

**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.).

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## Terms of Service

These terms of service (“**Terms**”) are entered into as of the date the Order is signed by the Government Contracting Officer (the “**Effective Date**”) between the Government Ordering Activity (“**Subscriber**,” “**you**” or “**your**”) and Databricks, Inc., a Delaware corporation (“**Databricks**” or “**we**”). These Terms of Service and any accompanying or future online order form or similar agreement you enter into with Databricks referencing these Terms (each an “**Order**” and, together with these Terms, the “**Agreement**”) govern your access to and use of the services provided to you by Databricks (the “**Databricks Services**”). As set forth in an Order or as otherwise agreed to by Databricks, the Databricks Services may include any one or more of the following: (a) subscription platform services, including any support services to which you may be subscribing (the “**Subscription Services**”), (b) non-subscription strategic services (the “**Strategic Services**”), (c) training services (the “**Training Services**”), or (d) any other services that Databricks may at its discretion agree to provide to you.

1. **Orders.** Any Order agreed to by the parties shall be incorporated by reference as part of the Agreement and shall identify: (a) specific Databricks Services to be provided, (b) any limitations on permitted use beyond those set forth in these Terms, (c) service term or other timing considerations, (d) payment terms, (e) any applicable limitations on number or type of Authorized Users (as such term is defined in Section 2(a)(i) below), and (f) any other applicable terms and conditions. To the extent any provision in an Order clearly conflicts with a provision of these Terms or the terms and conditions of Carahsoft Technology Corporation’s Multiple Award Schedule Contract, the conflict shall be resolved in accordance with General Services Administration Acquisition Regulation (GSAR) 552.212-4(o) Order of Precedence. Capitalized terms used but not defined in an Order shall have the meaning assigned to them, if any, within these Terms.
2. **Services.**
  - a) **Subscription Services.**
    - i) **Authorized Users.** If we have agreed to provide you with Subscription Services, you may select individuals (employees or independent contractors) to access and use the Subscription Services, subject to any numeric or other limits established in an Order or as otherwise agreed to by the parties, and you will obtain separate credentials (user IDs and passwords) from Databricks for such individuals (each an “**Authorized User**”). Subject to these limitations, Authorized Users may be changed upon reasonable notice at your request during a service term. You will at all times be responsible for all actions taken under an Authorized User’s account, whether such action was taken by an Authorized User or by another party, and whether or not such action was authorized by an Authorized User. You are responsible for the security of each Authorized User’s credentials and will not share (and will instruct each Authorized User not to share) such credentials with any other person or entity or otherwise permit any other person or entity to access or use the Subscription Services. You shall be fully responsible for any unauthorized use, including the payment of appropriate additional Fees (defined below) applied on a retroactive basis to such unauthorized use. Unless otherwise provided in an Order, refunds will not be provided and Fees will not be decreased during a service term if the number of Authorized Users decreases for any reason.
    - ii) **Provision of Services.** Subject to your compliance with the terms and conditions of this Agreement (including your payment of any fees (“**Fees**”) as due under Section 4 (Payment)),

Databricks will provide you with the Subscription Services, and you and your Authorized Users may access and use the Subscription Services, solely for your internal business purposes. Your rights to access the Subscription Services are non-exclusive and non-transferable and you may not distribute or display any portion of the Subscription Services to third parties, or use the Subscription Services for any other commercial purpose, except to the extent explicitly provided for in an Order. Databricks reserves the right to improve or otherwise modify its internal system architecture at any time subject to maintaining appropriate industry standards of practice relating to the provision and security of the Subscription Services. Except as expressly set forth in this paragraph, Databricks retains all worldwide patent, copyright, trade secret, know-how and other intellectual property rights (“**Intellectual Property Rights**”) and all other proprietary rights related to the Subscription Services. You will not delete or alter the copyright, trademark, or other proprietary rights notices or markings appearing within the Subscription Services as delivered to you. You retain all ownership rights in Customer Data (defined below).

