

**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.).

Software License Agreement

This Software License Agreement (the "**Agreement**") is entered into and made effective as of the date specified in the Purchase Order or similar document (the "**Effective Date**"), by and between Aqua Security Software, Inc., a Delaware corporation, with its principal place of business at 201 Spear Street STE 1100, San Francisco, CA 94105, USA ("**Aqua**"), and the Government Order Activity, with its principal place of business at specified in the Purchase Order or similar document ("**Customer**"). The parties herein may be referred to individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS, Aqua is the developer and provider of a proprietary security scanning and monitoring solution for virtual containers; and

WHEREAS, Customer wishes to obtain, and Aqua is willing to grant, a license to use the Software on the terms and conditions in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions

"Affiliate" means, with respect to any entity, any other present or future entity Controlling, Controlled by, or under common Control with such entity. **"Control"** for purposes of this definition means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.

"Agent" means a software component installed on every docker ("**Docker**") machine at the Host level that provides visibility and control to all containers running on that machine.

"Container" means an Image that is running on a container engine host.

"Documentation" means the manuals, specifications, and similar documentation accompanying the Software or otherwise made available by Aqua.

"End User" means a person, company, or other legal entity licensed to use the Licensed Software for its own internal purposes and not for distribution to, or use on behalf of, others.

"Environment" means the Customer's on - premise, private cloud, or other installation environment.

"Host" means the physical or virtual machine on which the Software is installed (including without limitation server, host, node and Docker).

"Image" means a self-contained software that is packaged through the Docker and other image formats.

"Intellectual Property Rights" means any and all right, title and interest in and to patents, inventions, discoveries, copyrights, works of authorship, trade secrets, trademarks, service marks, trade dress, technical information, data, know-how, show-how, designs, drawings, utility models, topography and semiconductor mask works, specifications, formulas, methods, techniques, processes, databases, software, code, algorithms, architecture, records, documentation, and other similar intellectual or industrial property, in any form and embodied in any media, whether capable of protection or not, whether registered or unregistered, and including all applications, registrations, renewals, extensions, continuations, divisions or reissues thereof.

"License Term" means the subscription-based term of the License stated in the Purchase Order.

"**Modules**" means the modules, tools, and/or features of the Software.

"**Aqua Console**" means the management and reporting Module of the Software.

"**Professional Services**" means installation, customization, integration, training, or other professional services.

"**Purchase Order**" means the ordering document the Parties have signed and entered into in respect of the Software (including any revisions or renewals thereof that were approved in writing by both Parties).

"**Scan**" means a process of identifying security vulnerabilities in an Image.

"**Software**" means Aqua's software product identified in the Purchase Order. References herein to "Software" include the Documentation, as well as any Updates (as defined in the Support TCs referenced in Section 9 below) made available to Customer pursuant to any Support Services (as defined below).

2. **License**

2.1 **Grant**. Subject to the terms and conditions of this Agreement, Aqua grants Customer a limited, non-exclusive, non-assignable, non-transferable, and non-sublicensable license, during the License Term, to do the following for internal business use only (collectively, the "**License**"):

- (a) install the Software (in object code only) in the Environment(s) and on such number of Hosts/Agents specified in the Purchase Order;
- (b) access and use those Modules permitted (and in the quantities permitted) under the Purchase Order; and
- (c) make a reasonable number of copies of the Software for disaster recovery, backup and archival purposes (i.e. "Non-Production Use"), provided that such copies are returned or destroyed (at Aqua's option) upon termination of the applicable License Term.

2.2 **Title; No other Licenses**. For the avoidance of doubt, the copy(ies) of the Software are only licensed under this Agreement, and no title in or to such copy(ies) (or the Software itself) pass to Customer. Except for the License, Customer is granted no other right or license in or to the Software, whether by implied license, estoppel, patent exhaustion, operation of law, or otherwise.

This Agreement shall supersede any click-through end user license agreement ("EULA") and evaluation license (pursuant to a Software License Evaluation Agreement), as of the Effective Date and shall apply to the Subscriptions and Software set forth on Exhibit B (or Exhibit) and/or Purchase Order for the applicable Term.

