

Carahsoft Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Revised 20160504

- 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 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 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 termination or cancellation of the Manufacturer's CSA are hereby deemed to be deleted. Termination 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.).

AVECTO® END USER LICENSE AGREEMENT

This is a legal agreement (“Agreement”) between you (the natural person or legal entity that is agreeing to be bound by this Agreement) and the applicable Avecto entity identified below. Your location of receipt of the Software (as defined below) determines the providing entity hereunder (the applicable entity is hereinafter referred to as “Avecto”). Avecto Inc., a Delaware corporation, licenses the Software in the U.S.A and Canada; Avecto Limited, an English company, licenses the Software in all other territories.

BY ACCESSING, INSTALLING OR OTHERWISE USING THE SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL OR USE THE SOFTWARE.

1 DEFINITIONS

“Affiliate” means any legal entity that controls, is controlled by or is under common control with you or Avecto (as applicable); where ‘control’ refers to ownership of more than fifty percent (50%) of voting securities.

“Device” means a single physical or virtual desktop, server or other information technology system which is authorized by you to use or access the Software on the operating system, or a later version thereof, permitted by the type of license purchased (where applicable). A Device shall require a license and shall be included in the license count, regardless of whether it is being used at any given time.

“Documentation” means, collectively, Avecto’s standard user manuals and related documentation generally made available to licensees of the Software, as revised by Avecto from time to time, and which may include end user manuals, operation instructions, release notes, and on-line help files.

“Order” means a purchase order or other ordering document issued by you to Avecto or an Avecto authorized reseller that is accepted by Avecto as set forth in Section 4 (Order) below.

“Software” means the object code form of the Avecto proprietary software product(s) to which you acquire a license under an Order, including any Documentation, together with any software code that is provided to you pursuant to a software support contract and that is not subject to a separate license agreement.

“License Term” means the period specified in the Order Form or, if no term is so specified, then the License Term shall be perpetual (subject to termination for breach in accordance with this Agreement).

“User” means your and your Affiliates’ employees, agents, consultants and contactors.

GRANT OF LICENSE.

- a. License. Subject to the terms of this Agreement and full payment of license fees, Avecto hereby grants you a non-exclusive, non-transferable, non-sublicenseable license during the License Term for Users to install, use and access the Software in accordance with the Documentation. You may only install, use and/or access the Software on such number and type of Devices as permitted by the licenses purchased and paid for by you, as set forth in the applicable Order. Users may install use and/or access the Software solely on behalf of and for the benefit of you or your applicable Affiliate and in accordance with this Agreement. You shall be responsible for all acts and omissions committed by any Users and any act or omission by any User which, if undertaken by you would constitute a breach of this Agreement, shall be deemed a breach of this Agreement. You may make copies of the Software as reasonably required for backup or installation purposes.
- b. Evaluation. If the Software is identified as “Evaluation” then, notwithstanding any contrary provision in this Agreement, you are permitted to use the Evaluation Software only for internal demonstration, test or evaluation purposes and only for the period specified on the software license key (if not indicated this period will be 30 days from delivery), following which the Evaluation Software may automatically disable itself. You acknowledge that Avecto is not obligated to permit further use of the Evaluation Software past the expiration date and in no event may Evaluation Software be used past the expiration date. NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS AGREEMENT, THE EVALUATION SOFTWARE IS PROVIDED “AS-IS” WITHOUT SUPPORT OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED AND YOU HAVE NO RIGHT TO INFRINGEMENT INDEMNIFICATION.
- c. Not for Resale. If the Software is identified as “Not for Resale” then, notwithstanding any contrary provision in this Agreement, you may only use the Not for Resale Software for demonstration, testing and/or training purposes in support of

your end-user customers and for no other purpose. Not for Resale Software may not be used in a production environment or used to deliver a managed services offering, in any circumstances. This license will automatically expire twelve (12) months from date of delivery, subject to extension by Avecto at its sole discretion. This license may be terminated by Avecto at any time, with or without cause, and will terminate immediately upon your ceasing to be an Avecto authorized distributor or program partner/participant. You acknowledge that Not For Resale Software is made available to you at Avecto's sole discretion and you have no right or entitlement thereto. NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS AGREEMENT, NOT FOR RESALE SOFTWARE IS PROVIDED "AS-IS" WITHOUT SUPPORT OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

- d. Third Party Components. You acknowledge and agree that the Software may be provided with certain open source software (as defined by the Open Source Initiative) or freeware software (collectively, "Open Source Software"), as referenced in the Documentation, for use in combination with the Software. Such Open Source Software is free and distributed to you solely under the terms set forth in the respective Open Source Software license agreements (which are referenced in the Documentation and/or the Avecto website) and you acknowledge and agree that this Agreement in no way supplements or detracts from any term or condition therein.