**iii) Restrictions on Use.** You shall not attempt to interfere with or disrupt the Subscription Services or attempt to gain access to any systems or networks that connect thereto (except as required to appropriately access and use the Subscription Services). You shall not:

- (A) copy, modify or distribute any portion of the Subscription Services;
- (B) rent, lease, or provide access to the Subscription Services on a time-share or service bureau basis;
- (C) transfer any of your rights hereunder;
- (D) use the Subscription Services to violate the security or integrity of, or otherwise abuse, any application, computing device, system or network (each a “**System**”) of any party, including but not limited to accessing or using any System without permission (including attempting to probe, scan, monitor, or test the vulnerability of a System), forging any headers or other parts of any message describing its origin or routing, interfering with the proper functioning of any System (including any deliberate attempt by any means to overload a System), implementing denial-of-service attacks (inundating a target with communications requests so it cannot respond effectively or at all to legitimate traffic), operating non-permissioned network services (including open proxies, mail relays or recursive domain name servers), or using any means to bypass System usage limitations;
- (E) use the Subscription Services to distribute or facilitate the sending of unsolicited mass email or other messages, promotions or solicitations (e.g., “spam”), including advertising or other announcements of any kind;
- (F) use the Subscription Services to engage in or promote any other harmful, offensive, inappropriate, fraudulent, deceptive or illegal activities;
- (G) during any free trial period granted by Databricks, use the Subscription Services for any purpose other than to evaluate the desirability of entering into a paid subscription to the Subscription Services, including any use of the Subscription Services that would constitute a substitution for entering into a paid subscription; or
- (H) directly or indirectly disclose to any third party the results of any performance benchmarking or other test you conduct on the Subscription Services without first obtaining the written preapproval of Databricks.

You acknowledge and agree that portions of the Subscription Services, including but not limited to the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets of Databricks and its licensors. Accordingly, you agree not to

disassemble, decompile or reverse engineer the Subscription Services, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition. You shall not, directly or indirectly, use or apply the Subscription Services in any manner competitive with the business of Databricks. You acknowledge that the Subscription Services are not designed, intended or authorized for use in hazardous or mission-critical circumstances or for uses requiring fail-safe performance, or where failure could lead to death, personal injury or environmental damage. You shall not use the Subscription Services for such purposes or under such circumstances.

**iv) Customer Data.** You represent and warrant to Databricks that the data and information input or submitted by you or Authorized Users into the Subscription Services or otherwise made accessible to Databricks (“**Customer Data**”) shall not contain:

- (A) any data for which you do not have all rights, power and authority necessary for its collection, use and processing as contemplated by this Agreement;
- (B) any data with respect to which your use and provision to Databricks pursuant to this Agreement would breach any agreement between you and any third party;
- (C) any data that includes pornography, incitements to violence, terrorism or other wrongdoing, or illicit, harmful, offensive, deceptive or inappropriate materials of any kind;
- (D) any data with respect to which its usage as contemplated herein would violate any applicable local, state, federal or other laws, regulations, orders or rules; or
- (E) except as may be specified in an Order for your intended use with the Subscription Services, any unencrypted (x) bank, credit card or other financial account numbers or login credentials, (y) social security, tax, driver’s license or other government-issued identification numbers, or (z) health records identifiable to a particular individual.

You are responsible for taking reasonable steps at all times to maintain the security, protection and backup of all Customer Data, including without limitation the regular rotation of access keys and other industry standard steps to preclude unauthorized access. You are responsible for ensuring that Databricks at all times has updated and accurate contact information for the appropriate person for Databricks to notify regarding data security issues relating to the Subscription Services. In the event of any loss or corruption of Customer Data, Databricks will use commercially reasonable efforts to restore the lost or corrupted Customer Data from the latest backup of such Customer Data maintained by Databricks. Databricks will not be responsible for any loss, destruction, alteration, unauthorized disclosure or corruption of Customer Data caused by any third party. DATABRICKS’ EFFORTS TO RESTORE LOST OR CORRUPTED CUSTOMER DATA PURSUANT TO THIS SECTION 2(a)(iv) WILL CONSTITUTE DATABRICKS’ SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF CUSTOMER DATA IN CONNECTION WITH THE DATABRICKS SERVICES.

