

**Carahsoft Rider to Application Security End User License Agreements
(for U.S. Government End Users)**

1. **Scope.** This Carahsoft Rider and the attached **Cyber-Ark Software, Inc.** ('Manufacturer') End User License Agreement (EULA) 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 EULA (refer to Attachment A) 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 EULA are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's 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 GSA contracts as set forth in GSA ORDER 4800.2G 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 GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which 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 Agreement: (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 Agreement. 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
 - (a) **Error! Unknown document property name.**

verify Ordering Activity's compliance with this Agreement.

- (e) **Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement 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 will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA 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 (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.
- (j) **Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All Manufacturer EULA 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 Manufacturer EULA 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 Manufacturer EULA 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 FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (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 EULA, 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 EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (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 EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA 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.

Attachment A

Cyber-Ark Software, Inc. Standard Software License Agreement

CYBER-ARK SOFTWARE, INC., 57 Wells Avenue Newton, MA 02459

Software License Agreement

SLA #

COMPANY ADDRESS (CUSTOMER)

INSTALLATION ADDRESS

ADDRESS

ADDRESS

PHONE

PHONE

GRANT OF LICENSE

Cyber-Ark Software, Inc. ("Cyber-Ark Software") grants the entity listed above ("Customer"), a non-exclusive, non-transferable right to use the computer software PRODUCT and the DOCUMENTATION defined in this Agreement, solely for Customer's own internal use on such number of servers, personal computers and locations as specified in this Agreement. In addition to the specified quantity of copies, Customer may make one (1) additional copy as backup to the original. However, Customer may not cause the software to execute or be loaded into the active memory or media of more computers than the specified quantity at any one time.

PRODUCT AND NUMBER OF USERS

PRODUCT shall include the client software, the server software or any other software component such as gateways/Vault Connectors or add-on modules of the following products together with all associated media and printed materials whether in electronic or in tangible form ("DOCUMENTATION") as set forth in Exhibit A or in future Customer Purchase Orders approved by Cyber-Ark Software.

Additional copies of the PRODUCT may be licensed separately from Cyber-Ark Software at such terms and conditions as shall be determined by Cyber-Ark Software from time to time and subject to the payment of the applicable license fees agreed with Cyber-Ark Software.

MAINTENANCE SERVICES

Customer may purchase separately from Cyber-Ark Software annual maintenance and support services under which Cyber-Ark Software will make available to Customer such corrections and enhancements as may be generally incorporated into the PRODUCT subject to any applicable handling and shipping charges.

EXTENDED USE

If Customer licensed the Inter-Business Vault®, Customer may, at its discretion, install copies of the client software part of the PRODUCT or its gateways/Vault Connectors licensed under this Agreement, on computers of a third party entity with which Customer is in such business or affiliation relationship which requires Customer to share digital information with, provided that such entity shall be bound by the License Agreement embedded as a click-on agreement in the PRODUCT. Customer shall not be permitted to act as intermediary and transfer digital information between different third party organizations.

RESTRICTION ON USE

Customer may not:

- Copy or reproduce the PRODUCT and/or the DOCUMENTATION or cause any software part of the PRODUCT to execute or be loaded into the active memory or media of more than the specified number of computers referred to above at any one time.
- remove or destroy any copyright, trademark or other proprietary marking or legends placed on or contained in the PRODUCT or the DOCUMENTATION.
- assign, rent, lease, or otherwise transfer the rights granted to Customer under this Agreement to any third party except as set forth in the Extended Use section above.
- reverse engineer, decompile, or disassemble the PRODUCT.

CONFIDENTIALITY

Customer understands and acknowledges that the PRODUCT consists of proprietary and confidential information. Customer will take all reasonable steps necessary to ensure that the PRODUCT or DOCUMENTATION is not made available or disclosed to any unauthorized person. Customer will indemnify and hold Cyber-Ark Software harmless from and against any loss, damage, cost, expense, claim or liability incurred by Cyber-Ark Software as a result of Customer's breach of this confidentiality obligation.

