THE FEES PAID BY YOU DURING THE THEN-CURRENT TERM OF THE CONTRACT IN WHICH THE CLAIM ARISES. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

1.9 Force majeure

Except with respect to payment obligations, neither of us is responsible for failure to fulfil or delay in fulfilling any obligations due to causes beyond its reasonable control. Strikes, lock-outs or other industrial action by the personnel of one party will not count as beyond the control of that party.

1.10 Assignment

Neither of us may assign any Contract nor hold any rights under it in trust, in whole or in part, without the prior written consent of the other. Active Risk may request assignment of a Contract in accordance with FAR 42.1204. Except as permitted by this section 1.10, any purported assignment will be null and void.

1.11 Confidentiality

Each party's Confidential Information will be held in strict confidence by the other, using at least the same standard of care as it uses to protect its own Confidential Information, and will not be used or disclosed except as necessary to fulfil a Contract or where required by law or stock exchange or similar regulation. When disclosure is necessary to fulfil a Contract (for example, to Group Companies, agents or professional advisors), the relevant party will ensure that such third parties maintain the confidentiality of the disclosed Confidential Information. When one party is required by law or stock exchange or similar regulation to disclose Confidential Information belonging to the other party, it will give as much prior notice and information as possible to that other party. A party which has disclosed Confidential Information to the other party may by notice require it to be returned following termination or expiry of the Contract in connection with which it was disclosed.

Subject thereto, each party must ensure that it has the prior written approval of the other party to the specific terms of any other announcement, press release, circular or other public comment concerning these Standard Terms and Conditions or any particular transaction.

This section will not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction.

The provisions of this section will survive termination or expiration of any Contract.

1.12 General

Nothing in these Standard Terms and Conditions will limit our software development activities, or those of our licensors, in any way.

You agree that in entering into any Contract, you will not be relying on any representation, statement, warranty, forecast or other information (whether written or oral) other than anything expressly set out in the relevant Contract.

No amendment or modification of a Contract will be valid unless it is in writing and signed by authorized representatives of both parties.

A failure to exercise or a delay in exercising any right or remedy provided by a Contract or by law will not amount to a waiver of that right or remedy. If any effective waiver is made, however, that waiver will not amount to a waiver in respect of any other breach. No waiver will be effective unless it is expressly stated in writing and signed by an authorized representative of the waiving party.

If any provision of a Contract is invalid or unenforceable for any reason in any jurisdiction, that provision will be construed to have been adjusted to the minimum extent necessary to cure the invalidity or unenforceability. The invalidity or unenforceability of a provision contained in a Contract will not have the effect of rendering that provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of the Contract invalid or unenforceable whatsoever.

All notices which must be given under any Contract must be in writing and must be sent, in the case of notices addressed to us, to our then current registered office marked for the attention of the Contracts Manager and, in the case of notices addressed to you, to the address specified for service of notices in the relevant Transaction Documents marked for the attention of the person also specified in those Transaction Documents

or to such other address/person as you may from time to time have notified to us in accordance with the requirements of this paragraph. All notices must be delivered personally or sent by first class pre-paid recorded delivery. They will be deemed to have been served at the time of delivery, if served personally, or two (2) days after posting if sent by first class pre-paid recorded delivery.

You acknowledge that the covenants set forth in each Contract are intended solely for your benefit and ours, and the benefit of your respective successors and permitted assigns and ours. Nothing under any Contract, whether express or implied, will confer upon any person or entity, other than you, us, and our respective successors and permitted assigns any legal or equitable right whatsoever to enforce any provision of these Standard Terms and Conditions or any Contract.

Upon termination or expiration of any Contract, 1) rights and remedies of either party in respect of any claim or breach which accrued or occurred before the Contract ended will not be affected (in particular, you will remain liable for any outstanding fee payments) and 2) any terms of the Contract which expressly or by implication are intended to come into or remain in effect when the Contract ends will survive (for example, sections 1.4, 1.7, 1.8 and 1.11).