**b) Strategic Services.** If we have agreed to provide you with Strategic Services, you agree to make available reasonably necessary and appropriate personnel and other resources. Subject to your rights in any data, information or other materials you provide to Databricks that may be necessary for Databricks to perform the Databricks Services (“**Customer Materials**”) and your rights in any Specified Work Product (defined below in this Section 2(b)), Databricks will exclusively own all rights, title and interest in and to any software programs, tools, utilities, processes, inventions, devices,

methodologies, specifications, documentation, techniques, training materials, and other materials of any kind used or developed by Databricks or its personnel in connection with performing the Strategic Services, or any other Databricks Services (collectively “**Databricks Materials**”), including all Intellectual Property Rights therein. You will have no rights in any Databricks Materials except as expressly set forth in this Agreement. Subject to Databricks’ ownership rights in the Databricks Materials, you will own all rights, title and interest in any work product to the extent it is specifically identified in an Order as mutually intended by the parties to be your owned work product to be created pursuant to the Strategic Services (“**Specified Work Product**”), including all Intellectual Property Rights therein; provided, however, that you agree to not use any Specified Work Product to develop, for sale, license or distribution to others, a product or service competitive with any product or service offered by Databricks. Databricks hereby assigns to you all rights, title and interest in and to any Specified Work Product (excluding all Databricks Materials incorporated into the Specified Work Product, if any), including all Intellectual Property Rights therein. At your request and expense, Databricks will reasonably assist and cooperate with you and take such further acts reasonably requested by you to enable you to acquire and perfect your ownership rights in any Specified Work Product. If and to the extent that Databricks incorporates Databricks Materials into any Specified Work Product, Databricks grants to you a non-exclusive, perpetual, fully paid-up, royalty-free license to use, copy, modify or create derivative works based on such Databricks Materials, solely as incorporated into the Specified Work Product and solely for your internal business use. Unless otherwise set forth in the applicable Order, Specified Work Product is not subject to any maintenance, support or updates after the termination of the applicable Order. As between Databricks and you, you will exclusively own all rights, title and interest in and to the Customer Materials, including all Intellectual Property Rights therein.

- c) **Training Services.** If we have agreed to provide you with Training Services, we will provide qualified training personnel and suitable training materials and, except as otherwise mutually agreed upon by the parties, you will: (i) provide qualified personnel to assist in coordinating and implementing the Training Services; (ii) provide Databricks with access to your sites and facilities during your normal business hours and as otherwise reasonably required by Databricks to perform the Training Services; (iii) provide Databricks with such working space and office support (including access to telephones, photocopying equipment, and the like) as Databricks may reasonably request; and (iv) perform Subscriber’s duties and tasks as may be reasonably required to permit Databricks to perform the Training Services, including any such duties and tasks that may be set forth in an Order. You will also make available to Databricks any Customer Materials Databricks reasonably requires to perform the Training Services.

### 3. Term.

- a) **Term of Agreement.** The Agreement may be terminated by either party on thirty (30) days’ prior written notice if (i) there are no operative Orders outstanding or (ii) the other party is in material breach of the Agreement and the breaching party fails to cure the breach prior to the end of the notice period. If the Agreement terminates pursuant to the prior sentence due to Databricks’ material breach, Databricks shall refund to you that portion of any prepayments related to Databricks Services not yet provided.
- b) **Term of Orders.** The Term of an Order shall be as specified in the Order.
- c) **Termination.** Upon termination for any reason, you will purge all stored elements of the Databricks Services from your systems, Databricks will purge all your Confidential Information (defined below) from its systems, and each party, upon request by the other party, shall provide certification of such



action. All provisions of the Agreement that by their nature should survive termination shall so survive, including without limitation each party's confidentiality obligations under Section 5.

4. **Payment.** You agree to pay all Fees owed to Databricks in U.S. Dollars. Invoiced payments shall be due within 30 days of the invoice date. All other payments shall be due on or before the agreed upon due date. All past due payments will accrue interest at the lesser of one and one half percent (1.5%) per month or the highest rate allowed under applicable law. You shall be solely responsible for payment of any applicable sales, value added or use taxes.
  
