Carahsoft Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Revised 20161213

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 General Services Administration Order   OGP 4800.2I, 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 suspension, termination or cancellation of the Manufacturer's CSA, the License, or the Customer's Account are hereby deemed to be deleted. Termination, suspension or cancellation 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.

(n) Taxes. Taxes are subject to GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w) (1) (x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).

(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 LICENSE AGREEMENT

This End User License Agreement ("**Agreement**") is made and entered into between the entity identified as the "Customer" in the Service Order ("**Customer**" or "**You**") and SecureWorks, Inc., a Georgia corporation ("**SecureWorks**"). The effective date of this Agreement is the date You execute the Service Order (as defined below) (the "**Effective Date**"). By executing the Service Order, You represent and warrant that You have authority to bind the entity identified as the "Customer" in the Service Order.

1. Services; Equipment.

   1.1   **Managed Security Services.**   During the term of this Agreement and subject to the terms and conditions herein and the terms and conditions of Carahsoft Technology Corporation's (Carahsoft's) GSA Multiple Award Schedule (MAS) 70 Contract, SecureWorks agrees to provide managed security services ("**MSS Services**") purchased by Customer through the reseller of SecureWorks Products identified on the Service Order ("**Reseller**"). The MSS Services shall be specified in one or more service order(s) ("**Service Order(s)**") executed by Customer and Reseller. A detailed description of the MSS Services purchased is provided in the service description and service level agreement ("**SLA**") for such MSS Services attached to each Service Order and incorporated therein by reference.

   1.2   **Equipment** SecureWorks will provide certain equipment as necessary for Customer to receive the MSS Services ("**Equipment**"). Upon the earlier of the termination or expiration of this Agreement and/or the applicable Service Order, Customer will return all Equipment to SecureWorks and shall erase, destroy and cease use of all Software (as defined in Section 2 below) located on any Customer equipment. If Customer does not return Equipment, Reseller may invoice Customer for the then-current replacement costs of such Equipment.

2. MSS Services Software; License; Restrictions.

   2.1   **License to Software, Documentation and Products**. SecureWorks will provide Customer with: (i) user IDs, tokens, and passwords, (ii) access and use of the software (in object code format only) (the "**Software**"), (iii) digital signatures, and (iv) access and use of the SecureWorks customer online portal (details and login details of which shall be provided by SecureWorks to the Customer) (the "**Portal**"), in each case as necessary for Customer to receive the MSS Services. SecureWorks will also provide Customer with the applicable written directions and/or policies relating to the MSS Services, which may be in paper or electronic format (the "**Documentation**", and collectively with the Portal, MSS Services, Equipment and Software, the "**Products**"), or a combination thereof, as necessary for Customer to receive the MSS Services and access the Portal. Subject to the terms and conditions of this Agreement (including, without limitation, the restrictions set forth in Section 2.2 below), SecureWorks grants to Customer a limited, non-transferable, non-sublicensable, royalty-free and non-exclusive license to access and use, and for Customer's Affiliate(s) to access and use, during the term of the MSS Services only, the Products delivered to Customer.

   2.2   **Restrictions**. Customer (i) will use the Products for its internal security purposes only, and (ii) will not, for itself, any Affiliate of Customer or any third party: (a) sell, rent, license, assign, distribute, or transfer any of the Products; (b) decipher, decompile, disassemble, reconstruct, translate, reverse engineer, or discover any source code of the Software; (c) copy any Software or Documentation, except that Customer may make a reasonable number of copies of the Documentation for its internal use (provided Customer reproduces on such copies all proprietary notices of SecureWorks or its suppliers); or (d) remove from any Software, Documentation or Equipment any language or designation indicating the confidential nature thereof or the proprietary rights of SecureWorks or its suppliers. In addition, Customer will not, and will not permit unaffiliated third parties to, (I) use the Products on a time-sharing, outsourcing, service bureau, hosting, application service provider or managed service provider basis; (II) alter any aspect of any Software or Equipment; or (III) assign, transfer, license, distribute, or otherwise provide access to any of the Products to any unaffiliated third party or otherwise use any Product with or for the benefit of any unaffiliated third party.

