

**Carahsoft Rider to Manufacturer Commercial Supplier Agreements**  
**(for U.S. Government End Users)**  
**Revised 20160504**

- 1. Scope.** This Carahsoft Rider and the Manufacturer's Commercial Supplier Agreement (CSA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").
  
- 2. Applicability.** The terms and conditions in the attached Manufacturer's CSA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's CSA is inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's Multiple Award Schedule Contract, GS-35F-0119Y, including, but not limited to the following:
  - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", defined as an entity authorized to order under Government contracts as set forth in Government Order 4800.2H ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
  
  - (b) Changes to Work and Delays.** Subject to General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of the GSAR and the FAR provisions shall take precedence.
  
  - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

- (d) Audit.** During the term of this CSA: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this CSA. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this CSA.
- (e) Termination.** Clauses in the Manufacturer's CSA referencing termination or cancellation of the Manufacturer's CSA are hereby deemed to be deleted. Termination shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:
- Carahsoft may request cancellation or termination of the CSA on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section (q) below or if such remedy is otherwise ordered by a United States Federal Court.
- (f) Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) Force Majeure.** Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.
- (h) Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA are hereby deemed to be deleted.
- (i) Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.

- (j) Customer Indemnities.** All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) Contractor Indemnities.** All of the Manufacturer's CSA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) Renewals.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) Future Fees or Penalties.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) Taxes.** Taxes are subject to GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w)(1)(x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).
- (o) Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer's CSA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) Dispute Resolution and Venue.** Any disputes relating to the Manufacturer's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w)(1)(iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.

**(r) Limitation of Liability: Subject to the following:**

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

**(s) Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

**(t) Public Access to Information.** Manufacturer agrees that the CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA and this Rider will be available to the public.

**(u) Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).

## SUBSCRIPTION AGREEMENT

BY CLICKING ON THE "ACCEPT" BUTTON, YOU AND THE ENTITY OR COMPANY THAT YOU REPRESENT ("LICENSEE") ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS SUBSCRIPTION AGREEMENT ("AGREEMENT") WITH EXABEAM, INC. ("EXABEAM"). LICENSEE'S CONTINUED USE OF THE DOWNLOADED MATERIALS SHALL ALSO CONSTITUTE ASSENT TO THE TERMS OF THIS AGREEMENT. IF LICENSEE DOES NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE "CANCEL" BUTTON AND THE DOWNLOAD AND INSTALLATION PROCESS WILL NOT CONTINUE. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS.

### TERMS AND CONDITIONS

1. **Grant of License and Restrictions.** Subject to all the terms of this Agreement and payment of all fees, Exabeam grants Licensee a nonsublicensable, nonexclusive right to use the Product during the Term of this Agreement strictly in accordance with the related user documentation and any terms and procedures Licensor may prescribe from time to time. Exabeam retains ownership of all Products and copies. Licensee will maintain the copyright notice and any other notices that appear on the Product on any copies and any media. Licensee will not (and will not allow any third party to) (i) reverse engineer or attempt to discover any source code or underlying ideas or algorithms of any Product (except to the extent that applicable law prohibits reverse engineering restrictions), (ii) provide, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use a Product for the benefit of any third party, or (iii) use any Product, or allow the transfer, transmission, export, or re-export of any Product or portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency. For clarity, all the limitations and restrictions on Products in this Agreement also apply to any related documentation.

2. **Support and Maintenance.** While the license for a particular Product remains effective and the applicable License Fee has been paid, Exabeam will use reasonable commercial efforts to provide the support and maintenance services for that Product as described in Exhibit A ("Support Services"), subject to Section 3.

3. **Fees and Payment.** Licensee shall pay Exabeam the License Fees and any other applicable fees set forth on the cover page hereof in accordance with the terms set forth therein. All payments shall be made inside the U.S., in U.S. dollars. Any payments more than thirty (30) days overdue will bear a late payment fee of 1.5% per month, or, if lower, the maximum rate allowed by law. In addition, Licensee will pay all taxes, shipping, duties, withholdings and the like, as well as all out of pocket expenses incurred by Exabeam in connection with consulting and/or Support Services, promptly upon invoice. Any purchase orders or order forms ("Purchase Orders") submitted by Licensee will be subject to the terms of this Agreement and in the event of a conflict, the order of precedence shall be determined in accordance with General Services Administration Acquisition Regulation (GSAR) 552.212-4(s). Purchase Orders shall only set forth factual terms such as pricing, license type and delivery date; accordingly, Exabeam's acceptance of a Purchase Order that contains any terms other than factual information of such nature, which are additional to, different from or inconsistent with the terms of this Agreement will be void. Licensee will maintain, and Exabeam will be entitled to audit, any records relevant to Licensee's use of the Products hereunder; Exabeam may audit such records on reasonable notice at

Exabeam's cost (or if the audits reveal material non-compliance with this Agreement, at Licensee's cost).