5. **Confidentiality.** **"Confidential Information"** means any business or technical information disclosed by either party to the other that is designated as confidential at the time of disclosure or that, under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. In addition, Customer Data, any Customer Materials, and any Specified Work Product are considered to be your Confidential Information, all elements of the Databricks Services, any Databricks Materials, and any information we convey to you concerning Databricks' data security measures, incidents, or findings are considered to be Databricks' Confidential Information, and the terms of this Agreement constitute Confidential Information of both parties. A receiving party will not use the disclosing party's Confidential Information except as necessary for the performance or enforcement of this Agreement and will not disclose such Confidential Information to any third party except to those of its employees and subcontractors who have a bona fide need to know such Confidential Information for the performance or enforcement of this Agreement; provided that each such employee and subcontractor is bound by a written agreement that contains use and disclosure restrictions consistent with the terms set forth in this Section. Each receiving party will protect the disclosing party's Confidential Information from unauthorized use and disclosure using efforts equivalent to the efforts that the receiving party ordinarily uses with respect to its own Confidential Information and in no event less than a reasonable standard of care. Each party's duty of confidentiality under this section shall continue indefinitely except solely with respect to any portion of the other party's received Confidential Information (a) that becomes publicly known through no fault of the receiving party or (b) the disclosure of which is required by applicable law or regulation, provided that the party required to make such a disclosure gives reasonable notice to the other party to enable it to contest such order or requirement or limit the scope of such request.
  
6. **Warranties and Disclaimer.**
  - a) **Warranties.** Databricks warrants and represents that Databricks has employed and will continue to employ appropriate industry standards of practice to: (i) confirm that its provision of the Databricks Services under this Agreement will not infringe any third party Intellectual Property Rights or other proprietary rights; (ii) prevent the transmission of malware or malicious code via the Databricks Services; (iii) meet its performance, confidentiality and other obligations under this Agreement; and (iv) implement and maintain data security policies and procedures designed to prevent unauthorized access to Customer Data.
  
  - b) **Disclaimer.** **EXCEPT AS EXPRESSLY PROVIDED BY THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. THE DATABRICKS SERVICES ARE PROVIDED "AS IS" AND DATABRICKS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES RELATING TO THE DATABRICKS SERVICES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WITHOUT LIMITATION, DATABRICKS DOES NOT MAKE ANY**

**WARRANTY OF ACCURACY, COMPLETENESS, TIMELINESS, UNINTERRUPTABILITY, FUNCTIONALITY, RELIABILITY OR SPEED OF DELIVERY OF THE DATABRICKS SERVICES. DATABRICKS ASSUMES NO LIABILITY FOR ANY CONSEQUENTIAL DAMAGES, COSTS OR LOSSES RELATING DIRECTLY OR INDIRECTLY TO ANY ACTION OR INACTION THAT YOU TAKE BASED ON YOUR USE OF THE DATABRICKS SERVICES. YOU ASSUME SOLE RESPONSIBILITY AND LIABILITY FOR RESULTS OBTAINED FROM THE USE OF THE DATABRICKS SERVICES AND FOR CONCLUSIONS DRAWN FROM SUCH USE.**

## **7. Indemnification by Databricks.**

- a) Indemnification.** Subject to Section 7(d), Databricks shall indemnify and defend you from any suit or action brought against you, including your officers, employees, directors, agents and affiliates (each an “**Indemnitee**”), to the extent based upon a third party claim that the Databricks Services, as provided by Databricks to you pursuant to this Agreement, infringe any Intellectual Property Right or other proprietary or contractual right and will pay any costs, damages and reasonable attorneys’ fees attributable to such claim that are incurred by any Indemnitee. Notwithstanding the foregoing, Databricks will have no liability for any infringement or misappropriation claim of any kind to the extent that it results from: (i) the combination, operation or use of the Databricks Services with equipment, devices, software or data (including without limitation your Confidential Information) not supplied by Databricks, if a claim would not have occurred but for such combination, operation or use; or (ii) your or an Authorized User’s use of the Databricks Services other than in accordance with this Agreement.
- b) Injunction.** If your use of the Databricks Services is, or in Databricks’ opinion is likely to be, enjoined due to the type of claim specified in Section 7(a), then Databricks may at its sole option and expense: (i) replace or modify the Databricks Services to make them non-infringing and of equivalent functionality; (ii) procure for you the right to continue using the Databricks Services under the terms of this Agreement; or (iii) if Databricks is unable to accomplish either (i) or (ii) despite using its reasonable efforts, terminate your rights and Databricks’ obligation under this Agreement with respect to such Databricks Services and refund to you any Fees prepaid by you for Databricks Services not yet provided.
- c) Sole Remedy.** THE FOREGOING STATES THE ENTIRE OBLIGATION OF DATABRICKS AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE DATABRICKS SERVICES.
- d) Conditions of Indemnification.** As a condition to Databricks’ obligations under this Section 7, an Indemnitee will: (i) promptly notify Databricks of the claim for which the Indemnitee is seeking indemnification; (ii) grant Databricks sole control of the defense and settlement of the claim; and (iii) provide Databricks, at Databricks’ expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim. Databricks will not settle any claim that involves a remedy other than payment without the Indemnitee’s prior written consent, which may not be unreasonably withheld or delayed. An Indemnitee has the right to retain counsel, at the Indemnitee’s expense, to participate in the defense or settlement of any claim. Databricks will not be liable for any settlement or compromise that an Indemnitee enters into without Databricks’ prior written consent.