   2.3   **Affiliates.** As used herein, the term **"Affiliate"** with respect to a party means any entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such party. "Customer" shall include Customer's Affiliate(s) if: (i) such Customer Affiliate(s) are approved by SecureWorks to purchase MSS Services under this Agreement by such Affiliate(s) executing a Service Order for such MSS Services directly with SecureWorks ("**Signing Customer Affiliate(s)**") or by Customer executing a

Service Order for such MSS Services on such Affiliate(s)' behalf, (ii) such Customer Affiliate(s) are receiving the benefit of the MSS Services through Customer's purchase of the MSS Services, or (iii) such Customer Affiliate(s)' data is included, accessed or received by SecureWorks in connection with the performance of the MSS Services for Customer. With respect to such Customer Affiliate(s), Customer hereby represents and warrants that: (A) Customer has obtained the necessary consent from each Customer Affiliate for SecureWorks to access such Customer Affiliate's networks and data in connection with providing the MSS Services, and (B) each Customer Affiliate agrees to, and is hereby legally bound by, this Agreement as if it were a party hereto. The parties acknowledge and agree that except for any Signing Customer Affiliate(s), Customer Affiliate(s) are not intended to be third party beneficiaries to this Agreement and shall have no direct claim against SecureWorks hereunder. Except for Signing Customer Affiliate(s), Customer shall be fully liable for any breach of the terms of this Agreement by its Affiliate(s) receiving or having access to the MSS Services hereunder.

In addition, in the event that a Customer Affiliate with a location outside of the United States is purchasing MSS Services under this Agreement ("**Customer International Affiliate**"), (i) such Customer International Affiliate shall enter into a Service Order directly with the SecureWorks local Affiliate ("**SecureWorks Local Affiliate**") for such MSS Services, and (ii) Customer shall execute a local country addendum in the form required by SecureWorks specifying any local country required terms with respect to Customer's International Affiliate. For the purposes of either party's Affiliate(s) performing, receiving or purchasing MSS Services hereunder, references to SecureWorks and Customer herein shall be deemed references to such party's respective Affiliate(s).

3. Customer Responsibilities.

     3.1 Customer will provide SecureWorks with the cooperation, access and detailed information reasonably necessary for SecureWorks to implement and deliver the MSS Services, including (i) test time on Customer's computer systems and networks sufficient for SecureWorks to provide the MSS Services and (ii) one employee who has substantial computer system and network and project management experience reasonably satisfactory to SecureWorks to act as project manager and as a liaison between Customer and SecureWorks. SecureWorks will be excused from any failure to perform its obligations under this Agreement to the extent such failure is caused by Customer's delay or failure to perform its responsibilities under this Agreement.

     3.2 If and to the extent that SecureWorks is providing managed or co-managed MSS Services hereunder, the obligations of SecureWorks to comply with the SLAs applicable to the MSS Services are dependent on SecureWorks' ability to connect directly to the Customer devices on the Customer's network through an authenticated server in SecureWorks' secure operations center. If and to the extent that SecureWorks is required to connect to Customer devices via Customer's VPN or other indirect or nonstandard means, then to the extent that SecureWorks is required to make adds, moves, or changes to or otherwise access such devices in connection with any incident response or help desk request, SecureWorks (i) can make no guarantees or give any assurances of compliance with the SLAs with respect thereto and (ii) shall have no responsibility or liability for any failure to perform or delay in performing its obligations or meeting its SLAs hereunder.

     3.3 In providing the vulnerability assessment service (if purchased by Customer) (the "**Vulnerability Assessment Service**"), SecureWorks will take all reasonable precautions to minimize negative impact to Customer's computer systems and network; however, Customer acknowledges that performance of such Vulnerability Assessment Service may temporarily degrade operation of Customer's computer systems and network. Customer hereby unconditionally and irrevocably releases and acquits SecureWorks and its Affiliates from any and all claims, demands, actions, proceedings, liabilities, obligations, losses, damages, costs, and expenses in connection with any negative impact or degradation to Customer's computer systems or networks resulting from the Vulnerability Assessment Service.

