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.).

CLOUDBOLT SOFTWARE, INC.

END USER LICENSE AGREEMENT

IMPORTANT--READ CAREFULLY: THIS AGREEMENT SETS FORTH THE TERMS AND CONDITIONS FOR THE USE OF THE SOFTWARE LISTED ON THE QUOTE/ORDER FORM. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE, AND YOU MUST DELETE OR DESTROY THE SOFTWARE. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU ACKNOWLEDGE AND AGREE THAT CLOUDBOLT MAY REMOTELY DISABLE THE SOFTWARE.

EVALUATION LICENSE. If You are licensing the Software for evaluation trial, demonstration or proof of concept purposes, or if CloudBolt provides you the Software at no charge, Licensee's use of the Software is only permitted in a non--production environment and for the period limited by the License Key and You acknowledge and agree that the Software is provided "AS--IS" without indemnification, support or warranty of any kind, expressed or implied.

1.0 DEFINITIONS.

1.1 "*CloudBolt*" means CloudBolt Software Inc.

1.2 "*Connector*" means a component of the Software that connects the Software to technologies and resources the Software manages.

1.3 "*Documentation*" means the documentation that is made generally available by CloudBolt to its licensees of the Software and which is provided to Licensee by CloudBolt with the Software, as may be revised by CloudBolt from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on--line help files regarding the use of the Software.

1.4 "*Intellectual Property Rights*" means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

1.5 "*Licensee*" means the entity or individual identified in the Quote/Order Form.

1.6 "*License Key*" means a serial number that enables Licensee to activate and use the Software for the License Term and quantity of Connectors and Servers licensed.

1.7 "*License Type*" means the type of license applicable to the Software, as set forth in the Quote/Order Form. There are two (2) License Types: perpetual and term.

1.8 "*Maintenance and Support*" or "*M&S*" means CloudBolt's maintenance and support services as set forth at http://downloads.cloudboltsoftware.com/docs/legal/SupportAgreement.pdf

1.9 "*Open Source Software*" or "*OSS*" means software components that are licensed under a license approved by the Open Source Initiative ("OSI") or similar open source or freeware license.

1.10 "*Quote/Order Form*" or "*QOF*" means the CloudBolt quotation and/or order form executed by CloudBolt and the Licensee and incorporated herein by reference. The QOF sets forth and identifies the Licensee, the Software, the Connectors, the License Term, License Type, the number of Servers, the fees and other specifics and terms of this Agreement not set forth or identified in the body of this Agreement. Agreement.

1.11 "*Software"* means the object or interpreted code of the computer software listed in the QOF, together with any fixes, updates or other software code relating to the foregoing that is provided to Licensee pursuant to Maintenance and Support and that is not subject to a separate license agreement.

1.12 "*Third Party Agent*" means a third party outsourcer providing information technology services for Licensee's internal use, pursuant to a written contract

1.13 "*Server*" means any physical computer, hardware based device, virtual machine or cloud machine, whether host or guest, that is capable of running an operating system or hypervisor or serves as a software container that can run a virtualized instance of an operating system.

2.0 LICENSE GRANT.

2.1 Scope of License. Subject to the terms and conditions of this Agreement, CloudBolt grants Licensee, a non-exclusive, non-transferable license to use the Software, for Licensee's internal operations in accordance with (a) the Documentation; (b) the License Type listed on the QOF and for which Licensee has paid the applicable fees; (c) the number of Servers and Connectors listed on the QOF and for which have the applicable fees have been paid; and (d) other applicable limitations, if any, set forth in the QOF. Except for the express licenses granted in this Section 2.0, no other licenses are granted by implication, estoppel or otherwise.

2.2 Third Party Agent Use. Subject to the terms and conditions of this Agreement, CloudBolt grants Licensee a non-exclusive, non-transferable license to permit Licensee's Third Party Agents to access, use and/or operate the Software on Licensee's behalf for the sole purpose of delivering outsourcing services to Licensee. Licensee acknowledges and agrees that it is fully responsible for its Third Party Agents' compliance with terms and conditions of this Agreement and that any breach of this Agreement by a Third Party Agent shall be deemed to be a breach by Licensee.

