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

- 1. Scope.** This Carahsoft Rider and the 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 ([www. /us.html](#)) 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 verify Ordering Activity's compliance with this Agreement.

- (e) **Termination.** To the extent the terms and conditions in the Manufacturer EULA referencing termination or cancellation are inconsistent with FAR 52.212-4, such terms in 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 due to Excusable delays 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) Intentionally omitted.

- (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.

Amendment to Lookout MTP License Agreement Applicable to Government Users

This Amendment to Lookout MTP License Agreement (“Amendment” or “Agreement”) applies only to users of the Services that are accessing, using, or wish to access or use the Enterprise Service in their capacity as U.S. government or U.S. public entities or in their capacity as employees of a U.S. government or U.S. public entity. If You are a U.S. government or U.S. public entity or an employee acting on behalf of one of those entities, read on. This Amendment applies to You. If You aren't, then this Amendment does not apply to you, but Lookout’s MTP License Agreement (“License Agreement”) applies to you. Defined terms used, but not defined herein, shall have the meanings given them in the License Agreement.

This Amendment is an agreement between Lookout, Inc. ("Lookout" or "Lookout") and U.S. Government users of the Service and applies solely to any U.S. Government agency Administrative Users and Members who use or access the Service on behalf of such U.S. Government agency (the "Agency"). You, as a United States Government entity, are required, when entering into agreements with other parties, to follow applicable federal laws and regulations, including those related to ethics; privacy and security; accessibility; federal records; limitations on indemnification; fiscal law constraints; advertising and endorsements; freedom of information; and governing law and dispute resolution forum.

Lookout and You (together, the "Parties") agree that these modifications to the License Agreement are appropriate to accommodate Your legal status, Your public (in contrast to private) mission, and other special circumstances. Accordingly, the License Agreement are hereby modified by this Amendment as they pertain to Agency's use of the Services.

A. Government entity: For the purposes of this Amendment to the License Agreement, "You" shall mean the Agency itself and shall not bind in their individual capacity (i) the individual(s) who utilize the Lookout site or Services on Agency's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the Agency. Lookout will look solely to the Agency to enforce any violation or breach of the

License Agreement by such individuals when they are acting on behalf of the Agency, subject to federal law. All other defined terms in the standard License Agreement will retain their definitions as set forth in that agreement.

B. Public purpose: Agency shall use the Services solely in furtherance of Agency's public purpose. Any requirement(s) set forth within the License Agreement that use of the Services be for private, personal and/or non-commercial purposes is hereby waived.

C. Advertisements: Lookout hereby agrees not to serve or display any third-party commercial advertisements or solicitations in the publicly available portion of the site displaying content uploaded by or under the control of the Agency. This exclusion shall not extend to house ads, which Lookout may serve on such pages in a non-intrusive manner.

D. Indemnification, Liability, Statute of Limitations: Any provisions in the License Agreement related to indemnification and filing deadlines are hereby waived, and shall not apply except to the extent expressly authorized by law. Liability for any breach of the License Agreement as modified by this Amendment, or any claim arising from the License Agreement as modified by this Amendment, shall be determined under the Federal Tort Claims Act, or other governing federal authority. Federal Statute of Limitations provisions shall apply to any breach or claim.

E. Governing law: Any arbitration, mediation or similar dispute resolution provision in the License Agreement is hereby waived. The License Agreement and this Amendment shall be governed, interpreted and enforced in accordance with applicable federal laws of the United States of America without reference to conflict of laws and exclusive jurisdiction shall be in the appropriate U.S. federal courts. To the extent permitted by federal law, the laws of the State of California (excluding California's choice of law rules) will apply in the absence of applicable federal law.

F. Changes to standard License Agreement: Language in the License Agreement reserving to Lookout the right to change the License Agreement without notice at any

time is hereby amended to grant You at least three days advance notice of any material change to the License Agreement. Lookout shall send this notice to the email address You designate at the time You sign up or order the Service, and You shall notify Lookout of any change in the notification email address during the life of the Amendment.