     3.4 Customer acknowledges that SecureWorks' performance and delivery of the MSS Services are contingent upon: (A) Customer providing safe and hazard-free access to its personnel, facilities, equipment, hardware, network and information, and (B) Customer's timely decision-making, providing the requested information and granting of approvals or permissions. Customer (i) has obtained or shall promptly obtain and provide to SecureWorks any required licenses, approvals or consents necessary for SecureWorks' performance of the MSS Services and (ii) shall perform such actions and tasks, in each case, as may be reasonably requested by SecureWorks to enable SecureWorks to perform the MSS Services in accordance with this Agreement (including,

but not limited to, the Customer responsibilities set forth in a Service Order). SecureWorks will be excused from its failure to perform its obligations under this Agreement to the extent such failure is caused by Customer's delay in performing or failure to perform its responsibilities under this Agreement and/or the applicable Service Order.

3.5   Customer is responsible for providing timely, accurate and complete information and reasonable assistance to SecureWorks, and Customer acknowledges and agrees that information developed by the MSS Services or advice and recommendations of SecureWorks in connection therewith may be impacted by untimely, inaccurate or incomplete information provided by Customer. Unless otherwise agreed in writing, SecureWorks will not validate or confirm any information or materials provided by Customer.

3.6   Customer is responsible for all management functions and decisions, including establishing and maintaining Customer's internal controls, evaluating and accepting the adequacy of the MSS Services in addressing Customer's needs and making decisions whether to proceed with advice and recommendations of SecureWorks.

3.7   If SecureWorks is requested by Customer, or required by government regulation, regulatory agency, subpoena, or other legal process, to produce Customer Reports (as defined in Section 5.3), documentation or SecureWorks personnel for testimony or interview with respect to the MSS Services, SecureWorks shall not charge or request reimbursement from Customer for SecureWorks' and its counsel's expenses and professional time incurred in responding to such a request, unless previously agreed or budgeted by Customer.

4. Term and Termination

4.1   **Term of Agreement**. The term of this Agreement shall commence on the Effective Date and shall continue until all Service Orders hereunder have expired or been terminated.

4.2   **Term of Service Orders(s)**. The term for the applicable MSS Services will be specified on each Service Order.

4.3   **Termination for Convenience**. Notwithstanding Sections 4.1 and 4.2, the Customer shall have the unilateral right to terminate this Agreement and any Service Orders hereunder immediately upon written notice to SecureWorks.

4.4   **Effect of Termination**. Upon termination or expiration of this Agreement in accordance with the terms hereof, the license granted to Customer and its Affiliates with respect to the Products will immediately terminate and Customer shall pay all fees owed to SecureWorks for Products through the date of such termination.

5. Proprietary Rights.

5.1   **Customer's Proprietary Rights**. Customer represents and warrants that it has the necessary rights, power and authority to transmit Customer Data (as defined below) to SecureWorks under this Agreement, including with respect to all federal, state, local and international laws, rules and regulations (collectively, "**Applicable Laws**") applicable to Customer Data. As between Customer and SecureWorks, Customer will own all right, title and interest in and to (i) (A) any data provided by Customer and/or its Affiliate(s) to SecureWorks and (B) Customer and/or its Affiliate(s)' data accessed or used by SecureWorks or transmitted by Customer and/or its Affiliate(s) to SecureWorks or SecureWorks Equipment in connection with SecureWorks' provision of the MSS Services, including, but not limited to, Customer's and/or its Affiliate(s)' data included in any written or printed summaries, analyses or reports generated in connection with the MSS Services (Customer and its Affiliate(s)' data collectively, "**Customer Data**"), (ii) all intellectual property, including patents, copyrights, trademarks, trade secrets and other proprietary rights and information (collectively, "**IP**") of Customer that may be made available to SecureWorks in the course of providing MSS Services under this Agreement, and (iii) all Confidential Information (as defined in Section 6) of Customer or its Affiliates, including, but not limited to, Customer Data, Customer Reports, and other Customer files, documentation and related materials, in each case under this clause (iii), obtained by SecureWorks in connection with this Agreement. Notwithstanding the foregoing, Customer shall have no ownership rights or interest as to Derivative Data, as defined below in Section 5.2.