2.3 Permitted Copies. Licensee may make one copy of the Software for archival purposes only. The copy shall: (a) be kept within Licensee's possession or control; (b) include all titles, trademarks, and copyright and restricted rights notices in the original; and (c) be subject to this Agreement. Licensee may not otherwise copy the Software without CloudBolt's prior written consent.

2.4 Open Source Software. CloudBolt may provide OSS with the Software. Any OSS supplied by CloudBolt is included for use at Licensee's option. CloudBolt shall provide information regarding such OSS in accompanying README or text files, in the Documentation, on a web page or by some other reasonable means, as CloudBolt deems appropriate.

2.5 Bursting. At its sole discretion, CloudBolt may provide a License Key that permits a customer to deploy a larger number of Connectors or Servers above the purchased quantity of Connectors or Servers. Licensee warrants that the provided quantity of Connectors or Servers is, to the best of Licensee's knowledge, a true and accurate representation of the actual size of the Licensee's environment. Failure to provide an accurate count or to interfere with the Software's reporting mechanisms is considered a material breach of the Agreement.

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3.0 RESTRICTIONS; OWNERSHIP.

3.1 Restrictions. Licensee acknowledges that the Software and the structure, sequence, organization, user interface and source code of the Software constitute valuable trade secrets of CloudBolt. Accordingly, except as expressly permitted in Section 2 or as otherwise authorized by CloudBolt in writing, Licensee will not and will not permit any third party to: (a) sell, lease, license, distribute, sublicense or otherwise transfer in whole or in part the Software or Documentation to any third party; (b) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part; (c) copy the Software, except for archival purposes, as set out in Section 2.3; (d) circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Software as described in this Agreement; (e) use any Connectors that are not described, or exceed the number of Servers listed, in the QOF; (f) translate, modify or create derivative works based upon the Software; (g) permit any use of or access to the Software by any third party other than Third Party Agents as set forth in Section 2.2; (h) remove any product identification, proprietary, copyright or other notices contained in the Software; (i) operate the Software on behalf of or for the benefit of any third party; including the operation of any service that is accessed by a third party; or (j) benchmark the operation of the Software without CloudBolt's prior written consent.

3.2 Decompilation. Licensee hereby waives any right it may have under any jurisdiction to reverse engineer the Software provided, however, if European Community law is applicable, the restrictions in this Section 3.2 are limited so that they prohibit such activity only to the maximum extent such activity may be prohibited without violating the EC Directive on the Legal Protection of Computer Programs. Notwithstanding the foregoing, prior to any such legally excused decompiling, disassembly or reverse engineering of the Software, Licensee must first issue a written request to CloudBolt for information or assistance and Licensee shall refrain from decompiling, disassembling, or otherwise reverse engineering any of the Software unless CloudBolt cannot, or fails, to comply with such request within a commercially reasonable period of time.

3.3 Ownership. The Software and Documentation, all copies and portions thereof, and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of CloudBolt and its licensors. Licensee's rights to use the Software and Documentation shall be limited to those expressly granted in this Agreement and any applicable QOF. No other rights with respect to the Software or any related Intellectual Property Rights are implied. Licensee is not authorized to use (and shall not permit any third party to use) the Software, Documentation or any portion thereof except as expressly authorized by this Agreement or the applicable QOF.

4.0 ORDERS, PAYMENT.

4.1 If Licensee requires a purchase order to be issued prior to its payment of any invoiced fees, Licensee will provide CloudBolt with the purchase order upon Licensee's execution of the initial QOF and upon Licensee's execution of any subsequent QOF.

4.2 Payment. The fees and charges set forth in the QOF shall be paid in accordance with the terms and conditions of Carahsoft Technology Corporation's GSA Multiple Award Schedule Contract and the Prompt Payment Act. Unless otherwise set forth in the QOF, all fees are due within thirty (30) days of the date of each invoice. All fees are exclusive of any taxes, duties, or similar charges imposed by any government. Licensee shall pay or reimburse CloudBolt for all federal, state, dominion, provincial, or local sales, use, personal property, excise, value added, withholding or other taxes, fees, or duties relating to the transactions contemplated by this Agreement (other than taxes on the net income of CloudBolt). All amounts that are not paid when due shall be subject to a late charge equal to one and one-half percent (1.5%) per month, or, if less, the maximum amount allowed by applicable law.

