

**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.).

## CloudPassage Terms of Service

1. Scope of Agreement. These Terms of Service (the "Agreement") applies to all order forms ("Order Forms") submitted by you ("Customer", "you", "your") providing for access to the Service (as defined below) for a specified term (the "Term") in exchange for payment of fees to CloudPassage, Inc. ("CloudPassage", "us", "we", "our") or a third party authorized by us to resell the Service (a "Reseller"). This Agreement shall remain in effect until the termination or expiration of all Order Forms submitted by Customer.
2. Use of Service and Software License; Restrictions.
  - a. Subject to these Terms of Service, we hereby grant you a personal, nonexclusive license to access and use the Service (as defined below) specified in one or more Order Forms in accordance with the documentation supplied by us, solely for your internal business purposes for the term (the "Term") specified in the Order Forms. "Service" means one or more of our computer security and compliance analysis, monitoring and management services, including the services and information provided through [portal.cloudpassage.com](http://portal.cloudpassage.com), and any related software and materials provided by us for your use as part of the Service.
  - b. Except for the rights expressly granted under this Agreement, we retain all right, title, and interest in and to the Service. You agree not to reverse assemble, reverse compile or reverse engineer any software related to the Service, or otherwise attempt to discover any such software source code, object code, or underlying Proprietary Information (as that term is defined below), or use the Service for performing comparisons or other benchmarking activities, either alone or in connection with any software, except to the extent such restrictions are prohibited by applicable law.
  - c. You shall, and hereby do, grant us a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by you or your users relating to the design or operation of the Service.
  - d. You agree to discontinue all use of the Service at the end of the Term, unless the Term is extended by submission of a new Order Form. If you continue to use the Service after the end of the Term, we may send you an invoice at the end of each Usage Period for the number of hours used during such Usage Period (as defined in the Order Form), calculated using the Price Per Additional Service-Hour specified in the relevant Order Form. Notwithstanding the previous sentence, we may terminate your access to the Service at any time after the end of the Term.
  - e. You are authorized only to use the portions of the Service specified on an Order Form. All other modules currently available or released for sale following the Effective Date are referred to as "Unlicensed Modules". Use of Unlicensed Modules is permitted for evaluation purposes only.

- f. You acknowledge and agree that the Service incorporates functionality to monitor your usage of the Service for billing purposes (the "Metering Tools"). You shall not temporarily deactivate or impair use of the Metering Tools on any protected system, from activation to de-activation of such system, or otherwise interfere with the normal operation of the Metering Tools.
3. Modifications. From time to time, we may (but are not obligated to) provide upgrades, patches, enhancements, or fixes for the Service to our customers generally without additional charge, which, if and when provided will become part of the Service and subject to this Agreement. We may cease supporting old versions or releases, or certain features of the Service at any time in our sole discretion, in which case we will provide at least 30 days' advance notice. In addition, we may temporarily restrict your access to parts or all of the Service without liability for maintenance purposes, to ensure overall stability of the Service. If such restrictions are implemented for purposes of maintenance or upgrade of the Service then we will provide reasonable advance notice, and if such restrictions are implemented for emergency purposes then advance notice is not required.
4. Confidentiality.
  - a. You acknowledge that, in the course of using the Service and performing your duties under this Agreement, you may obtain, learn or develop information relating to the Service and/or to CloudPassage, including, but not limited to, technical, business, product, marketing and financial information, plans and data (including performance data), as well as authentication or access keys, tokens or passwords or other registration information provided to you hereunder (collectively, "Proprietary Information"). During and after the Term, you shall hold in confidence and protect, and shall not use (except as expressly authorized by this Agreement) or disclose, Proprietary Information, unless such Proprietary Information becomes generally known to the public without breach of this Agreement by you or your agents. You will not remove or export the Service or any Proprietary Information or any portion or direct product thereof from the United States in violation of any export control or similar laws.
  - b. We will: (i) not use, modify or disclose to anyone any electronic data or information submitted by you to the Service ("System Data"); and (ii) use our reasonable commercial efforts to maintain the security and integrity of the Service and the System Data.
  - c. "Aggregated Service Data" means electronic data regarding the use and performance of the Service by our customers generally, including Customer, such as Service response time, scans completed an agents registered, but only in aggregated, anonymized form which in no way allows Customer to be identified. Supplier retains the right to use Aggregated Service Data in the course of providing and maintaining the Service and for other business purposes.
5. Protection of Personal Information. In this Section 5, the following expressions shall have the following meanings: "Controller" shall mean the entity which determines the purposes and means of the processing of Personal Information; "Personal Information" shall mean any information relating to an identified or identifiable natural person; and "Processor" shall mean an entity that processes Personal Information on behalf of a Controller. If and to the extent that data collected by the Service contains any Personal Information, then we will process such

