

**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.).

BRICKSTOR END USER LICENSE AGREEMENT

THIS BRICKSTOR END USER LICENSE AGREEMENT (this "*Agreement*") is entered into by and between RACKTOP SYSTEMS, INC., a Delaware corporation located in Fulton, Maryland (the "*Company*"), and the Government Ordering Activity ("*You*" or "*Your*") which has purchased or otherwise acquired a BRICKSTOR APPLIANCE ("*BrickStor*"). If You are entering into this Agreement on behalf of a company or other legal entity, You hereby represent that You have the legal authority to bind the legal entity to this Agreement, in which case "You" or "Your" shall mean such entity.

Your use of the Software is subject to the terms and conditions of the BrickStor End User License Agreement, but only to the extent that all terms and conditions in the BrickStor End User License Agreement are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341 and 41 U.S.C. §6301), the Contracts Disputes Act of 1978 (41. U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (41 § U.S.C.6405), 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 BrickStor End User License Agreement or these Service Specific Terms are inconsistent with Federal Law (See FAR 12.212(a)), they shall be deemed deleted and unenforceable as applied to any Orders under these Service Specific Terms.

BY EXECUTING AN ORDER FORM OF SIMILAR DOCUMENT, YOU EXPRESSLY AGREE TO BE BOUND BY, AND TO STRICTLY ADHERE TO, ALL OF THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT ACCEPT THIS AGREEMENT AND DO NOT ACCESS, INSTALL OR USE ANY PART OF THE BRICKSTOR SYSTEM.

IF YOU DO NOT ACCEPT THESE TERMS, YOU MAY RETURN THE BRICKSTOR APPLIANCE TO THE PERSON OR ENTITY WHICH SOLD OR TRANSFERRED SUCH EQUIPMENT TO YOU OR TO THE COMPANY WITHIN TEN (10) DAYS FOR A FULL REFUND. IF YOU OPERATE THE BRICKSTOR PRODUCT, LOAD ANY OF THE SOFTWARE OR RETAIN THE SYSTEM, IN WHOLE OR IN PART, FOR A PERIOD OF TEN (10) DAYS AFTER RECEIPT THEREOF, YOU ARE DEEMED TO HAVE ACCEPTED THESE TERMS.

AGREEMENT

1. DEFINITIONS. As used herein, the following terms shall be interpreted as follows:

(a) "*BRICKSTOR APPLIANCE*" means any model of any Company data storage or processing equipment, including but not limited to, BrickStor, BrickStor zFLASH, vBOX, the Secure Data Protection Platform (SDP2), and any other equipment with similar purposes as now or hereafter developed by the Company;

(b) "*Derivative Works*" mean any revision, modification, annotation or elaboration, whether in source or object code form, to a work which represents, as a whole, an original work of authorship.

(c) "**Documentation**" means any and all manuals, guides, templates, documents and materials provided in conjunction with the System;

(d) "**Open Source Software**" means software released under a license that guarantees a certain specific set of freedoms as to use, copying, modifications and redistribution, including any Derivative Works thereof that are released back to the licensor, project or trustee. but not including any Derivative Works by the Company that are retained as proprietary);

(e) "**Open Source Licenses**" mean the terms of use applicable to Open Source Software;

(f) "**Racktop Cloud**" means an integrated collection of data hosting and storage capabilities provided by servers, hardware, subscription software, bandwidth, computing, networking, IP addresses and internet services used in connection with any BRICKSTOR APPLIANCE;

(g) "**Software**" means collectively those software programs, code, tools and applications incorporated into or used in connection with any BRICKSTOR APPLIANCE, including but not limited to (i) any Open Source Software, (ii) any Derivative Works of Open Source Software, (iii) the BrickStorOS, the operating system running on a BRICKSTOR APPLIANCE or in a virtual machine version thereof, (iv) the software management program used in the Racktop Cloud known as MyRACK, and (v) any and all Derivative Works or other updates, enhancements, supplements, repairs, modifications to or new versions of any of the foregoing;

(h) "**System**" means, individually and collectively, (i) the BRICKSTOR APPLIANCE; (ii) the Software, (iii) the Racktop Cloud, and (iv) any and all other data and information provided by the Company to You in connection herewith (other than data and information provided by You).

