

**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.).

Contrast Security Enterprise Terms of Service SaaS

These Contrast Security Enterprise Terms of Service (the “Agreement”) are entered into as of the date set forth in the Order Form or similar document (the “Effective Date”) by and between Contrast Security, Inc. (“Contrast”) and the Government Ordering Activity (“Customer”).

1. Order Forms; Access to the Service. Contrast and Customer may mutually execute one or more written order forms which reference this Agreement (each, an “Order Form”), and upon mutual execution, each Order Form shall be incorporated into and form a part of the Agreement. Subject to Customer’s compliance with the terms and conditions of this Agreement (including any limitations and restrictions set forth on the applicable Order Form) Contrast grants Customer the right to access and use the services specified in each Order Form (collectively, the “Service,” or “Services”) during the applicable Order Form Term (as defined below) for the internal business purposes of Customer, only as provided herein and only in accordance with Contrast’s official user documentation set forth at www.contrastsecurity.com/support (the “Documentation”). Customer may only use the Service to manage and analyze the maximum aggregate number of Applications (as defined below) set forth on the applicable Order Form, and once Customer has used the Service to manage or analyze a particular Application, that Application will permanently count toward the number of maximum allowable Applications, and may not be replaced by another Application. For purposes of this Agreement, “Application” shall have the meaning set forth at www.contrastsecurity.com/appdefinition.

2. Support; Service Levels. Contrast will provide support and uptime for the Service in accordance with (i) the support package selected by Customer on the applicable Order Form (if any), and (ii) Contrast’s then-current standard Support and Availability Policy set forth at www.contrastsecurity.com/tos.

3. Service Updates. From time to time, Contrast may provide upgrades, patches, enhancements, or fixes for the Services to its customers generally without additional charge (“Updates”), and such Updates will become part of the Services and subject to this Agreement. Notwithstanding the foregoing, Contrast shall have no obligation under this Agreement or otherwise to provide any such Updates.

4. Ownership; Restrictions; Feedback. As between the parties, Contrast retains all right, title, and interest in and to the Services, and all software, products, works, and other intellectual property and moral rights related thereto or created, used, or provided by Contrast for the purposes of this Agreement, including any copies and derivative works of the foregoing. Any software which is distributed or otherwise provided to Customer hereunder shall be deemed a part of the “Services”. No rights or licenses are granted except as expressly and unambiguously set forth in this Agreement. Customer may from time to time provide suggestions, comments or other feedback to Contrast with respect to the Service (“Feedback”). Feedback, even if designated as confidential by Customer, shall not create any confidentiality obligation for Contrast notwithstanding anything else. Customer shall, and hereby does, grant to Contrast a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and exploit the Feedback for any purpose; provided that such license grant shall not be construed to relieve Contrast of any confidentiality obligations it may have hereunder with respect to Customer Data. Nothing in this Agreement will impair Contrast’s right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with any products, software or technologies that Customer may develop, produce, market, or distribute.

5. Fees; Payment. Customer shall pay Contrast fees for the Service as set forth in each Order Form (“Fees”). Unless otherwise specified in an Order Form, all Fees shall be invoiced annually in advance and all invoices issued under this Agreement are payable in U.S. dollars within thirty (30) days from date of invoice. Past due invoices are subject to interest on any outstanding balance of the lesser of 1.5% per month or the maximum amount permitted by law. Customer shall be responsible for all taxes associated with Service other than taxes based on Contrast’s net income. All Fees paid are non-refundable and are not subject to set-off.

6. Restrictions. Except as expressly set forth in this Agreement, Customer shall not (and shall not permit any third party to), directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the

source code, object code, or underlying structure, ideas, or algorithms of the Service (except to the extent applicable laws specifically prohibit such restriction); (ii) modify, translate, or create derivative works based on the Service; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Service; (iv) use the Service for the benefit of a third party; (v) remove or otherwise alter any proprietary notices or labels from the Service or any portion thereof; (vi) use the Service to build an application or product that is competitive with any Contrast product or service. Customer is responsible for all of Customer's activity in connection with the Service, including but not limited to uploading Customer Data (as defined below) onto the Service. Customer (i) shall use the Service in compliance with all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Service (including those related to data privacy, international communications, export laws and the transmission of technical or personal data laws), and (ii) shall not use the Service in a manner that violates any third party intellectual property, contractual or other proprietary rights. Additionally, Customer shall not: (i) interfere or attempt to interfere with the proper working of the Service or any activities conducted on the Service; or (ii) bypass any measures Contrast may use to prevent or restrict access to the Service (or other accounts, computer systems or networks connected to the Service).

7. Customer Data. For purposes of this Agreement, "Customer Data" shall mean any data, information or material provided, uploaded, or submitted by Customer to the Service in the course of using the Service. Customer shall retain all right, title and interest in and to the Customer Data (as defined below), including all intellectual property rights therein. Customer, not Contrast, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data. Contrast shall use commercially reasonable efforts to maintain the security and integrity of the Service and the Customer Data. Contrast is not responsible to Customer for unauthorized access to Customer Data or the unauthorized use of the Service unless such access is due to Contrast's gross negligence or willful misconduct. Customer is responsible for the use of the Service by any person to whom Customer has given access to the Service, and any person who gains access to Customer Data, even if Customer did not authorize such use. Customer agrees and acknowledges that Customer Data may be irretrievably deleted if Customer's account is ninety (90) days or more delinquent. Notwithstanding anything to the contrary, Customer acknowledges and agrees that Contrast may (i) internally use and modify (but not disclose) Customer Data for the purposes of (A) providing the Service to Customer and (B) generating Aggregated Anonymous Data, and (ii) freely use and make available Aggregated Anonymous Data for Contrast's business purposes. "Aggregated Anonymous Data" means data submitted to, collected by or generated by Contrast in connection with Customer's use of the Service, but only in aggregate, anonymized form which can in no way be linked specifically to Customer. Customer shall own and hereby reserves all right, title and interest in the Customer Data.