Personal Information only in connection with the performance of the Service and as a Processor acting on behalf of Customer (as Controller). CloudPassage will process any such Personal Information only in accordance with your lawful instructions in connection with use of the Service. We will maintain appropriate technical and organizational measures to protect such Personal Information against unauthorized or unlawful processing and against accidental loss or destruction. You acknowledge and agree that CloudPassage may process such Personal Information at its or its authorized subcontractors' data processing facilities in the U.S.

6. WARRANTY; DISCLAIMER.

- a. CloudPassage warrants that, during the first sixty (60) days of the Term (the "Warranty Period"), the Service will substantially conform to the applicable documentation for such Service and that any media will be free from manufacturing defects in materials and workmanship.
- b. THE PARTIES ACKNOWLEDGE THAT EXCEPT FOR ANY EXPRESS WARRANTIES SET FORTH HEREIN, THE SERVICE IS PROVIDED "AS IS" AND CLOUDPASSAGE HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE SERVICE OR OTHER SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF QUALITY, AVAILABILITY, OR NON-INFRINGEMENT, BUT EXCLUDING ANY APPLICABLE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN ADDITION, CLOUDPASSAGE MAKES NO REPRESENTATION OR WARRANTY THAT THE SERVICE WILL BE ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED OR THAT SERVICE MEETS CUSTOMER'S REQUIREMENTS, EXCEPT IF EXPRESSLY WARRANTED BY CLOUDPASSAGE IN ITS QUOTE.

7. LIMITATION OF REMEDIES AND DAMAGES.

- a. IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUPPLIERS BE LIABLE WITH RESPECT TO THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY, FOR (I) LOSS OR INTERRUPTION OF USE OF THE SERVICES; (II) LOSS OR INACCURACY OR CORRUPTION OF DATA; (III) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, OR TECHNOLOGY; (IV) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES, PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. EXCEPT FOR (I) PAYMENTS DUE IN THE NORMAL COURSE, (II) CLOUDPASSAGE'S LIABILITY ARISING OUT OF ITS INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION OBLIGATION IN SECTION 6, AND (III) CUSTOMER'S OBLIGATIONS UNDER SECTION 3(A), IN NO EVENT SHALL EITHER PARTY'S OR AMOUNTS IN EXCESS OF THE GREATER OF (X) THE AGGREGATE AMOUNT PAID TO CLOUDPASSAGE BY CUSTOMER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE LIABILITY, OR (Y) ONE HUNDRED THOUSAND DOLLARS (\$100,000).