3. **License Restrictions**

3.1. **Prohibited Acts**. Except to the extent expressly permitted in this Agreement (or otherwise mandated under any law applicable to Customer), Customer shall not, and shall not permit or encourage any third party to, do any of the following: (a) copy the Software; (b) sell, assign, lease, lend, rent, sublicense, or make available the Software to any third party, or otherwise use the Software to operate in a time-sharing, outsourcing, or service bureau environment; (c) modify, alter, adapt, arrange, translate, decompile, disassemble, reverse engineer, or otherwise attempt to discover the source code or non-literal aspects (such as the underlying structure, sequence, organization, and interfaces) of, the Software; (d) remove, alter, or conceal, in whole or in part, any copyright, trademark, or other proprietary rights notice or legend displayed or contained on or in the Software; (e) circumvent, disable or otherwise interfere with security-

related or technical features or protocols of the Software (such as usage monitoring features); (f) make a derivative work of the Software, or use the Software to develop any service or product that is the same as (or substantially similar to) the Software; (g) disclose to the public the results of any internal performance testing or benchmarking studies of or about the Software, without first (x) sending the results and related study(ies) to Aqua, and (y) obtaining Aqua's written approval of the assumptions, methodologies and other parameters of the testing or study; (h) use, publish or transmit any robot, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt the Software; and/or (i) access the Software and/or its servers through or use with the Software any unauthorized means, services or tools, including, without limitation, any data mining, robots, or similar automated means or data gathering and extraction tools, including, without limitation, in order to extract for re-utilization of any parts of the Software. Customer shall not ship, transfer, or export the Software or any component thereof or use the Software in any manner, prohibited by law, including without limitation to, sell, distribute, export or download the Software: (a) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Sudan, Lebanon, Syria, or the Crimea Region of Ukraine (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals, (c) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval, or (d) otherwise in violation of any export or import restrictions, laws or regulations of the U.S. or any foreign agency or authority. Customer agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The foregoing are limitations on the scope of the License.

4. **Installation.** Aqua will notify Customer (email acceptable) when the Software is available for installation, and Aqua's licensing server will issue Customer the relevant license key(s) (which, for the avoidance of doubt, will be deemed Aqua's Confidential Information). Customer will be responsible for the installation, including without limitation: (a) all configurations (including without limitation to the Environment and other third party systems) in connection therewith; and (b) for providing Aqua with (as well as procuring for Aqua the right to access and use) all information, materials, facilities, and equipment reasonably requested by Aqua for the purposes of installation. In addition, Customer will cooperate with Aqua in configuring and maintaining the Software's remote connectivity Module to enable Aqua to monitor and receive reports regarding Customer's use and consumption levels of the Software (such monitoring and reports, "Usage Audits").
5. **Professional Services.** Customer acknowledges and agrees that nothing in this Agreement obligates Aqua to provide any Professional Services. In the event Customer wishes to receive Professional Services with respect to the Software or otherwise, the Parties shall enter into a separate services agreement and (a) the Professional Services shall be charged in accordance with Aqua's then-current rates or the authorized rates specified in Carahsoft Technology Corporation's (Carahsoft's) GSA Multiple Award Schedule (MAS) 70 Contract, as applicable, (the "**Professional Services Fees**"); (b) the Parties will enter into a statement of work ("**SOW**") specifying the Professional Services to be performed.
6. **Payment**
 - 6.1. **License Fees.** Customer will pay the Software license fees ("**License Fees**") stated in the Purchase Order, and in accordance with its payment terms; *provided, however*, that if a Usage Audit reveals a usage level above that permitted in the Purchase Order, Carahsoft or Aqua may invoice Customer for the excess usage according to Aqua's then-current price list or the authorized rates specified in Carahsoft's GSA MAS 70 Contract, as applicable, (and as otherwise specified in the Purchase Order for such excessive use). For the avoidance of doubt, the

foregoing mechanism shall not result in a reduction in License Fees in the event Customer's consumption level decreases below the level purchased under the Purchase Order.