- 8. Limitation of Liability.** EXCEPT AS SET FORTH BELOW IN THIS SECTION, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING LOST PROFITS, REGARDLESS OF WHETHER SUCH DAMAGES COULD HAVE BEEN FORESEEN OR PREVENTED. Furthermore, except as set forth below in this Section, the aggregate liability of either party to the other for damages, direct or otherwise, arising out of or in connection with this Agreement, shall be limited to the total amount of Fees actually paid by you to Databricks under this Agreement during the twelve (12) month period immediately preceding the event or the alleged act or omission giving rise to the loss, regardless of the cause or form of action. The limitations in this Section 8 shall not apply to liabilities arising under this Agreement from (a) a party's gross negligence, willful misconduct or illegal action, (b) the indemnification provided by Databricks pursuant to Section 7, or (c) an action causing death, personal injury or damage to property.
- 9. Equitable Relief.** Each party acknowledges and agrees that the other party will be irreparably harmed in the event that such party breaches Section 2(a)(i) (Authorized Users), Section 2(a)(iii) (Restrictions on Your Use), Section 2(a)(iv) (Customer Data), or Section 5 (Confidentiality), and that monetary damages alone cannot fully compensate the non-breaching party for such harm. Accordingly, each party hereto hereby agrees that the non-breaching party shall be entitled to injunctive relief to prevent or stop breaches of such terms and provisions of this Agreement, and to obtain specific enforcement thereof. Any such equitable remedies obtained shall be in addition to, and not foreclose, any other remedies that may be available.
- 10. General.** If your notice, billing or service address provided in an Initial Order is in California, or you are headquartered in or organized under the laws of California, the Agreement (including all Orders) will be governed by the laws of the state of California; otherwise, the Agreement (including all Orders) will be governed by the laws of the state of Delaware. In all cases, the application of law shall be without regard to, or application of, conflict of law rules or principles, and the United Nations Convention on Contracts for the International Sale of Goods will not apply. If any provision of this Agreement is held to be unenforceable or invalid, that provision will be enforced to the maximum extent possible, and the other provisions will remain in full force and effect. This Agreement (including all Orders) and the terms and conditions of Carahsoft Technology Corporation's GSA Multiple Award Schedule Contract are the complete and exclusive understanding and agreement between the parties regarding its subject matter. This Agreement may not be modified or amended except by mutual written agreement of Databricks, Carahsoft Technology Corporation and the GSA. No assignment of a party's rights and obligations under this Agreement is permitted except with the prior written approval of the other party, which shall not be unreasonably withheld; provided, however, that either party may freely make such assignment to a successor in interest upon a change of control. Any required notice under this Agreement shall be deemed given when received by letter delivered by nationally recognized overnight delivery service or recorded prepaid mail. Unless notified in writing of a change of address, you shall send any required notice to Databricks, Inc., 160 Spear Street, Suite 1300, San Francisco, CA 94105, attention: Legal Department, and Databricks shall send any required notice to you directed to the most recent address you have provided to Databricks for such notice.