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.).

MASTER SERVICES AGREEMENT

This Master Services Agreement (this "**Agreement**") effective as of the date set forth in the Statement of Work or Order Form ("**Effective Date**") is entered into by and between ThinkSmart, LLC, with its principal place of business at 530 Jackson Street, 3rd Floor, San Francisco, CA 94133 ("**ThinkSmart**") and the Government Ordering Activity ("**Customer**"). ThinkSmart and Customer may be singularly or collectively referred to in this Agreement as the "**Party**" or the "**Parties**", respectively.

BACKGROUND

ThinkSmart has developed and offers on a hosted software-as-a-service (SaaS) basis certain business automation and workflow management tools related to contract review and execution.

Customer wishes to utilize ThinkSmart's services to aid in improving the efficiency and reliability of its contract review and execution processes.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the Parties hereto agree as follows:

1.   **Definitions**.

1.1   "**Affiliate**" means an entity that controls, is controlled by, or under common control with a Party, where "control" means the power to direct (directly or indirectly) the management or policies of an entity, whether through ownership of voting securities, by contract or otherwise.

1.2   "**Data**" means Customer's pre-existing non-public data that may be imported by, or input by, Customer into the Service.

1.3   "Order Form" means initial order for the Service and any associated Professional Services provided by ThinkSmart to Customer, and any subsequent orders as may be agreed in writing between the Parties from time to time and made a part of this Agreement, each order specifying, among other things, the applicable Service, fees, and term.

1.4   "**Professional Services**" means those professional services to be provided by ThinkSmart to Customer in connection with this Agreement, as may be mutually agreed to in writing in on or more SOWs.

1.5   "**Service**" means those modules and features of ThinkSmart's web-based service as made available by ThinkSmart from time to time through one or more web sites owned or controlled by or on behalf of ThinkSmart, including integration with certain supported third party electronic signature platforms.

1.6   "**Statement of Work**" ("**SOW**") means an initial order for the Service and any associated Professional Services provided by ThinkSmart to Customer, and any subsequent SOWs as may be agreed in writing between the Parties from time to time and made a part of this Agreement, each SOW specifying, among other things, the applicable Service, Professional Services, fees, and term.

1.7   "**System**" means Customer's servers, systems, and other similar IT equipment.

2.   **ThinkSmart Service**.

     2.1   **Statement of Work.** The Service to be provided by ThinkSmart, applicable fees, and the initial term during which Customer (or its Affiliate, if applicable) is authorized to use such Service (the "**Initial Term**") shall be set forth in a SOW or Order Form. The Parties may, from time to time upon mutual written agreement, amend existing SOWs, or enter into additional SOWs, which, upon execution, will become a part of and subject to the terms and conditions of this Agreement.

     2.2   **Professional Services**. To the extent a SOW includes Professional Services, including without limitation any initial discovery, setup and implementation, workflow rules development, and integration with Customer's Systems, such services will be provided on an hourly basis in accordance with the rates set forth in the SOW.

     2.3   **Right to Access and Use.** Subject to Customer's full and ongoing compliance with the terms and conditions of this Agreement, including without limitation the payment of all applicable Fees (defined below), ThinkSmart grants Customer non-exclusive, non-transferable permission during the applicable Subscription Term (as defined below), to access and use the Service, as expressly identified and described in each mutually executed SOW solely for Customer's internal business purposes. ThinkSmart agrees to provide the Service described in a mutually executed SOW substantially in accordance with the service levels set forth in Exhibit A.

     2.4   **Technical Support Services**. For so long as Customer is current with its payment of the Support Fees (defined below), ThinkSmart will provide Customer, during the Term (defined below), the technical support services specified in Exhibit B ("**Support**"). To obtain such Support, Customer shall (i) provide supervision, control and management of the use of the Service; (ii) document and promptly report all errors or malfunctions; and (iii) take all steps reasonably necessary to carry out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from ThinkSmart. If Customer is unable to access or use the Service hereunder as a result of an error occurring on Customer's System, or if access to such System is necessary to otherwise rectify an error occurring on the Service, Customer agrees to provide ThinkSmart with access to its System as may be necessary to duplicate and resolve such errors.