SUPPORT AND MAINTENANCE SERVICES. Avecto does not provide any technical support or maintenance services for the Software under this Agreement and you have no rights to any updates, upgrades, enhancements or other modifications to the Software unless you purchase Avecto software support services. All software support services are subject to the attached Avecto Software Support Terms and Conditions. If you purchase support and maintenance services for the Software, you are required to purchase and maintain such services at the same level for all licences of the Software.

LICENSE RESTRICTIONS. The Software is licensed, not sold. You may not use the Software for any purpose beyond the scope of the licenses granted in this Agreement, all other rights are reserved by Avecto or its suppliers. Without limiting the generality of the foregoing and except as expressly permitted in this Agreement, you will not (and will not permit any User or third party to): (i) authorize or permit use of the Software by persons other than Users; (ii) assign, sublicense, distribute, sell, lease, rent, novate or otherwise transfer or convey the Software or Documentation to any third party without Avecto's prior written consent or disclose the software license key to the Software to any third party; (iii) pledge as security or otherwise encumber the rights granted under this Agreement; (iv) modify, alter, copy, adapt or create any derivative works of the Software (or any component thereof); (v) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Software; (vi) use the Software as a service bureau, ASP or SaaS offering for third parties; (vii) circumvent or attempt to circumvent any technical restrictions in the Software; or (viii) remove, alter or obscure any proprietary notices or legends from the Software or any copies thereof.

You hereby agree that, to the extent that any applicable mandatory laws give you the right to perform any of the aforementioned activities without the consent of Avecto to gain certain information about the Software, before you exercise any such rights, you shall first request such information from Avecto in writing detailing the purpose for which you need the information. Only if and after Avecto, at its sole discretion, denies your request, shall you exercise your statutory rights.

ORDER. Your Order is subject to this Agreement. No Orders are binding on Avecto until accepted by Avecto. Orders for Software are deemed accepted upon Avecto's delivery of the license key to the Software included in such Order.

TITLE. Avecto and its licensors (if any) retain all rights, title and interest, including all patent, copyright, trade secret, trademark, moral rights and other intellectual property rights, in and to the Software and Avecto expressly reserves all rights not expressly granted under this Agreement.

INFRINGEMENT INDEMNIFICATION. Avecto undertakes to indemnify and defend, or at its option, settle any claim, suit or proceeding brought against you based on an allegation that the Software and/or Documentation infringes upon any patent or copyright of any third party ("Infringement Claim") and Avecto shall pay all third party costs and damages awarded in judgment of the Claim or agreed to in settlement of the Claim between Avecto and the third party, provided that that you promptly notify Avecto in writing of an Infringement Claim such that Avecto is not prejudiced by any delay in such notification and do nothing which may prejudice Avecto's defence of such Infringement Claim. Avecto will have sole control over the defense or settlement of any Infringement Claim and you will provide reasonable assistance at Avecto's expense. If any Infringement Claim is made or appears possible, Avecto may at its sole expense and option: (i) procure for you the right to continue to use the alleged infringing Software or Documentation; (ii) replace or modify the Software or Documentation to make it non-infringing; or (iii) if neither (i) nor (ii) are reasonably achievable, accept return of the Software and Documentation and provide you with a refund of the license fees paid by you for the affected Software based on a straight line depreciated value over 5 years. Avecto assumes no liability for any Infringement Claim or allegations of infringement based on: (A) the combination, operation, or use of the Software with products, services, hardware, data or other materials not furnished by Avecto, if such Infringement Claim would have been avoided by the use of the Software alone; (B) modifications to the Software by you or at your direction; (C) use of any Software after notice that you should cease use of the Software due to an Infringement Claim, where Avecto had provided you with a subsequent non-infringing release of the Software; or (D) use of the Software otherwise than in accordance with the Documentation and any applicable laws and regulations. THE FOREGOING STATES YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT CLAIM.