- 6.2. **Late Payment.** Aqua shall be paid in accordance with the payment terms set out in the applicable Purchase Order. Unless otherwise provided in the relevant Purchase Order, invoiced amounts for which no due date is otherwise established will be due and payable within thirty (30) days from receipt of an undisputed invoice. Unless otherwise specified in the Purchase Order, all payments are non-refundable, and are without any right of set-off. Any amount not paid when due will accrue interest on a daily basis until paid in full, at the lesser of: (a) the rate of one and a half percent (1.5%) per month; and (b) the highest amount permitted by applicable law. Notwithstanding the preceding, payments shall be made in accordance with General Services Administration Acquisition Regulation (GSAR) 552.212-4(g) Invoice and (i) Payment and the Prompt Payment Act.
- 6.3. **Taxes.** Amounts payable under this Agreement are exclusive of all applicable sales, use, consumption, VAT, GST, and other taxes, duties or governmental charges, except for taxes based upon Aqua's net income. In the event that Customer is required by applicable law to withhold or deduct taxes imposed upon Customer for any payment under this Agreement, then the amounts due to Aqua will be increased by the amount necessary so that Aqua receives and retains, free from liability for any deduction or withholding, an amount equal to the sum it would have received had Customer not made any such withholding or deduction.
7. **Third Party Software.** The Software may include third party software components that are subject to open source and/or pass-through commercial licenses and/or notices (such third party programs, "**Third Party Software**" and "**Third Party Software Terms and Notices**", respectively). Some of the Third Party Software Terms and Notices may be made available to Customer in the Software, its Documentation or via a supplementary list provided by Aqua. Any covenants, representations, warranties, indemnities and other commitments with respect to the Software in this Agreement are made by Aqua and not by any authors or suppliers of, or contributors to such Third Party Software. Any use of Third Party Software is subject solely to the rights and obligations under the applicable Third Party Software Terms and Notices. Notwithstanding anything in this Agreement to the contrary, Aqua does not make any representation, warranty, guarantee, or condition, and does not undertake any liability or obligation, with respect to any Third Party Software.
8. **Support Services.** Subject to Customer's timely payment of the support and maintenance fees stated in the Purchase Order ("**Support Fees**"), Aqua will provide the support and maintenance services ("**Support Services**") in accordance with the terms and conditions set forth at <http://www.aquasec.com/support-terms> ("**Support TCs**").
9. **Confidentiality**
 - 9.1. As used herein, "**Confidential Information**" means all confidential information disclosed by a Party ("**Disclosing Party**", or "**Discloser**") to the other Party ("**Receiving Party**", or "**Recipient**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer shall include the Customer Data. Confidential Information of Aqua shall include the Software and Documentation; Confidential Information of each Party shall include all Exhibits and attachments. Confidential Information will not include information or material which Recipient can demonstrate: (a) was in the public domain at the time of disclosure by Discloser to Recipient hereunder; (b) became part of the public domain after disclosure by Discloser to Recipient hereunder, through no fault of Recipient; (c) was in the Recipient's possession at the time of disclosure by the Discloser hereunder, and was not subject to prior continuing obligations of confidentiality by Recipient to Discloser; (d) was rightfully disclosed to the Recipient by a third party having the lawful right to

do so; and/or (e) was independently and rightfully developed by the Recipient without (direct or indirect) use of, or reliance upon, Discloser's Confidential Information.