2. SOFTWARE LICENSE FEE INCLUDED. Your purchase of the BRICKSTOR APPLIANCE includes the payment of a Software License Fee ("**License Fee**") for the Software License (as defined here) to all Software (other than Open Source Software) incorporated into or otherwise used, accessed or operated by or through the BRICKSTOR APPLIANCE, the System and/or the Racktop Cloud in such form as exists as of the date of Your purchase of the BRICKSTOR APPLIANCE. THE SOFTWARE LICENSE REQUIRES YOUR CONTINUED PURCHASE OF MAINTENANCE SERVICES IN ORDER TO KEEP YOUR SYSTEM UP TO DATE AND FUNCTIONING CORRECTLY.

3. MAINTENANCE AND SUPPORT SERVICES; CLOUD SERVICES.

(a) Software Maintenance Services. Software maintenance and support services, including bug fixes, repairs, modifications, improvements, enhancements and new versions of the Software (collectively "**Maintenance Services**") must be purchased separately from the BRICKSTOR APPLIANCE and are not included with your purchase of such appliance or any other use of the System. Your ability to use and operate all functions and capabilities of the System requires a fully functioning and up-to-date version of the Software that is only available through

your purchase of Maintenance Services at the Company's then-current software maintenance fees ("**Maintenance Fees**"). If, at any time, You fail to maintain continuous access to current Maintenance Services, You may only restart such services by paying in advance all Maintenance Fees that would have been paid during any period of interruption in such services.

(b) Cloud Service Fees. You have access to Racktop Cloud services, in such form and amount as offered from time to time by the Company, either as part of or independent of the purchase of a BRICKSTOR APPLIANCE. The purchase of Maintenance Services includes a certain portion of Racktop Cloud services at no additional charge (*e.g.*, GB overage fee, IaaS, Desktop-as-a-Service, etc.) and further capabilities can be purchased from the Company for an additional fee based on the services used or reserved (collectively, "**Cloud Fees**").

(c) Payment Terms. The payment terms for Maintenance Fees and Cloud Fees and any other charges hereunder shall be as set by the Company from time to time. Any fees not paid when due will automatically accrue interest at the lesser of (i) the highest interest rate permitted by law, and (ii) 1.5% per month to accrue, in either case, until fully paid.

4. SOFTWARE LICENSE GRANT; OPEN SOURCE LICENSES.

(a) Software License Grant For Other Than Open Source Software. Your purchase of a BRICKSTOR APPLIANCE constitutes Your purchase of title to the hardware comprising such equipment, and a non-exclusive, non-transferable (except as provided herein), perpetual (subject to termination for breach of this Agreement) right and license to use and operate the Software (other than the Open Source Software) and the Racktop Cloud in accordance herewith for Your own internal purposes as integrated and indivisible components of the System (the "**Software License**"). THE SOFTWARE LICENSE DOES NOT INCLUDE ANY RIGHT FOR ANY THIRD PARTIES, INCLUDING BUT NOT LIMITED TO ANY AFFILIATES, TO RECEIVE, ACCESS OR USE THE SOFTWARE OR THE RACKTOP CLOUD, IN WHOLE OR IN PART. As used herein, the term "**Affiliate**" means any person, organization or entity controlling, controlled by or under common control with You and the term "**control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity.

(b) Open Source Software Licenses. The Open Source Software included within the BRICKSTOR APPLIANCE is subject to the following Open Source Licenses as applicable to the particular software. Upon request, the Company will provide You with a source code version of the Software delivered with the BRICKSTOR APPLIANCE that is subject to an Open Source License (use of the Racktop Cloud does not trigger any sharing obligation). Unless Derivative Works of Open Source Software are contributed back to the Open Source Software licensor, project or trustee, all right, title and interest in and to Derivative Works are hereby retained by the Company and are subject to the Software License. **Any conflict or inconsistency between the terms of any Open Source License and this Agreement, including those terms relating to Disclaimer of Warranty, Limitation of Liability and/or Indemnification, shall be governed by the applicable Open Source License but solely as to such Open Source Software:**