COPYRIGHTS AND PATENTS

The PRODUCT is owned by Cyber-Ark Software and its licensors and is protected by US and international patent laws, trade secret laws, copyright laws and international treaty provisions. Therefore, Customer must treat the PRODUCT like any other copyrighted and protected material. As specified above, Customer may either: a) make one copy of the PRODUCT solely for backup or archival purposes, or b) transfer the PRODUCT to a single hard disk provided Customer keep the original solely for backup or archival purposes. Customer may not copy the DOCUMENTATION, if any, accompanying the PRODUCT. All title and interest in and to the PRODUCT shall remain with Cyber-Ark Software or its licensors.

TRADEMARKS

PrivateArk®, Enterprise Password Vault®, Sensitive Document Vault™, Cyber-Ark®, Network Vault®, Inter-Business Vault® and all trademarks and logos, which appear on or in connection with the PRODUCT, are, unless stated otherwise, trademarks of Cyber-Ark Software. No right, license, or interest to such trademarks are generated or granted hereunder other than the limited right to use, and Customer agrees that no such right, license, or interest, shall be asserted by Customer with respect to such trademarks. Customer will not remove or destroy any copyright, trademark, logos or other proprietary marking or legends placed on or contained in the PRODUCT.

LIMITED WARRANTY

Cyber-Ark Software warrants that the original copy of the software will perform substantially as described in the DOCUMENTATION for a period of ninety (90) days from date of purchase of the license to use the PRODUCT. Any and all warranties, expressed or implied, are limited to the extent and period mentioned above. Cyber-Ark Software's entire liability under this warranty shall be, at Cyber-Ark Software's option, either (a) the return of the license fee of the PRODUCT set forth in this Agreement, or (b) repair or replacement of the PRODUCT that does not meet the limited warranty set forth above. This limited warranty is void if the failure of the software has resulted from abuse, negligence, accident, or misuse by the Customer, by anyone on the customer behalf or by any unauthorized third party of the PRODUCT. Any replacement PRODUCT will be warranted under the terms of this limited warranty for a period of ninety (90) days.

WARRANTY

The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

LIMITATION OF LIABILITY

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, IN NO EVENT SHALL CYBER-ARK SOFTWARE OR ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR ANY INDIRECT DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT OR DOCUMENTATION, EVEN IF CYBER-ARK SOFTWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CYBER-ARK SOFTWARE'S ENTIRE LIABILITY FOR DIRECT DAMAGES, UNDER ANY LEGAL THEORY OR BASIS, SHALL NOT EXCEED THE LICENSE FEE CUSTOMER PAID FOR THE USE OF THE PRODUCT.

TAXES

Prices quoted in the contract include all federal, state, and local taxes as well as any duties.

SEVERABILITY

Should any term or provision of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remainder of this Agreement.

AGREEMENT DISCLOSURE

Unless otherwise requested in writing by Customer, Cyber-Ark may publicize and promote the business relationship it created with Customer in the form of press releases and other forms of announcements on the Cyber-Ark website, its marketing materials and in on-line and printed trade publications.

NO WAIVER

The failure of either party to enforce any rights granted to it hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

EXPORT CONTROL.

Customer acknowledges that the exportation of the PRODUCT is subject to compliance with the U. S. Export Administration Act, as amended, and the rules and regulations promulgated from time to time there under, and Customer agrees not to knowingly export or re-export the PRODUCT or any part thereof directly or indirectly, without first obtaining required permission to do so from the United States Office of Export Administration and other appropriate governmental agencies.

This section is not intended to grant the Customer any rights in addition to those set forth in this Agreement.

FORUM AND EXCLUSIVE JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the United States. Customer irrevocably consents to the exclusive jurisdiction of any United States District Court, over any action, suit or proceeding arising hereunder.

~End of Attachment A~