G. Access and use: Lookout acknowledges that the Agency's use of Lookout's Services may energize significant citizen engagement and otherwise become important to the Agency's Mission. Language in the License Agreement allowing Lookout to terminate service or close the Agency's account at any time, for any reason, is modified to reflect the Parties' agreement that Lookout may unilaterally terminate Service and/or terminate Agency's account only for breach of the Agency's obligations under the License Agreement, its material failure to comply with the instructions and guidelines posted on the Service, if Lookout ceases to operate the Service generally or as provided in paragraph S. below. Lookout will provide the Agency with a reasonable opportunity to cure any breach or failure on the Agency's part.

H. Provision on crawlers: Any provision in the License Agreement prohibiting "crawl," "spider" or similar processes is amended to allow the Agency to apply such tools solely to its pages and content, and solely to fulfill Agency's obligations under the Federal Records Act or other applicable federal law or regulation.

I. Ownership of names: Any provision(s) in the License Agreement related to Lookout's ownership of and right to change Your selected user name(s), user ID(s), domain name(s), channel name(s), and group name(s), are modified to reasonably accommodate Agency's proprietary, practical, and/or operational interest in its own publicly-recognized name and the names of Agency programs.

J. Modifications of Agency content: Any right Lookout reserves in the License Agreement to modify or adapt Agency content is limited to technical actions necessary to index, format and display that content. The right to modify or adapt does not include the right to substantively edit or otherwise alter the meaning of the content. In the event Agency discovers that Agency content has been modified in a manner that alters the

meaning of such content, Agency may contact Lookout and the Parties shall work together in good faith to resolve the matter. Notwithstanding the foregoing, nothing in this Amendment shall result in an expansion of Your rights as a United States Government entity under the Copyright Act of 1976 (17 U.S.C. §§101 et seq.), specifically including Section 105 of the Act.

K. Limitation of liability: The Parties agree that nothing in the Limitation of Liability clause or elsewhere in the License Agreement in any way grants Lookout a waiver from, release of, or limitation of liability pertaining to, any direct past, current or future violation of federal law by Lookout.

L. No endorsement: Lookout agrees that Your seals, trademarks, logos, service marks, trade names, and the fact that You have a presence on Lookout's site and use Lookout's Services, shall not be used by Lookout in such a manner as to state or imply that Lookout's products or services are endorsed, sponsored or recommended by You or by any other element of the U.S. Government, or are considered by You or the U.S. Government to be superior to any other products or services. Except for pages whose design and content is under the control of the Agency, or for links to or promotion of such pages, Lookout agrees not to display any Agency or government seals, trademarks, logos, service marks, and trade names on the Lookout's homepage or elsewhere on the site unless permission to do so has been granted by the Agency or by other relevant federal government authority. Lookout may list the Agency's name in a publicly available customer list on its homepage or elsewhere so long as the name is not displayed in a more prominent fashion than that of any other third party name.

M. No business relationship created: The Parties are independent entities and nothing in the License Agreement as modified by this Amendment creates an agency, partnership, joint venture, or employer/employee relationship.

N. No cost agreement: Nothing in the License Agreement as modified by this Amendment obligates You to expend appropriations or incur financial obligations. The Parties acknowledge and agree that none of the obligations arising from the License

Agreement as modified by this Amendment are contingent upon the payment of fees by one party to the other.

O. Separate future action for fee based Services: Lookout provides Services at a basic level free of charge to the public, but this may change in the future. Agency acknowledges that while Lookout will provide Agency with some Services and features for free, Lookout reserves the right to begin charging for the Services and features at some point in the future. Lookout will provide Agency with at least 30 days advance notice of a change involving the charging of fees for a previously-free service. You also understand that Lookout currently offers other premium and enterprise Services for a fee. The parties understand that fee-based products and services are categorically different than free products and services, and are subject to federal procurement rules and processes. Before the Agency decides to enter into a premium or enterprise subscription, or any other fee-based service that this Lookout or alternative providers may offer now or in the future, You agree: to determine the Agency has a need for those additional services for a fee; to consider the subscription's value in comparison with comparable services available elsewhere; to determine that Agency funds are available for payment; to properly use the Government Purchase Card if that Card is used as the payment method; to review any then-applicable TOS for conformance to federal procurement law; and in all other respects to follow applicable federal acquisition laws, regulations and agency guidelines (including those related to payments) when initiating that separate action.

