Carahsoft Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Revised 20161213

1. **Scope.** This Carahsoft Rider and the Manufacturer's Commercial Supplier Agreement (CSA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").

2. **Applicability.** The terms and conditions in the attached Manufacturer's CSA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a) (1) (B)), the Contracts Disputes Act of 1978 (41. U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's CSA is inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's Multiple Award Schedule Contract, GS-35F-0119Y, including, but not limited to the following:

(a) **Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", defined as an entity authorized to order under Government contracts as set forth in General Services Administration Order OGP 4800.2I, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

(b) **Changes to Work and Delays.** Subject to General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of the GSAR and the FAR provisions shall take precedence.

(c) **Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

(d) Audit. During the term of this CSA: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this CSA. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this CSA.

(e) Termination. Clauses in the Manufacturer's CSA referencing suspension, termination or cancellation of the Manufacturer's CSA, the License, or the Customer's Account are hereby deemed to be deleted. Termination, suspension or cancellation shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

> Carahsoft may request cancellation or termination of the CSA on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section (q) below or if such remedy is otherwise ordered by a United States Federal Court.

(f) Consent to Government Law / Consent to Jurisdiction. Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

(g) Force Majeure. Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.

(h) Assignment. All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA are hereby deemed to be deleted.

(i) Waiver of Jury Trial. All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.

(j) Customer Indemnities. All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.

(k) Contractor Indemnities. All of the Manufacturer's CSA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

(l) Renewals. All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.

(m) Future Fees or Penalties. All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

(n) Taxes. Taxes are subject to GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w) (1) (x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).

(o) Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.

(p) Installation and Use of the Software. Installation and use of the software shall be in accordance with the Rider and Manufacturer's CSA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.

(q) Dispute Resolution and Venue. Any disputes relating to the Manufacturer's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w) (1) (iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.

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

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

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

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

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

QADIUM

TERMS AND CONDITIONS

These Terms and Conditions (these "**Terms**") apply to any Ordering Activity, as defined in the attached Carahsoft Rider, who wishes to access or use certain products and services manufactured by Qadium, Inc., a Delaware corporation with offices at 85 2nd St., 8th Fl., San Francisco, California 94105 ("**Qadium**") under an individual Purchase Order placed against Carahsoft's Multiple Award Schedule 70 Contract (each an "**Order**"). Each such Ordering Activity is referred to individually as a "**Customer**" below.

WHEREAS, Qadium provides the Services (defined in Section 1 below), which comprise a proprietary internet sensing platform designed to help customers assess their network security and prevent intrusions, and related services provided in connection therewith;

WHEREAS, Carahsoft has agreed to resell or otherwise distribute certain products and services to Customer pursuant to Carahsoft's GSA Multiple Award Schedule 70 Contract entered into between Carahsoft and the GSA (the "**GSA Agreement**"); and

WHEREAS, Customer desires to procure, through Carahsoft, a license to receive such Services as set forth on the Order to which these Terms are attached, and Qadium desires to provide, through Carahsoft, such Services in accordance with these Terms.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in these Terms, the parties hereby agree as follows:

1. Definitions

"**Customer Systems**" means any software, hardware, or systems of Customer or its affiliates or contractors (including any third-party platform or service which Qadium will access on behalf of Customer).

"**Derivative Data**" means the data that results from the commingling or other aggregation of the IP Addresses on the IP List and Qadium Data.

"**Hosted Software**" means the hosted software described in the Order and pursuant to these Terms.

"**IP List**" means the list of Internet Protocol addresses ("**IP Addresses**") provided by Customer to Qadium for use in connection with the Hosted Software.

"**Qadium Data**" means any data that is: (a) generated by Qadium in the course of providing the Services, including, without limitation, service and usage data; and/or (b) otherwise collected by Qadium, whether as a result of the Services or otherwise.

"**Reports**" means the reports prepared by Qadium and made available to Customer via the Hosted Software.

"**Services**" means, collectively: (a) the Hosted Software; and (b) Qadium's ingestion of the IP Addresses provided on the IP List, commingling of such IP Addresses with Qadium Data, and the production of Reports through use of Qadium's proprietary software algorithms, which such reports are made available to Customer via the Hosted Software.