- 9.2. Recipient will use the Discloser's Confidential Information solely for the purpose of Recipient performing its obligations and/or exercising its rights under this Agreement. Recipient will not disclose or make available the Discloser's Confidential Information to any third party, except to its employees, legal advisors, and potential investors that have a need to know such information and that are bound by obligations at least as protective as provided herein. Recipient will remain liable at all times for the acts or omissions of said recipients. Recipient will take measures at a level at least as protective as those taken to protect its own Confidential Information of like nature (but in no event less than a reasonable level) to protect the Discloser's Confidential Information from disclosure to a third party or other unauthorized use. Recipient will promptly notify Discloser in writing in the event of any actual or suspected unauthorized use or disclosure of the Discloser's Confidential Information.
- 9.3. In the event that Recipient is required to disclose Confidential Information of the Discloser pursuant to any law or governmental or judicial order, Recipient will promptly notify the Discloser in writing of such law or order and reasonably cooperate with the Discloser in opposing such disclosure or obtaining such other protective measures. In any event, such disclosure made pursuant to this paragraph will be made solely to the extent required by such law or order (as the case may be).
10. **Ownership.** As between the Parties, Aqua is, and shall remain, the sole and exclusive owner of all Intellectual Property Rights in and to the Software and all its copies (as well as any modifications, improvements or derivatives thereto), the Support Services, and any other products or services provided by Aqua ("**Aqua Intellectual Property rights**"). Aqua reserves all rights not expressly granted herein. Customer undertakes not to contest Aqua's ownership in the **Aqua Intellectual Property Rights**.
11. **Warranty; Disclaimer.** Aqua warrants to Customer that the Software will materially perform the functions described in the technical specifications included in the Documentation for a period of sixty (60) days commencing upon the Effective Date (the "**Warranty**" and "**Warranty Period**", respectively). The following are excluded from the foregoing Warranty: (a) the Software has not been properly installed, operated, repaired or maintained in accordance with the Documentation and the written instructions of Aqua; (b) the Software has been modified by persons other than Aqua or its authorized representatives; and (c) any error or failure related to the Environment. Customer's sole and exclusive remedy, and Aqua's entire obligation and liability, for a Warranty claim under this Section will be for Aqua to make commercially reasonable efforts to promptly (within ten (10) business days) provide a fix, patch or workaround (which may be included in a future Update) for reproducible defects in the Software reported to Aqua in writing, all at no additional charge to Customer; *provided, however*, that (A) the Warranty claim is made in writing, with sufficient detail, within the Warranty Period; (B) Aqua determines that the defect is not due to any misuse, abuse, neglect, negligence, or unauthorized repair or modification of the Software; and (C) the failure or error is reproducible by Aqua. Any fix, patch, or workaround provided as part of the foregoing remedy will not re-commence the Warranty Period and are warranted for the remainder of the Warranty Period, as then in effect.

EXCEPT TO THE EXTENT PROVIDED OTHERWISE IN THIS SECTION 11, THE SOFTWARE AND ANY SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AQUA DOES NOT MAKE ANY REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION REGARDING THE EFFECTIVENESS, USEFULNESS, RELIABILITY, COMPLETENESS, OR QUALITY OF THE SOFTWARE, OR THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.

12. LIMITATION OF LIABILITY

- 12.1. NITHER PARTY, INCLUDING THEIR AFFILIATES, SHALL BE LIABLE UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT, THE SOFTWARE OR OTHERWISE FOR: (A) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES; (B) ANY LOSS OF PROFITS, BUSINESS, ANTICIPATED SAVINGS, OR DATA AND/OR DAMAGE TO OR LOSS OF REPUTATION, OR GOODWILL; AND/OR (C) THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES.
- 12.2 EXCEPT AS OTHERWISE SPECIFIED HEREIN, THE COMBINED CUMULATIVE LIABILITY OF AQUA AND AQUA AFFILIATES AND ANY OF THEIR LICENSORS AND SUPPLIERS UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT, THE SOFTWARE OR OTHERWISE, WILL NOT EXCEED THE LICENSE FEES ACTUALLY PAID BY CUSTOMER TO AQUA UNDER THE APPLICABLE PURCHASE ORDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.
- 12.3 THE PRECEDING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO BREACHES OF CONFIDENTIALITY, MISAPPROPRIATION OR BREACH OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS AND OBLIGATIONS PURSUANT TO SECTION 13 (INDEMNIFICATION) HEREIN. IRRESPECTIVE OF THE FOREGOING AND EXCEPT AS OTHERWISE SPECIFIED IN A PURCHASE ORDER, AQUA'S LIABILITY UNDER EACH PURCHASE ORDER SHALL BE LIMITED, IN THE AGGREGATE, TO THE GREATER OF (I) TWO TIMES (2X) THE FEES PAID UNDER THE APPLICABLE PURCHASE ORDER TO WHICH THE CLAIMS RELATE, OR (II) ONE MILLION DOLLARS (\$1,000,000).
- 12.4 THE FOREGOING LIMITATIONS OF LIABILITY WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND: (A) EVEN IF A PARTY OR AN AQUA AFFILIATE HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES, DAMAGES, OR COSTS; (B) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; AND (C) REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY).