     2.5   **Customer Responsibilities.** Customer is responsible for all activities that occur under Customer's user accounts. Customer shall: (i) obtain and maintain all equipment and any ancillary services needed to connect to, access or otherwise use the Service and ensuring that its equipment meets the minimum system guidelines set forth in the applicable documentation; (ii) provide ThinkSmart sufficient secure access to its Systems as may be necessary to extract the Data and to provide the Service; and (iii) have sole responsibility for the accuracy, quality, integrity, reliability, and appropriateness of all Data provided to ThinkSmart hereunder. Without limiting the generality of the foregoing, the use of the Service may require use of third party electronic signature and similar services, and Customer shall be solely responsible for obtaining and paying all applicable fees related thereto.

     2.6   **Service Guidelines.** Customer shall use the Service solely as contemplated by this Agreement and all applicable documentation, and shall not: (i) submit or transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs to or through the Service or transmit unlawful, immoral, libelous, tortuous, infringing, defamatory, threatening, vulgar or obscene material or material harmful to minors, or collect data regarding others without their consent; (ii) interfere

with or disrupt the integrity or performance of the Service or the content, data, or information contained therein; (iii) attempt to gain or permit unauthorized access or access to a third party (including customers or vendors) to the Service, computer systems or networks related to the Service; (iv) disassemble, reverse engineer, or decompile any of the ThinkSmart Technology (defined below), or attempt to do so; (v) "frame", "mirror", or otherwise embed or incorporate any of the Service or any content, data, or information contained therein (other than Data) in any Customer or third party system or service; or (vi) access the Service to build a competitive product or service, reproduce features of the Service, or resell the Service.

3.   **Fees and Billing**.

3.1   **Fees.** Customer shall pay (i) the set up fees ("**Set-up Fee**"); (ii) the subscription fees for all the Services ("**Subscription Fee**"); (iii) the support fee ("**Support Fee**"); and (iv) all other fees (Set-up Fee, Subscription Fee, Support Fee and Hosting Fee, collectively, the "**Fees**"), all in the amounts and as specified in the SOW and in any mutually executed additional SOWs.

3.2   **Billing and Payment Terms; Late Payment**. Unless otherwise provided in the applicable SOW, Fees are payable in advance of the provision of the applicable Service. With respect to ongoing Services purchased for terms in excess of one month, the applicable Fees will be payable on a prorated basis prior to the commencement of the applicable service month. All Fees are quoted in, and all payments must be made in, U.S. dollars. Late payments hereunder will accrue interest at a rate of 1.5% per month, or the highest rate allowed by applicable law, whichever is lower, and may result in suspension or termination of the Service.

3.3   **Taxes**. All payments required by this Agreement exclude all sales, value-added, use, or other taxes and obligations, all of which Customer will be responsible for and will pay in full, except for taxes based on ThinkSmart's net income. If ThinkSmart has the legal obligation to pay or collect taxes for which Customer is responsible pursuant to this Section 3.3, including taxes if any levied by a government authority with retroactive effect, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides ThinkSmart with a valid tax exemption certificate authorized by the appropriate taxing authority.

4.   **Proprietary Rights**.

4.1   **ThinkSmart.** Customer acknowledges that in providing the Service, ThinkSmart utilizes (i) the ThinkSmart name, the ThinkSmart logo, the ThinkSmart's websites and related domain names, the product names associated with the Service and other trademarks; and (ii) certain analytical, predictive, and optimization models, algorithms, and similar systems, and other technology, software, hardware, products, processes, know-how, techniques, designs, inventions and other tangible or intangible technology (collectively, "**ThinkSmart Technology**"). As between Customer and ThinkSmart, ThinkSmart reserves all rights, title and interest, including all intellectual property rights in and to, the ThinkSmart Technology and the Service, any and all modifications, enhancements, customizations or improvements to any of the foregoing, and any Service usage data collected or obtained by ThinkSmart, such as log data ("**ThinkSmart IP Rights**"), and nothing herein shall be deemed or interpreted to transfer ownership of any ThinkSmart IP Rights to Customer, whether by implication, estoppel, or otherwise.

