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

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1. **Scope.**  This Carahsoft Rider and the Application Security, Inc. ('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

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(a)   **Error! Unknown document property name.**

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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 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.

# HyTrust License Agreement

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3. **SUPPORT AND UPGRADES.** This Agreement does not entitle Licensee to any support, upgrades, patches, enhancements, or fixes for the Product (collectively, "Support") unless explicitly set forth in Licensee's Order Confirmation. Any such Support for the Software that may be made available by Licensor shall become part of the Software and subject to this Agreement. After the termination of the support and maintenance term specified in the applicable Order Confirmation, Licensee may contact Licensor or Licensor may contact Licensee to discuss the continuation of support and maintenance for the Product on the Licensor's standard then-existing support and maintenance terms.

4. **FEES.** Licensee shall pay Licensor (or its applicable authorized reseller) the fees for the Product designated by Licensor (or its applicable authorized reseller) as set forth in the Order Confirmation, within 30 days from invoice. All fees shall be non-refundable and payable in US dollars on the date they come due. Licensee shall also pay all sales, use, value-added and other taxes, tariffs and duties of any type except for taxes on Licensor's income.

5. **PUBLICITY.** Licensee hereby grants Licensor the right to use Licensee's name and logo in Licensor's customer list, on Licensor's website, and within Licensor's marketing materials.

6. **EMBEDDED REPORTING; DATA ACCESS AND USE.** Licensee acknowledges that the Product contains automated reporting routines that will automatically identify and analyze certain aspects of use and performance of Product and/or the systems on which it is installed, as well as

the operator and operating environment (including problems and issues that arise in connection therewith), and electronic reports to Licensor. Provided it does not identify Licensee, Licensor shall be free to use for development, enhancement, diagnostic and corrective purposes any data and information it collects relating to diagnosis, problems, systems, performance, use or functionality, and may allow others to do so.

7. **INDEMNITY.** Licensee agrees that Licensor shall have no liability whatsoever for any use Licensee makes of the Product. Licensee shall indemnify and hold harmless Licensor from any claims, damages, liabilities, costs and fees (including reasonable attorney fees) arising from Licensee's use of the Product as well as from Licensee's failure to comply with any term of this Agreement.

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11. **TERM AND TERMINATION.** This Agreement shall continue until terminated as set forth in this section. Licensee may terminate this Agreement at any time. Licensor may terminate this Agreement immediately if Licensee violates any provision of this Agreement. Any termination of this Agreement shall also terminate the licenses granted hereunder. Upon termination of this Agreement for any reason, Licensee shall destroy and remove from all computers, hard drives, networks, and other storage media all copies of the Software, and shall so certify to Licensor that such actions have occurred. Licensor shall have the right to inspect and audit Licensee's facilities to confirm the foregoing. Sections 2 and 4 through 12, and all accrued rights to payment, shall survive termination of this Agreement.

12. **GOVERNMENT USE.** If Licensee is part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Software and Product is restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement as applied to military agencies. The Product and Software are each a "commercial item," "commercial computer software" and "commercial computer software documentation." In accordance with such provisions, any use of the Product or Software by the Government shall be governed solely by the terms of this Agreement.

13. **EXPORT CONTROLS.** Licensee shall comply with all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control ("OFAC"), or other United States or foreign agency or authority, and Licensee shall not export, or allow the export or re-export of the Product in violation of any such restrictions, laws or regulations. By installing or using the Product, Licensee agrees to the foregoing and represents and warrants that Licensee is not located in, under the control of, or a national or resident of any restricted country.

14. **MISCELLANEOUS.** This Agreement represents the complete agreement concerning the Product and Software between the parties, to the exclusion of any pre-printed or contrary terms of any Licensee purchase order (or similar document), and supersedes all prior agreements and representations between them; provided, however, that if there is already a mutually signed agreement between Licensor and Licensee (not including any Licensee purchase order or similar document) covering Licensee's purchase of the Product and license to use the Software, then the express terms of that signed agreement will govern to the extent they are expressly contrary to this Agreement. This Agreement may be amended only by a writing executed by both parties. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. The failure of Licensor to act with respect to a breach of this Agreement by Licensee or others does not constitute a waiver and shall not limit Licensor's rights with respect to such breach or any subsequent breaches. This Agreement is personal to Licensee and may not be assigned or transferred for any reason whatsoever without Licensor's consent (provided, however that no such consent shall be required in the event of an assignment to a successor to substantially all of the assets or business of Licensee) and any action or conduct in violation of the foregoing shall be void and without effect. Licensor expressly reserves the right to assign this Agreement and to delegate any of its obligations hereunder. This Agreement shall be governed by and construed under California law as such law applies to agreements between California residents entered into and to be performed within California. Unless waived by Licensor in a particular instance, the sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be the State and Federal courts in California and each party hereby consents to the jurisdiction of such courts for any such dispute. The party prevailing in any dispute under this Agreement shall be entitled to its costs and legal fees.

Signature on next page:

**HyTrust License Agreement**