P. Assignment: Neither party may assign its obligations under the License Agreement as modified by this Amendment to any third party without prior written consent of the other; however, Lookout or its subsidiaries may assign the License Agreement as modified by this Amendment to a subsidiary or parent or successor to its assets or business without written consent from the Agency provided that the successor assumes Lookout's obligations under the License Agreement as modified by this Amendment.

Q. Termination: Agency may close Agency's account and terminate this Amendment at any time. Lookout may close Agency's account and terminate this Amendment on 30 days written notice, but the Agency shall not be entitled to a refund of any fees paid.

R. Posting and availability of this Amendment: Any provision of the License Agreement requiring modifications of its terms to be posted on Lookout's site is inapplicable since this Amendment is of limited, not general, application, and is otherwise waived for this special circumstance. The parties agree this Amendment contains no confidential or proprietary information, and either party may release it to the public at large. You may also post it for the benefit of other U.S. Government agencies interested in using the Service on <http://www.howto.gov/> or similar federal informational web sites.

S. Security: Lookout will, in good faith, exercise due diligence using reasonable business practices for IT security, to ensure that systems are operated and maintained in a secure manner, and that management, operational and technical controls are employed to ensure security of systems and data. Recognizing the changing nature of the Web, Lookout will continuously work with users to ensure that its site and Services meet users' requirements for the security of systems and data. Lookout agrees to discuss implementing additional security controls as deemed necessary by the Agency to conform to the Federal Information Security Management Act (FISMA), 44 U.S.C. 3541 et seq., but is under no obligation to provide such additional security controls.

T. Federal Records: Agency acknowledges that use of Lookout's Services may require management of Federal records. Your data may meet the definition of Federal records as determined by the Agency. If Lookout holds Federal records, the Agency and Lookout must manage Federal records in accordance with all applicable records management laws and regulations, including but not limited to the Federal Records Act (44 U.S.C. chs. 21, 29, 31, 33), and regulations of the National Archives and Records Administration (NARA) at 36 CFR Chapter XII Subchapter B). Managing the records includes, but is not limited to, secure storage, retrievability, and proper disposition of all

Federal records including transfer of permanently valuable records to NARA in a format and manner acceptable to NARA at the time of transfer. The Agency is responsible for ensuring that Lookout is compliant with applicable records management laws and regulations through the life and termination of its use of the Site and Services.

U. Intellectual property ownership: Except as expressly allowed in the License Agreement, no rights to the Lookout site or Services or any derivative works, inventions, or Lookout product or service modifications are conferred on Agency or any other party. All such rights belong solely to Lookout.

V. Precedence; Further Amendments: If there is any conflict between this Amendment and the License Agreement, or between this Amendment and other terms, rules or policies on the Lookout site or related to its Services, this Amendment shall prevail. This Amendment constitutes an amendment to the License Agreement; any language in the License Agreement indicating it may not be modified or that it alone is the entire agreement between the Parties is waived. Any further amendment must be agreed to by both Parties in writing.

W. Additional Items for Discussion and Possible Inclusion in this Agreement: Lookout understands current federal law, regulation and policy may affect Agency's use of the Lookout's products and services in ways not addressed in the list of clauses above. Much depends on the nature of the products and services offered by the Lookout (which may change from time to time), and how Agency intends to use those services (which also may change). Among the topics Agency may need to discuss with Lookout, and which may lead to the insertion of additional clauses in this Agreement, are Privacy and Accessibility.