Part 2 – Software Licenses

2.1 Delivery

We will deliver one copy of the version of the Software specified in the relevant Transaction Document and its associated Documentation as soon as possible after the Transaction Document has been executed. The only exception to this is where a Contract is an order which relates to Software that is already in use under another Contract (for example, an order for increased user numbers) in which case we will not make any shipment as you will already have the Software and Documentation.

We will only deliver to destinations that are permitted under applicable export regulations in force at the relevant time. These will include US export regulations if any Software is wholly or partly of US origin. You must ensure that import is allowed in the destination country you have specified.

There are two ways in which we may make delivery. We will either give you a user name and password to enable you to download the Software and Documentation from our systems or we will dispatch them to you by carrier on physical data media such as CD-ROMs. If we make the Software and Documentation available to download, they will be treated as having been delivered at the point when we provide you with the user name and password. If we choose to use a carrier, the Software and Documentation will be treated as having been delivered at the point when we hand the physical data media to the carrier.

We will supply a reasonable number of additional copies of the Software and Documentation upon request and without charge at any time.

We are not responsible for installation or configuration of the Software or any other Professional Services unless we have entered into a Contract with you for such services.

2.2 Rights to use

We grant you a non-exclusive, non-transferable, worldwide license to use the Software and Documentation within the scope of use (for example, numbers of users and processors) and limited to the term set out in the relevant Transaction Documents.

Where numbers of users is one of the metrics by reference to which permitted scope of use is measured, 1) users are counted on a named user basis and 2) a person will count as a user regardless of whether they access the Software directly or indirectly. For purposes of clarification, no sharing of access authorizations by named users is permitted.

You may only use the Software and Documentation in the ordinary course of your business operations and for your own business purposes. This means that you may not use them to undertake computer centre or service bureau operations or application service provision or to provide managed services (except, in each case, to your Group Companies).

The Software and Documentation are subject to export control regulations of various countries. These export control regulations can apply to any re-export that might be proposed not just to any export we make when we initially deliver the Software and Documentation. This is the case even if the re-export is to a person that has a right of use under section 2.3 following. It is not just the physical shipping of data media that counts as export/import. These regulations also apply to export/import by electronic means (including remote access). It is also possible for the import of the Software and Documentation into the country of destination and/or its use there to be restricted or banned by that country. You must comply with all export and import regulations each time the Software or Documentation is re-exported and with all local laws relating to import and use of the Software and Documentation.

You must also take all reasonable precautions to safeguard the Software and Documentation to prevent its misuse.

You must take all reasonable precautions against the possibility of the Software not functioning properly, such as running regular data back-ups.

The relevant Transaction Document will state the location where the Software is to be installed but you may subsequently change the installation location at any time without charge as long as 1) the Software remains under your control and 2) we are given advance notice of the new location.

You may create as many copies of the Software and Documentation as you need in order to exercise your lawful rights of use. For example, you may create back-up copies in accordance with good technological practice. The copyright and other Intellectual Property Rights notices that appear in the programs and on the media on which the Software and Documentation were originally delivered must be reproduced in full whenever copies are made. You must keep up-to-date written records on use of the Software under each Contract (including copies made) and allow us to inspect and take copies of those records during normal office hours as long as we give you reasonable prior notice that we want to do this.

You may not modify the Software or Documentation for the purposes of error correction or otherwise.

You agree not to reverse engineer, decompile, disassemble or translate the Software or Documentation. If a court determines that the preceding sentence is unenforceable, then, if you wish to create interoperability, you must give us a reasonable opportunity to provide you with the information that you need before decompiling to obtain that information yourself.

You may not rent or lend the Software and Documentation. You may only sub-license use of the Software and Documentation as set out in section 2.3 following.

Ownership of all Intellectual Property Rights in the Software and Documentation will remain vested in us and our licensors. We reserve all rights in the Software and Documentation that are not expressly granted by applicable Contracts.

2.3 Sub-licensing

Subject to and in accordance with the terms of this section, you may only sub-license the right to use the Software and Documentation to 1) your Group Companies and 2) any person who is contracted to provide services related to the Software to you or one of your Group Companies (for example, a services company to which you have outsourced operation or hosting of the Software or a company that is contracted to provide IT business continuity services to you). A sub-licensee falling within the second category may only use the Software and Documentation in connection with the operation of your business and that of your Group Companies.