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5. 0 AUDIT RIGHTS.

5.1 Records. For a period of two (2) years from the expiration or any earlier termination of this Agreement, Licensee agrees to maintain accurate records of the use of the Software sufficient to demonstrate Licensee's compliance with the terms of this Agreement and all QOFs.

5.2 Audit Rights. During the period in which the Licensee is obligated to maintain such records, CloudBolt, or its third party auditor, may, upon reasonable notice to Licensee, audit such records to verify that Licensee has: (a) used the Software solely in the manner authorized herein; (b) paid all applicable fees; and (c) otherwise complied with the terms of this Agreement and all QOFs. Audits will be conducted during normal business hours and CloudBolt will use commercially reasonable efforts to minimize the disruption of Licensee's normal business activities. Licensee agrees to cooperate with CloudBolt and/or its third-party auditor. Carahsoft, acting on behalf of CloudBolt, may invoice Licensee for any underpayments revealed by such audit and for all reasonable costs and expenses incurred by CloudBolt for such audit if: (i) such audit reveals an underpayment by Licensee of more than five percent (5%) of the fees payable by Licensee to CloudBolt for the period audited; or (ii) such audit reveals Licensee has materially failed to maintain accurate records of Licensee's use of the Software.

5.3 Electronic Reporting. When configured to do so, the Software may periodically transmit analytical information and data about how the Software is being used in Licensee's environment. This information consists of only non-attributable, non PCI-regulated data and information, such as the license serial number, the Software's unique identifier, a total count of managed resources or connectors, total count of users, and other pieces of data intended to help CloudBolt improve the Software.

6.0 MAINTENANCE AND SUPPORT.

6.1 M&S. Pricing and Start Date. Provided Licensee has paid the applicable fees and is not otherwise in default of this Agreement, Licensee is entitled to receive Maintenance & Support. Pricing for Maintenance and Support is based upon the level of M&S and the number of Servers and Connectors for which M&S is ordered. Maintenance & Support will start upon CloudBolt's issuance of a License Key and remain in force for the duration of the License Type ("*M&S Start Date*").

6.2 Reinstatement Fees. In the event that Maintenance and Support is not renewed, then upon the commencement of Maintenance and Support, a reinstatement fee will be assessed. The reinstatement fee is equal to: (a) all the back M&S fees that would have been due if M&S had not expired; (b) one year of M&S fees going forward; and (c) an activation charge. The activation charge will be calculated at twenty percent (20%) of the annual go forward M&S fee for the lapsed Software.

6.3 Community Support. Provided Licensee has paid the applicable fees and is not otherwise in default of this Agreement, and subject to compliance with CloudBolt's terms of use, Licensee is entitled to community support and to access CloudBolt's community support portal and knowledge base at no additional charge. Community support is access to CloudBolt's public forum on its support portal where CloudBolt customers are ale to review existing discussions, and registered licensees are able to participate in community discussions related to various aspects of CloudBolt Software. CloudBolt reserves the right to moderate all support forums. Violation of CloudBolt terms of use may result in a user being denied access to CloudBolt community support. The knowledge base is designed to provide 24x7x365 access to comprehensive information on known issues, workarounds, tips and tricks via the community support portal. CloudBolt 's technical team regularly creates timely knowledge base articles to assist customers in the self- investigation and resolution of issues and queries.

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7.0 WARRANTIES.

7.1 Software Warranty. CloudBolt warrants that the Software will, for a period of ninety (90) days following issuance of the License Key ("**Warranty Period**"), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times and in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than CloudBolt or its authorized representative. CloudBolt will, at its own expense and as its sole obligation and Licensee's exclusive remedy for any breach of the foregoing warranty, either replace the applicable Software or correct any reproducible error in the Software reported to CloudBolt by Licensee in writing during the Warranty Period. If CloudBolt determines that it is unable to correct the error or replace the Software, CloudBolt will refund to Licensee the license fees actually paid by for the applicable Software and Licensee's right to use such Software will terminate.