LIMITED WARRANTY AND DISCLAIMER. Avecto warrants that for a period of ninety (90) days from the date of delivery of the

license key for the Software to you, the Software will perform materially in accordance with the Documentation. Avecto and its authorized resellers and distributors' entire liability and your exclusive remedy under this warranty (which is subject to you deleting all copies of the Software within your possession and control and certifying in writing to Avecto or an authorized reseller that you have done so) will be, at the sole option of Avecto and subject to applicable law, to replace the Software or to refund the license fees paid and terminate this Agreement. This limited warranty will not apply unless: (i) the Software has been properly installed and used at all times in accordance with the Documentation; (ii) no modification, deletion or addition has been made other than by Avecto and (iii) Avecto receives written notice of the non-conformity within the warranty period; and (iv) the non-conformity is not caused by the combination of the Software with software, hardware or other technology (except where such combination is approved by Avecto). Any replacement or repaired Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE ABOVE LIMITED WARRANTY, THE SOFTWARE IS PROVIDED "AS IS" AND "WITH ALL FAULTS" AND AVECTO AND ITS LICENSORS MAKE NO WARRANTIES OR CONDITIONS OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. AVECTO CANNOT GUARANTEE AND DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS CAN BE CORRECTED. THE SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR DISTRIBUTION WITH ANY EQUIPMENT THE FAILURE OF WHICH COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE THAT NEITHER AVECTO, ITS AFFILIATES OR ITS OR THEIR LICENSORS, RESELLERS OR DISTRIBUTORS SHALL BE LIABLE FOR ANY LOSS OF INCOME, LOSS OF OPPORTUNITY OR PROFITS, LOSS OF GOODWILL, LOSS OF DATA OR FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES ARISING FROM USE OF THE SOFTWARE, UPDATES, THIRD PARTY SOFTWARE OR OTHERWISE ARISING IN CONNECTION WITH THIS AGREEMENT, HOWSOEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE). TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE LIABILITY OF AVECTO, ITS AFFILIATES OR ITS OR THEIR LICENSORS, RESELLERS OR DISTRIBUTORS EXCEED THE AMOUNT PAID FOR THE AFFECTED SOFTWARE. THIS LIMITATION WILL APPLY EVEN IF AVECTO, ITS AFFILIATES OR ITS OR THEIR LICENSORS, RESELLERS OR DISTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. YOU ACKNOWLEDGE THAT THE LICENSE FEES REFLECTS THIS ALLOCATION OF RISK. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

TERMINATION. You may terminate this Agreement without refund at any time by removing the Software from your computers and destroying all copies and providing written notice to Avecto. Avecto may terminate this Agreement in the event that you breach this Agreement and (if such breach is capable of remedy) you fail to remedy such breach within 30 days from Avecto's notice to you. Upon termination of this Agreement or expiration of the License Term, the license granted herein will terminate and you must immediately remove and destroy all copies of the Software, including all back-up copies. Any obligations to pay fees incurred prior to termination shall survive termination for any reason.

AUDIT. During the term of this Agreement and for three (3) years after termination of the Agreement or support and maintenance services for the applicable Software, you shall maintain accurate and complete records regarding your use of the Software and you shall permit Avecto (or persons authorized by Avecto) to inspect such records and your computer equipment in order to verify that your use of the Software is in compliance with this Agreement and that you have paid the applicable license fees and support services fees for the Software. Avecto may not conduct an audit more than once per calendar year and such audits shall take place during normal business hours and on reasonable prior notice. Without prejudice to any other rights and remedies, where such audit reveals any underpayment, you shall immediately pay such underpayment to Avecto and where any underpayment is more than five per cent (5%) of the amounts payable by you for the audited period you shall promptly reimburse Avecto for the reasonable costs of the audit.

CONFIDENTIAL INFORMATION. In this Agreement. "Confidential Information" means information or materials provided by one party ("Discloser") to the other party ("Recipient") which are in tangible form and labelled "confidential" or the like, or, information which a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or not marked or identified as such: (i) software license keys; (ii) information regarding Avecto's pricing, product roadmaps or strategic marketing plans; and (iii) non-public materials relating to the Software. Notwithstanding the foregoing, Confidential Information shall not include information that: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. Recipient may use Confidential Information of Discloser; (A) to exercise its rights and perform its obligations under this Agreement or (B) in connection with the parties' on-going business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care. Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is