2. Provision of Services

2.1. Licenses.

(a) Access to Hosted Software. During the Term, and subject to the terms and conditions of these Terms, Qadium will make the Hosted Software available to Customer in accordance with these Terms, including the Service Level Agreement (as defined below), on a nonexclusive, non-transferable, non-assignable basis. Customer may access and use the Hosted Software solely for its internal network security purposes. The parties agree that the Hosted Software shall be made available solely on a hosted basis.

(b) Reports. During the Term, and subject to the terms and conditions of these Terms, Qadium will make available Reports via the Hosted Software. Qadium may provide via the Hosted Software certain features and functionality that permit the download and/or other export of certain Reports, Derivative Data, and/or Qadium Data regarding the Customer Network. Customer may utilize such features and functionality to download and/or export such Reports, Derivative Data, and/or Qadium Data in the format provided by Qadium; provided that Customer may not: (i) remove, modify, or obscure any copyright or other proprietary notices included on such materials; (ii) make any copies (e.g., printouts, screenshots, or other images) of any such materials that are not made available via the features or functionalities provided by Qadium; or (iii) share, disclose, or otherwise provide any such materials (in whole or in part) to any third-party (other than Customer's affiliates as identified in any applicable SOW) without the prior written approval of Qadium.

(c) Copies. Customer may make a reasonable number of copies of the Reports, Derivative Data, and/or Qadium Data regarding the Customer Network described in Section 2.1(b) subject to the restrictions set forth therein. While all such copies shall remain the sole and exclusive property of Qadium, Customer may use such copies for its internal network security purposes both during and after the Term.

2.2. Use and Protection of IP List and Derivative Data. By submitting an IP List to Qadium, Customer hereby grants, and represents and warrants that it has all rights necessary to grant, all rights and licenses to the IP List required for Qadium and its subcontractors and service providers to provide the Services. Customer acknowledges and agrees that it shall be responsible in the event that any damage or loss of any kind results from Customer's provision of any IP Addresses that are not owned or controlled by Customer. Qadium shall have no right to sell, resell, license, sublicense, assign, or otherwise transfer any IP List provided by Customer without Customer's prior written consent. Notwithstanding the foregoing, Qadium may create, collect, analyze, and use Derivative Data for purposes of operating, analyzing, improving, or marketing the Services and any related services. If Qadium publishes, shares, or discloses any Derivative Data, such data will be

aggregated or anonymized to reasonably avoid identification of Customer. Qadium will implement and maintain industry-standard information security processes (including technical, administrative, and physical safeguards) designed to prevent unauthorized access to or use or disclosure of the IP List and Derivative Data.

2.3.   Access to Customer Systems and Facilities. Qadium may access Customer Systems or Customer facilities (to the extent permitted by Customer in its discretion) only to provide the Services and only with Customer's prior written consent. Any access is limited to the time periods and personnel specified by Customer and is subject to Customer's security and other policies that are provided to Qadium in advance in writing. Other access is expressly prohibited. Qadium will be solely liable for its acts or omissions while accessing any Customer Systems and facilities.

2.4.   General Restrictions. Customer will not, and will not permit any third-party to: (a) use the Hosted Software, Reports, Derivative Data, and/or Qadium Data regarding the Customer Network except as permitted hereunder; (b) decompile, disassemble, or reverse engineer the underlying software to the Hosted Software (unless this restriction is not permitted under applicable law); (c) sell, rent, lease or use the Hosted Software for time sharing purposes; (d) remove, modify, or obscure any copyright or proprietary notices contained in the Hosted Software, Reports, Derivative Data, and/or Qadium Data regarding the Customer Network; (e) access or use the Hosted Software to circumvent or exceed Hosted Software account limitations or requirements; (f) use the Hosted Software for the purpose of building a similar or competitive product or service to the Services, (h) obtain unauthorized access to the Hosted Software (including without limitation permitting access to or use of the Hosted Software via another system or tool, the primary effect of which is to enable input of requests or transactions by other than authorized users); (i) use the Hosted Software, Reports, Derivative Data, and/or Qadium Data regarding the Customer Network in a manner that is contrary to applicable law or in violation of any third party rights of privacy or intellectual property rights; (j) publish, post, upload or otherwise transmit any data via the Hosted Software that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; (k) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the Hosted Software; (l) use the Hosted Software, Reports, Derivative Data, and/or Qadium Data regarding the Customer Network for any cyber-offensive operations aimed to damage, disrupt, degrade, or otherwise harm any third-parties (whether directly or indirectly); (m) fail to attribute Qadium as the data source to Customer and its affiliates in deliverables informed by analytic insights arising from, in whole or in part, the use of the Service, Reports, Derivative Data, and/or Qadium Data; or (n) alter or remove, in whole or in part, Qadium logo and/or Qadium name from deliverables sourced from the Service, Reports, Derivative Data, and/or Qadium Data.