4.2   **Customer.** As between ThinkSmart and Customer, Customer is the sole and exclusive owner of the Data. ThinkSmart collects and aggregates data from multiple sources for the purpose of providing and improving the Service (including ThinkSmart Technology), and Customer hereby authorizes ThinkSmart to collect and use the Data and the analytical results resulting therefrom for the foregoing purposes, provided

that Data may not be disclosed to any third party in raw or disaggregated form, and Customer shall not be identified as the source of such Data. Customer also hereby permits ThinkSmart, during the Term, to access and use the System (and any materials thereon), including through the Customer's application programming interface ("**Customer APIs**") to integrate the Service with the System to interoperate and to exchange data between the Service and the System, but only as necessary to provide the Service.

5.   **Confidentiality.**

5.1   **Confidential Information.** As used herein, "**Confidential Information**" means all information of a Party ("**Disclosing Party**"), disclosed to the other Party ("**Receiving Party**") that is marked as being confidential at the time of disclosure, or that a reasonable person would understand to be confidential given the nature of the information or the circumstances underlying the disclosure. Notwithstanding the foregoing, Confidential Information shall not include any information that: (i) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (ii) was independently developed or obtained by the Receiving Party without use of the Disclosing Party's Confidential Information; or (iii) is received from a third party without a duty of confidentiality.

5.2   **Confidentiality.** Except as otherwise authorized herein, the Receiving Party shall not (i) use any Confidential Information of the Disclosing Party for any purpose other than to exercise its rights or to perform its obligations under this Agreement, or (ii) disclose, publish, or disseminate Confidential Information of the Disclosing Party to anyone other than the Receiving Party's personnel (including employees, contractors and consultants) who have a need to know the Confidential Information for the purposes set forth in this Agreement and who are bound by a written agreement that prohibits unauthorized disclosure or use of Confidential Information that is at least as protective of the Confidential Information as the Receiving Party's obligations hereunder. Notwithstanding the foregoing, the Receiving Party shall have the right to share the existence and nature of this Agreement with potential investors or acquirers, or with such Party's attorneys, accountants, bankers, or other professional advisors in connection with a financing, merger, acquisition, corporate reorganization, consolidation, or sale of all or substantially all of its assets, or as required by law. Further, ThinkSmart shall have the unrestricted right to use or act upon any suggestions or feedback provided by or on behalf of Customer relating to the Service.

5.3   **Compelled Disclosure**. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by law, provided that the Receiving Party shall make reasonable efforts to provide the Disclosing Party with prior written notice of such compelled disclosure and reasonable assistance (at Disclosing Party's cost) if the Disclosing Party wishes to obtain protective treatment of the Confidential Information.

6.   **Representations and Warranties**.

6.1   **Mutual.** Each party represents and warrants to the other party that it has the full power and authority to enter into this Agreement and perform its obligations hereunder, and grant the access and rights granted hereunder.

6.2   **By ThinkSmart**. ThinkSmart represents and warrants to Customer that it will provide the Service to Customer in a professional manner consistent with applicable industry standards.

THE FOREGOING REPRESENTATIONS AND WARRANTIES SHALL BE THE PARTIES' EXCLUSIVE REPRESENTATIONS AND WARRANTIES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. EXCEPT

AS EXPRESSLY STATED IN SECTION 6.1, THE SERVICES ARE PROVIDED "AS IS". ACCORDINGLY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THINKSMART HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, ACCURACY, RESULTS, OR THAT THE SERVICES SHALL BE ERROR-FREE OR UNINTERRUPTED.

7.   **Indemnification**.

    7.1   **By ThinkSmart**.

