

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

NetAbstraction

End User's Agreement

This Agreement is between the party accepting this agreement and Cutting Edge Consulting Associates (Cutting Edge) and consists of the below terms and conditions, the Terms of Use Policy, and the pricing and related terms established within the Subscription contract. It is effective on the date of the subscription agreement and the authorized subscription user's access to the NetAbstraction (NetA) capabilities (Service). Key terms are defined in Section 10.

1. Use of Services.

- a. **Right to use.** We grant you the right to access and use the Service and to install and use Software included with your Subscription, as further described in this agreement. We reserve all other rights.
- b. **Manner of use.** You may use the Service only in accordance with this agreement. You may not reverse engineer, decompile, disassemble or work around the technical architecture of the Service. You may not disable, tamper with or otherwise attempt to circumvent any billing mechanism that meters your use of the Service. You may not rent, lease, lend, resell, transfer, or sublicense any Service capability to or for third parties without the express written agreement of Cutting Edge.
- c. **End Users.** You control access by your End Users, and you are responsible for their use of the Service in accordance with this agreement. For example, you will ensure End Users comply with the Terms of Use Policy.
- d. **Customer Data.** You are solely responsible for the content of your User Data. You will not violate the rights of any third party, or otherwise obligate Cutting Edge to you or to any third party. Cutting Edge does not and will not accept any obligations set forth in any separate license or other agreement that may apply to Customer Data or your use of the Service.
- e. **Non-Cutting Edge Products.**
 - i. We may make Non-Cutting Edge Products available to you through the Portal or other means. The use of a Non-Cutting Edge Product will be governed by separate terms between you and the third party providing that Product. For your convenience, Cutting Edge may include charges for the Non-Cutting Edge Product as part of your bill for the Services. Cutting Edge, however, assumes no responsibility or liability whatsoever for the third part Product.
 - ii. You are solely responsible for any third party Product that you install or use with the Service. We are not a party to and are not bound by any terms governing your use of third party Products.
 - iii. If you install or use any third party Product with the Service, then you, not Cutting Edge, direct and control the installation and use of it in the Service through your actions (for example, through your use of application programming interfaces and other technical means that are part of the Services). We will not run

or make any copies of any third party Product outside of our relationship with you.

- iv. If you install or use any third party Product with the Service, you may not do so in any way that would subject our intellectual property or technology to obligations beyond those included in this agreement.
- f. **Responsibility for your accounts.** You are responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of the Service. You must promptly notify our customer support team about any possible misuse of your accounts or authentication credentials, or any security incident related to the Services.
- g. **Updates.** With your written consent, we may make changes to the Service from time to time. We will provide you with advance notice before removing any material feature or functionality, unless security, legal or system performance considerations require an expedited removal.

2. Security, privacy, and data protection.

- a. **Security.** We maintain appropriate technical and organizational measures, internal controls, and data security routines intended to protect Customer Data against accidental loss or change, unauthorized disclosure or access, or unlawful destruction.
- b. **Privacy and data location.** We treat Customer Data in accordance with our Privacy Statement. Subject to any restrictions set forth in the Subscriber agreement and our Privacy Statement, we may transfer to, store, and process Customer Data in any country where we or our Affiliates or subcontractors have facilities used for our Service. We are a data processor (or sub-processor) acting on your behalf, and you appoint us to do these things with Customer Data in order to provide the Service to you. You will obtain any necessary consent from End Users or others whose personal information or other data you will be hosting via our Service.
- c. **Ownership of Customer Data.** Except for Software we license to you, as between the parties, you retain all right, title and interest in and to Customer Data. We acquire no rights in Customer Data, other than the right to host and reproduce Customer Data solely for hosting purposes, if hosting is mutually agreed.
- d. **Use of Customer Data.** We will use Customer Data only to provide you Service. This use may include troubleshooting to prevent, find and fix problems with the operation of the Service. It may also include improving features for finding and protecting against threats to users. We will not use Customer Data or derive information from it for any advertising or other commercial purposes without your consent.
- e. **Third party requests.** We will not disclose Customer Data to a third party (including law enforcement, other government entity, or civil litigant; excluding our subcontractors) except as you direct or unless required by law. Should a third party contact us with a demand for Customer Data, we will ask the third party to contact you directly and may provide your basic contact information to the third party. If compelled to disclose Customer Data to a third party, we will use commercially reasonable efforts to notify you in advance of a disclosure unless legally prohibited. You are responsible for responding to requests by a third party regarding your use of our Service, such as a request to take down content under the Digital Millennium Copyright Act.