A Group Company may only use the Software and Documentation for as long as it remains one of your Group Companies.

You agree to ensure that your sub-licensees shall comply with the Contract. In particular, the scope of use for which you have agreed to pay licensing fees for shall not be exceeded and you shall provide us with a written note if and when a change of installation location takes place to a location owned or controlled by a sub-licensee. We will hold you responsible for any non-compliance because our Contract is with you. This means that you agree to be legally liable to us for the behaviour of third parties exercising rights of use under this section as if that behaviour were your own.

2.4 Warranty

We warrant that for three (3) months from the date of delivery the Software will perform substantially in accordance with the Documentation. We do not warrant that the Software will operate uninterrupted or be completely error-free.

You must give us prompt notice within the three (3)-month warranty period and provide us with sufficient information, in reasonable detail, in order to enable us to reproduce the error or defect if you want to be entitled to a warranty claim. Our sole obligation and your exclusive remedy shall be for us to repair or eliminate the error or defect, providing an Upgrade which does not contain the defect or demonstrating how to avoid the effects of the defect in a reasonable manner. If we fail to remedy or cure the defect within a reasonable period

of time, we will, in good faith, use our best efforts to agree with you as to a written plan of action, including a date by which the defect should be remedied. We will act reasonably in trying to agree to the plan with you and you agree to do the same. This paragraph sets out our entire obligations and liability to you regarding any claim for breach of the foregoing warranty.

2.5 Audit

As long as Active Risk complies with Customer's security requirements, we may enter your premises during normal business hours upon giving reasonable prior notice for the purpose of ensuring that the terms of the Contract are being complied with. If any such audit reveals that the permitted scope of use in terms of user numbers or other relevant licensing metric has been exceeded, then you must remedy the same immediately, including, if applicable, by paying to us within thirty (30) days an additional license fee calculated in accordance with our then-current GSA Schedule price list (as long as there is no dispute).

We may also require you to promptly complete and return to us periodic certifications of the scope of use in terms of user numbers and other relevant licensing metrics.

2.6 Escrow

Where indicated in the relevant Transaction Documents, we have entered into a multi-licensee escrow agreement with the NCC in relation to the Software. You will be able to participate in the benefit of this agreement if you enter into a contract with the NCC and pay the relevant fees.

2.7 Termination and consequences of termination

Part 3 – Support Services

3.1 Scope of the services

The Support Services are comprised of the following three elements: 1) helpdesk facility, 2) the supply of Upgrades and 3) subject to payment of additional fees, on-site support. They are provided in accordance with and subject to the terms of our current published support policy from time to time.

We shall not be liable to provide Support Services if 1) problems arise as a result of unauthorized use of the Software or 2) problems arise as a result of you failing to implement in a timely manner a fix which we have previously provided to you (whether in a standalone fix or as part of an Upgrade) or 3) you are not using either the latest or immediately preceding Upgrade.

Support will be provided on a remote basis whenever this is possible.

3.2 Fees

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3.3 Warranty

We will perform the Support Services with reasonable skill and care. Our sole obligation for breach of this warranty will be re-performance of the relevant Services in a manner that complies with the warranty.

3.4 Termination and reinstatement

The Support Services will terminate automatically if your right to use the Software terminates for any reason.

Subject thereto, unless otherwise expressly stated in the relevant Transaction Documents, each Contract for Support Services will have an initial term of twelve (12) months.

If you terminate Support Services then you may subsequently reinstate them as long as you are using either the latest or immediately preceding Upgrade.

Part 4 – Hosting Services

4.1 Summary of the Hosting Services

We offer Active Risk Manager as a solution that is delivered to you through third party Hosting Services. These Hosting Services are provided by Amazon and are subject to their terms and conditions of use:

<http://aws.amazon.com/agreement/>
<http://aws.amazon.com/ec2-sla/>
<http://aws.amazon.com/s3-sla/>

By entering into an agreement for Hosting Services with us, you agree to be bound by and to comply with the above third party terms (“the Amazon Terms”).