8. Indemnification. We will indemnify, defend and hold you, your affiliates, officers, directors, and employees harmless from any and all costs, damages, liabilities and expenses (including but not limited to, reasonable attorneys' fees) to the extent arising out of or in connection with any claim by an unaffiliated third party that the Services infringe or misappropriate any patent, copyright, trademark or other intellectual property right of such third party (each, an "Infringement Claim"), provided that you: (a) notify us in writing within thirty (30) calendar days of receipt of the Infringement Claim; (b) grant us sole control of the defense and settlement of the Infringement Claim; and (c) provide us (at our expense) with all assistance, information and authority reasonably required for the defense and settlement of the Infringement Claim. In the event of any such Infringement Claim, we may, at our option: (i) obtain a license to permit you to continue using the Service; or (ii) modify or replace the relevant portion(s) of the Service with a non-infringing alternative having substantially equivalent performance within a reasonable period of time, provided that if (i) and (ii) are not available on economically feasible terms, then we will have the right to terminate this Agreement or the applicable Order Form and refund to you any prepaid and unused Fees. Notwithstanding the foregoing, we will have no liability for any Infringement Claim to the extent that it results from: (1) modifications to the Service not made by us or our agents; (2) the combination, operation or use of the Service with equipment, devices, data or software not provided or approved by us, , where the Service itself would not be infringing; (3) your failure to use updated or modified versions of the Service provided by us; (4) our compliance with any specifications or requirements provided by you; or (5) your use of the Service other than in accordance with this Agreement. You shall indemnify and hold us harmless from any Infringement Claim relating to any of the exclusions set forth in the previous sentence. This Section 8 sets forth our sole and exclusive obligations, and your sole and exclusive remedies, with respect to any claim of infringement or misappropriation of intellectual property rights.
9. Term; Termination. Unless earlier terminated in accordance with this Section 9, this Agreement shall commence upon your first use of the Service and shall continue until the end of the Term. Either party may terminate this Agreement by written notice to the other party in the event that such other party materially breaches this Agreement and does not materially cure such breach within thirty (30) days of such notice. In the event of early termination of an Order Form by you for any reason other than our uncured material breach, you shall not be entitled to a refund of any Fees paid and Customer shall pay CloudPassage as liquidated damages and not as a penalty any Fees not prepaid and owed by you at the time of such termination for the remainder of the term set forth in such Order Form. Upon termination, (a) the rights and licenses granted to you hereunder shall terminate; (b) we shall make available for download all System Data and output from the Service that is in our possession, and (c) you shall immediately return, delete or destroy any software you have obtained in connection with the Service (including related documentation), together with any Proprietary Information and all copies and extracts of the foregoing. The rights and obligations of the parties under Sections 2 through 8 will survive the termination or expiration of this Agreement.



10. Miscellaneous.

- a. Neither party may assign its rights or obligations arising under this Agreement without the other party's written consent, and any such attempted assignment or transfer shall be void and without effect; provided that we may assign all of our rights and obligations under this Agreement without your consent to a successor-in-interest in connection with a sale of all or substantially all of our assets or business.
- b. We may utilize subcontractors in providing the Service hereunder; provided that we remain responsible for such subcontractors' performance hereunder.
- c. Neither party will be liable to the other party by reason of any failure or delay in performance because of events beyond its reasonable control, which may include, without limitation, denial-of-service attacks, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, earthquakes, or widespread internet connectivity failures.
- d. Each party shall comply with all applicable laws and government regulations in connection with its exercise of rights or performance of obligations under this Agreement.
- e. The failure of a party to enforce any right or provision of this Agreement will not be deemed a waiver of such right or provision
- f. Any violation or threatened violation of this Agreement by a party which involves the other party's Proprietary Information may cause irreparable harm to the other party, for which there may not be an adequate or reasonably determinable remedy at law, and therefore, upon any such breach or threat thereof, the other party is entitled to seek an injunction and other appropriate equitable relief in addition to whatever remedies it may have at law, without the requirement of posting a bond.
- g. The parties shall be independent contractors under this Agreement, and nothing herein shall constitute either of us as the employer, employee, agent, or representative of the other, or both of us as joint venturers or partners for any purpose.
- h. This Agreement shall be governed by and construed in accordance with Federal law.
- i. In the event that any provision of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision shall be deleted and the remaining provisions shall remain in full force and effect and enforceable. In the event the court or tribunal elects to construe the deleted provision, the Customer, CloudPassage and Reseller shall abide by the order(s) of the court or tribunal.
- j. This Agreement, the terms and conditions of Multiple Award Schedule Contract GS-35F-0119Y, the Government Purchase Order, and all Order Forms (the "Customer-CP Documents") constitute the entire agreement between you and us pertaining to your use of the Service on the subject matter hereof. All modifications to the Customer-CP Documents must be in writing and signed by both parties hereto and specifically state that they modify the Customer-CP Documents.