        (a)   ThinkSmart shall, at its own expense, defend or at its option settle any claim ("**Claim**") brought against Customer alleging that to ThinkSmart's knowledge, the ThinkSmart Technology, when used in providing the Services purchased hereunder in accordance with the terms of this Agreement and applicable documentation, infringes any third party's intellectual property rights; provided that Customer provides ThinkSmart with (i) prompt written notice of such Claim; (ii) sole control over the defense and settlement of such Claim; and (iii) available information and assistance, at ThinkSmart's expense, to settle and/or defend any such Claim; provided. ThinkSmart agrees to pay, subject to the limitations set forth in Sections 7.1(c), any final judgment or settlement amount entered against Customer as a result of such Claim defended by ThinkSmart.

        (b)   In the event any such Claim is brought or threatened, ThinkSmart may, at its sole option and expense: (i) procure for Customer the right to continue to use the applicable Service; (ii) modify or amend the applicable portion of the Service, or replace all or the applicable portion of the Service with other service having substantially the same or better capabilities; or (iii) terminate this Agreement or a SOW in whole or in part, and refund to Customer a prorated portion of any Subscription Fees paid in advance for any Service not provided as a result of such termination.

        (c)   ThinkSmart shall have no obligation to Customer under Section 7.1(a) to the extent a Claim arises from (i) Customer's breach of this Agreement, or use of the ThinkSmart Technology other than in accordance with this Agreement and all applicable documentation; (ii) the Data; (iii) the combination of the Service with any of Customer's products, services, data, hardware, Systems, or business process; or (iv) implementation of any of Customer's specifications or requirements.

        (d)   THE FOREGOING PROVISIONS OF SECTION 7.1 STATE THE ENTIRE LIABILITY OF THINKSMART, AND THE SOLE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.

    7.2   **By Customer.** Customer shall, at its own expense, defend or at its option settle any Claim brought against ThinkSmart to the extent related to the Data; provided that ThinkSmart provides Customer: (i) prompt written notice of such claim; (ii) sole control over the defense and settlement of such claim; and (iii) proper and full information and assistance, at ThinkSmart's expense, to settle and/or defend any such claim. Customer shall have no obligation to ThinkSmart under this Section 7.2 to the extent a Claim arises from ThinkSmart's breach of this Agreement. Customer agrees to pay, subject to the limitations set forth in this Section 7.2, any final judgment or settlement amount entered against ThinkSmart as a result of such Claim defended by Customer.

8. **Term and Termination**.

8.1 **Term**. The term of this Agreement shall commence on the Effective Date and shall remain in force until all the subscription terms for Services purchased under all SOWs expire or are terminated in accordance with this Agreement. Subscription Services may be renewed for subsequent terms only based upon a mutually agreed upon written Amendment to this Agreement.

8.2 **Termination**. Either Party will have the right to terminate this Agreement, or the applicable SOW, upon written notice, if the other Party materially breaches this Agreement and fails to cure such breach within sixty (60) days after receipt of written notice of the same. The foregoing cure period shall not apply in the case of failure to pay fees.

8.3 **Effect of Termination**. Upon the effective date of expiration or termination of this Agreement for any reason: (a) ThinkSmart may immediately cease providing the Service hereunder; (b) any and all payment obligations of Customer under this Agreement will become due immediately; (c) within thirty (30) days after such expiration or termination, each Party shall return the tangible embodiments of the other Party's Confidential Information in its possession and shall not retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement.

8.4 **Survival**. The following provisions (and such other provisions that by their express terms survive expiration or termination of this Agreement) will survive any expiration or termination of the Agreement: Sections 2.5 (Customer Responsibilities), 2.6 (Service Guidelines), 3.2 (Billing and Payment Terms; Late Payment), 3.3 (Taxes), 4 (Proprietary Rights), 5 (Confidentiality), 6 (Representations and Warranties), 9 (Limitations of Liability), 7 (Indemnification), 8.3 (Effect of Termination), 10(Miscellaneous Provisions).

9. **Limitations of Liability**.

9.1 **Disclaimer**. EXCEPT WITH RESPECT TO ANY MATERIAL BREACH OF A PARTY'S OBLIGATIONS OF CONFIDENTIALITY, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY HEREUNDER FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2 **Limitation on Liability**. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO THINKSMART FOR THE SERVICES GIVING RISE TO THE APPLICABLE LIABILITY DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.