References are to SPDX (www.spdx.org) License List

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| (i) | CDDL-1.0 | http://spdx.org/licenses/CDDL-1.0#licenseText |
| (ii) | Apache-2.0 | http://spdx.org/licenses/Apache-2.0#licenseText |
| (iii) | MIT | http://spdx.org/licenses/MIT#licenseText |
| (iv) | BSD-2-Clause | http://spdx.org/licenses/BSD-2-Clause#licenseText |
| (v) | AGPL-3.0 | http://spdx.org/licenses/AGPL-3.0 |

(c) Permitted Transfer. Notwithstanding the foregoing, You may transfer all (but not less than all) of your rights to the Software (other than Open Source Software) contained within the BRICKSTOR APPLIANCE only in connection with Your sale, assignment or other transfer of such BRICKSTOR APPLIANCE, subject to the continuing obligations of this Agreement in transferee's hands. Such transferee's rights to any access or use of the System shall be subject to the Company's consent, in its sole discretion, following a full disclosure of the details of such transaction, without which the transferee's rights to use of the System shall forthwith terminate. A "REQUEST FOR BRICKSTOR APPLIANCE SOFTWARE LICENSE TRANSFER" MAY BE MADE THROUGH A FORM AVAILABLE ON THE COMPANY'S WEB SITE OR BY EMAIL OR TELEPHONE DIRECTLY TO THE COMPANY.

5. ADDITIONAL LICENSE RESTRICTIONS. The Software License is subject to the following additional limitations, restrictions and terms of use:

(a) You may not use the Software or the System, in whole or in part, (i) in any life sustaining, nuclear or other application where a failure could result in personal injury, loss of life or catastrophic property damage, or (ii) on a computer or in a network environment of a type, category or specification for which the Software or the System is not compatible as determined by the Company in its sole discretion;

(b) You may not install Your own or any third party software on the System that has not been released, approved or distributed by the Company;

(c) You may not make any copies of the Software subject to the Software License, even for back-up purposes, except as automatically created in any cache memory of any authorized computer connected to the System during the Term hereof. Notwithstanding the foregoing, You may make as many copies of the Documentation as necessary for Your internal use only, subject to the terms hereof. YOU SHALL NOT REMOVE OR DEFACE ANY COPYRIGHT NOTICES, TRADEMARKS, LEGENDS AND LOGOS ON THE SOFTWARE OR DOCUMENTATION;

(d) Except through the authorized use of the Racktop Cloud in compliance herewith, You may not convey, lend, distribute, sell, rent, assign, sub-license, transfer or otherwise provide access to (electronically or otherwise) the Software subject to the Software License or the System, in whole or in part, to any person, organization or entity outside Your legal entity or make such Software or the System available for use by others in any time-sharing, service bureau or similar arrangement (including by Affiliates) that circumvents the fees and protections that would otherwise accrue to the Company from the intended and authorized use of the Software and/or System;

(e) You may not modify, create any derivative work of, reverse engineer, disassemble, decompile, reverse translate or in any way decode the Software subject to the Software License, the Racktop Cloud or the System, in whole or in part, in order to derive any source code or other benefit therefrom; and/or

(f) You may not publish or otherwise disclose information relating to the performance of the Software subject to the Software License, the Racktop Cloud or the System to any third party unless and to the extent required by law or regulation or as agreed by the Company in writing.

6. OWNERSHIP AND OPERATION OF THE SYSTEM; YOUR DATA.

(a) Company Ownership and Retention of Rights. Except as expressly provided herein, all right, title and interest in and to the Software subject to the Software License, the Racktop Cloud, the System and the Documentation, and all elements thereof, including but not limited to copyrights, patent rights, moral rights, design rights, mask works, trade secrets and all other intellectual property and commercial rights, are owned exclusively and retained by the Company and neither You nor any third party hereby acquires any right, title or interest therein other than the right to use it in accordance with this Agreement for the Term hereof.