During the term of the MSS Services, Customer grants to SecureWorks a limited, non-exclusive, royalty-free license to use Customer Data to (i) perform the MSS Services hereunder; and (ii) perform research to enhance its MSS Services, including: (1) monitoring the performance of the MSS Services; and (2) optimizing the MSS Services by

improving performance, functionality and usability; provided, however that SecureWorks' obligations of confidentiality with respect to Customer Data shall apply to SecureWorks' use of Customer Data as set forth in this paragraph. This Agreement does not transfer or convey to SecureWorks or any third party any right, title or interest in or to Customer Data or any associated IP rights, but only a limited right of use as granted in and revocable in accordance with this Agreement.

5.2 <u>**SecureWorks' Proprietary Rights**</u>. As between Customer and SecureWorks, SecureWorks will own all right, title and interest in and to the Products and MSS Services. This Agreement does not transfer or convey to Customer, any of its Affiliates, or any third party, any right, title or interest in or to the Products and MSS Services or any associated IP rights, but only a limited right of use as granted in and revocable in accordance with this Agreement. SecureWorks will retain ownership of all copies of the Documentation. SecureWorks agrees to transfer to Customer, all right, title and interest in and to any Equipment purchased by Customer ("**Customer Purchased Equipment**"), excluding any right, title or interest in and to the Software and any other SecureWorks IP loaded onto such Customer Purchased Equipment. In addition, Customer agrees that SecureWorks is the owner of all right, title and interest in all IP in any work, including, but not limited to, all inventions, methods, processes, and computer programs including any source code or object code (and any enhancements and modifications made to any of the foregoing), contained within the MSS Services and/or Products, developed by SecureWorks in connection with the performance of the MSS Services hereunder and of general applicability across SecureWorks' customer base (collectively, the "**Works**"), and Customer hereby assigns to SecureWorks all right, title and interest in and to any IP that Customer may have in and to such Works; provided, however, that such Works shall not include Customer's Confidential Information (as defined in Section 6), Customer Data, or Customer Reports (as defined in Section 5.3). Without limiting the foregoing, SecureWorks will own all right, title and interest in and to all IP in any advisory data, threat data, vulnerability data, analyses, summaries, bulletins and information made available to Customer in SecureWorks' provision of its counter threat intelligence MSS Services (the "**TI Reports**"). SecureWorks shall also own all right, title and interest in and to all IP in any security event data derived from Customer Data and the Services that does not identify Confidential Information of Customer, together with any and all updates and modifications thereto (collectively, "**Derivative Data**").

During the term of the MSS Services, SecureWorks grants to Customer a limited, non-transferable, non-sublicensable, royalty-free, non-exclusive license to use such Works and TI Reports solely for Customer to receive the MSS Services and for Customer's or its Affiliate's internal security purposes only. Customer acknowledges that any license to the Products, MSS Services, Works and TI Reports immediately expires upon the expiration or termination of any individual Service Order and/or this Agreement.

At all times during the term of this Agreement and thereafter, Customer covenants and agrees not to take any action, either directly or indirectly, to: (i) challenge, question, or attempt to invalidate any of the ownership rights of SecureWorks described in this Section 5.2; or (ii) assert any IP or other rights in or to any of the Products, MSS Services, Works, TI Reports, or Derivative Data, other than the limited licenses granted to Customer under this Agreement.

5.3 <u>**Customer Reports**</u>. Customer shall own all right, title and interest in and to any written summaries, reports, analyses, and findings or other information or documentation prepared uniquely and exclusively for Customer in connection with the MSS Services and as specified in a Service Order (the "**Customer Reports**"). For clarity, the Customer Reports do not include the TI Reports, as set forth in Section 5.2 above. The provision by Customer of any Customer Report, any information therein or any other results or output of the MSS Services to any unaffiliated third party shall not entitle such unaffiliated third party to rely on the Customer Report or the contents thereof in any manner or for any purpose whatsoever, and SecureWorks specifically disclaims all liability for any damages whatsoever (whether foreseen or unforeseen, direct, indirect, consequential, incidental, special, exemplary or punitive) to such unaffiliated third party arising from or related to reliance by such unaffiliated third party on any Customer Report or any contents thereof.

6. Confidentiality.

In the performance of the MSS Services, Customer and SecureWorks may have access to or be exposed to proprietary or confidential information of the other party, including, but not limited to software, product plans, marketing and sales information, customer lists, "know-how," and trade secrets, regardless of the form or medium of

such information, whether or not such information constitutes a trade secret under Applicable Law, and whether or not such information is marked or identified as "proprietary", "confidential" or similar designation at the time of access or exposure (collectively, "**Confidential Information**"). Each party may use and reproduce the other party's Confidential Information in connection with performing under this Agreement, and not for any other purpose. Neither party may disclose the other party's Confidential Information to any third parties unless such disclosure is to personnel of SecureWorks or Customer, including employees, agents and subcontractors, on a "need-to-know" basis in connection with its performance obligations pursuant to this Agreement, so long as such personnel have agreed to treat such Confidential Information under terms at least as restrictive as those herein. Each party agrees to take the necessary precautions to maintain the confidentiality of the other party's Confidential Information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a like-kind nature, but in no case less than a commercially reasonable standard of care. The foregoing restrictions shall not pertain to any information which (A) was known by one party prior to its receipt from the other or is or becomes public knowledge without the fault of the recipient, (B) is received by the recipient from a source other than a party to this Agreement, (C) is independently developed by a party without causing a breach of the terms hereunder, or (D) a party is required to disclose in response to an order by a court or governmental agency, provided that advance notice of the disclosure is provided to other party.

During the term of this Agreement and the MSS Services, SecureWorks shall employ and maintain reasonable and appropriate safeguards designed to: (a) reasonably protect all Customer Data in SecureWorks' possession from unauthorized use, alteration, access or disclosure; (b) detect and prevent against a Security Breach (as defined below); and (c) help ensure that SecureWorks' employees and agents are appropriately trained to maintain the confidentiality and security of Customer Data in SecureWorks' possession.

SecureWorks agrees to notify Customer reasonably promptly upon becoming aware of a confirmed use or disclosure of Customer Data or Customer Confidential Information in SecureWorks' possession or control in violation of this Agreement (a "**Security Breach**").

This Section 6 shall survive for three (3) years following any termination or expiration of this Agreement; provided that with respect to any Confidential Information remaining in the receiving party's possession following any termination or expiration of this Agreement, the obligations under this Section 6 shall survive for as long as such Confidential Information remains in such party's possession.

7. Warranties; Limitation of Liability.

        7.1   Warranties. SECUREWORKS WARRANTS THAT: (I) ITS PERSONNEL ARE ADEQUATELY TRAINED AND COMPETENT TO PERFORM THE MSS SERVICES AND (II) THE MSS SERVICES SHALL BE PERFORMED IN A PROFESSIONAL MANNER IN ACCORDANCE WITH THE APPLICABLE SERVICE ORDER AND THIS AGREEMENT. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 7.1, SECUREWORKS MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO ANY OF THE PRODUCTS, CUSTOMER REPORTS OR MSS SERVICES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY OR NON-INFRINGEMENT, OR ANY WARRANTY RELATING TO THIRD-PARTY PURCHASES.

        7.2   Limitation of Liability

      7.2.1   SECUREWORKS WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, (i) DAMAGES FOR LOST OPPORTUNITIES, REVENUE, INCOME, PROFITS, OR SAVINGS, AND (ii) DAMAGES FOR LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEMS OR NETWORKS, OR THE RECOVERY THEREOF, OR BUSINESS INTERRUPTION OR DOWNTIME, IN EACH CASE, EVEN IF SECUREWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2.2   SECUREWORKS' AGGREGATE LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE) FOR ALL CLAIMS OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE SPECIFIC MSS SERVICE(S) GIVING RISE TO SUCH CLAIM DURING THE PRIOR TWELVE (12) MONTH PERIOD.

7.2.3   THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY, REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, AND TORT OR OTHERWISE.   INSOFAR AS APPLICABLE LAW PROHIBITS ANY LIMITATION, EXCLUSION OR DISCLAIMER HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION, EXCLUSION OR DISCLAIMER WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION, EXCLUSION OR DISCLAIMER PERMITTED TO THE FULLEST EXTENT POSSIBLE UNDER SUCH LAW. THE PARTIES AGREE THAT THE LIMITATIONS ON LIABILITIES SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR SECUREWORKS' PROVISION OF MSS SERVICES AND/OR PRODUCTS TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