9.3 **Basis of the Bargain; Failure of Essential Purpose**. Customer acknowledges that ThinkSmart has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the Parties. The Parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

10.   **Miscellaneous Provisions**.

10.1   **Force Majeure**. Except for the obligation to pay money, neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including act of war, acts of God, labor shortage or dispute, governmental act or failure of the Internet or telecommunications. The delayed Party shall give the other Party prompt notice of such cause, and shall use its reasonable commercial efforts to correct promptly such failure or delay in performance.

10.2   **Insurance**. At its own expense, ThinkSmart shall continuously maintain in full force and effect commercial general liability, auto liability, worker's compensation, professional liability/errors & omissions, and employee dishonesty insurance coverages in amounts that are standard in the industry (at least $1,000,000 per occurrence, $2,000,000 in the aggregate). Upon request, ThinkSmart shall provide evidence of such coverage to Customer and shall name Palo Alto Networks, Inc., as additional insured on the commercial general liability policy, but only to the extent of liabilities arising from ThinkSmart's obligations under this Agreement.

10.3   **Government Regulations**. Each Party shall comply with all United States and foreign export control laws or regulations applicable to its performance under this Agreement.

10.4   **Governing Law; Venue**. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of law principles. Any dispute arising out of this Agreement will be subject to the exclusive jurisdiction of the state courts located in San Francisco, California and the federal courts of the United States in the Northern District of California, and each Party consents to the personal jurisdiction thereof and waives any right it may otherwise have to challenge the appropriateness of such forums.

10.5   **Severability; Waiver**. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision shall be modified so as best to accomplish the original intent of the Parties to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving Party.

10.6   **Construction**. The Parties acknowledge and agree that they have had the opportunity to discuss this Agreement with and obtain advice from their legal counsel, have had sufficient time to, and have carefully read and fully understand all the provisions of this Agreement, and are knowingly and voluntarily entering into this Agreement. Therefore, the Parties waive the application of any rule of construction providing that ambiguities in an agreement will be construed against the Party drafting such agreement.

10.7   **Assignment**. Neither Party shall have the right to assign this Agreement, in whole or in part, or any of its rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of the other Party, except that each Party may assign this Agreement as part of a corporate reorganization, upon a change of control, consolidation, merger, or sale of all or substantially all of its assets related to this Agreement. Any attempted assignment or delegation in violation of the foregoing will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each Party's successors and permitted assigns.

10.8   **Notices**. Any payment, demand, invoice, notice or declaration of any kind which must be delivered to the other party, shall be in writing and served: (i) personally; (ii) by a recognized overnight

courier providing a written confirmation of delivery; or (iii) by United States first-class mail (postage prepaid), addressed to the party at its address set forth below or at such address as either party may advise the other in writing from time-to-time. Notices given hereunder shall be deemed to have been given on: (iv) the date of personal delivery; (v) the date of delivery as documented by the overnight courier; or (vi) on the third business day after the date of mailing.

To Customer at: Name and Address set forth in the Statement of Work or Order Form

To ThinkSmart at: ThinkSmart, LLC
530 Jackson Street,
San Francisco, CA 94133
Attn: ThinkSmart Accounting

10.9 **Independent Contractors; Subcontractors**. ThinkSmart and Customer are independent contractors. This Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between ThinkSmart and Customer. Neither ThinkSmart nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

10.10 **Entire Agreement**. The terms and conditions of any SOW, the terms and conditions of Carahsoft Technology Corporation's GSA Multiple Award Schedule Contract, and any exhibits, schedules and other documents referenced herein or therein are incorporated into the terms and conditions of this Agreement, and constitute the complete and exclusive agreement between the Parties with respect to the subject matter hereof, and supersede and replace any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. In the event of any conflict in the documents which constitute this Agreement, the conflict will be resolved in accordance with General Services Administration Acquisition Regulation 552.212-4(o) Order of Precedence.

1.   Scheduled Downtime. When needed, ThinkSmart will schedule downtime for routine maintenance or system upgrades ("**Scheduled Downtime**") for the Service. ThinkSmart shall exercise commercially reasonable efforts to schedule Scheduled Downtime outside of peak traffic periods. ThinkSmart will use commercially reasonable efforts to notify Customer's designated contact at least one calendar week prior to the occurrence of Scheduled Downtime.

2. Uptime Commitment.

A. The Services will be accessible 98% of the time, 7 days per week, and 24 hours per day ("**Uptime Commitment**"), as calculated over a calendar month. Uptime Commitment shall not apply to, and ThinkSmart will not be responsible for, any downtime which: 1) lasts less than 15 minutes; 2) results from Scheduled Downtime; 3) results from the failure of communication or telephone access service or other outside service or equipment or software not the fault of ThinkSmart, including without limitation general network outages; 4) is caused by a third party not under ThinkSmart's control; 5) is a result of causes beyond the reasonable control of ThinkSmart; or 6) results from failures of the System or the Customer API Kit.

B. If ThinkSmart fails to meet its Uptime Commitment in any given month, Customer's sole remedy and ThinkSmart's entire liability will be for ThinkSmart to credit Customer's account with "Service Level Credits", to be applied against Customer's next billing period as follows:

No. of Hours Below Uptime Commitment	Service Level Credits
1 hours to 2 hours	1 day prorated monthly Subscription Fees
> 2 hours to 24 hours	3 days prorated monthly Subscription Fees

C. To receive a Service Level Credit, Customer must submit a written request for a Service Level Credit to Customer's designated account manager or the ThinkSmart support team. To be eligible, the request must (i) include the dates and times of each incident of downtime experienced by Customer in the preceding month; and (ii) be received by ThinkSmart within ten business days after the end of the billing cycle in which the downtime occurred.

D. Upon receipt of a Service Level Credit request in compliance with the above requirements, ThinkSmart shall have 30 days to review the request and to validate the information provided. If ThinkSmart determines in good faith that the Services failed to meet the Uptime Commitment as alleged in such a request, then ThinkSmart will apply such Service Level Credits to Customer's immediately succeeding billing period. Customer's failure to comply with the provisions of Section 2.C. above will disqualify it from receiving a Service Level Credit.

1.   Liaison.   Customer's technical liaison to communicate with ThinkSmart with respect to the resolution of technical problems shall be identified and communicated to ThinkSmart prior to commencement of Service (the "Liaison"). Liaison shall complete reasonable training with ThinkSmart to enable the Liaison to train users and correct problems caused by user error, assist users with the resolution of known issues, and obtain sufficient information from user's to adequately report problems to ThinkSmart. Customer may change such liaison from time to time at reasonable intervals upon written notice to ThinkSmart and completion of applicable training by the successor Liaison. ThinkSmart will not be obligated to respond or provide support to any person other than the designated liaison.

2.   Support Hours and Methods. ThinkSmart shall use commercially reasonable efforts to provide email and phone support to Customer's Liaison during regular business hours, M-F 9 a.m. to 5 p.m. Pacific Time. Problems may be reported any time, however, ThinkSmart will not be obligated to assign work after business hours (9 a.m. to 5 p.m. Pacific Time) to problems that are not classified as Priority 1/ASAP.

3.   Holidays. ThinkSmart observes the following holidays: New Year's Day, Martin Luther King Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve Day, and Christmas Day.

4.   Priority. Upon receiving a call or request, ThinkSmart will classify and prioritize the problem according to the following criteria (it being understood that in the event that ThinkSmart completes a workaround that relegates the applicable problem to a lower priority level, the service levels applicable to that lower priority level will apply going forward):

Priority	Description	Response Time	Target Resolution Time
Priority 1/ - ASAP	The issue renders the mission critical real time processing features and functionalities of the Service completely unavailable, unresponsive, or inoperable, and there is no workaround.	4 business hours	1 business day
Priority 1	Process cannot complete and there is no workaround, but the condition does not interrupt all functions of the Service.	1 business day	10 business days
Priority 2	Process cannot complete, but there is a workaround that allows Customer to use the Service.	2 business days	15 business days
Priority 3	This priority addresses "cosmetic" type calls with no financial or processing impact.	5 business days	One month