7.2 Maintenance and Support. CloudBolt warrants that Maintenance and Support shall be performed in a professional and workmanlike manner by skilled and proficient personnel.

7.3 Disclaimer of Warranties. Software that is provided to Licensee on a trial, demonstration, product extensions, proof of concept and/or evaluation basis ("**Sample Code**"), and information and Software Maintenance provided by CloudBolt as part of M&S, is provided on an "AS IS", 'WHERE IS" basis, without warranty of any kind, including without limitation any warranties that the Sample Code is free of defects, merchantable, fit for a particular purpose or non-infringing. Licensee bears the entire risk as to the quality and performance of Sample Code. THE EXPRESS WARRANTIES IN SECTION 7.1 AND 7.2 ABOVE IS IN LIEU OF AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CLOUDBOLT AND ITS LICENSORS DISCLAIM, ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE) REGARDING OR RELATING TO THE SOFTWARE, THE DOCUMENTATION, M&S OR ANY OTHER MATERIALS OR SERVICES FURNISHED, PROVIDED OR OTHERWISE MADE AVAILABLE. CLOUDBOLT AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED. THAT IT WILL BE FREE FROM DEFECTS, THAT ALL ERRORS WILL BE CORRECTED OR THAT THE SOFTWARE WILL MEET (OR IS DESIGNED TO MEET) LICENSEE'S BUSINESS REQUIREMENTS.

8.0 INDEMNIFICATION.

8.1 Indemnification by CloudBolt. CloudBolt will, at its expense, defend or settle and will hold Licensee harmless from any claim, action or allegation brought against Licensee that the Software and Documentation provided by CloudBolt infringes any US or EU copyright or trade secret ("**Claim**") and will pay any final judgments awarded or settlements entered into, provided that Licensee notifies CloudBolt in writing within thirty (30) days of the discovery of any such Claim, and gives CloudBolt the authority to proceed as contemplated herein. CloudBolt will have the right to participate in the defense of any such Claim and make settlements thereof at its own discretion, and Licensee may not settle or compromise such Claim, except with prior written consent of CloudBolt. Licensee will give such assistance and information as CloudBolt may reasonably require to settle or defend all Claims. In the event any such Claim is brought or threatened, or if in the opinion of CloudBolt is likely to become, the subject of a Claim, CloudBolt may, at its sole option and expense: (a) procure for Licensee the right to continue to use the Software or infringing part thereof; (b) modify or amend the Software or infringing part thereof, or replace the Software or infringing part thereof with other software having substantially the same or better capabilities; or (c) if neither of the foregoing is commercially practicable, CloudBolt may terminate the license and this Agreement with respect to the infringing part of the Software.

8.2 Exclusions. CloudBolt will have no obligation or liability under Section 8.1 for any Claim based on: (a) any unauthorized use or reproduction of the Software or Documentation by the Licensee; (b) use of other than the most recent update of the Software if infringement could have been avoided by use

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of the most current release to the extent that the most recent release has been provided to the Licensee; (c) use of the Software in combination with products, equipment, software or data not provided by CloudBolt, if such infringement would have been avoided in the absence of such combination; (d) compliance by CloudBolt with specifications or instructions supplied by Licensee; (e) use or incorporation in the Software of any design, technique or specification supplied by Licensee if the infringement would not have occurred but for such use or incorporation; (f) modification of the Software by the Licensee or a third party; and (g) Sample Code or Open Source Software. The provisions of Section 8.1 and 8.2 state CloudBolt's entire liability and Licensee's sole and exclusive remedy for any violation or infringement of Intellectual Property Rights.

9. 0 LIMITATION OF LIABILITY.