2.5.   Service Level Agreement. During the Term the Hosted Software is subject to the service level terms set forth in Exhibit A ("**Service Level Agreement**").

2.6.   Reservation of Rights. Except to the extent otherwise expressly set forth in these Terms: (a) Qadium hereby reserves all rights in and to the Services, Qadium Data, Derivative Data, and Reports; and (b) Customer hereby reserves all rights in and to any IP Lists it provides hereunder.

3.   **Representations and Warranties**

3.1.   Representations and Warranties. Each party represents and warrants to the other that it has full right and power to enter into and perform under these Terms, without any third party consents or conflicts with any other agreement. Qadium further warrants that it will provide the Services in material accordance with these Terms (including, with respect to the Hosted Software, the Service Level Agreement) and in material conformance with its generally published specifications and the descriptions herein (the "**Performance Warranty**") and any applicable SOW upon which the parties agree.

3.2.   Remedy of Defects. If Customer reports in writing a breach of the Performance Warranty, Qadium will perform the Support described in "Table 1" of the Service Level Agreement. The foregoing shall be Customer's sole remedy, and Qadium's sole responsibility, for a breach of the Performance Warranty.

3.3.   Warranty Disclaimer.

(a) General Disclaimer. EXCEPT FOR THE WARRANTIES SET FORTH IN THESE TERMS AND ANY SOW: (I) EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (II) THE PARTIES AGREE THAT THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." QADIUM MAKES NO OTHER WARRANTY AS TO THE SERVICES.

(b) Results of Use of the Services. THE PARTIES ACKNOWLEDGE AND AGREE THAT THERE ARE CERTAIN RISKS INHERENT TO THEIR ENGAGEMENT HEREUNDER, AND THAT CUSTOMER'S USE OF, AND QADIUM'S PROVISION OF, THE SERVICES MAY NOT RESULT IN ANY SPECIFIED RESULT. THE PARTIES ACKNOWLEDGE AND AGREE THAT INFORMATION PROVIDED VIA THE HOSTED SOFTWARE OR THROUGH THE PROVISION OF THE SERVICES, SUCH AS REPORTS, DERIVATIVE DATA, AND QADIUM DATA RELATING TO THE CUSTOMER NETWORK, IS INTENDED TO BE INFORMATIVE, AND SHOULD NOT BE CONSTRUED AS ADVICE OR RECOMMENDATIONS. ACCORDINGLY, QADIUM HEREBY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY RELIEVES QADIUM FROM, ANY CLAIMS, DAMAGES, COSTS, OR LIABILITIES THAT MAY ARISE FROM OR RELATE TO ANY ACTS OR OMISSIONS MADE BY CUSTOMER BASED IN WHOLE OR IN PART BASED ON ANY INFORMATION PROVIDED VIA THE HOSTED SOFTWARE.

4.   **Payment.**

4.1.   Fees. In consideration of Qadium's provision of the Services, Carahsoft shall pay to Qadium, with respect to Customer, the fees agreed-upon between them in

accordance with the Qadium Price List (the "**Fees**"). Any additional discounts offered by Carahsoft to Customer will be subject to the GSA Agreement and shall not be binding upon Qadium unless otherwise expressly agreed between Qadium and Carahsoft in writing.

4.2.   Taxes. Customer will be responsible for the payment of any and all local, state, federal, or foreign taxes, levies, and duties of any nature, including value-added, sales, use, and withholding taxes ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on Qadium's net income. If Qadium has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Qadium with a valid tax exemption certificate authorized by the appropriate taxing authority.

4.3.   Payment Terms. All amounts payable to Qadium under these Terms will be due within forty-five (45) days from the date of an invoice. All fees are deemed earned upon receipt of payment, and are non-refundable except as otherwise required by applicable law or as set forth herein. Overdue payments will be subject to interest at the rate of 1-1/2% per month, or the maximum allowable under applicable law, whichever is less.

5.   Term and Termination

5.1.   Effective Date and Term. Unless earlier terminated as provided in this Section, these Terms and the license granted hereunder shall be effective as of the Effective Date and shall continue through the Term set forth on the Order.

5.2.   Termination for Convenience. Termination of these Terms shall be in accordance with General Services Administration Acquisition Regulation (GSAR) 552.212-4(l).

5.3.   Termination for Cause. Termination of these Terms shall be in accordance with GSAR 552.212-4(m), GSAR 552.212-4(d) Disputes, and the Contract Disputes Act. In accordance with GSAR 552.212-4(w)(1)(iv), Carahsoft/Qadium shall continue performance while pursuing its rights under the Contract Disputes Act and other applicable Federal Statutes.

5.4.   Effect of Termination. Sections 1, 2.1(c), 2.2, 2.7, 3.3, 4, 5.4, 6, 7 (for three (3) years after termination or expiration of these Terms or, with respect to trade secrets, until such trade secrets are no longer protected as such under Laws), 9.1 (solely with respect to claims arising during the Term), 9.2, 9.3, 10, and 11 shall survive termination of these Terms. Upon any termination of these Terms by Qadium for cause or by Customer for convenience, all unpaid Fees for the then-current Term (if any) shall become immediately due and payable. If Customer terminates these Terms for cause under Section 5.3(a), then Qadium will provide Customer a refund of the Fees paid for the then-current Term, prorated by a fraction the numerator of which will be the number of days during the then-current Term during which Customer had access to the Hosted Software and the denominator of which will be the total number of days during the then-current Term. Within five (5) days after termination of these Terms, the receiving party shall return to the disclosing party or, upon the disclosing party's request, destroy, at the receiving party's expense, all Confidential Information and materials containing any Confidential Information of the disclosing party (where Qadium is the disclosing party, including but not limited to the Hosted Software, Reports, Derivative Data, and Qadium Data, including all copies thereof except as expressly permitted under Section 2.1(b)), and deliver to the disclosing party a certification, in writing signed by a duly authorized representative of the receiving party, that the Confidential Information and all copies thereof have been returned or destroyed, and their use discontinued. Nothing contained herein shall limit any other remedies that either party may have for the default of the other party under these Terms nor relieve either party of any of its obligations incurred prior to such termination.

6.   Limitation of Liability.

6.1.   Liability Caps. EXCEPT WITH RESPECT TO EXCLUDED CLAIMS (DEFINED BELOW), IN NO EVENT SHALL EITHER PARTY'S TOTAL AGGREGATE LIABILITY ARISING UNDER THESE TERMS EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO QADIUM HEREUNDER DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

6.2.   Consequential Damages Waiver. EXCEPT WITH RESPECT TO EXCLUDED CLAIMS (DEFINED BELOW), NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, BUSINESS, CONTRACTS, REVENUE, GOODWILL, PRODUCTION, ANTICIPATED SAVINGS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR, EXCEPT AS PROVIDED IN SECTION 9, FOR ANY CLAIM OR DEMAND BY ANY OTHER PARTY, HOWEVER CAUSED AND (TO THE FULLEST EXTENT PERMITTED BY LAW) UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.3.   Excluded Claims. As used in these Terms, "**Excluded Claims**" means: (a) Customer's breach of Section 2; (b) either party's breach of its confidentiality obligations under Section 7; (c) Customer's indemnification obligations under Section 9; and (d) the gross negligence or willful misconduct of either party or its agents. Customer acknowledges that the amounts payable hereunder are based in part on these limitations, and further agrees that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

6.4.   THESE TERMS SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

7.   Confidential Information.

7.1.   Nondisclosure. Qadium and Customer each agree

to retain in confidence the non-public information and know-how disclosed pursuant to these Terms which is either designated in writing as proprietary and/or confidential, if disclosed in writing, or if disclosed orally, is designated in writing (which may be via email) as confidential within thirty (30) days of the oral disclosure or should reasonably be understood to be confidential by the recipient (the "**Confidential Information**"). Notwithstanding any failure to so designate them, the Services, Derivative Data, Qadium Data, and Reports shall be Qadium's Confidential Information. Each party agrees to: (a) preserve and protect the confidentiality of the other party's Confidential Information; (b) refrain from using the other party's Confidential Information except as contemplated herein; and (c) not disclose such Confidential Information to any third party except to employees and subcontractors as is reasonably required in connection with the exercise of its rights and obligations under these Terms (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein). Each party agrees to immediately notify the other party of any unauthorized disclosure or use of any Confidential Information and to assist the other party in remedying such unauthorized use or disclosure by taking such steps as are reasonably requested. Notwithstanding the foregoing, either party may disclose Confidential Information of the other party which is: (i) already publicly known without breach of these Terms; (ii) discovered or created by the receiving party without use of, or reference to, the Confidential Information of the disclosing party, as shown in records of the receiving party; (iii) otherwise known to the receiving party through no wrongful conduct of the receiving party, or (iv) required to be disclosed by law or court order; provided that the receiving party shall provide prompt notice thereof and reasonable assistance to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Moreover, either party hereto may disclose any Confidential Information hereunder to such party's agents, attorneys and other representatives (and only subject to confidentiality obligations at least as protective as those set forth herein) or any court of competent jurisdiction as reasonably required to resolve any dispute between the parties hereto.

7.2.   [RESERVED].

7.3.   Feedback. Customer may choose to or Qadium may invite Customer to submit comments or ideas about the Services, including without limitation about how to improve the Services or Qadium's products ("**Feedback**"). By submitting any Feedback, Customer agrees that its disclosure is gratuitous, unsolicited and without restriction and will not place Qadium under any fiduciary or other obligation, and that Qadium is free to use the Feedback without any additional compensation to Customer or anyone else, and/or to disclose the Feedback on a non-confidential basis or otherwise to anyone. Customer further acknowledges that, by acceptance of Customer's submission, Qadium does not waive any rights to use similar or related ideas previously known to Qadium, or developed by its employees, or obtained from sources other than Customer.

8.   Publicity. Neither party may use the other party's name, logo or marks without such other party's written pre-approval.

9.   Indemnification

9.1.   Qadium Indemnification

(a)   Qadium Indemnity. Qadium shall defend or settle, at its own option and expense, any suit, claim, action, or proceeding brought against Customer by a third-party to the extent based upon a claim that the Services infringes any U.S. copyright or trademark or misappropriates any U.S. trade secret of such third-party, and will pay such damages or costs as are finally awarded against Customer by a court (or mediator or arbitrator, if applicable) of competent jurisdiction or are agreed to in a settlement that are attributable to such claim.

(b)   Qadium Options. Should the Services become, or in the opinion of Qadium be likely to become, the subject of such an infringement claim, Qadium may, at its option (i) procure for Customer the right to use the Services at no cost to Customer; (ii) replace or modify, in whole or in part, the Services to make it non-infringing; or (iii) if neither (i) nor (ii) are, in Qadium's sole and absolute discretion, commercially practicable, accept return of the Services, or remove the allegedly offending module thereof, and, refund the Fees paid for such Services or module by Customer, less an amount determined by multiplying the Fees paid for such Services or such module during the then-current Term by a fraction, the numerator of which is the number of months during the then-current Term during which Customer had use of the Services and the denominator of which is the total number of months during the then-current Term.