- f. **Subcontractors.** We may hire other companies to provide limited services on our behalf, such as customer support. Any such subcontractors will be permitted to obtain Customer Data only to deliver the services we have retained them to provide, and they are prohibited from using Customer Data for any other purpose. We remain responsible for our subcontractors' compliance with the obligations set forth in this agreement.
- g. **Compliance with law.** We will comply with all laws applicable to our provision of the Service, including applicable security breach notification laws, but not including any laws applicable to you or your industry that are not generally applicable to information technology services providers. You will comply with all laws applicable to your use of the Services, including any laws applicable to you or your industry.

3. Purchasing Service.

- a. **Available Offers.** Cutting Edge provides pricing and related terms for available Subscription offers, which generally can be categorized as one or a combination of the following:
 - i. **Commitment Offering.** You commit in advance to purchase a specific quantity of Service for use during a Term and pay upfront or on a periodic basis during the Term in advance of use. Additional or other usage (for example, usage beyond your commitment quantity) may be billed like a Consumption Offering.
 - ii. **Consumption Offering (also known as Pay-As-You-Go).** You pay based on actual usage in the preceding month with no upfront commitment. Payment is on a periodic basis in arrears.
 - iii. **Limited Offering.** You receive a limited quantity of Service for a limited term without charge (for example, a free trial). Provisions in this agreement with respect to pricing, cancellation fees, payment, and data retention may not apply.
- b. **Ordering.** You may place orders for your Affiliates under this agreement and grant your Affiliates administrative rights to use the Service, but Affiliates may not place orders under this agreement. If you grant any rights to Affiliates, such Affiliates shall be bound by this agreement and you agree to be jointly and severally liable for any actions of such Affiliates related to their use of the Service.
- c. **Pricing and payment.** Payments are due and must be made according to the pricing and related terms for your Subscription.
 - i. For Commitment Offerings, the price level may be based on the quantity you ordered. Some offers may permit you to modify the quantity ordered during the Term and your price level may be adjusted accordingly, but price level changes are not retroactive. During the Term, we will not increase prices for the commitment portion of your Subscription from those agreed at the time your order is first placed. All prices are subject to change at the beginning of any Subscription renewal.
- d. **Renewal.** Renewal is subject to the renewal terms for your Subscription.
 - i.
 - ii. For Limited Offerings, renewal may not be permitted.
- e. **Taxes.** Notwithstanding anything in this Agreement to the contrary, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Cutting Edge shall state

separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 “State and Local Taxes” (Apr 1984) and FAR 52.229-3 “Federal, State and Local Taxes” (Feb 2013).

4. Term, termination, and suspension.

- a. **Agreement Term and termination.** This agreement will remain in effect unless you terminate it.

Subscription Term and termination. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the exceptions stated in the attached rider.***5. Warranties.***

- a. **Limited warranty.** We warrant that the Service will meet the terms of the SLAs during the Term. Your only remedies for breach of this warranty are those in the SLAs.
- b. **Limited warranty exclusions.** This limited warranty is subject to the following limitations:
 - i. any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
 - ii. this limited warranty does not cover problems caused by accident, abuse or use of the Service in a manner inconsistent with this agreement, or resulting from events beyond our reasonable control;
 - iii. this limited warranty does not apply to problems caused by the failure to meet minimum system requirements; and
 - iv. this limited warranty does not apply to free offerings.
- c. **DISCLAIMER.** OTHER THAN THIS WARRANTY, WE PROVIDE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THESE DISCLAIMERS WILL APPLY TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW.

6. Defense of claims.

- a. **Defense.** We will defend you against any claims made by an unaffiliated third party that the Service infringes its patent, copyright or trademark or makes unlawful use of its trade secret. You will defend us against any claims made by an unaffiliated third party that (1) any of your Affiliates activities or Customer Data you provide directly or indirectly in using the Service infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret or (2) arise from violation of the Terms of Use Policy.
- b. **Limitations.** Our obligations in subsection 6(a) will not apply to a claim or award based on: (1) Customer Data, use of third party Products, modifications you make to our Service, or materials you provide or make available as part of using the Service; (2) your combination of our Service with, or damages based upon the value of, a third party

product, data or business process; (3) your use of our trademark without our express written consent, or your use of the Service after we notify you to stop due to a third-party claim; or (4) your redistribution of the Service to, or use for the benefit of, any unaffiliated third party.