9.1 Limitation of Liability. IN NO EVENT SHALL CLOUDBOLT BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, LOSS OF USE, LOSS OF DATA, COMPUTER FAILURE OR MALFUNCTION, HOWEVER CAUSED, AND WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY, EVEN IF CLOUDBOLT HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES. IN NO EVENT SHALL CLOUDBOLT'S CUMULATIVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR LICENSEE'S USE OF THE SOFTWARE EXCEED THE AMOUNT OF LICENSE FEES RECEIVED BY CLOUDBOLT FROM LICENSEE PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE CONSIDERATION EXCHANGED HEREUNDER IS BASED IN PART UPON THE ABOVE LIMITATIONS, AND FURTHER AGREE THAT SUCH LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
9.2 Further Limitations. CloudBolt's licensors shall have no liability of any kind under this Agreement and CloudBolt's liability with respect to any third party software embedded in the Software shall be subject to Section 9.1.

10.0 TERMINATION.

10.1 License Term. This Agreement shall commence on the date CloudBolt issues the first License Key to Licensee and shall continue for the duration of the License Type, unless terminated earlier as set forth in Section 10.2.

10.2 Termination for Breach. CloudBolt may terminate this Agreement in its entirety effective immediately upon written notice to Licensee if: (a) Licensee is in breach any provision in Section 2.0 or 3.0 and does not cure the breach within ten (10) days after receiving written notice thereof from CloudBolt; (b) Licensee fails to pay any portion of the fees under an applicable QOF within ten (10) days after receiving written notice from CloudBolt that payment is past due; (c) Licensee is in breach of any other provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from CloudBolt; or (d) Licensee commits a material breach that is not capable of being cured. Notwithstanding the foregoing, termination of this Agreement shall be in accordance with General Services Administration Regulation (GSAR) 552.212-4(m) Termination for Cause, GSAR 552.212-4(d) Disputes, and the Contract Disputes Act.

10.3 Termination for Insolvency. CloudBolt may terminate this Agreement in its entirety effective immediately upon written notice to Licensee if Licensee: (a) terminates or suspends its business; (b) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors; or becomes subject to any bankruptcy or insolvency proceeding or the control of a trustee, receiver or similar authority.

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10.4 Effect of Termination. Licensee acknowledges and agrees that that if CloudBolt has the right to terminate this Agreement, CloudBolt may do so remotely through the use of the License Key or by other means. In the event of termination of this Agreement, Licensee acknowledges and agrees that CloudBolt shall not be liable to Licensee because of such termination for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases or commitments in connection with Licensee's business or goodwill. If CloudBolt terminates this Agreement under this Section 10: (a) all license rights to all Software granted to Licensee under this Agreement will immediately cease to exist; and (b) Licensee must promptly discontinue all use of all Software, and (destroy all copies of the Software and all License Key(s)) and return, or if requested by CloudBolt, destroy, any related CloudBolt Confidential Information in Licensee's possession or control and certify in writing to CloudBolt that Licensee has fully complied with these requirements. Sections 1 (Definitions), 2.4 (Open Source Software), 3.0 (Restrictions; Ownership), 5.1 (Records), 5.2 (Audit Rights), 7.2 (Disclaimer of Warranties), 9.0 (Limitation of Liability), 10.0 (Termination), 11.0 (Confidential Information) and 12.0 (Miscellaneous) will any survive termination of this Agreement.

11.0 CONFIDENTIAL INFORMATION. "*Confidential Information*" shall mean the Software, the Documentation and all technical and other business information of CloudBolt that are marked as confidential in writing or, if disclosed orally, is identified as confidential at the time of disclosure or is of an inherently confidential nature such that a reasonable person would know the information is confidential. Licensee shall not use such Confidential Information except in the exercise of the licenses granted in Section 2.0 herein, and shall not to disclose such Confidential Information to any third party. Without limiting the foregoing, Licensee shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by CloudBolt under this Agreement. Licensee agrees that it will make Confidential Information available only on a "need to know" basis and only to its employees and representatives who are bound in writing to protect the confidentiality of such Confidential Information. Licensee shall promptly notify CloudBolt of any actual or suspected misuse or unauthorized disclosure of Confidential Information, and, upon the request, shall promptly return all copies of Confidential Information within its possession or control. Notwithstanding the foregoing, Licensee shall have no liability to CloudBolt with regard to any Confidential Information which Licensee can demonstrate: (a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Licensee; (b) was known to Licensee without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (c) was disclosed with the prior written approval of CloudBolt; (d) was independently developed by Licensee without any use of the Confidential Information, as demonstrated by files created at the time of such independent development; or (e) is required to be disclosed by law or pursuant to the order or requirement of a court, administrative agency or other governmental body; provided that Licensee provides prompt written notice thereof to CloudBolt to enable it to seek a protective order or otherwise prevent or restrict such disclosure.