13. Indemnification

- 13.1. By Aqua. Aqua will defend, indemnify and hold harmless Customer against any third party demand, claim, suit, or action alleging that Customer's use of the Software in accordance with this Agreement infringes such third party's intellectual property rights (an "**Infringement Claim**"), and Aqua will pay any amounts finally awarded by a court against Customer (or otherwise agreed in settlement) under such Infringement Claim Aqua will have no obligation or liability under this Section 13.1 to the extent that the Infringement Claim is based upon or results from: (a) the combination or use of the Software with any third party products or services if such combination is the cause of the infringement; (b) any modification to the Software not made by Aqua; (c) Customer's failure to comply with the written instructions of Aqua and/or with the terms of this Agreement or the Documentation; (d) Customer's continued use of the alleged infringing Software after being notified thereof; (e) use or retention of a copy of the Software not

in its most current version provided by Aqua; and/or (f) Aqua's compliance with any Customer instructions or requirements.

- 13.2. **Remediation.** Should the Software (in whole or in part) become, or in Aqua's opinion be likely to become, the subject of any Infringement Claim, then Customer permits Aqua, at Aqua's option, either to: (a) obtain for Customer the right to continue using the Software (or part thereof); or (b) replace or modify the Software (or part thereof) so that it becomes non-infringing; *provided, however,* that if, in Aqua's opinion, the remedies in clauses (a) and (b) above are not commercially feasible, Aqua may terminate this Agreement immediately upon written notice to Customer and provide Customer with a pro-rata refund of any prepaid (but unutilized) License Fees based on the remaining License Term.
- 13.3. **13.3 Procedure.** Each Party's obligation and liability under this Section (*Indemnification*) is subject to the conditions that: (a) the indemnified Party has promptly notified the indemnifying Party in writing of the Infringement Claim (as used in this subsection, "**Claim**"), provided that a delay or failure by the indemnified Party to provide such notice will not relieve the indemnifying Party of its obligation or liability under this Section (*Indemnification*), except to the extent that such delay or failure materially prejudices its ability to defend the claim; (b) the indemnified Party reasonably cooperates with the indemnifying Party and permits the indemnifying Party to assume sole control of the defense of the Claim and all negotiations for any settlement thereof, provided that Aqua will not be required to cede control of a Aqua Claim to the extent that it impacts any Aqua Intellectual Property Right or goodwill; and (c) the indemnified Party refrains from admitting any liability or otherwise compromising the defense of the Claim (in whole or in part), without the prior express written consent of the indemnifying Party.
- 13.4. **Entire Liability.** This Section 13 (*Indemnification*) states Aqua's sole and exclusive obligation and liability, and Customer's sole remedy, with respect to any Infringement Claim.

14. Term and Termination

- 14.1. **Term.** This Agreement commences as of the Effective Date and will continue in full force and effect for the duration of the License Term as specified in the applicable Purchase Order, unless earlier terminated in accordance with this Agreement.
- 14.2. **Termination.** Each Party may terminate this Agreement upon written notice to the other Party: (a) if the other Party commits a material breach under this Agreement and, if curable, fails to cure that breach within thirty (30) days after receipt of written notice specifying the material breach (except that for payment defaults, such cure period will be seven days); and/or (b) if the other Party is declared bankrupt by a judicial decision, or, in the event an involuntary bankruptcy action is filed against such other Party, it has not taken, within sixty (60) days from service of such action to such Party, any possible action under applicable law for such filed action to be dismissed.
- 14.3. **Effect of Termination; Survival.** Upon expiration or the effective date of termination of this Agreement (as the case may be): (a) this License will automatically terminate and Customer will uninstall and permanently erase (or, if requested by Aqua, permit Aqua to uninstall and permanently erase) all copies of the Software from the Customer's systems; (b) Customer will pay all outstanding fees, including any License Fees; and (c) Customer shall, at Aqua's election, erase or return to Aqua all Aqua Confidential Information in its possession or under its control. Sections 1 (Definitions), 3.1 (Prohibited Acts), 6 (Payments), 7 (Third Party Software) and 9 (*Confidentiality*) through 15 (*Miscellaneous*) will survive the expiration or termination of this Agreement.