- c. **Remedies.** If we reasonably believe that a claim under subsection 6(a) may bar your use of the Service, we will seek to: (1) obtain the right for you to keep using it; or (2) modify or replace it with a functional equivalent. If these options are not commercially reasonable, we may terminate your rights to use the Service and then refund any advance payments for unused Subscription rights.
- d. **Obligations.** Each party must notify the other promptly of a claim under this Section 6. The party seeking protection must (1) give the other sole control over the defense and settlement of the claim; and (2) give reasonable help in defending the claim. The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment (or settlement that the other consents to). The parties' respective rights to defense and payment of judgments or settlements under this Section are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law rights.
- e. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

7. Limitation of liability.

- a. **Limitation.** The aggregate liability of each party under this agreement is limited to direct damages up to the amount paid under this agreement for the Service giving rise to that liability during the 12 months before the liability arose, or for Service provided free of charge, Five Thousand United States dollars (\$5,000.00 USD).
- b. **EXCLUSION.** NEITHER PARTY WILL BE LIABLE FOR LOSS OF REVENUE OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, EVEN IF THE PARTY KNEW THEY WERE POSSIBLE.
- c. **Exceptions to Limitations.** The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 6 or subsection 9(n); or (2) violation of the other's intellectual property rights.

8. Software.

- a. **Software provided for use on devices.** If Software is provided to you with its own proprietary license terms, those terms control. If the Software does not have its own license terms, then you may install and use any number of copies of Software on your devices for use with Services. This Section does not apply to Software addressed in subsection 8(b).
- b. **Software provided for use within Service.** We may provide you with the option of running Software within the Service (for example, in a virtual machine). Your use of the

Software is subject to our proprietary license terms contained in the Software, as modified below:

- i. You may use such Software only within the Service and only in conjunction with your permitted use of any applicable Service role. To the extent of any conflict between this paragraph and the proprietary license terms contained in the Software, this paragraph controls.
- ii. You have no other rights under the Software's license terms or under this agreement to run the software (for example, you may not run copies on your on-premise servers or other devices unless you separately obtain the license to do so).
- c. **Effect of termination or expiration on Software.** If this agreement or a Subscription is terminated or expires and you do not exercise an available buy-out option for Software, then you must delete all copies of Software licensed under this agreement and destroy any associated media.
- d. **Other rights.** Rights to access Software on any device do not give you any right to implement our patents or other Cutting Edge intellectual property in software or devices that access that device.
- e. **Third party software.** Software may contain third party proprietary programs that are licensed under separate terms that are presented to you. Software may also contain third party open source programs that we, not the third party, licenses to you under our license terms. Notices, if any, for the third party open source programs are included for your information only.

9. *Miscellaneous.*

- a. **Notices.** You must send notices by mail to the address below.

Notices should be sent to:	Copies should be sent to:
Cutting Edge CA	NetAbstraction
3901 Centerview Drive, Suite F	3901 Centerview Drive, Suite F
Chantilly, VA 20151	Chantilly, VA 20151
USA	USA
Email: Info@cuttingedgeca.com	Email: Info@netabstraction.com

You agree to receive electronic notices from us, which will be sent by email to the account administrator you specified in the subscription agreement. Notices are effective on the date on the return receipt or, for email, when sent.

- b. **Assignment.** You may not assign this agreement either in whole or in part.
- c. **Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.
- d. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.

- e. **No agency.** We are independent contractors. This agreement does not create an agency, partnership or joint venture.
- f. **No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.
- g. **Applicable law and venue.** This agreement is governed by the federal laws of the United States, without regard to its conflict of laws principles except that (1) if you are a U.S. Government entity, this agreement is governed by the laws of the United States, and (2) if you are a state or local government entity in the United States, this agreement is governed by the laws of that state. Any action to enforce this agreement must be brought in the State of Virginia. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.
- h. **Entire agreement.** This agreement (which includes the Terms of Use Policy, the Services Terms, and the pricing and payment terms listed in the subscription agreement) , the underlying GSA Schedule Contract, the Schedule Pricelist and any applicable Orders, including all exhibits and attachments, if any, constitute the entire agreement concerning its subject matter and supersedes any prior or concurrent communications.
- i. **Survival.** The following provisions will survive this agreement's termination or expiration: 1c-f, 2b-g, 3e, 4a-c, 5-7, 8c, and 9-10. This agreement will remain in effect for any Subscription term.
- j. **U.S. export jurisdiction.** The Service is subject to U.S. export jurisdiction. You must comply with all applicable laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments
- k. **International availability.** Availability of the Service, including specific features and possible language versions, varies by country. Information on availability is available from Cutting Edge as part of the subscription agreement offering.
- l. **Acquired rights.**
- m. **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond its reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Service). This section will not, however, apply to your payment obligations under this agreement.
- n. **Modifications.**

10. Definitions.

Any reference in this agreement to "day" will be a calendar day.

"Terms of Use Policy" lists prohibited uses of the Service, and is published on our website or at an alternate site that we identify.

"Affiliate" means a designated subscriber user or any legal entity that a party owns or that owns a party, with a 50% or greater interest.

"Consumption Offering", "Commitment Offering", or "Limited Offering" describe categories of Subscription offers and are defined in Section 3.