4. **Termination.** This Agreement will continue in effect for the Term as specified in the cover sheet. If either party materially breaches this Agreement, the other party shall have the right to terminate this Agreement (and all licenses) upon thirty days (ten in the case of non-payment and immediately in the case of a breach of Section 1) written notice of any such breach, unless such breach is cured during such notice period. Upon termination, Licensee shall immediately cease all use of all affected Products and return or destroy all copies of all affected Products and all portions thereof and so certify to Exabeam. Except as otherwise expressly provided herein, the terms of the Agreement shall survive termination. Termination is not an exclusive remedy and all other remedies will be available whether or not termination occurs.

5. **Indemnification.** Exabeam shall hold Licensee harmless from liability to third parties resulting from infringement by a Product of any United States patent or copyright or misappropriation of any trade secret, provided Exabeam is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Exabeam will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to a Product or portions or components thereof (i) not supplied by Exabeam, (ii) made in whole or in part in accordance with Licensee specifications, (iii) that are modified after delivery by Exabeam, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Licensee continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Licensee's use of such Product is not strictly in accordance with this Agreement.

6. **Warranty; Disclaimer.**

6.1 **Warranty.** Exabeam offers a limited warranty for a period of: (i) three (3) years from Licensee's purchase of a hardware appliance Product; and (ii) one (1) year from Licensee's purchase of hardware components purchased in addition to the hardware appliance Product (e.g. additional drives) (collectively, "Hardware"). Exabeam warrants that the Hardware will be free from defects in workmanship. Exabeam will repair or replace the Hardware, at Exabeam's option, provided Licensee bears the cost of freight and insurance to the point of repair. This warranty is contingent upon: (a) proper use of the Hardware as set forth in the applicable user documentation; (b) use of the then-current Return Merchandise Authorization process as prescribed by Exabeam; and (c) warranty claims must be reported to Exabeam

during the warranty period. The warranty shall not apply to any failure caused by: (1) neglect; misuse; fluctuations in electrical power beyond specifications; failure of air conditioning or humidity control; (2) any equipment or software used with the Hardware that is not furnished by Exabeam; or (3) alteration or repair of the Hardware by anyone other than Exabeam or as authorized in writing by Exabeam.

6.2 DISCLAIMER. ANY LIABILITY OF EXABEAM WITH RESPECT TO A PRODUCT OR THE PERFORMANCE THEREOF UNDER ANY WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY WILL BE LIMITED EXCLUSIVELY TO PRODUCT REPAIR OR REPLACEMENT OR, IF, IN EXABEAM'S OPINION, REPAIR OR REPLACEMENT IS IMPRACTICAL, TO REFUND OF THE LICENSE FEE. EXCEPT FOR THE FOREGOING, ALL PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. FURTHER, EXABEAM DOES NOT WARRANT RESULTS OF USE OF THAT THE PRODUCTS ARE BUG FREE OR THAT THEIR USE WILL BE UNINTERRUPTED.

7. Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, AND EXCEPT FOR BODILY INJURY, EXABEAM SHALL NOT BE LIABLE OR OBLIGATED WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY: (1) FOR ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE FEES PAID TO IT HEREUNDER WITH RESPECT TO THE APPLICABLE PRODUCT DURING THE SIX MONTH PERIOD PRIOR TO THE CAUSE OF ACTION; (2) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (3) FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR (4) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA.

8. Confidentiality. Technical, financial, business or other information provided by one party (the "Disclosing Party") to the other party (the "Receiving Party") and designated as confidential or proprietary ("Confidential Information") shall be held in confidence and not disclosed and shall not be used except to the extent necessary to carry out the Receiving Party's obligations or express rights hereunder. For clarity, the Products

and related documentation and information shall be deemed Confidential Information of Exabeam whether or not otherwise designated as such. This obligation will not apply to information that: (i) is generally and freely publicly available through no fault of the Receiving Party; (ii) the Receiving Party otherwise rightfully obtains from third parties without restriction; or (iii) is independently developed by employees of the Receiving Party with no knowledge of or access to such information.

9. Government Matters. As defined in FAR section 2.101, the Products (including the software, documentation and data related thereto) are "commercial items" and according to DFAR section 252.227 7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

10. Miscellaneous. Neither party shall have the right to assign this Agreement, except that either party may assign its rights and obligations without consent to a successor to substantially all its relevant assets or business. Any notice, report, approval or consent required or permitted hereunder shall be in writing. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be construed pursuant to the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. Any waivers or amendments shall be effective only if made in writing. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorney's fees and costs in connection with such action.