(c)   Exclusions from Qadium Indemnity. Qadium assumes no liability hereunder for: (i) any method or process in which the Services may be used; (ii) any compliance with Customer's specifications; (iii) use of software other than current unaltered releases of the applicable Services; or (iv) the combination, operation or use of the Services with non-Qadium programs or data.

9.2.   [RESERVED].

9.3.   Sole Remedy for Infringement. THIS SECTION 9 SETS FORTH QADIUM'S ENTIRE LIABILITY AND CUSTOMER'S SOLE REMEDY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH THE SERVICES AND THESE TERMS.

10.   Compliance with Laws. Each party shall comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with these Terms ("**Laws**").

11.   Miscellaneous.

11.1.   Assignment. As between Carahsoft and the GSA, Carahsoft's and the GSA's rights and responsibilities with respect to the assignment of these Terms are set forth in the GSA Agreement. Subject to this Section, these Terms shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

11.2.   Integration. These Terms and the terms and conditions of Carahsoft's GSA Multiple Award Schedule 70 Contract, together with their exhibits, the Letter of Supply, and any SOWs issued hereunder represents the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, with

respect to the matters covered by these Terms, and are not intended to confer upon any third party any rights or remedies hereunder. Customer acknowledges that it has not entered into these Terms based on any representations other than those contained herein.

11.3. Modification; Waiver; Severability. No modification of these Terms, nor any waiver of any rights under these Terms, shall be effective unless in writing and signed by the GSA and Carahsoft. The waiver of one breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default. If any provision of these Terms is held invalid or unenforceable under applicable law, a court of competent jurisdiction may re-construe the invalid or unenforceable provision, and the remaining provisions of the Agreement will remain in full force and effect.

11.4. Delays. In the event that either party is prevented from performing or is unable to perform any of its obligations under these Terms (other than any payment obligation) due to any Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, material unavailability, or any other cause beyond the reasonable control of the party invoking this Section (each a "**Force Majeure Event**"), and if such party shall have used its commercially reasonable efforts to mitigate its effects, such party shall give prompt written notice to the other party, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences.

11.5. Governing Law. These Terms shall in all respects be governed by the federal laws of the United States of America.

11.6. Independent Contractor Relationship. Nothing in these Terms is to be construed as creating an agency, partnership, or joint venture relationship between the parties hereto. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.

11.7. Notices. All notices permitted or required under these Terms shall be in writing and shall be deemed to have been given when delivered in person (including by overnight courier), or three (3) business days after being mailed by first class, registered or certified mail, postage prepaid, to the address of the party specified in these Terms or such other address as either party may specify in writing.

11.8. Government Matters. The Services, Software Product Maintenance, and Support Services are "commercial items" as defined at 48 C.F.R. 2.101, consisting of commercial computer software, commercial computer software documentation and commercial services. If Customer or end user is a U.S. governmental entity, then Customer acknowledges and agrees that its (i) use, duplication, reproduction, release, modification, disclosure, or transfer of the Service and any related Documentation of any kind, including, without limitation, technical data and manuals, will be subject to the terms and conditions of these Terms, in accordance with Federal Acquisition Regulation 12.212 for civilian purposes or

Defense Federal Acquisition Regulation Supplement 227.7202-1 as applicable, (ii) the Service and Documentation were developed fully at private expense and (iii) all other use of the Service and Documentation except in accordance with the license grant provided above is strictly prohibited.