8. Term; Termination. This Agreement shall commence on the Effective Date and, unless earlier terminated in accordance herewith, shall last until the expiration of the term set forth on the applicable Order Form (the "Initial Term"). Following the Initial Term, this Agreement shall automatically renew for successive renewal terms of equal length to the Initial Term (each a "Renewal Term," and together with the Initial Term, the "Order Form Term"), unless either party provides the other party with written notice of non-renewal at least thirty (30) days prior to the then-current term. In the event of a material breach of this Agreement by the either party, the non-breaching party may terminate this Agreement by providing written notice to the breaching party, provided that the breaching party does not materially cure such breach within thirty (30) days of receipt of such notice. Without limiting the foregoing, Contrast may suspend or limit Customer's access to or use of the Service if (i) Customer's account is more than sixty (60) days past due, or (ii) Customer's use of the Service results in (or is reasonably likely to result in) damage to or material degradation of the Service which interferes with Contrast's ability to provide access to the Service to other customers; provided that in the case of subsection (ii): (a) Contrast shall use reasonable good faith efforts to work with Customer to resolve or mitigate the damage or degradation in order to resolve the issue without resorting to suspension or limitation; (b) prior to any such suspension or limitation, Contrast shall use commercially reasonable efforts to provide notice to Customer describing the nature of the damage or degradation; and (c) Contrast shall reinstate Customer's use of or access to the Service, as applicable, if Customer remediates the issue within thirty (30) days of receipt of such notice. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, accrued payment obligations, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

9. Indemnification. Each party (“Indemnitor”) shall defend, indemnify, and hold harmless the other party, its affiliates and each of its and its affiliates’ employees, contractors, directors, suppliers and representatives (collectively, the “Indemnitee”) from all liabilities, claims, and expenses paid or payable to an unaffiliated third party (including reasonable attorneys’ fees) (“Losses”), that arise from or relate to any claim that (i) the Customer Data or Customer’s use of the Service (in the case of Customer as Indemnitor), or (ii) the Service (in the case of Contrast as Indemnitor), infringes, violates, or misappropriates any third party intellectual property or proprietary right. Each Indemnitor’s indemnification obligations hereunder shall be conditioned upon the Indemnitee providing the Indemnitor with: (i) prompt written notice of any claim (provided that a failure to provide such notice shall only relieve the Indemnitor of its indemnity obligations if the Indemnitor is materially prejudiced by such failure); (ii) the option to assume sole control over the defense and settlement of any claim (provided that the Indemnitee may participate in such defense and settlement at its own expense); and (iii) reasonable information and assistance in connection with such defense and settlement (at the Indemnitor’s expense). The foregoing obligations of Contrast do not apply with respect to the Service or any information, technology, materials or data (or any portions or components of the foregoing) to the extent (i) not created or provided by Contrast, (ii) made in whole or in part in accordance to Customer specifications, (iii) modified after delivery by Contrast, (iv) combined with other products, processes or materials not provided by Contrast (where the alleged Losses arise from or relate to such combination), (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) Customer’s use of the Service is not strictly in accordance herewith.

10. Warranty; Disclaimer. Contrast represents and warrants that, during the applicable Order Form Term, the Service will operate in substantial conformance with the Documentation. As Customer’s sole remedy (and Contrast’s sole liability) for any breach of the warranty set forth in the foregoing sentence, Contrast shall use commercially reasonable efforts to correct the applicable nonconformance. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICE IS PROVIDED “AS IS” AND “AS AVAILABLE” AND ARE WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE, USAGE OF TRADE, OR COURSE OF DEALING, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

11. Limitation of Liability. EXCEPT FOR THE PARTIES’ INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY, NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) THE FEES PAID (OR PAYABLE) BY CUSTOMER TO CONTRAST HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO A CLAIM HEREUNDER.

12. Miscellaneous. This Agreement and the terms and conditions of Carahsoft Technology Corporation’s Multiple Award Schedule Contract represents the entire agreement between Customer and Contrast with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between Customer and Contrast with respect thereto. The Agreement shall be governed by and construed in accordance with federal law. All notices under this Agreement shall be in writing and shall be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Notices must be sent to the contacts for each party set forth on the most recent Order Form. Either party may update its address set forth above by giving notice in accordance with this section. Except as otherwise provided herein, this Agreement may be amended only by a writing executed by GSA, Carahsoft Technology Corporation, and Contrast. Except for payment obligations, neither party shall be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond such party’s reasonable control, including, without limitation, the elements; fire; flood; severe weather; earthquake; vandalism; accidents; sabotage; power failure; denial of service attacks or similar attacks; Internet failure; acts of God and the public enemy; acts of war; acts of terrorism; riots; civil or public disturbances; strikes lock-outs or labor disruptions; any laws, orders,

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rules, regulations, acts or restraints of any government or governmental body or authority, civil or military, including the orders and judgments of courts. Neither party may assign any of its rights or obligations hereunder without the other party's consent; provided that (i) either party may assign all of its rights and obligations hereunder without such consent to a successor-in-interest in connection with a sale of substantially all of such party's business relating to this Agreement, and (ii) Contrast may utilize subcontractors in the performance of its obligations hereunder. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. The failure of either party to act with respect to a breach of this Agreement by the other party shall not constitute a waiver and shall not limit such party's rights with respect to such breach or any subsequent breaches.