required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

GENERAL

- a. **Export Restriction.** You will not, directly or indirectly export or re-export or knowingly permit the export or re-export of any Software in breach of any applicable export and import control laws and regulations including regulations of the United States Bureau of Industry and Security and other applicable agencies. Furthermore, you shall ensure that your use of the Software is in accordance with all applicable laws and regulations.
- b. **U.S. Government End Users.** Each of the components that constitute the Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "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 the Software with only those rights set forth herein. If Software is acquired for or on behalf of the U.S. Government, then it is recognized and agreed that the Software: (i) was developed at private expense; (ii) was not required to be originated or developed under a Government contract; (iii) was not generated as a necessary part of performing a Government contract.
- c. **Authorized Distributors and Resellers.** You acknowledge and agree that Avecto authorized distributors and resellers do not have the right to make modifications to this Agreement or to make any additional representations, commitments or warranties binding on Avecto.
- d. **Modification.** This Agreement may not be amended except in a written document signed by both parties.
- e. **Governing Law and Venue.** If this Agreement is with Avecto, Inc., this Agreement will be governed by the laws of the Commonwealth of Massachusetts without regard to conflict of laws principles and in any dispute arising out of or in connection with this Agreement you consent to the exclusive jurisdiction and venue in the State and Federal courts within the Commonwealth of Massachusetts. If this Agreement is with Avecto Limited, this Agreement will be governed by the laws of the England and Wales without regard to conflict of laws principles and in any dispute arising out of or in connection with this Agreement you consent to the jurisdiction of the English courts. You agree that, to the fullest extent permitted, the provisions of the Uniform Computer Information Transactions Act and/or any federal or state statutory adoptions or equivalent in effect at any time (whether before or after the date of this Agreement) shall not apply to this Agreement and the United Nations Convention for the International Sale of Goods shall not apply to this Agreement.
- f. **Severance.** If any provision of this Agreement is held to be unenforceable, void or invalid under applicable law, such provision shall be deemed omitted and the remaining provisions will remain in full force.
- g. **Entire Agreement; English Language Agreement Controls.** This Agreement represents the complete and exclusive statement of the agreement between Avecto and you with respect to the Software and supersedes all prior or contemporaneous oral or written communications and arrangements concerning the subject matter contained herein. In the event of any inconsistency between this Agreement in English language and any translation of it into another language, the English language Agreement shall control.
- h. **Transfers; Assignment.** Except to the extent transfer may not legally be restricted, you will not assign this Agreement, any Order, or any right or obligation herein or delegate any performance without Avecto's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by you will be void.
- i. **Third Party Rights.** Other than as expressly set out in this Agreement, this Agreement does not create any rights for any person who is not a party to it, and no person who is not a party to this Agreement may enforce any of its terms.
- j. **No Waiver.** No failure or delay to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other rights or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right shall preclude or restrict the further exercise of that or any other right or remedy.
- k. **Contact Information.** Please direct legal notices or other correspondence to the address specified below. If you have any questions concerning this Agreement please send an email to contracts@avecto.com.

For Avecto Limited: Hobart House, 3 Oakwater Avenue, Cheadle Royal Business Park, Cheadle, Cheshire SK8 3SR, United Kingdom.

For Avecto, Inc: 125 Cambridge Park Drive, Cambridge, MA 02140, USA.

This is a legal agreement (“**Agreement**”) between you (the natural person or legal entity that is agreeing to be bound by this Agreement) and the applicable Avecto entity identified below. Avecto Inc., a Delaware corporation, performs the Services (as defined herein) in the US, Canada, Mexico, Latin America, or the Caribbean; Avecto Limited, an English company, performs the Services in all other territories; the applicable entity is hereinafter referred to as “**Avecto**”). **NOTE: THE SERVICES ARE PROVIDED IN ENGLISH LANGUAGE ONLY.**

1. DEFINITIONS

- 1.1 “**Maintenance Services**” means the provision of Updates to you for electronic download.
- 1.2 “**Services**” means the means the Technical Hotline Support and Maintenance Services, collectively.
- 1.3 “**Services Fees**” means the fees for the Services as specified in the Avecto or reseller invoice.
- 1.4 “**Services Period**” means the period for which you have purchased the Services and any subsequent renewal periods and shall commence upon delivery to you of the software license key for the Software.
- 1.5 “**Software**” means the Avecto proprietary software licensed to you and for which you have purchased the Services. Software does not include any customizations or private fixes which Avecto may create for you.
- 1.6 “**Technical Hotline Support**” means the provision of telephone or web-based technical assistance for the support and remote diagnosis of reported problems, errors and faults, at the corresponding Services level purchased by you.
- 1.7 “**Updates**” means all or any of the following: upgrades, patches, services packs, fixes and modifications to the Software and corresponding documentation.

