

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

- 1. Scope.** This Carahsoft Rider and the BlackBag Technologies ('Manufacturer') End User License Agreement (EULA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").

 - 2. Applicability.** The terms and conditions in the attached Manufacturer EULA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's EULA are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's contract #GS-35F-0119Y, including, but not limited to the following:
 - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

 - (b) Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.

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

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

verify Ordering Activity's compliance with this Agreement.

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

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

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.

- (i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.

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

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

- (m) **Future Fees or Penalties.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To

Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

- (n) Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (o) Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) Dispute Resolution and Venue.** Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (r) Limitation of Liability: Subject to the following:**

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.
- (s) Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.
- (t) Public Access to Information.** Manufacturer agrees that the EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA and this Rider will be available to the public.
- (u) Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.

END USER LICENSE AGREEMENT

IMPORTANT – PLEASE READ THE TERMS OF THIS END USER LICENSE AGREEMENT (“AGREEMENT”) CAREFULLY. BY CLICKING ON THE “I AGREE” BUTTON, (1) YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT, AND (2) YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT, PERSONALLY OR ON BEHALF OF THE COMPANY OR AGENCY YOU HAVE NAMED AS THE CUSTOMER (THE “LICENSEE”), AND TO BIND THE LICENSEE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT, OR IF YOU DO NOT HAVE SUCH AUTHORITY, YOU MUST CLICK ON THE “I DECLINE” BUTTON TO DISCONTINUE THE DOWNLOAD OR ACTIVATION OF THE SOFTWARE. IN SUCH CASE, PLEASE CONTACT LICENSOR REGARDING A REFUND OF ANY FEES PAID.

This Agreement is a legal agreement between Licensee and BlackBag Technologies, Inc. (“Licensor”) for the accompanying software product (“Software”), which includes computer software and may include associated media, printed materials and online or electronic documentation (“Documentation”). If you do not agree to the terms and conditions of this Agreement, do not download, activate, or use the Software.

1. LICENSE GRANT AND RESTRICTIONS.

(a) The Software and Documentation are licensed, not sold to Licensee for use only under the terms of this Agreement. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a personal, royalty-free, worldwide, non-exclusive, non-transferable, non-sublicenseable license to use, execute and display one (1) copy of the Software, or the number of copies otherwise set forth, along with any other requirements or notices, in a separate, written authorization from Licensor to Licensee (the “License Confirmation”), in executable object code format only, during the term of this Agreement, and solely for Licensee’s own internal business purposes, provided that each such authorized copy of the Software shall be used, executed, or displayed solely by one (1) Licensed User and on one Licensed System at any given instance. The term “Licensed User” means a particular individual authorized by Licensee to use, execute, and display the Software in accordance with this Agreement. The term “Licensed System” means a computer to which an activation key provided by Licensor has been connected or accessed, as authorized by Licensor in the applicable License Confirmation.

(b) Licensee shall not, and shall not permit any third party to: (a) sell, lease, license, rent, loan, or otherwise transfer the Software, with or without consideration; (b) permit any third party to access or use the Software; (c) permit any third party to benefit from the use or functionality of the Software via a timesharing, service bureau, or other arrangement; (d) transfer any of the rights granted to Licensee under this Agreement; (e) reverse engineer, decompile, or disassemble the Software; (f) modify or create derivative works based upon the Software in whole or in part; (g) reproduce the Software, except as expressly permitted in Section 1(a) above; (h) access or use the Software except as permitted by Licensed Users on Licensed Systems; (i) remove any proprietary notices or labels on the Software; or (j) use the Software for any purpose other than expressly permitted in Section 1(a) above.

(c) Any future release, update, or other addition to functionality of the Software shall be subject to the terms of this Agreement, unless Licensor expressly states otherwise. Notwithstanding the previous sentence, neither

Licensor nor any of its suppliers is obligated to provide any services, updates or upgrades to the Software.

2. PROPRIETARY RIGHTS.

Licensor and its licensors shall retain exclusive ownership of all worldwide copyrights, trade secrets, patents, and all other intellectual property rights throughout the world and all applications and registrations therefor, in and to the Software and any full or partial copies thereof, including any additions or modifications thereto. All rights in and to the Software not expressly granted to Licensee in this Agreement are expressly reserved to Licensor and its licensors.