8. Export. Each party agrees to comply with all Applicable Laws in the course of performance of its obligations under this Agreement. Customer acknowledges that the Products provided under this Agreement, which may include technology, authentication and encryption, are subject to the customs and export control laws, rules, and regulations of the United States ("**U.S.**"); may be rendered or performed either in the U.S., in countries outside the U.S., or outside of the borders of the country in which Customer or its systems are located; and may also be subject to the customs and export laws and regulations of the country in which the Products are rendered or received. Each party agrees to abide by those laws and regulations applicable to such party in the course of performance of its obligations under this Agreement. Customer also may be subject to import or re-export restrictions in the event Customer transfers the Products from the country of delivery and Customer is responsible for complying with applicable restrictions. SecureWorks' acceptance of any order for Products is contingent upon the issuance of any applicable export license required by the U.S. Government or any other applicable national government. SecureWorks will not be liable for delays or failure to deliver Products resulting from Customer's failure to obtain such license or to provide such certification.

9. OFAC Warranty. Customer warrants that neither it, nor any of its Affiliates or such party's agents are on any list maintained by the United States Treasury Department's Office of Foreign Assets Control of persons, entities, or prohibited or restricted jurisdictions. Customer agrees that it will promptly notify SecureWorks in writing if it becomes aware of any changes to this warranty or if to Customer's knowledge any change is threatened. In such event, SecureWorks shall have the ability to immediately terminate this Agreement without affording Customer an opportunity to cure.

10.   Government Relations.

If the Products are provided to U.S. Government agencies, other than the supporting Documentation, they are provided with LIMITED RIGHTS, as those terms are defined in the Federal Acquisition Regulation ("FAR") at FAR clauses 52.227-14 and 52.227-19. Use, duplication, or disclosure of restricted rights Products by the U.S. Government is subject to the restrictions as set forth in subparagraph "(c)" of the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19. In the event the sale is to a U.S. Department of Defense agency, the U.S. Government's rights in software, supporting documentation, and technical data are governed by the restrictions in the Technical Data Commercial Items clause at DFARS 252.227-7015 and DFARS 227.7202. In no event shall Customer grant any higher tier contractor or the U.S. Government rights in any SecureWorks Products greater than those set forth in this Section 10.

11.   Additional Terms.

      11.1   Independent Contractor Relationship; Assignment; Subcontracting. The parties are independent contractors. Neither party will have any rights, power or authority to act or create an obligation, express or implied, on behalf of another party except as specified in this Agreement. Neither party will use the other party's name (except internal use only), trademark, logos, or trade name without the prior written consent of the other party. SecureWorks has the right to assign, subcontract or delegate in whole or in part this Agreement, or any rights, duties, obligations or liabilities under this Agreement, by operation of law or otherwise, provided that

SecureWorks shall remain responsible for the performance of the MSS Services under this Agreement. Otherwise, neither party may assign this Agreement without the permission of the other party, which such permission shall not be unreasonably withheld or delayed.

      11.2   Entire Agreement; Severability; Section Headings. This Agreement, the terms and conditions of Carahsoft's MAS 70 Contract, and the Service Orders are the entire agreement between SecureWorks and Customer with respect to its subject matter and supersede all prior oral and written understandings, agreements, communications, and terms and conditions attached to or contained within a purchase order issued by Customer in connection with the MSS Services, including, but not limited to, any security or privacy agreements executed by the parties. If any provision of this Agreement is void or unenforceable, the remainder of this Agreement will remain in full force and effect. Section headings are for reference only and shall not affect the meaning or interpretation of this Agreement.

      11.3   Force Majeure. SecureWorks shall not be liable to Customer for any failure to perform any of its obligations under this Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control, including, but not limited to, fire, flood, war, embargo, strike, riot or the intervention of any governmental authority.

      11.4   Governing Law, Forum and Language.

11.4.1   THE PARTIES AGREE THAT THIS AGREEMENT SHALL BE GOVERNED BY THE FEDERAL LAWS OF THE UNITED STATES.   THE PARTIES EXPRESSLY AGREE THAT THIS AGREEMENT SHALL NOT BE GOVERENED BY OR CONSTRUED IN ACCORDANCE WITH THE U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

11.4.2   This Agreement will be interpreted and construed in accordance with the English language.

      11.5   Survival. Sections 5.1, 5.2, 6, 7.2, and 8-12 shall survive any expiration or termination of this Agreement.