2. SERVICES TERMS

- 2.1. Support Services. Subject to the terms of this Agreement, Avecto will, during the Services Period, provide the Services at the applicable Services level purchased by you. More detailed information on the different Services levels including, without limitation, response times, contact information and hours of operation corresponding to the different Services levels can be found at or accessed through www.avecto.com/support the “Support Description”). In the event of any conflict or inconsistency between this Agreement and the Support Description, this Agreement prevails.
- 2.2. End of Availability. Avecto shall provide the Services in accordance with the Avecto support lifecycle policy set out in the Support Description. A withdrawal of the Services per the lifecycle policy, shall not affect your right to continue use of that version of the Software under and subject to the applicable license agreement and you will receive a prorated refund of any charges for the Services that have been paid in advance. Avecto shall have no obligation to provide Services for Software that is outside of the Services lifecycle.
- 2.3. Purchase Requirements. The minimum term for any Services is one (1) year. Upon expiry of the Services Period the Services shall automatically cease, subject to renewal. Upon any renewal, and subject to review and acceptance by the General Services Administration, this Agreement shall automatically update to Avecto’s then current Services terms and conditions, as will be displayed at www.avecto.com/legals. You must purchase and/or renew the Services at the same Services level for all licenses for the applicable Software.
- 2.4. Interruptions in Services. If you do not continuously maintain the Services, before you may resume the Services Avecto reserves the right to require you to pay the applicable fees for the Services that were not paid for the unsubscribed period and to move to the most recent version of the Software.
- 2.5. Eligibility and Exclusions. The Services do not include Avecto investigating or remedying or attempting to alleviate the consequences of: (a) the improper or negligent use, operation or neglect of the Software or use of the Software other than as permitted by your license agreement with Avecto; (b) the modification, repair, adjustment, alteration or modification of the Software by any person other than Avecto; (c) the use of the Software outside the minimum environment requirements necessary to allow the Software to operate in accordance with its specification, as notified by Avecto from time to time; (d) your failure to implement recommendations previously advised by Avecto in relation to the use of the Software or otherwise; (e) your failure to upgrade the Software with new versions of it in substitution for previous releases when recommended to do so by Avecto; (f) incorrect or incomplete installation or configuration of the Software, other than by Avecto; or (g) the use, combination or integration of the Software with hardware, software and/or technology not provided or otherwise approved by Avecto. The Services do not include on-site support, configuration, installation, training or other services, which additional services may be requested and purchased separately from Avecto.
- 2.6. Your Responsibilities. In connection with Avecto’s provision of the Services, you must fulfil the following responsibilities: (i) maintain the Software in good working order in compliance with the minimum system requirements set forth in the software documentation; (ii) supply Avecto with access to and use of information, facilities, and personnel reasonably required by Avecto to render the Services; (iii) reasonably perform any tests or procedures recommended by Avecto for the purpose of identifying and/or resolving any problems; (iv) keep full back-up copies of all of its data.
- 2.7. Frequency of Updates: Any dates given by Avecto for delivery or frequency of Updates shall be treated as approximate only.

3. FEES AND PAYMENT

- 3.1. Services Fees and Payment Terms. Services Fees are payable in advance and are non-refundable. Avecto will issue its invoice for the Services following your purchase and payment is due in full and without deduction within fifteen (15) days of