3. TERM AND TERMINATION.

(a) This Agreement and the licenses granted hereunder are effective on the date Licensee downloads the Software and shall continue unless and until this Agreement is terminated by either party as provided herein.

(b) Licensor may terminate this Agreement immediately because of a material breach by Licensee by delivery of notice of breach to Licensee. Any notice to Licensee may be provided by e-mail sent to the address provided by Licensee. Licensee may terminate this Agreement at any time, with or without cause. Licensee may terminate this Agreement by sending either an email to support@blackbagtech.com with Licensee’s name and the subject “CANCEL BLACKLIGHT” or a letter sent by confirmed delivery to: Customer Service Dept., BlackBag Technologies, Inc. 300 Piercy Rd., San Jose, CA 95138 or to such other address as Licensor may specify in writing by posting the new address on the BlackBag Technologies website.

(c) Upon expiration or termination of this Agreement for any reason, (i) all licenses granted to Licensee under Section 1(a) shall immediately terminate and Licensee’s rights to use the Software shall immediately cease, and (ii) Licensee shall promptly return to Licensor or destroy the Software (including but not limited to copies of the Software resident on Licensee’s hard drives and backup media), and all copies thereof, and certify to Licensor in writing by an officer of Licensee that Licensee has done so.

(d) Upon expiration or termination of this Agreement for any reason, Sections 2, 3(c), 3(d), 4, 5, 6 and 7 shall survive and remain in effect.

4. LIMITED WARRANTY.

(a) For a period of sixty (60) days after the first download of the Software by Licensee (the "Software Warranty Period"), Licensor warrants that the Software, when used as permitted under this Agreement and in accordance with the instructions in the Documentation will operate substantially as described in the Documentation. Licensor does not warrant that the Licensee's use of the Software will be error-free or uninterrupted. Licensor will, at its own expense and as its sole obligation and Licensee's exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible error in the Software reported to Licensor by Licensee in writing during the Software Warranty Period or, if Licensor determines that it is unable to correct the error, Licensor will refund to Licensee all license fees actually paid, in which case this Agreement and Licensee's right to use the Software will be terminated. Any such error correction provided to Licensee will not extend the original Software Warranty Period.

(b) If a hardware activation key is provided, then for a period of sixty (60) days after shipment of the activation key by Licensor, Licensor warrants that when used as permitted under this Agreement and in accordance with the instructions in the Documentation, the encoding of the Software on the activation key will operate substantially in accordance with the Documentation. LICENSOR PROVIDES NO WARRANTY WHATSOEVER ON ANY HARDWARE. LICENSEE'S EXCLUSIVE REMEDY AND THE SOLE AND ENTIRE LIABILITY OF LICENSOR WITH RESPECT TO ANY ACTIVATION KEY SHALL BE, UPON LICENSEE'S RETURN OF THE DEFECTIVE ACTIVATION KEY TO LICENSOR, LICENSOR WILL SHIP A REPLACEMENT ACTIVATION KEY TO LICENSEE AT LICENSOR'S EXPENSE. ANY REPLACEMENT ACTIVATION KEY PROVIDED TO LICENSEE WILL NOT EXTEND THE ORIGINAL SOFTWARE WARRANTY PERIOD. To make a warranty claim, Licensee must contact Licensor at the address provided in section 3 (b), above.

(c) EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 4(a) and 4(b), THE SOFTWARE, DOCUMENTATION, ANY ACTIVATION KEY AND ANY SUPPORT OR OTHER SERVICES PROVIDED BY LICENSOR HEREUNDER IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE. THE ENTIRE RISK ARISING OUT OF THE USE OF THE SOFTWARE IS WITH LICENSEE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY

LICENSOR OR ITS AGENTS OR EMPLOYEES SHALL IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. IF LICENSOR CANNOT DISCLAIM IMPLIED WARRANTIES UNDER APPLICABLE LAW, THEN TO THE MAXIMUM EXTENT POSSIBLE, SUCH IMPLIED WARRANTIES ARE LIMITED TO THE DURATION OF THE EXPRESS SOFTWARE WARRANTY PERIOD.

5. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL LICENSOR OR ITS LICENSORS OR SUPPLIERS BE LIABLE FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, LOSS OF OR DAMAGE TO BUSINESS INFORMATION OR DATA OR OTHER PECUNIARY LOSS, OR FOR ANY INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT OR THE USE OR INABILITY TO USE THE SOFTWARE, ANY ACTIVATION KEY OR DOCUMENTATION, EVEN IF LICENSOR OR ITS LICENSORS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL LICENSOR'S TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY (INCLUDING STRICT LIABILITY AND NEGLIGENCE) EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE SOFTWARE. LICENSOR'S LICENSORS AND SUPPLIERS WILL HAVE NO LIABILITY FOR DAMAGES WHATSOEVER. THE FOREGOING LIMITATIONS AND EXCLUSIONS OF LIABILITY FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES, AND LICENSOR WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT SUCH LIMITATIONS AND EXCLUSIONS.

6. OPEN SOURCE AND THIRD PARTY SOFTWARE.

Licensee acknowledges that this Software distribution includes certain third party software that is made available under third party commercial and open source licenses (the "Third Party Licenses"). For information about such Third Party software and Licenses, please see '3rd_Party_Licenses.txt'

LICENSEE ACKNOWLEDGES AND AGREES THAT ITS COPYING, MODIFICATION OR DISTRIBUTION OF ANY THIRD PARTY SOFTWARE IS SUBJECT TO, AND LICENSEE WILL COMPLY WITH, THE TERMS OF THE APPLICABLE THIRD PARTY SOFTWARE LICENSE(S). BEFORE COPYING, MODIFYING, OR DISTRIBUTING ANY OF THE THIRD PARTY SOFTWARE, LICENSEE WILL CONFIRM THAT IT HAS ALL NECESSARY RIGHTS AND PERMISSIONS TO DO SO.

7. MISCELLANEOUS.

(a) This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of California, without giving effect to any conflicts of laws principles. Licensee hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for the county in which Licensor's principal place of business is located for any lawsuit filed arising from or related to this Agreement. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

(b) If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be remain enforceable, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

(c) The Software and related technical information and materials may be subject to export controls under U.S. or other export laws and regulations. Licensee agrees that Licensee shall not export or re-export the Software in any form in violation of the export or import laws and regulations of the United States or any other jurisdiction.

(d) Licensee shall not use the Software for any purpose prohibited by law. Licensee shall defend, indemnify and hold Licensor and its licensors harmless from and against any violation of any laws or regulations by Licensee or any of its agents, officers, or employees.

(e) Government Users. This Software and related Documentation, including technical data and manuals, are commercial as defined at Federal Acquisition Regulation (FAR) 2.101 and were developed solely at private expense. In accordance with FAR 12.212 and Defense Federal Acquisition Regulation Supplement 227.7202, no rights are conferred to any Government end user of this Software and related documentation except as expressly provided in this Agreement. No other rights are conferred; all other uses are prohibited. In the event that this Software is transferred, moved, sold or duplicated (transfer) for Government purposes, the transferor will ensure that the following legend is affixed to the Software in a conspicuous place prior to such transfer:

BlackBag Technologies
300 Piercy Rd.
San Jose, CA 95138

'All use, duplication, transfer, adaption, modification or disclosure of this software and related documentation is prohibited except as expressly provided in the BlackBag Technologies, Inc. End User License Agreement and any modifications thereto. For further information contact BlackBag Technologies, Inc.'

(f) This Agreement may not be assigned by Licensee without the prior, written permission of Licensor. Licensor expressly reserves the right to assign this Agreement and to delegate any of its obligations hereunder. Any purported assignment in derogation of the foregoing shall be without any effect.

(g) This Agreement may not be modified or amended except in writing, signed by both parties. Any purported oral modification or amendment of this Agreement in derogation of the foregoing shall be without any effect.

(h) Neither party may waive any right hereunder except expressly and in writing. Any other purported waiver of any such right shall be without any effect. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

(i) The headings in this Agreement are provided for purposes of convenience only, and the sections of this Agreement shall be interpreted without regard to their respective headings.

(j) Any breach of this Agreement by Licensee would cause irreparable injury to Licensor for which monetary damages would not be an adequate remedy and, therefore, Licensor will be entitled to injunctive relief (including specific performance).

(k) This Agreement and the applicable License Confirmation is the entire agreement between the parties with respect to this subject matter, and supersedes all prior and contemporaneous discussions, negotiations, communications, documentation and agreements with respect thereto.