Under the Hosting Services we manage: (a) the Software; (b) the Operating System; (c) Security Groups; (d) Network ACLs; (e) Network Configuration; (f) Account Management

Services in relation to: (a) Facilities; (b) Physical Security; (c) Physical Infrastructure; (d) Network Infrastructure; (e) Virtualisation Infrastructure; will be provided by Amazon Web Services.

4.2 Use and suspension of the Services

We grant you, on and subject to the terms and conditions of this agreement, a non-exclusive, non-transferable licence to allow (within the scope of use) authorised users to access the Software through the Hosting Services for the term set out in the relevant Transaction Documents.

You may not use the Hosted Services: (a) to host, store, send, relay or process any: (i) material which breaches any applicable laws, regulations or legally binding codes, or infringes any third party intellectual property rights or other third party rights, or may give rise to any form of legal action against us or any third party; (ii) pornographic or lewd material; or messages or communications which are offensive, abusive, indecent or obscene, are likely to cause annoyance, inconvenience or anxiety to another internet user, or constitute spam or bulk unsolicited mail; or (b) for any purpose which is unlawful, fraudulent, or infringes any third party rights; or (c) in any way which may put us in breach of a contractual or other obligation owed by us to Amazon or any other internet service provider.

We may suspend access to the Hosting Services, without any liability, if: (a) we believe that there has been a breach of the Amazon Terms (or we are required by Amazon to suspend the Hosting Services); (b) we believe that the Hosting Services are being used in breach of this Agreement and you do not remedy such breach within 7 days of receipt of our written notice; (b) there is an attack on the Hosting Services or the Hosting Services are accessed or manipulated by a third party without our consent; (c) we are required by law to suspend the Hosting Services; (d) we believe that suspension of the Hosting Services is necessary to protect us or our customers.

Any breach by you of this clause 4 will be deemed to be a material breach of this Agreement.

4.3 Availability and scheduled maintenance

We will use reasonable endeavours to provide a 99.5% uptime service level for the Hosting Services. Any availability refers to an access point on our network as you are responsible for your own Internet access.

The Hosting Services have a Recovery Time Objective (RTO) of 8 hours and a Recovery Point Objective (RPO) of 1 hour.

We do not warrant that your use of the Software or the Hosting Services will be uninterrupted or error-free and we shall not be liable for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities including the Internet, and you acknowledge that the Hosting Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities. We shall not be responsible and disclaim all liability for, any loss, destruction,

alteration or disclosure of any of your data or any inability to use the Software or the Hosting Services in whole or part caused by the acts or omissions of any third party.

Uptime does not include maintenance events, customer caused or third-party outages or disruptions, or outages or disruptions attributable in whole or in part to force majeure events. We may suspend some or all of the Hosting Services in order to carry out scheduled maintenance or repairs. We will use reasonable endeavours to ensure that the Hosting Services are not suspended during normal business hours.

Part 5 – Professional Services

5.1 Timing

We will use all reasonable endeavours to meet dates specified in the Contract for delivery of Deliverables.

5.2 Warranty

We will perform the Professional Services with reasonable skill and care. If we breach this warranty, you must allow us a reasonable time to re-perform the relevant Professional Services free of charge, and our sole obligation for breach of this warranty will be re-performance of the relevant Services in a manner that complies with the warranty.

5.3 Fees

5.4 Cancellation

You may cancel a Professional Services Contract by giving us notice before the services are scheduled to start. There will be no cancellation charge if notice of cancellation is given one (1) month or more in advance of the start date

5.5 Intellectual Property Rights

You will continue to own all intellectual property rights in materials and information that you provide to us for purposes of enabling us to perform Professional Services. You hereby grant to us a limited, non-exclusive license in such intellectual property rights, during the term of the Contract, for purposes of performing our duties. We shall own any and all intellectual property rights in materials and processes that we develop in the course of performing Professional Services, unless the parties agree in writing to deviate from this rule on a case-by-case, or if expressly stated in the relevant Transaction Documents.