(b) Your Data. Notwithstanding the foregoing, You shall have and retain sole right, title and ownership of any and all of Your data and information used with or inserted into the System by You.

(c) Accessibility. You agree that from time to time the System and the Racktop Cloud may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which the Company may undertake from time to time; and/or (iii) causes beyond the control of the Company or which are not reasonably foreseeable by the Company.

(d) Security. You are solely responsible for the security, confidentiality and integrity of all messages and the content that you receive, transmit through or store on the System. You are solely responsible for any authorized or unauthorized access to your account by any person. You agree to bear all responsibility for the confidentiality of your password and all use or charges incurred from use of the Service with your password. You are personally responsible for all applications running on and with traffic originating from the instances You initiate within the System. You must protect Your authentication keys and security credentials as any and all actions taken using Your credentials shall be deemed to be actions taken by You. You are responsible for maintaining licenses and adhering to the license terms of any software that You operate.

(e) Privacy. It is the policy of the Company to respect Your privacy. Nevertheless, You hereby consent to the Company's tracking of and collection of information and telemetry data regarding Your use of the System which shall constitute Company proprietary information. However, the Company will not monitor, edit or disclose any personal information about You or Your account, including its contents, without Your prior consent unless the Company has a good

faith belief that such action is necessary to: (i) comply with legal process or other legal requirements of any governmental authority; (ii) protect and defend the rights or property of the Company; (iii) enforce this Agreement; or (iv) protect the interests of users of the Service other than You or any other person. Your IP address and certain location data is transmitted and recorded with each message you send from the Service and such data may be retained and used by the Company for lawful purposes.

7. NO OBLIGATION TO SUPPORT; EXCLUSIVE REMEDY FOR DEFECTIVE SOFTWARE OR MEDIA. Except for the then current and immediately prior versions of the Software subject to the Software License, and the Documentation associated with such versions, the Company has no obligation at any time to support, maintain, repair, upgrade or enhance such Software or the Documentation or to make any modifications thereto or new releases thereof. Notwithstanding the foregoing, if the Company's proprietary Software shall be defective or fail to meet its specifications when downloaded or delivered to You, or should any DVD or CD on which such Software is stored be corrupted or defective upon delivery, the Company will promptly replace such defective Software or DVD/CD without charge as the Company's sole obligation and Your exclusive remedy for any such defects or deficiencies. THE COMPANY MAY REPLACE ANY DEFECTIVE PROPRIETARY SOFTWARE WITH THE THEN-CURRENT VERSION, IN ITS DISCRETION, IF THE DEFECTIVE VERSION OF PROPRIETARY SOFTWARE SHOULD BE A PRIOR VERSION.

8. CONFIDENTIALITY. You hereby acknowledge that the System contains valuable trade secrets and confidential information of the Company, including but not limited to, the design, code, architecture and functionality of the BRICKSTOR APPLIANCE and the Software subject to the Software License; the appearance, content and flow of the Software screens; the organization, design and content of the System; and the method and pattern of user interaction with the System. You hereby agree not to share, disclose or transfer, and not to permit any third party to share, disclose or transfer any trade secrets or confidential information of the System or the Company.

9. TERMINATION OF AGREEMENT; SURVIVAL.

(a) This Agreement will commence and you may begin using the BRICKSTOR APPLIANCE and the System once You complete the registration process for your Racktop Cloud account. This Agreement will continue thereafter until termination of this Agreement or Your use of the System pursuant to the terms hereof (collectively, the "**Term**").

(b) You may terminate this Agreement and Your use of the System at any time, in your discretion, by providing written notice of your desire to cancel your account to your then current Racktop Account Manager. Upon Your receipt of a confirmation cancellation email, Your account for the Racktop Cloud and for Your use of the System will be terminated and any and all outstanding charges will be immediately charged to any payment mechanism You have provided to us. If such mechanism is no longer operative, we may invoice You directly.

(c) The Company does not have a right to terminate this Agreement for its own convenience.

(d) Upon any termination of this Agreement, (i) You retain ownership of the BRICKSTOR APPLIANCE and the version of the Software then contained therein (which remains subject to the restrictions herein); (ii) Your right to access to and use of the System and the Racktop Cloud shall terminate; (iii) Your right to Maintenance Services shall terminate (iv) You shall immediately pay any due but unpaid fees to the Company; and (v) You shall return any Confidential Information of the Company (and documents containing same) which You do not have the right to retain, deleting all electronic versions thereof on any and all media in your possession.

(e) Upon any termination of this Agreement, the provisions of Sections 4–15, inclusive, shall survive.

10. DISCLAIMER OF WARRANTY.

(a) THE SYSTEM AND EACH ELEMENT THEREOF IS PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, NON-INTERFERENCE, INFORMATIONAL CONTENT, SYSTEM INTEGRATION AND ANY WARRANTIES ARISING FROM A COURSE OF USAGE OR TRADE PRACTICE. THE COMPANY DOES NOT WARRANT THAT THE BRICKSTOR APPLIANCE, THE SOFTWARE OR THE SYSTEM WILL BE UNINTERRUPTED OR ERROR FREE.

(b) YOU ALONE SHALL DETERMINE IF AND TO WHAT EXTENT THE SYSTEM WILL MEET YOUR NEEDS AND YOU ALONE SHALL BEAR THE ENTIRE RISK OF ITS PERFORMANCE OR NON-PERFORMANCE. IN NO EVENT SHALL THE COMPANY BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY COSTS, LOSSES, LIABILITIES, DAMAGES, EXPENSES OR CLAIMS INCURRED AS THE RESULT OF YOUR USE OF THE SYSTEM, INCLUDING THE LOSS OF ANY OF YOUR DATA, WHICH YOU SHALL AT ALL TIMES RETAIN A BACK-UP COPY OF.

11. LIMITATION OF LIABILITY; LIMITATION OF DAMAGES. THE COMPANY SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGES UNDER ANY THEORY OF LIABILITY OR RECOVERY, WHETHER SUCH DAMAGES ARE DIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL OR INDIRECT AND WHETHER OR NOT FORESEEABLE, ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT OR THE USE OR NON-USE OF THE SYSTEM OR DOCUMENTATION. YOUR SOLE AND EXCLUSIVE REMEDY HEREUNDER FOR ANY SUCH LOSS OR DAMAGES SHALL BE FOR YOU TO DISCONTINUE YOUR USE OF THE SYSTEM AND TERMINATE THIS AGREEMENT.

12. GENERAL PROVISIONS. Nothing in this Agreement is intended to nor shall be deemed to create a joint venture, partnership, agency or employment relationship between the Company and You. The waiver or failure of either party to exercise any rights provided herein shall not be deemed a waiver of any further right hereunder. If any term or provision of this Agreement shall be declared to be invalid or ineffective by a court of competent jurisdiction or by operation of law, the invalid term or provision shall be severed and the remaining terms and

provisions of this Agreement shall remain in full force and effect. This Agreement and the terms and conditions of Carahsoft Technology Corporation's GSA Multiple Award Schedule 70 Contract constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior proposals, negotiations, discussions and understandings between them concerning the subject matter hereof. No amendment or modification of any provision of this Agreement shall be effective unless in writing and executed by Rack Top, Carahsoft and the GSA Contracting Officer. The Company may assign or transfer any of its rights or duties under this Agreement to any other person or entity in accordance with FAR 52.232-23 Assignment of Claims and FAR 42.12 Novation and Change-of-Name Agreements.

13. U.S. GOVERNMENT END USERS. The Software subject to the Software License and Documentation each were developed by private financing and constitute "Commercial Items," as that term is defined at 48 C.F.R. §2.101. The Software consists of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §227.7202-1 through 227.7202-4, all U.S. Government End Users acquire only those rights in the Software subject to the Software License and the Documentation that are specifically provided by this Agreement. Consistent with 48 C.F.R. §12.211, all U.S. Government End Users acquire only technical data and the rights in that data customarily as specifically provided in this Agreement.

14. GOVERNING LAW; JURISDICTION AND VENUE. This Agreement shall be governed by and interpreted in accordance with federal law.