## EXHIBIT A

### SUPPORT SERVICES TERMS AND CONDITIONS

Capitalized terms not defined in Section 4 below have the same meaning as in the Agreement. Exabeam is obligated under this Exhibit A only with respect to Products for which it is obligated under Sections 1 and 2 of the main body of the Agreement.

1. **SUPPORT SERVICES.** Support Services consist of (a) Error Correction and Telephone Support provided to a single technical support contact concerning the installation and use of the then current release of a Product and the Previous Sequential Release, and (b) product updates that Exabeam in its discretion makes generally available without additional charge.

2. **ERROR PRIORITY LEVELS.** Exabeam shall exercise commercially reasonable efforts to correct any Error reported by Licensee in the current unmodified release of Product in accordance with the priority level reasonably assigned to such Error by Exabeam.

- Priority A Errors - Exabeam shall promptly commence the following procedures: (i) assign Exabeam engineers to correct the Error; (ii) notify Exabeam management that such Errors have been reported and of steps being taken to correct such Error(s); (iii) provide Licensee with periodic reports on the status of the corrections; and (iv) initiate work to provide Licensee with a Workaround or Fix.
- Priority B Errors - Exabeam shall exercise commercially reasonable efforts to include the Fix for the Error in the next regular Product maintenance release.
- Priority C Errors - Exabeam may include the Fix for the Error in the next major release of the Product.

If Exabeam believes that a problem reported by Licensee may not be due to an Error in a Product, Exabeam will so notify Licensee. At that time, Licensee may (1) instruct Exabeam to proceed with problem determination at its possible expense as set forth below, or (2) instruct Exabeam that Licensee does not wish the problem pursued at its possible expense. If Licensee requests that Exabeam proceed with problem determination at its possible expense and Exabeam determines that the error was not due to an Error in the Product, Licensee shall pay Exabeam, at Exabeam's then-current and standard consulting rates, for all work performed in connection with such determination, plus reasonable related expenses incurred therewith. Licensee shall not be liable for (i) problem determination or repair to the extent problems are due to Errors in the Product; or (ii) work performed under this paragraph in excess of its instructions; or (iii) work performed after Licensee has notified Exabeam that it no longer wishes work on the problem determination to be continued at its possible expense (such notice shall be deemed given when actually received by Exabeam). If Licensee instructs Exabeam that it does not wish the problem pursued at its possible expense or if such determination requires effort in excess of Licensee's instructions, Exabeam may, at its sole discretion, elect not to investigate the error with no liability therefor.

3. **EXCLUSIONS.** Exabeam shall have no obligation to support: (i) altered or damaged Product or any portion of a Product incorporated with or into other software; (ii) Product that is not the then current release or immediately Previous Sequential Release; (iii) Product problems caused by Licensee's negligence, abuse or misapplication, use of Product other than as specified in the Exabeam's user manual or other causes beyond the control of Exabeam; or (iv) Product installed on any hardware that is not supported by Exabeam. Exabeam shall have no liability for any changes in Licensee's hardware which may be necessary to use Product due to a Workaround or maintenance release.

4. **DEFINITIONS.**

- "Error" means an error in a Product which significantly degrades such Product as compared to the Exabeam's published performance specifications contained in the user documentation.
- "Error Correction" means the use of reasonable commercial efforts to correct Errors.
- "Fix" means the repair or replacement of object or executable code versions of a Product to remedy an Error.
- "Previous Sequential Release" means the release of a Product which has been replaced by a subsequent release of the same Product. Notwithstanding anything else, a Previous Sequential Release will be supported by Exabeam only for a period of six (6) months after release of the subsequent release.
- "Priority A Error" means an Error which renders a Product inoperative or causes such Product to fail catastrophically.
- "Priority B Error" means an Error which substantially degrades the performance of a Product or materially restricts Licensee's use of such Product.
- "Priority C Error" means an Error which causes only a minor impact on the Licensee's use of a Product.
- "Support Services" means Exabeam support services as described in Section 2.

- “Telephone Support” means technical support telephone assistance provided by Exabeam to the Technical Support Contact during normal business hours concerning the installation and use of the then current release of a Product and the Previous Sequential Release.
  - “Workaround” means a change in the procedures followed or data supplied by Licensee to avoid an Error without substantially impairing Licensee’s use of a Product.
5. THESE TERMS AND CONDITIONS CONSTITUTE A SERVICE CONTRACT AND NOT A PRODUCT WARRANTY. ALL PRODUCTS AND MATERIALS RELATED THERETO ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE AGREEMENT. THIS ATTACHMENT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT.