

**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.).

## QMULOS SOFTWARE LICENSE AGREEMENT (Version 1.3)

THIS QMULOS SOFTWARE LICENSE AGREEMENT (“**AGREEMENT**”) ENTERED INTO BY QMULOS INC., GOVERNS THE INSTALLATION AND USE OF THE QMULOS SOFTWARE DESCRIBED HEREIN. THE INSTALLATION AND USE OF THE QMULOS SOFTWARE WILL BE SUBJECT TO THE ORDER DOCUMENT(S).

THIS AGREEMENT SUPERSEDES ANY CLICK-THROUGH SOFTWARE LICENSE AGREEMENT REQUIRED IN ORDER TO ACCESS, INSTALL OR USE ANY SOFTWARE. THIS AGREEMENT IS ENFORCEABLE THE U.S. GOVERNMENT CUSTOMER (AGENCY), UNDER GSA SCHEDULE CONTRACT GS-35F-0119Y, IS THE “ORDERING ACTIVITY,” DEFINED AS AN “ENTITY AUTHORIZED TO ORDER UNDER GSA SCHEDULE CONTRACTS AS DEFINED IN GSA ORDER ADM4800.2H, AS MAY BE REVISED FROM TIME TO TIME .

THIS SOFTWARE IS BEING LICENSED AND NOT SOLD TO YOU. QMULOS PERMITS YOU TO DOWNLOAD, INSTALL AND USE THE FUNCTIONALITY OR FEATURES OF THE SOFTWARE ONLY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

1. **DEFINITIONS.** Capitalized terms not otherwise defined herein can be found in Exhibit A.
2. **TERM.** This Agreement will be in effect perpetually unless earlier terminated as provided herein (the “**Term**”).
3. **LICENSE GRANTS.** Subject to your compliance with the terms and conditions of this Agreement, including (as applicable) your timely payment of license fees set forth in the applicable Order Document (the “**License Fees**”), Qmulos grants to you the following nonexclusive, worldwide, nontransferable, nonsublicensable, revocable, limited licenses during the Term (or such other period of time provided in your Order Document) to use:

**3.1** the Purchased Software solely for the Internal Business Purpose of the public sector agency for whom you are placing an Order as a Prime Contractor (“Agency”) for which you have paid the applicable License Fees;

**3.2** Qmulos Software solely for use with the Software for the Agency’s Internal Business Purpose

**SOFTWARE RESTRICTIONS.** You agree not to (a) use the Qmulos Materials except as expressly authorized in this Agreement and your Order Document; (b) copy the Software (except as required to run the Software and for reasonable backup purposes); (c) modify, adapt, or create derivative works of the Software; (d) rent, lease, loan, resell, transfer, sublicense (including but not limited to offering any of the functionality of the Qmulos Materials on a service provider, hosted or time sharing basis except as otherwise expressly provided herein) or distribute the Qmulos Materials to any third party; (e) decompile, disassemble or reverse-engineer the Software or otherwise attempt to derive the Software source code; (f) disclose to any third party the results of any benchmark tests or other evaluation of the Software, (g) use the Qmulos Materials for your Internal Business Purpose or (h) authorize any third parties to do any of the above. Any consultant, contractor, or agent hired to perform services for you may operate the Software on your behalf under these terms and conditions, provided that: (v) you are responsible for ensuring that any such third party agrees to abide by and fully comply with the terms of this Agreement on the same basis as applicable to you; (x) such use is only in connection with your Internal Business Purpose; (y) such use

does not represent or constitute an increase in the scope of the licenses provided hereunder; and (z) you remain fully liable for any and all acts or omissions by such third parties related to this Agreement. Any violation of this Section shall be a material breach of this Agreement subject to immediate termination of this Agreement for which no notice from Qmulos shall be required.

- 4. OWNERSHIP.** Qmulos, its suppliers and/or its licensors own all worldwide right, title and interest in and to the Qmulos Materials, including all worldwide patent rights (including patent applications and disclosures); copyright rights (including copyrights, copyright registration and copy rights with respect to computer software, software design, software code, software architecture, firmware, programming tools, graphic user interfaces, reports, dashboard, business rules, use cases, screens, alerts, notifications, drawings, specifications and databases); moral rights; trade secrets and other rights with respect to confidential or proprietary information; know-how; other rights with respect to inventions, discoveries, ideas, improvements, techniques, formulae, algorithms, processes, schematics, testing procedures, technical information and other technology; and any other intellectual and industrial property rights, whether or not subject to registration or protection; and all rights under any license or other arrangement with respect to the foregoing. Except as expressly stated in this Agreement, Qmulos does not grant you any intellectual property rights in the Qmulos Materials, and all right, title, and interest in and to all copies of the Qmulos Materials not expressly granted remain with Qmulos, its suppliers and/or its licensors. The Qmulos Materials are copyrighted and protected by the laws of the United States and other countries, and international treaty provisions. You may not remove or obscure any copyright, trademark, and/or any other intellectual property or proprietary notices from the Qmulos Materials.
- 5. PURCHASED SOFTWARE LICENSE AND FEES.** In order to access and use the Purchased Software, you are required to pay Carahsoft Technology Corporation, who will pay Qmulos, the license fees set forth in your Order Document (the “*License Fees*”). The License Fees will be due and payable in accordance with the terms set forth in your Order Document. Any failure to pay the License Fees in accordance with an Order Document may result in automatic revocation and termination of this Agreement and all rights and licenses granted hereunder in Qmulos’s sole discretion. All License Fees are non-refundable once paid.
- 6. MAINTENANCE AND SUPPORT.** Subject to your payment of the applicable annual maintenance and support fees set forth in your Order Document (the “*Support Fees*”), Qmulos will provide the level of support for the Purchased Software identified in your Order Document and in accordance with the support and maintenance terms and conditions set forth on Exhibit B (“*Support and Maintenance Terms and Conditions*”), attached hereto and made a part hereof.
- 7. SOFTWARE VERIFICATION AND AUDIT.** At Qmulos’s written request, you will furnish Qmulos with a certification signed by your authorized representative verifying that the Purchased Software is being used in accordance with the terms and conditions of this Agreement and the applicable Order Document. Upon at least ten (10) days prior written notice and subject to reasonable security requirements, if any, Qmulos may audit your use of the Qmulos Purchased Software to ensure that you are in compliance with the terms of this Agreement and the applicable Order Document. Any such audit will be conducted during regular business hours at the facilities where the Software resides, will not unreasonably interfere with your business activities and will be in compliance with your reasonable security procedures. You will provide Qmulos with reasonable access to the relevant records and facilities for the Purchased Software. If an audit reveals that you have exceeded the Peak Daily Volume or the scope of your license grant during the period audited, then Qmulos will invoice you any underpaid fees based on Qmulos’s price list in effect at the time the audit is completed. If the daily volume usage exceeds ten percent (10%) of the Peak Daily Volume, Qmulos may invoice you for the reasonable costs of

conducting the audit. This Section shall survive expiration or termination of this Agreement for a period of three (3) years.

- 8. PURCHASED SOFTWARE WARRANTY.** Qmulos warrants that for a period of thirty (30) days after the earlier of delivery or registration of the Purchased Software with Qmulos, the Purchased Software will substantially achieve any material function described in documentation for the Purchased Software published by Qmulos. As Qmulos and its Affiliates, licensors and suppliers' sole liability and your sole remedy for any failure of the Purchased Software to conform to this warranty, Qmulos will repair or replace (at Qmulos's option) your copy of the Purchased Software.
- 9. WARRANTY DISCLAIMER.** Except as set forth in section 9 above, qmulos, its affiliates, licensors and suppliers provide the qmulos materials as-is and expressly disclaim any and all warranties, express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose, noninfringement, quiet enjoyment, integration and warranties arising out of course of dealing or usage of trade. You agree that, as between you and qmulos, you are responsible for the accuracy and quality of your data input into any qmulos materials. Because this disclaimer of warranty may not be valid in some states or jurisdictions, the above disclaimer may not apply to you.
- 10. LIMITATION OF LIABILITY.** To the extent permitted by applicable law, qmulos's total cumulative liability to you and to any third party, from all causes of action and all theories of liability, will be limited to and will not exceed the amounts paid by you to qmulos under the applicable order document giving rise to such liability in the twelve months prior to the event giving rise to such liability. In no event will qmulos be liable to you or any third party for any special, indirect, incidental, consequential or punitive damages (including loss of use, data, or profits, business interruption, or costs of procuring substitute qmulos materials) arising out of or in connection with this agreement or the use or performance of the qmulos materials, whether such liability arises from contract, warranty, tort (including negligence), strict liability or otherwise, and whether or not qmulos has been advised of the possibility of such loss or damage. The parties have agreed that these limitations will survive and apply even if any remedy is found to have failed of its essential purpose. Without limiting the foregoing, qmulos will have no liability or responsibility for any business interruption or loss of data arising from the automatic termination of the license rights granted herein and any associated cessation of the functions of the qmulos materials. Because some states or jurisdictions do not allow limitation or exclusion of consequential or incidental damages, the above limitation may not apply to you. Qmulos is acting on behalf of its affiliates, licensors and suppliers for the purpose of disclaiming, excluding and limiting obligations, warranties and liability, but in no other respects and for no other purposes.
- 11. PURCHASED SOFTWARE INDEMNITY.** Provided your use of the Purchased Software was in accordance with the terms of this Agreement, Qmulos will defend, indemnify and hold you harmless from and against any loss, damage, liability or cost (including reasonable attorneys' fees) resulting from any third party claim that the Purchased Software infringes or violates any third party's copyright or trademark rights; provided that you promptly notify Qmulos in writing of any and all such claims. In the event of any loss, damage, liability or cost for which Qmulos is obligated to indemnify you hereunder, Qmulos shall have sole control of the defense and all related settlement negotiations, and you shall reasonably cooperate with Qmulos in the defense and/or settlement thereof at Qmulos's expense; provided that you may participate in such defense using your own counsel, at your own expense.
- 12. TERMINATION.** You may terminate this Agreement at any time by providing to Qmulos a written statement signed by your authorized representative notifying Qmulos that you are terminating the Agreement. If you are not a U.S. Government agency, department, or instrumentality, upon thirty (30)

days notice, Qmulos may terminate this Agreement (and your license rights) upon notice in the event that you breach any provision of this Agreement and have not cured the breach during such notice period. Notwithstanding the foregoing, a material breach of any license granted to you shall be grounds for immediate termination. If You are a U.S. Government agency, department, or instrumentality, termination terms and conditions shall be governed by 48 C.F.R. 52.212-4. Upon any expiration or termination of this Agreement, the rights and licenses granted hereunder will automatically terminate, and you agree to immediately cease using the Qmulos Materials and to return or destroy all copies of the Qmulos Materials, including any documentation, and other Qmulos proprietary or confidential information in your possession or control and certify in writing the completion of such return or destruction. In the event of termination of this Agreement, Qmulos will have no obligation to refund any License Fees, Support Fees, or other fees received from you during the Term. Section 1 (Definitions), Section 3.3 (solely with respect to indemnity), Section 5 (Ownership), Section 8 (Software Verification and Audit), Section 10 (Warranty Disclaimer), Section 11 (Limitation of Liability), Section 12 (Purchased Software Indemnity), Section 13 (Termination) and Sections 14 (Severability) through 20 (General) shall survive termination of this Agreement

- 13. SEVERABILITY.** Unless otherwise provided herein, all rights and remedies, whether conferred hereunder or by any other instrument or law, will be cumulative and may be exercised singularly or concurrently. The failure by either party to enforce any provisions of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent enforcement of that or any other provisions. The terms and conditions stated herein are declared to be severable. If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.
- 14. EXPORT.** You will comply fully with all relevant export laws and regulations of the United States and any other country (“*Export Laws*”) where you use any of the Qmulos Materials. You certify that you are not on any of the relevant U.S. Government Lists of prohibited persons, including but not limited to the Treasury Department’s List of Specially Designated Nationals, and the Commerce Department’s List of Denied Persons or Entity List. You further certify that you shall not export, re-export, ship, transfer or otherwise use the Qmulos Materials in any country subject to an embargo or other sanction by the United States, including Iran, Syria, Cuba, Sudan and North Korea and that you shall not use the Qmulos Materials for any purpose prohibited by the Export Laws, including, but not limited to, nuclear, chemical, missile or biological weapons related end uses.
- 15. GOVERNMENT END USER RIGHTS.** You acknowledge that all Qmulos Materials were developed entirely at private expense and that no part of the Qmulos Materials were first produced in the performance of a Government contract. You agree that all Qmulos Materials and any derivatives thereof are "commercial items" as defined in 48 C.F.R. 2.101, and if You are a U.S. Government agency or instrumentality or if You are providing all or any part of the Qmulos Material or any derivatives thereof to the U.S. Government, such use, duplication, reproduction, release, modification, disclosure or transfer of this commercial product and data, is restricted in accordance with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-1 through 48 C.F.R. §227.7102-3, and 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Qmulos Materials are licensed to U.S. Government end users (i) only as Commercial Items and (ii) with only those rights as are granted to all other users pursuant to this Agreement and any related agreement(s), as applicable. Accordingly, You will have no rights in the Qmulos Materials except as expressly agreed to in writing by You and Qmulos.

- 16. PUBLICITY.** Upon prior written consent of the U.S. Government Customer, Qmulos may publish a brief description highlighting your deployment of the Software, identify you as a Qmulos customer on any of Qmulos's websites, client lists, press releases, and/or other marketing materials.
- 17. CHOICE OF LAW AND DISPUTES.** The following Choice of Law and Disputes terms and conditions shall apply under this Agreement: (i) For other than the U.S. Government as a party, this Agreement shall be governed by and construed in accordance with the laws of the State of Virginia, as if performed wholly within the state and without giving effect to the principles of conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Virginia and the parties hereby consent to personal jurisdiction and venue therein. If a dispute arises between You and Qmulos, and either You or Qmulos files suit in any court of competent jurisdiction to enforce rights under this Agreement, then the prevailing party shall be entitled to recover from the other party all costs of such action or suit, including, but not limited to, investigative costs, court costs and reasonable attorneys' fees (including expenses incurred to collect those expenses) and (ii) When the U.S. Government is a party to this Agreement, this Agreement shall be governed by and interpreted in accordance with the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- 18. GENERAL.** All notices required or permitted under this Agreement or any Exhibit hereto will be in writing and delivered in person, by confirmed facsimile transmission, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth in the applicable Order Document(s) or to such other address as may be specified by either party to the other party in accordance with this Section. You may not assign, delegate or transfer this Agreement, in whole or in part, by agreement, operation of law or otherwise, except to the Agency because you are no longer the Prime Contractor. Qmulos may assign this Agreement in whole or in part to (i) an Affiliate, upon written notice to you (such notice to be delivered electronically or otherwise) or (ii) in connection with an internal reorganization or in connection with a merger, acquisition, or sale of all or substantially all of Qmulos's assets. Any attempt to assign this Agreement other than as permitted herein will be null and void; provided, however, Qmulos may assign its rights to receive payment due as a result of performance of this Agreement to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727) and may assign this Agreement in accordance with the provisions at 48 C.F.R 42.12, as applicable. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties and their successors. This Agreement, along with any additional terms incorporated herein by reference, including any Order Documents and any Exhibits hereto, constitute the complete and exclusive understanding and agreement between the parties and supersede any and all prior or contemporaneous agreements, communications and understandings, written or oral, relating to their subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both parties. Any terms and conditions contained or referenced by either party in a quote, purchase order, acceptance, invoice or any similar document purporting to modify the terms and conditions contained in this Agreement shall be disregarded and have no effect unless otherwise expressly agreed to by the parties in accordance with the preceding sentence. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Qmulos Software License Agreement by their duly authorized officers or representatives.

**QMULOS**

**Organization:**

Signature:

Signature:

Name:

Name:

Title:

Title:

Date:

Date:

## **EXHIBIT A**

### **DEFINITIONS**

1. “*Affiliate*” means, with respect to any person or entity, any other person or entity that directly or indirectly Controls or is Controlled by such person or entity, from time to time, but only for so long as such Control exists.

“Control” and its grammatical variants means (i) a general partnership interest in a partnership, or (ii) the beneficial ownership of a majority of the outstanding equity entitled to vote for directors.

2. “*Enhancements*” means any updates, upgrades, releases, fixes, enhancements or modifications to the Software.
3. “*Extensions*” mean any separate downloadable suite, add-on, command, function, or application, including any example module, which extends the Software.
4. “*Internal Business Purpose*” of a party means the use of any of the Qmulos Materials, as applicable, only for

such party’s internal business use with its systems, networks, devices and data. Such use does not include use of such party’s systems, networks or devices as part of services such party provide for a third party's benefit.

5. “*Order Document(s)*” mean the purchase order or any equivalent ordering document and the order confirmation that detail the components, solutions, and quantities of your purchase of the Software.
6. “*Purchased Software*” means Software purchased through Qmulos or other channels.
7. “*Software*” means the software components listed in the Order Document(s) which have a valid license.
8. “*Qmulos*” means Qmulos Inc..
9. “*Qmulos Materials*” mean the Software, Extensions and/or the Enhancements and any derivatives to any of them.

## **EXHIBIT B**

### **SUPPORT AND MAINTENANCE TERMS AND CONDITIONS**

You agree that the following terms and conditions (“*Terms and Conditions*”) shall govern the delivery of any support and/or maintenance services by Qmulos (“*Support*”) listed on an Order Document entered into pursuant to the Qmulos Software License Agreement (the “*Agreement*”) to which these Terms and Conditions are attached and made a part thereof. Subject to your termination rights set forth in the Agreement, ordering any Support from Qmulos or any authorized reseller indicates your acceptance of these Terms and Conditions. These Terms and Conditions are effective upon receipt and confirmation of acceptance of your purchase order by Qmulos or an authorized reseller (the “*Effective Date*”).

**1. DEFINITIONS.** Unless otherwise defined in these Terms and Conditions, capitalized terms shall have the meanings set forth in the Agreement.

**2. SUPPORT AND MAINTENANCE.**

**2.1 Services.** Subject to your timely payment of the applicable annual Support fees set forth in your Order Document(s) (the “Support Fees”), Qmulos will provide the level of Support identified in your Order Document(s) in accordance with the Support descriptions set forth below. Qmulos will notify (electronic or otherwise) you of any amendments to such Support descriptions in each notice of term renewal. No other maintenance or support for the Software is included in these Terms and Conditions.

**2.2 Support Fees.** Support Fees will be due and payable in accordance with the Order Document(s). Qmulos will notify (electronic or otherwise) you of the then-current annual Support Fee for your level of Support in each notice of term renewal. Support Fees will be non-refundable once paid.

**2.3 Exclusions.** Qmulos will have no obligation of any kind to provide Support for problems caused by or arising out of any of the following (each, a “Licensee-Generated Error”): (i) modifications to the Software not made by Qmulos; (ii) use of the Software other than as authorized in the Agreement or as provided in the documentation for the Software; (iii) damage to the media on which the Software is provided or to the machine on which the Software is installed; (iv) your negligence or fault; (v) versions of the Software other than the most recent version or the Supported Prior Version (defined in Section 2.5.9); (vi) third-party products not expressly supported by Qmulos; or (vii) conflicts related to replacing or installing hardware, drivers, and software that has not been Qmulos certified. If Qmulos determines that it is necessary to provide support for a problem caused by a Licensee-Generated Error, Qmulos will notify you thereof as soon as Qmulos is aware of such Licensee-Generated Error and Qmulos will have the right to invoice you at Qmulos's then-current time and materials rates for any such support provided by Qmulos.

**2.4 Restrictions.** Support is delivered in English only unless you are in a location where Qmulos has made localized Support available.

**2.5 Support Descriptions.**

**2.5.1 Qmulos Enterprise Support.** Qmulos Enterprise Support provides telephone and email support

submitting cases and tracking case status. Support cases are handled based on case priority levels as described in Section 2.5.2. When submitting a case, customers select the priority for initial response in accordance with the priority guidelines set forth in Section 2.5.2. When the case is received, Qmulos Customer Support may change the priority if the issue does not conform to the criteria for the selected priority and will provide you with notice (electronic or otherwise) of such change. Qmulos will respond to Qmulos Enterprise Support requests and will provide workarounds or fixes in accordance with the guidelines set forth in Section 2.5.3.

**2.5.2** Case Priority Levels. Case priorities are assigned based on the technical importance of the problem on your Qmulos environment.

- **P1:** Qmulos Software is completely inaccessible or the majority of its functionality is unusable.
- **P2:** One or more key features of Qmulos Software are unusable.
- **P3:** Any other case where a Qmulos Software feature is not operating as documented.
- **P4:** All enhancement requests.

**2.5.3** Target Fix, Workaround, Escalation and Response Times. Authorized Support Contacts.

**Initial Response & Acknowledgment, by case priority:**

- **P1:** 4 hours
- **P2:** Next business day
- **P3:** Two business days
- **P4:** Two business days

**Targeted Fix Date or Workaround, by case priority:**

- **P1:** 1 day
- **P2:** 1 week
- **P3:** Next release
- **P4:** At Qmulos's discretion

**Escalation, by case priority:**

- **P1:** Manager: Immediate / VP: 1 business day
- **P2:** Manager: 1 business day / VP: 1 week
- **P3:** CTO reviews all open bugs quarterly
- **P4:** CTO reviews all enhancement requests quarterly

**Email Status Updates for Open cases, by case priority:**

- **P1:** Daily
- **P2:** Weekly
- **P3:** None
- **P4:** None

**2.5.4** Additional Support. Support will be provided solely to the authorized individual(s) specified by you that Qmulos will communicate with when providing Support (“Support Contacts”). Qmulos strongly recommends that your Support Contact(s) be trained on the Software. Your

Order Document(s) will indicate a maximum number of authorized Support Contacts for your license level. You will be asked to designate your authorized support contacts, including their primary email address, following Qmulos's acknowledgment of your Order Document(s).

- 2.5.5** Defect Resolution. Should Qmulos in its sole judgment determine that there is a defect in the Software, it will, at its sole option, repair that defect in the version of the Software that you are currently using or instruct you to install a newer version of the Software with that defect repaired. Qmulos reserves the right to provide you with a workaround in lieu of fixing a defect should it in its sole judgment determine that it is more effective to do so.
- 2.5.6** Support Hours. Support is provided via telephone, email and web portal. Support will be delivered by a member of Qmulos's technical support team during the hour of 9-5 EST.
- 2.5.7** Your Obligation to Assist. Should you report a purported defect in the Software to Qmulos, Qmulos may require you to provide them with the following information: (a) a general description of the operating environment, (b) a list of all hardware components, operating systems and networks, (c) a reproducible test case, and (d) any log files, trace and systems files. Your failure to provide this information may prevent Qmulos from identifying and fixing that purported defect.
- 2.5.8** Software Upgrades and Software End of Life Policy. When available, Qmulos provides updates, upgrades, maintenance releases and reset keys only to Qmulos Enterprise or Global Support customers. Qmulos Software comes with a three digit number version. The first digit represents the major release (i.e. upgrade), the second digit identifies the minor releases (i.e. updates) and the third digit identifies the maintenance releases. With a new major version, the number to the left of the decimal is changed and for minor releases, the number to the right of the decimal point is increased. If your Qmulos Enterprise or Global Support agreement expires, you will receive only maintenance releases, when available. Subject to the foregoing, Qmulos provides full Support, including, when available, bug fixes, only on the current major release and (a) the immediately prior major release or (b) twenty-four months from the then current major release ("Supported Prior Versions").
- 2.6** **Changes in Support and Software.** You acknowledge that Qmulos has the right to discontinue the manufacture and development of any Software and the Support for any Software, including, without limitation, the distribution of older Software versions, at any time in its sole discretion, provided that Qmulos agrees not to discontinue Support for the Software during the current annual term of these Terms and Conditions, subject to the termination provisions herein. Qmulos reserves the right to alter Support from time to time, using reasonable discretion but in no event shall such alterations result in (i) diminished support from the level of Support set forth herein; (ii) materially diminished obligations for Qmulos; (iii) materially diminished your rights; or (iv) higher Support Fees during the then-current term. Qmulos shall provide you with thirty (30) days prior written notice (delivered electronically or otherwise) of any permitted material changes to the Support contemplated herein.

### **3. CONFIDENTIAL INFORMATION.**

- 3.1** **Confidential Information.** "*Confidential Information*" means any technical or business information, ideas, materials, know-how or other subject matter that is disclosed by one party to the other party that: (A) if disclosed in writing, is marked "confidential" or "proprietary" at the

time of such disclosure; (B) if disclosed orally, is identified as “confidential” or “proprietary” at the time of such disclosure, and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days after any such disclosure; or (C) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Confidential Information of Qmulos shall include the Qmulos Materials.

- 3.2 Use and Disclosure Restrictions.** The receiving party of Confidential Information (the “*Recipient*”) agrees: (i) to maintain the Confidential Information of the party disclosing such information (the “*Discloser*”) in the strictest of confidence; (ii) not to disclose such Confidential Information to any third parties; and (iii) not to use any such Confidential Information for any purpose other than in furtherance of this Agreement and the activities described herein. Recipient will treat Confidential Information of the Discloser with the same degree of care as it accords to its own Confidential Information, but in no event with less than reasonable care. Recipient may disclose the Confidential Information of Discloser to its directors, officers, employees and consultants (collectively, “*Representatives*”) who have a bona fide need to know such Confidential Information, but solely to the extent necessary to pursue the activities described herein and for no other purpose; provided that each such Representative first executes a written agreement (or is otherwise already bound by a written agreement) that contains use and nondisclosure restrictions at least as protective of the other party’s Confidential Information as those set forth herein.
- 3.3 Exclusions.** The obligations of Recipient under Section 3.2 shall not apply to any Confidential Information which: (a) is now or thereafter becomes generally known or available to the public, through no act or omission on the part of Recipient (or any of its Representatives, affiliates, or agents) or any third party subject to any use or disclosure restrictions with respect to such Confidential Information; (b) was known by or lawfully in the possession of Recipient, prior to receiving such information from Discloser, without restriction as to use or disclosure; (c) is rightfully acquired by Receiver from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (d) is independently developed by Recipient independently without access to any Confidential Information of Discloser.
- 3.4 Required Disclosures.** The provisions of Section 3.2 will not restrict Recipient from disclosing Discloser’s Confidential Information to the extent required by any law or regulation or compelled by a court or administrative agency of competent jurisdiction.
- 3.5 Independent Development.** Recipient reserves the right to develop and market any technology, products or services or pursue business opportunities that compete with or are similar to those disclosed by Discloser under this Agreement without the use of the Discloser’s Confidential Information. Nothing contained in this Agreement shall prohibit or restrict Recipient from employing general ideas, concepts or techniques which may be retained in the unaided human memory by Recipient personnel in the course of their review of the Confidential Information (but without any attempt to memorize such information). The foregoing sentence shall not, however, grant Recipient any rights under any patents or copyrights.
- 3.6 Return or Destruction of Confidential Information.** Upon termination of the Agreement or support and maintenance, Recipient will promptly return to Discloser, or at Discloser’s option, destroy, all tangible items and embodiments containing or consisting of Discloser’s Confidential Information and all copies thereof and provide written certification of such destruction or return by an authorized person.

#### 4. TERM AND TERMINATION.

**4.1 Term.** These Terms and Conditions will commence on the date when Qmulos delivers the Software to you and, unless terminated earlier in accordance with the terms of the Agreement, for a period of one year thereafter (the “Initial Term”). If you allow your support Term to expire, then you may seek to re-activate Support by submitting a purchase order that includes fees for the lapsed period.

**4.2 Survival.** The rights and obligations of the parties contained in Sections 1, 3, 4.2 and 5 will survive the expiration or termination of the Agreement, these Terms and Conditions or any Order Document(s).

**5. LIMITATION OF LIABILITY.** In no event will Qmulos be liable to customer or to any third party for any special, incidental, punitive or consequential damages (including loss of use, data, business or profits) or for costs of procuring substitute services, arising out of or in connection with these terms and conditions or the support services, however caused and regardless of the theory of liability, even if Qmulos has been advised of the possibility of such damages. These limitations shall apply notwithstanding the failure of the essential purpose of any limited remedy. Qmulos’s total liability to you, from all causes of action and all theories of liability, will be limited to and will not exceed the amounts paid to Qmulos by you under the order document(s) for support giving rise to any liability hereunder.

**6. FORCE MAJEURE.** Qmulos will not be responsible for any failure or delay in its performance under these Terms and Conditions due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, war, acts of terror, riot, acts of God or governmental action.