

Kove IO Inc.
14 N Peoria – 2H
Chicago, IL 60607
www.kove.com

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

- 1. Scope.** This Carahsoft Rider and the Manufacturer Agreement 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 Agreement 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 Agreement's 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 Government contracts as set forth in Government 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 verify Ordering Activity's compliance with this Agreement.

(e) Termination. Clauses in the Manufacturer Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement are hereby deemed to be deleted.
- (j) **Customer Indemnities.** All Manufacturer Agreement clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All Manufacturer Agreement 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 Agreement 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 Agreement 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 Agreement, 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 Agreement 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 Agreement and this Rider contain no confidential or proprietary information and acknowledges the Agreement 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.

KOVE IO, INC.
COMMERCIAL END USER TERMS AND CONDITIONS

The Hardware and Software (defined below) that relate to this Agreement are intended for commercial or academic use and not for use by consumers. This Agreement governs the use of the Hardware and Software.

These Commercial End User Terms and Conditions form an agreement (this "**Agreement**") by and between Kove IO, Inc., a Delaware corporation ("**Kove**") and the original purchaser of the Hardware and any transferee, successor or assign of such customer, and any other user of the Hardware or Software ("**Customer**").

1. DEFINITIONS. As used in this Agreement:

1.1 "Authorized User" means an individual employee or contractor of Customer who has (i) been assigned a unique username-password combination to access and use System, and (ii) registered to access and use System.

1.2 "Customer Data" means the information provided by Customer that is stored or processed by the System.

1.3 "Documentation" means standard System documentation that Kove makes generally available from time to time.

1.4 "Kove Property" means the Software, the specifications and other information pertaining to the Hardware and other Kove Confidential Information.

1.5 "Hardware Products" means the hardware provided by Kove on which the Software runs.

1.6 "Software" means the Kove proprietary software in executable form that accompanies the Hardware, as further described in the Documentation.

1.7 "Intellectual Property Rights" means patent rights, copyrights, trademarks, trade secrets, know-how and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.8 "Permitted Use" means use of the System by Authorized Users solely for Customer's internal business or research purposes, as further specified in the Documentation, consistent with all applicable laws, regulations and the rights of others. The System is not designed, intended or authorized for, and Permitted Use does not include, use in hazardous or mission-critical circumstances or uses requiring fail-safe performance such as the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control systems or weapons control systems, or where failure could lead to death, personal injury or environmental damage.

1.9 "System" means the Hardware and the Software and any other hardware components, operating systems or other third party software, as specified in the Documentation.

1.10 "Term" means the term of this Agreement as set forth in Section 9 below.

2. KOVE OFFERINGS.

2.1 Hardware. All sales of Hardware by Kove are final, and title and risk of loss pass to the original Customer FOB Kove's designated facilities.

2.2 Software. Subject to the terms and conditions of this Agreement, Kove grants to Customer a non-exclusive license to use object code versions of the Software for Permitted Uses on the Hardware. KOVE AND ITS SUPPLIERS RESERVE ALL RIGHTS TO THE LICENSED SOFTWARE NOT EXPRESSLY GRANTED HEREIN.

3. CUSTOMER RESPONSIBILITIES AND RESTRICTIONS

3.1 System. Customer is solely responsible for installing and configuring the System, and unless Customer purchases a separate maintenance and support contract authorized by Kove, for System maintenance. Customer assumes and bears the risk of all loss or damage to the System.

3.2 Data Maintenance and Backup. Customer is solely responsible for maintenance and backup of Customer Data. Kove is not responsible for any loss, destruction, alteration, unauthorized disclosure or corruption of Customer Data.

3.3 Restrictions. Customer shall not allow access to or use of the System by anyone other than Authorized Users. Customer may not, directly or indirectly: (a) use or copy the Software except as provided in this Agreement; (b) modify or alter the System; (c) reverse engineer, reverse assemble, reverse compile, or otherwise translate the System except as specifically required by law without the possibility of contractual waiver; (d) use the System for purposes of benchmarking or making comparisons with other products or services, including competitive products or services, other than as used exclusively for Customer's internal use and evaluation of the System; (e) remove any proprietary notices, labels or marks; (f) merge the Software with incompatible products; (g) distribute, transfer, license, sublicense, rent, loan, resell, transfer, mortgage, pledge or encumber System, or otherwise make the System available to any third party, except as set forth in Section 9.1.

3.4 Enforcement. Customer shall ensure that all Authorized Users and any others who may have or obtain access to the System by or through Customer comply with the terms and conditions of this Agreement. Customer shall cooperate with Kove with respect to investigation by Kove of any suspected or alleged violation of this Agreement and any action by Kove to enforce the terms and

conditions of this Agreement.- Customer will be responsible for any unauthorized use of, or infringement of Kove' rights in, the System, occurring by or through Customer or its failure to comply with the terms and conditions of this Agreement.

3.5 LIMITED WARRANTY AND DISCLAIMERS. Kove offers its Kove Limited Warranty covering the Hardware and Software for a period of ninety (90) days from the date of delivery of the System to the initial Customer, subject to the terms and conditions of such Kove Limited Warranty, a copy of which is included with the System as originally shipped, or which may be obtained from Kove at no charge. KOVE DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE, OR PERTAINING TO CUSTOMER DATA ("IMPLIED WARRANTIES"). NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM KOVE OR ELSEWHERE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

4. INDEMNIFICATION.

4.1 Infringement Indemnity. Kove will defend or settle any action brought against Customer to the extent that it is based upon a claim that the Software infringes any third party copyright or trade secret, and will indemnify Customer against any costs, damages, liabilities, expenses and reasonable attorneys' fees attributable to such claim; provided that Customer: (a) promptly notifies Kove in writing of the claim; (b) grants Kove control of the defense and settlement of the claim to the extent permitted by 28 U.S.C. 516; and (c) provides Kove, at Kove's expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim.

4.2 Injunctions. If Customer's use of the Software is, or in Kove's opinion is likely to be, enjoined due to the type of claim specified in Section 5.1 above, Kove may, at its sole option and expense: (a) procure for Customer the right to continue using such Software under the terms of this Agreement; (b) modify the Software so that it is non-infringing and equivalent in function to the enjoined the Software; or (c) if options (a) and (b) above cannot be accomplished despite Kove's reasonable efforts, then Kove may terminate this Agreement and Kove's obligations hereunder with respect to such Software and refund to Customer the unamortized portion of the fees paid for such Software.

4.3 Exclusions. Notwithstanding the terms of Section 6, Kove will have no liability for any infringement or misappropriation claim of any kind to the extent that it results from: (a) the combination, operation or use of the Software with equipment, devices, software or data not supplied by Kove (including the Customer Data); (b) Kove's compliance with any detailed designs, specifications or plans provided by Customer; or (c) Customer's use of the System other than in accordance with this Agreement or the Documentation; or (d) the Customer Data.

4.4 Sole Remedy. THE PROVISIONS OF THIS SECTION 5 SET FORTH KOVE'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

5. CONFIDENTIALITY AND PROPRIETARY RIGHTS.

5.1 Definition. "**Confidential Information**" means the Software, Documentation and any business or technical information of Kove that, if disclosed in writing, is marked "confidential" or "proprietary" at the time of disclosure, or, if disclosed orally, is identified as "confidential" or "proprietary" at the time of disclosure, and is summarized in a writing sent by the disclosing party to the other party within thirty (30) days of such disclosure. Confidential Information does not include information that: (a) is or becomes generally known to the public through no fault of or breach of this Agreement by Customer; (b) is rightfully known by Customer at the time of disclosure without an obligation of confidentiality; (c) is independently developed by Customer without use of Confidential Information; or (d) Customer rightfully obtains from a third party without restriction on use or disclosure.

5.2 Use and Disclosure Restrictions. Customer will not use Confidential Information except as necessary to use the System and will not disclose such Confidential Information to any third party except to those of its employees, subcontractors and third parties that need to know such Confidential Information for the purpose of using the System in accordance with the terms of this Agreement, provided that each such employee, subcontractor and third party is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein. Customer will use all reasonable efforts to maintain the confidentiality of all such Confidential Information in its possession or control, but in no event less than the efforts that Customer ordinarily uses with respect to its own proprietary information of similar nature and importance.

5.3 Ownership. Customer expressly acknowledges that, as between Kove and Customer, Kove owns all worldwide right, title and interest in and to the Kove Property, including all worldwide Intellectual Property Rights therein and thereto. Customer will not delete or in any manner alter the copyright, trademark, and other proprietary rights notices appearing on the System as delivered to Customer. Customer will reproduce such notices on all copies it makes of the Software. As between Kove and Customer, Customer owns the Customer Data.

6. LIMITATION OF LIABILITY.

6.1 Exclusion of Damages. EXCEPT IN CONNECTION WITH BREACH OF SECTION 6 (CONFIDENTIALITY AND PROPRIETARY RIGHTS), IN NO EVENT WILL KOVE BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT

OR THE USE OR PERFORMANCE OF THE SYSTEM, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT CUSTOMER 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 LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

6.2 Total Liability. NOTWITHSTANDING ANY TERM OR CONDITION OF THIS AGREEMENT, KOVE'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY WILL BE LIMITED TO AND WILL NOT EXCEED THE FEES PAID TO KOVE BY CUSTOMER. 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.

7. TERM AND TERMINATION.

7.1 Term. This Agreement will begin on the Effective Date and will remain in effect unless or until it is terminated in accordance with the terms of this Agreement.

7.2 Termination for Breach.

7.3 Effect of Termination. Upon termination of this Agreement, all licenses granted by Kove pursuant to this Agreement will cease, and Customer will promptly return to Kove or destroy the Confidential Information and all copies and portions thereof, in all forms and types of media.

7.4 Survival. Sections 1, 2.1, 2.3, 3, 4.3, 5, 6, 7, 8 and 9 will survive the termination of this Agreement.

8. GENERAL.

8.1 Assignment. Customer will have no right to assign or transfer this Agreement or any rights hereunder, in whole or in part, by operation of law or otherwise, without Kove's express prior written consent. *except* that Customer may transfer the Software, in whole but not in any part, and the license thereto set forth in Section 2.2 above, solely together with the Hardware on which it is installed by Kove. Upon any such transfer, Customer will permanently destroy all copies of Software and other Kove Confidential Information in Customer's possession or under Customer's control. As a condition to any such transfer, the Software will remain, and such transferee will, as a condition to the receipt and use of the System become and remain, subject to the terms and conditions of this Agreement. Any attempt to assign or transfer this Agreement or any rights hereunder, in violation of this Agreement, will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

8.2 Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the United States. The United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of Illinois and Customer hereby consents to the personal jurisdiction and venue therein.

8.3 Nonexclusive Remedy. Except as expressly set forth in this Agreement, the exercise by Kove of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise

8.4 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

8.5 Waiver. The failure by Kove to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

8.6 Force Majeure. Kove will not be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control.

8.7 Export Control. Customer agrees to comply fully with all relevant export laws and regulations of the United States ("**Export Laws**") to ensure that neither the Software, nor any direct product thereof are: (a) exported or re-exported directly or indirectly in violation of Export Laws; or (b) used for any purposes prohibited by the Export Laws, including but not limited to nuclear, chemical, or biological weapons proliferation.

8.8 Entire Agreement. 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 Kove and the authorized contracting officer. The terms and conditions of this Agreement governing the use of the System may be updated from time to time by Kove, effective prospectively upon written approval by the authorized contracting officer.

Contact: Kove IO, Inc., 14 N Peoria – 2H, Chicago IL 60607, kove.com.

The software included in this product contains copyrighted software that is licensed under the GPLv2. A copy of that license is included by [clicking here](#). You may obtain the complete Corresponding Source code from us by sending a money order or check for \$5 to:

GPL Compliance Division
Kove IO, Inc.
14 N Peoria – 2H
Chicago IL 60607

Please write "source for XPD" in the memo line of your payment.

This offer is valid to anyone in receipt of this information.