"Customer Data" means all data, including all text, sound, software, or image files that are provided to us by, or on behalf of, you through your use of the Service

"End User" means any user of the Service, or any person permitted by you to access Customer Data hosted via the Service or otherwise use the Service.

"Non-Cutting Edge Product" is any software, data, service, website or other product licensed, sold or otherwise provided to you by an entity other than us, whether you obtained it via our Service or elsewhere.

"Privacy Statement" means Cutting Edge/NetAbstraction Privacy Statement, published on our website or at an alternate site that we identify.

"Service" means one or more of the NetAbstraction services or features made available to you under this agreement by Cutting Edge.

"Subscription" means an enrollment for Service for a defined Term as specified in the subscription contract. You may purchase multiple Subscriptions, which may be administered separately.

"Term" means the duration of a Subscription (for example, 30 days or 12 months).

"we" and "us" means Cutting Edge and its affiliates, as appropriate.

"you" and "your" means the entity signing this agreement to use the Service.

Terms of Use

This Terms of Use Policy (this “**Policy**”) describes prohibited uses of the web services accessed via NetAbstraction or its affiliates. The examples described in this Policy are not exhaustive. We, or our service providers, may modify this Policy at any time by posting a revised version on our website or on our service provider’s websites. (**See the links below to connect to our various service providers to see their terms and conditions of use.**) By using our Services and by accessing our supporting service providers (the Services), you agree to the latest version of this Policy. If you violate the Policy or authorize or help others to do so, we may suspend or terminate your use of the Services.

No Illegal, Harmful, or Offensive Use or Content

You may not use, or encourage, promote, facilitate or instruct others to use, the Services for any illegal, harmful or offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, or offensive. Prohibited activities or content include:

- **Illegal Activities.** Any illegal activities, including advertising, transmitting, or otherwise making available gambling sites or services or disseminating, promoting or facilitating child pornography.
- **Harmful or Fraudulent Activities.** Activities that may be harmful to others, our operations or reputation, including offering or disseminating fraudulent goods, services, schemes, or promotions (e.g., make-money-fast schemes, ponzi and pyramid schemes, phishing, or pharming), or engaging in other deceptive practices.
- **Infringing Content.** Content that infringes or misappropriates the intellectual property or proprietary rights of others.
- **Offensive Content.** Content that is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable, including content that constitutes child pornography, relates to bestiality, or depicts non-consensual sex acts.
- **Harmful Content.** Content or other computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including viruses, Trojan horses, worms, time bombs, or cancelbots.

No Security Violations

You may not use the Services to violate the security or integrity of any network, computer or communications system, software application, or network or computing device (each, a “System”). Prohibited activities include:

- **Unauthorized Access.** Accessing or using any System without permission, including attempting to probe, scan, or test the vulnerability of a System or to breach any security or authentication measures used by a System.
- **Interception.** Monitoring of data or traffic on a System without permission.
- **Falsification of Origin.** Forging TCP-IP packet headers, e-mail headers, or any part of a message describing its origin or route. This prohibition does not include the use of aliases or anonymous remailers.

No Network Abuse

You may not make network connections to any users, hosts, or networks unless you have permission to communicate with them. Prohibited activities include:

- **Monitoring or Crawling.** Monitoring or crawling of a System that impairs or disrupts the System being monitored or crawled.
- **Denial of Service (DoS).** Inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective.
- **Intentional Interference.** Interfering with the proper functioning of any System, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques.
- **Operation of Certain Network Services.** Operating network services like open proxies, open mail relays, or open recursive domain name servers.
- **Avoiding System Restrictions.** Using manual or electronic means to avoid any use limitations placed on a System, such as access and storage restrictions.

No E-Mail or Other Message Abuse

You will not distribute, publish, send, or facilitate the sending of unsolicited mass e-mail or other messages, promotions, advertising, or solicitations (like “spam”), including commercial advertising and informational announcements. You will not alter or obscure mail headers or assume a sender’s identity without the sender’s explicit permission. You will not collect replies to messages sent from another internet service provider if those messages violate this Policy or the acceptable use policy of that provider.

Our Monitoring and Enforcement

We reserve the right, but do not assume the obligation, to investigate any violation of this Policy or misuse of the Services. We may:

- investigate violations of this Policy or misuse of the Services; or
- remove, disable access to, or modify any content or resource that violates this Policy or any other agreement we have with you for use of the Services.

We may report any activity that we suspect violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Our reporting may include disclosing appropriate customer information. We also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of this Policy.

Reporting of Violations of this Policy

If you become aware of any violation of this Policy, you will immediately notify us and provide us with assistance, as requested, to stop or remedy the violation. To report any violation of this Policy contact us at info@netabstraction.com.