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.


(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.).
End User Software License Agreement

IMPORTANT — PLEASE READ CAREFULLY

This End User Software License Agreement (this “EULA”) is a legal agreement between you, eligible ordering activity that has agreed to pay for the rights granted herein (“Licensee”), and DataDirect Networks, Inc., a California corporation (“DDN”). This EULA governs Licensee’s possession and use of the Software and the Documentation (each as defined below).

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1.1. “Documentation” means any and all end user documentation provided by DDN in connection with the Software, and all Updates thereto.

1.2. “Factory Installed Software” means Software that is installed by DDN on a DDN hardware product prior to delivery of that DDN hardware product to Licensee, and all Updates thereto. Factory Installed Software may include, without limitation, firmware, DirectOS, DirectMon, and certain third party file server programs.

1.3. “GPL Software” refers to certain open source software that DDN may provide to Licensee in connection with a DDN hardware products. GPL Software is provided by DDN to Licensee solely under the terms of (a) the GNU General Public License, Version 2, June 1991 (the “GPLv2”) and (b) the GNU General Public License, Version 3, June 2007 (the “GPLv3”), a copy of each of which accompanies this Agreement. Consistent with the requirements of the GNU GPL, DDN will provide a complete machine-readable copy of the source code for GPL Software for a charge of no more than DDN’s cost of physically performing such distribution, provided that such copy is requested within three (3) years following Licensee’s receipt of the corresponding GPL Software from DDN. This offer is valid to anyone in receipt of this information.

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(i) SFAOS firmware may only be used with the number of SFA System ports (if any) specified in the corresponding invoice;

(ii) SFAOS firmware may only be used with the amount of disk storage (if any) specified in the corresponding invoice; and

(iii) SFAOS feature licenses such as SFX and SED management may only be used if specified in the corresponding invoice

(b) Use Remote Software, only in object code form, and only on the number of Licensee computers for which Licensee has purchased a license (as specified in the corresponding invoice); and

(c) make one copy of the Software, only in object code form, and Use that copy only for backup and archival purposes.

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6. **RESPONSIBILITIES OF LICENSEE.**

6.1. **Payment.** In consideration for the licenses and rights granted to Licensee herein, Licensee agrees to pay all amount(s) for such licenses and rights as set forth in the corresponding invoice, in accordance with the payment terms agreed upon by Licensee.

7. **COMPLIANCE AUDIT.** DDN shall have the right, upon reasonable notice, to conduct and/or have an independent accounting firm conduct, during normal business hours on Licensee’s premises under Licensee’s reasonable supervision, an audit to verify Licensee’s compliance with the terms of this EULA. Such an audit shall be subject to the security requirements that may be in place at the audit location, and auditors shall have to comply with such requirements in order to gain access to Licensee’s facilities. If an audit reveals underpayments, then DDN shall have the ability to make a claim for those underpayments in accordance with the terms of the underlying GSA Schedule contract.

8. **USE OF LICENSEE INFORMATION/ACTIVATION OF CALL HOME FEATURE.**

8.1. **Use of Licensee Information.** With respect to any information Licensee provides to DDN in connection with the Software or the Documentation, DDN may use such information for any purpose permissible by law, without restriction, including, without limitation, for product support and development purposes, provided that DDN will not use such information in a form that identifies Licensee.

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9.1. **General.** Except as provided below with respect to evaluation and limited term licenses, this EULA and the license(s) granted herein will remain effective in accordance with the terms and conditions of applicable task orders and the GSA Schedule contract.

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11.1. Commercial Software. The Licensee agrees that the Software and the Documentation are deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, for purposes of Federal Acquisition Regulation (“FAR”) 12.212 and the Defense FAR Supplement (“DFARS”) 227.7202-1, 227.7202-3, and 227.7202-4, and the restrictions set forth in such regulations, and this EULA shall be deemed to be the license customarily provided to the public and, accordingly, provided to the Government, as described in such regulations. Any use, modification, reproduction, release, performance, display, or disclosure of the Software or the Documentation by any agency, department, or entity of the United States Government (the “Government”) shall be governed by the terms of this EULA and applicable law, and is prohibited except to the extent required by applicable law or expressly permitted by the terms of this EULA.

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11.3. Third Party Acceptance of Restrictions. Licensee shall not provide the Software, the Documentation, or the technical data described in Section 11.2 above to any party, including but not limited to the Government, unless such third party accepts the same restrictions as are set forth in this Section 11, or as may be required by applicable law. Licensee is responsible for ensuring that the proper notice is given to all such third parties and that the Software, the Documentation, and such technical data is properly marked with the required legends. Nothing in this Section 11.3 shall be deemed to modify the restrictions on transfer or disclosure set forth elsewhere in this EULA.

12. MISCELLANEOUS. Except as otherwise expressly agreed in a written, signed agreement between DDN and Licensee, this EULA and the relevant GSA Schedule contract and orders thereunder set forth the entire agreement between DDN and Licensee with respect to the Software, the Documentation, and/or Licensee’s use of the Software and the Documentation. There are no implied licenses with respect to the Software or the Documentation. No provision of this EULA may be waived, modified, or superseded except by a written instrument signed by each of DDN and Licensee. No failure or delay in exercising any right or remedy shall operate as a waiver of any such (or any other) right or remedy.
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Should Licensee have any questions concerning this EULA, or if Licensee desires to contact DDN for any reason, please write DDN at 2929 Patrick Henry Drive, Santa Clara, CA 94054 USA, or send an email to DDN at support@ddn.com.
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