11.9. Export Law Assurances. Customer understands that the Services are or may be subject to export control laws and regulations. CUSTOMER MAY NOT DOWNLOAD OR OTHERWISE EXPORT OR RE-EXPORT THE SERVICES OR ANY TECHNICAL OR OTHER DATA PROVIDED IN CONNECTION THEREWITH OR ANY UNDERLYING INFORMATION OR TECHNOLOGY EXCEPT IN FULL COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, IN PARTICULAR, BUT WITHOUT LIMITATION, UNITED STATES EXPORT CONTROL LAWS. NONE OF THE SERVICES OR ANY UNDERLYING INFORMATION OR TECHNOLOGY MAY BE DOWNLOADED OR OTHERWISE EXPORTED OR RE- EXPORTED: (A) INTO (OR TO A NATIONAL OR RESIDENT OF) ANY COUNTRY TO WHICH THE UNITED STATES HAS EMBARGOED GOODS; OR (B) TO ANYONE ON THE U.S. TREASURY DEPARTMENT'S LIST OF SPECIALLY DESIGNATED NATIONALS OR THE U.S. COMMERCE DEPARTMENT'S LIST OF PROHIBITED COUNTRIES OR DEBARRED OR DENIED PERSONS OR ENTITIES. CUSTOMER HEREBY AGREES TO THE FOREGOING AND REPRESENTS AND WARRANTS THAT CUSTOMER IS NOT LOCATED IN, UNDER CONTROL OF, OR A NATIONAL OR RESIDENT OF ANY SUCH COUNTRY OR ON ANY SUCH LIST.

SERVICE LEVEL AGREEMENT

1.   **Support.** During the Term, Qadium will provide the Support described in this <u>Exhibit A</u>.

2.   **Technical Support Contacts.** Unless otherwise agreed, Qadium will provide support to two (2) contacts mutually agreed upon by the parties ("**Technical Support Contacts**"). They will be the only interface to Qadium's support ticketing system.

3.   **Hosted Enterprise Software to be Licensed:** Expander, which features hosted, web-based access for: (a) viewing observations of externally exposed services and potential exposures on the IP addresses associated with the Customer-identified network of Customer ("**Customer Network**"), and Qadium-identified network of Customer ("Qadium Independent Network Mapping") as separately priced; which such observations may be made available in the form of Reports; (b) exploring Qadium-produced maps of the Customer Network and comparison to Customer-provided network maps; (c) comparative statistics on the Customer Network; (d) alerts and changes relevant to Customer Network on the global internet. Other capabilities and API functionality made available by Qadium at its sole discretion.

4.   **Fees:** Fees are set forth in the Order pursuant to the effective Qadium Price List.

5.   **Software Product Maintenance:** Qadium will provide the following Software Product Maintenance:

- Publishing of bug/defect fixes via patches

- Updates in function and technology to maintain the operability and usability of the software product

- As Qadium makes generally available at its discretion: blogs, discussion forums, on-line help libraries and FAQs

6.   **Support Services:** Qadium will provide the following Support Services:

- Onsite Training & Onboarding: Mutually agreed one (1) day onsite deployment(s), onboarding(s), and training(s), includes: general user informational session, overview of dashboard pre-populated with Customer data, user training, and Q&A.

- IP Comparison Review: In-depth review over conference call or WebEx between Customer and Qadium Technical Support Contact(s) to remedy differences in Customer provided IP list and Qadium generated IP list. Calls to continue until Customer and Qadium mutually agree on IP range(s) for Customer's network; mutually agreed upon Customer network will serve as the framework for Expander data.

- High-Touch Onboarding Support: Weekly calls between Customer and Qadium Technical Support Contacts within the first month (for a total of four calls) for additional user training, to remediate onboarding issues and bug reports, and/or for miscellaneous software queries.

- Participation in mutually agreed briefings arising from or related to data and results surfaced in Qadium Expander SaaS platform.

- Ancillary Support Services as mutually agreed by the parties in the effective SOW.

7.   **Access to Customer Systems:** Qadium will have such access to Customer Systems or Customer facilities as authorized in writing by the Customer.

8.   **Data Security and Safeguards:** During the Term, Qadium shall, at a minimum, implement and follow practices and procedures consistent with industry standards, which are designed to protect the security of all data, records or information maintained, hosted, received and/or possessed by Qadium or its agents in connection with the performance of these Terms.

9.   **Definitions.**

"**Emergency Downtime**" means such time as the Hosted Software is offline due to a short-term emergency condition.

"**Error**" means a failure of the Hosted Software to conform to the specifications set forth in the Documentation, resulting in the inability to use, or material restriction in the use of, the Hosted Software.

"**Excused Downtime**" means any downtime that is Maintenance Downtime or Emergency Downtime.