12.0 MISCELLANEOUS.

12.1 Force Majeure. Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquakes, fire and explosions, but the inability to meet financial obligations is expressly excluded. In addition, Licensee is aware that: (a) the Software is based on a portfolio of third party technology products, industry standards and/or official standards; and (b) the hypervisors, server automation software, hardware, framework software and storage and network software that the abstraction layer of the Software that connects to; are constantly evolving and changing or may be even be succeeded by yet unknown new products or techniques. Therefore performance interruptions or incompatibilities due to such cause(s) are excluded from any liability of CloudBolt to Licensee and are a form of force majeure.

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12.2 Waiver. Any waiver of the provisions of this Agreement or any agreement related to this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or agreement related to this Agreement, or its rights or remedies at any time will not be construed nor deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action.

12.3 Applicable Law and Jurisdiction. This agreement will be governed by and interpreted in accordance with United States Federal laws. The parties acknowledge and agree that this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

12.4 Severability. If any term, condition, or provision in this Agreement or Agreement is found to be invalid, unlawful or unenforceable to any extent, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

12.5 Independent Parties. The parties will at all times be independent parties and will present themselves to all other parties as such. Nothing in this Agreement will be construed to make either party, and each party agrees that it is not an agent, employee, franchisee, joint venture or legal representative of the other party. Each party hereto is an independent contractor. A party does not have, and shall not represent itself to have, any authority to bind the other party or act on its behalf.

12.6 Compliance with Laws; Export Control; Government Regulations. Each party shall comply with all laws applicable to the actions contemplated by this Agreement. Licensee acknowledges that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. Licensee represents that: (a) it is not, and is not acting on behalf of: (i) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (ii) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (b) it will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by the U.S. Government shall be governed solely by the terms and conditions of this Agreement.

12.7 Notices. Any notices required or permitted under the terms of this Agreement or required by law will (unless otherwise provided) be in writing and will be delivered in person, or send by registered mail or fax to the respective contact persons indicated in the QOF, as may be updated from time to time upon notification by one party to the other party. Any such notice will be considered to have been given at the time of actual delivery in person or, if sent by fax, at the time mentioned on the transmission result report, or within five (5) days after it was mailed in the manner specified above.

12.8 High Risk Activities. The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Accordingly, CloudBolt and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities. Licensee assumes all risk of loss or damage for use of the Software in High Risk Activities.

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12.9   Feedback. In connection with M&S, the CloudBolt knowledge base, community forum(s) or Licensee's use of the Software, Licensee may provide suggestions, enhancement requests, recommendations or other feedback ("*Feedback*"). Licensee hereby grants to CloudBolt a non-exclusive, transferable, sublicensable, world-wide, perpetual, royalty-free, irrevocable license to reproduce, create derivative works from, distribute, perform, display and otherwise use Feedback (including, but not limited to, incorporating it into the Software) and without any confidentiality obligation in any manner whatsoever.

12.10 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 or rely on any exclusion or limitation contained in it.

12.11 Entire Agreement, Order of Precedence. This Agreement and the terms and conditions of Carahsoft Technology Corporation's GSA Multiple Award Schedule Contract (including all Quote/Order Forms, which are incorporated herein by reference), constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral or written communications between the parties relating in any way to the subject matter hereof. In the event of a conflict between the terms of this Agreement, a Government Purchase Order, and a QOF, the conflict shall be resolved in accordance with GSAR 552.212-4(s) Order of Precedence.