15. Miscellaneous

- 15.1. **Entire Agreement.** This Agreement, the terms and conditions of Carahsoft's GSA MAS 70 contract, all Purchase Orders and SOWs and the Support TCs represent the entire agreement of

the Parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral or written understandings and statements by the Parties with respect to such subject matter. This Agreement may only be amended by a written instrument duly signed by GSA and Carahsoft. The Section and subsection headings used in this Agreement are for convenience only.

- 15.2. No Third Party Beneficiaries. Unless otherwise expressly provided herein, no provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than Customer and Aqua or the Aqua Affiliates and successors or assignees any rights, remedies or other benefits under or by reason of the Agreement.
- 15.3. Assignment. This Agreement (whether in whole or in part): (a) may not be assigned by Customer without the prior express written consent of Aqua; and (b) may be assigned by Aqua, without obligation or restriction. Any prohibited assignment will be null and void. Subject to the provisions of this Section 15.4 (*Assignment*), this Agreement will bind and benefit each Party and its respective successors and assigns.
- 15.4. Governing Law; Jurisdiction. This Agreement will be governed by, and construed in accordance with the federal laws of the United States.
- 15.6 Feedback. If Customer provides Aqua with any feedback, ideas or suggestions regarding the Software ("Feedback"), Aqua may, at no cost, freely use such Feedback for any purpose whatsoever. For the avoidance of doubt, Feedback will not be deemed Customer's Confidential Information.
- 15.5. Relationship. The Parties are solely independent contractors. Nothing in this Agreement shall create a partnership, joint venture, agency, or employment relationship between the Parties. Neither Party may make, or undertake, any commitments or obligations on behalf of the other.
- 15.6. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) such provision will be ineffective solely as to such jurisdiction (and only to the extent and for the duration of such invalidity or unenforceability), and will be substituted (in respect of such jurisdiction) with a valid and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.
- 15.7. Notices. Except as stated otherwise in this Agreement, any notice or other communication under this Agreement (each a "**Notice**"), will be addressed and delivered to the other Party by at least one of the following methods: (a) by hand delivery, (b) by nationally recognized courier service; or (c) by prepaid certified mail, to the attention of the person listed below at the addresses set forth below. Each Notice will be deemed effective on the following date: (A) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section; and (B) if given by certified mail, on the date evidenced by a signed return receipt. Notwithstanding anything contained herein to the contrary, a copy of any Notice transmitted will also be sent via electronic mail (email) to the address(es) listed below:

To Aqua:

Aqua Security Software, Inc.
201 Spear Street STE 1100,
San Francisco, CA 94105,
USA

Attn: Dror Davidoff
Title: CEO
Email: davidoff@aquasec.com

To Customer: See Purchase Order or similar document

- 15.8. Force Majeure. Except for payment obligations, neither Party will be liable for failure or delay in performance of any of its obligations under or in connection with this Agreement arising out of any event or circumstance beyond that Party's reasonable control, including without limitation an Act of God, fire, flood, lightning, war, revolution, act of terrorism, riot, civil commotion, adverse weather condition, adverse traffic condition, strike, lock-out or other industrial action, and failure of supply of power, fuel, transport, equipment, raw materials, or other goods or services.
- 15.9. Customer Data; Storage. Customer acknowledges that the Software is not intended to, and will not, operate as an archive or file-storage product or service for Customer Data (as defined below), and Customer will be solely responsible for the maintenance and backup of all Customer Data. "**Customer Data**" means Customer's content, code, or data uploaded to, or otherwise processed by, the Software.
- 15.10. Remedies. Except as expressly provided otherwise in this Agreement, no right or remedy conferred upon or reserved by either Party under this Agreement is intended to be, or will be deemed, exclusive of any other right or remedy under this Agreement, at law, or in equity, but will be cumulative of such other rights and remedies.
- 15.11. Waiver. No failure or delay on the part of either Party in exercising any right or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right or remedy preclude any other or further exercise thereof, or the exercise of any other right or remedy. Any waiver granted hereunder must be in writing, duly signed by the waiving Party, and will be valid only in the specific instance in which given.
- 15.12. U.S. Government Rights. As defined in 48 C.F.R. §2.101, DFAR §252.227-7014(a)(1) and DFAR §252.227-7014(a)(5) or otherwise, all Software and Documentation provided in connection with this Agreement are "commercial items," "commercial computer software" and/or "commercial computer software documentation." consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.