- the date of the invoice by wire transfer. Services Fees are exclusive of any applicable sales taxes, duties or similar charges imposed by any government, which shall be payable by you in addition to the Services Fees (other than taxes on the net income of Avecto). Amounts not paid on time may, at Avecto's discretion, be subject to a late charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum allowed by applicable law. If payment of any Services Fee is overdue, Avecto may also suspend provision of the Services until full payment is made.
- 3.2. Renewals. If you renew or add a Services offering, you may elect to make Services for all of your Software licenses coterminous with the renewed or added Services. In such instance, Avecto will prorate the applicable Services Fees to extend the current Services Period to make it coterminous with the renewed or added Services.
4. **INTELLECTUAL PROPERTY AND LICENSE.** All intellectual property rights (including, without limitation, any patents, copyrights, rights in software, technical or commercial know-how, trademarks and trade secret) in or arising out of in connection with the Services shall be owned by Avecto. All Updates are licensed solely on the terms of the separate license agreement Avecto and you.
5. **LIMITED WARRANTY.** Avecto warrants that the Services will be performed with reasonable care and skill and conform to industry standards. Upon you providing Avecto with a reasonably detailed written notice to cure within 30 days of occurrence of the nonconformance, Avecto will reperform the Services to achieve material compliance with the above warranty. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY SET FORTH IN THESE CONDITIONS, ALL SERVICES ARE PROVIDED "AS-IS" AND AVECTO HEREBY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION OR WARRANTY IS GIVEN THAT ERRORS OR FAULTS WILL BE FIXED OR FIXED WITHIN A SPECIFIED PERIOD OF TIME. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THIS SECTION 5 SETS OUT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY NON-COMPLIANCE WITH THE WARRANTY.
6. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVECTO SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER, OR FOR ANY LOSS OF GOODWILL, LOST PROFITS, LOSS OF BUSINESS OR LOST OPPORTUNITIES IN ANY WAY RELATING TO THE CONTRACT, EVEN IF AVECTO HAS BEEN NOTIFIED OF, OR REASONABLY COULD HAVE FORESEEN, THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. AVECTO'S TOTAL LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE SERVICES FEES PAID BY YOU IN THE 12 MONTHS PRIOR TO THE DATE ON WHICH THE LIABILITY ARISES. NOTHING IN THESE CONDITIONS SHALL HAVE THE EFFECT OF LIMITING OR EXCLUDING ANY LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OR FOR FRAUD OR FOR ANY OTHER LIABILITY TO THE EXTENT THAT IT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.
7. **TERMINATION.** Without prejudice to any rights or remedies, either party may terminate the Services on written notice if the other party commits a material breach of these terms and conditions and, if such breach is remediable, fails to remedy that breach within 30 days after being notified in writing to do so. The Services will terminate automatically on termination or expiry of the license agreement pursuant to which the Software is licensed to you. Termination or expiry will not affect the accrued rights, remedies, obligations or liabilities of either party.
8. **DATA PROTECTION.** You acknowledge that files and correspondence generated in connection with a request for Services may contain personal, confidential or sensitive data. You are solely responsible for taking steps to protect or guard such data before sending it to Avecto.
9. **GENERAL**
- 9.1. Authorized Distributors and Resellers. You acknowledge and agree that Avecto authorized distributors and resellers do not have the right to make modifications to this Agreement or to make any additional representations, commitments or warranties binding on Avecto.
- 9.2. Governing Law and Venue. If this Agreement is with Avecto, Inc., this Agreement will be governed by the laws of the Commonwealth of Massachusetts without regard to conflict of laws principles and in any dispute arising out of or in connection with this Agreement you consent to the exclusive jurisdiction and venue in the State and Federal courts within the Commonwealth of Massachusetts. If this Agreement is with Avecto Limited, this Agreement will be governed by the laws of England and Wales without regard to conflict of laws principles and in any dispute arising out of or in connection with this Agreement you consent to the jurisdiction of the English courts.
- 9.3. Severance. If any provision of this Agreement is held to be unenforceable, void or invalid under applicable law, such provision shall be deemed omitted and the remaining provisions will remain in full force.
- 9.4. Modification. This Agreement may not be amended except in a written document signed by both parties.
- 9.5. Entire Agreement; English Language Agreement Controls. This Agreement represents the complete and exclusive statement of the agreement between Avecto and you with respect to the Software and supersedes all prior or contemporaneous oral or written communications and arrangements concerning the subject matter contained herein. In the event of any inconsistency between this Agreement in English language and any translation of it into another language, the English language Agreement shall control.

- 9.6. Transfers; Assignment; Subcontracting. Except to the extent transfer may not legally be restricted, you will not assign this Agreement, any Order, or any right or obligation herein or delegate any performance without Avecto's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by you will be void. Avecto may perform any of its obligations or exercise any of its rights under this Agreement by itself or through any of its affiliates or subcontractors, provided that any act or omission of any such affiliate or subcontractor shall be deemed to be the act or omission of Avecto.
- 9.7. Third Party Rights. Other than as expressly set out in this Agreement, this Agreement does not create any rights for any person who is not a party to it, and no person who is not a party to this Agreement may enforce any of its terms.
- 9.8. No Waiver. No failure or delay to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other rights or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right shall preclude or restrict the further exercise of that or any other right or remedy.
- 9.9. Contact Information. Please direct legal notices or other correspondence to Building One, Trident Business Park, Styal Road, Manchester, M22 5XB United Kingdom for Avecto Limited or 450 Artisan Way, Suite 330, Somerville, MA 02145 USA for Avecto Inc. If you have any questions concerning this Agreement please send an email to contracts@avecto.com.