"**Maintenance Downtime**" means such time as the Hosted Software is offline for maintenance or backup purposes, provided that the incident is scheduled with Customer at least twenty-four (24) hours in advance.

"**Monthly Availability Percentage**" means the percentage of time over the course of each calendar month during the Term, excluding Excused Downtime, that the Hosted Software is available for use by Customer.

"**Start Time**" means the time at which Qadium first becomes aware of an Error during Qadium's regular business hours.

"**Update**" means either a software modification or addition that, when made or added to the Hosted Software, corrects the Error, or a procedure or routine that, when observed in the regular operation of the Hosted Software, eliminates the practical adverse effect of the Error on Customer.

10.   **Support.** During the Term, Qadium shall provide the customer maintenance and support described below to Customer ("**Support**"):

10.1   Qadium Standard Customer Support. Qadium shall provide customer support through Qadium's online support ticketing system.

10.2   Updates. Qadium will make commercially reasonable efforts to provide an Update designed to solve or bypass a reported Error. Qadium shall reasonably determine the priority level of Errors, pursuant to the following protocols and take the actions described below during Qadium's regular business hours.

11.   **Hosted Software Availability**

11.1   Hosted Software Availability. The Service Levels under this Section 5 measure the availability of the Hosted Software. Qadium shall meet the following service availability level: The Hosted Software shall have a Monthly Availability Percentage equal to or greater than **99%**.

11.2   Error Response Service Levels. Qadium will use its commercially reasonable efforts to adhere to the response and resolution times for Errors as set forth below in Table 1.

Table 1 – Error Management

Error Management	Severity 1	Any Error reported by Customer where the majority of the users for a particular part of the Hosted Software are affected, the Error has high visibility, there is no workaround, and it affects Client's ability to perform its business.	**Response Time***	**Resolution Time****
			Within 2 hours of the Start Time.	Qadium will provide resolution or workaround for 90% of Errors within eight (8) hours of the Start Time.
	Severity 2	Any Error reported by Customer where the majority of the users for a particular part of the Hosted Software are affected, the Error has high visibility, a workaround is available; however, performance may be degraded or functions limited.	**Response Time***	**Resolution Time****
			Within 4 hours of the Start Time.	Qadium will provide resolution or workaround for 90% of Errors within 24 hours of the Start Time.
	Severity 3	Any Error reported by Customer where many of the users for a particular part of the Hosted Software are affected, the Error has high visibility, a workaround is available, however, performance may be degraded or functions limited.	**Response Time***	**Resolution Time****
			Within 24 hours of the Start Time.	Qadium will provide resolution or workaround for 90% of Errors within seven (7) days of the Start Time.
	Severity 4	Any Error reported by Customer where a single user is severely affected or completely inoperable or a small percentage of users are moderately affected or partially inoperable.	**Response Time***	**Resolution Time****
			Within seven (7) days of the Start Time.	Qadium will provide resolution or workaround for 90% of Errors within fourteen (14) days of the Start Time.

* All times during regular business hours: 9 a.m. – 5 p.m. (Pacific Time, Monday through Friday). Support tickets may be submitted outside of regular business hours, but all response and resolution times shall be calculated with regard to Qadium's regular business hours.

** With respect to any Errors that are not able to be resolved within the listed Resolution Time, Qadium will work continuously to provide resolution or a workaround until complete.

12.   **Conditions, Exclusions, and Termination of Support Service.**

12.1   Conditions for Providing Support. Qadium's obligation to provide Support is conditioned upon the following: (a) Customer makes reasonable efforts to solve the Error after consulting with Qadium; (b) Customer provides Qadium with sufficient information and resources to correct the Error, as well as any and all assistance reasonably requested by Qadium in

discovering and addressing the Error; and (c) Customer procures, installs and maintains all equipment, telephone lines, communication interfaces and other hardware necessary to operate the Hosted Software.

12.2 <u>Exclusions from Qadium's Support</u>. Qadium is not obligated to provide Support in the following situations: (a) the problem is caused by Customer's negligence, hardware malfunction or other causes beyond the reasonable control of Qadium; or (b) the problem is with third party software not licensed through Qadium.