

**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.).



INSYNC+PHOENIX CLOUD  
CUSTOMER AGREEMENT

THIS CUSTOMER AGREEMENT (this "Agreement") is executed and delivered effective as of the date set forth in the Order Form executed by Carahsoft Technology Corporation (Carahsoft or Reseller) and the Government Ordering Activity's Contracting Officer ("Customer").

1. **Definitions.**

- (a) "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "**Control**" for purposes of this definition means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- (b) "**Authorized Users**" shall mean natural persons who are authorized by Customer to use the Software and/or the Cloud Services, as applicable, and who actively use the Software and/or Cloud Services.
- (c) "**Client Software**" shall mean the client software agent installed on an Authorized User's endpoint device (i.e. laptop, cellphone, personal digital assistant, desktop, and tablet) and any feature or functionality add-ons, and any modified versions and copies of, and upgrades, updates and additions to such software, licensed to Customer pursuant to this Agreement.
- (d) "**Cloud Services**" shall mean the unified data protection and governance software-as-a-service solution of Druva and its Affiliates for enterprise endpoints (inSync) and/or servers (Phoenix), and any feature or functionality add-ons, and any modified versions of, and upgrades, updates and additions to such solution, that Customer licenses from Druva pursuant to this Agreement."
- (e) "**Customer Data**" shall mean data, information and materials of Customer or its Authorized Users that Customer or its Authorized Users uploads to, stores on, or accesses with, Druva's products and services.
- (f) "**Documentation**" shall mean the published user guides, manuals, instructions and/or specifications provided or made available to Customer with respect to the Software and the Cloud Services.
- (g) "**Druva**" shall mean: (i) Druva Technologies Pte. Ltd., a Republic of Singapore company, if this Agreement is entered into when Customer is headquartered in the Asia-Pacific region (other than the India subcontinent), (ii) Druva Data Solutions Private Limited, a Republic of India company, if this Agreement is entered into when Customer is headquartered in the India subcontinent (which includes India, Pakistan, Sri Lanka, Bangladesh, Nepal and Bhutan), (iii) Druva Europe Limited, an England and Wales, United Kingdom company, if this Agreement is entered into when Customer is headquartered in Europe, the Middle East or Africa, (iv) Druva Inc., a Delaware, United States company, if this Agreement is entered into when Customer is headquartered in North America, South America or any other geography not described above, or (v) the Druva company designated in a written document signed by such Druva company and Customer; which in each case will include the applicable Druva company's designated assigns, successors and transferees
- (h) "**Order Form**" shall mean an order confirmation of Druva (or an Affiliate of Druva) or other written document (e.g., purchase order) that identifies Druva's products and services ordered by Customer, directly or through the reseller with which Customer contracted, which is accepted by Druva (or an Affiliate of Druva) in writing. The term "reseller" in this Agreement shall refer to a reseller or a distributor of Druva's products and services, as applicable.
- (i) "**Software**" shall mean the Client Software.
- (j) "**Term**" shall mean the period of time during which Druva's products and services, as applicable, are initially contracted to be available to Customer pursuant to this Agreement as set forth in the Order Form(s), unless earlier terminated pursuant to this Agreement.

2. **Druva Products and Services.**

- (a) **inSync Cloud License.** This Section 2(a) applies to a Customer that is licensing inSync Cloud as identified in the Order Form. Subject to the restrictions and limitations set forth in this Agreement and Customer's compliance with this Agreement, Druva grants Customer a non-transferable, non-exclusive, limited and restricted license to (i) access and use the Cloud Services solely for Customer's enterprise endpoint devices, including laptops, smartphones and tablets but excluding servers, and (ii) install the Client Software on each Authorized User's endpoint device, which excludes servers, in each case for Customer's own internal business purposes only in a manner pursuant to this Agreement and the applicable Documentation for the Term unless earlier terminated. Druva will use commercially reasonable efforts to make the Cloud Services available to Customer in accordance with this Agreement, including the service levels attached hereto as Exhibit A, during the Term unless earlier terminated. Customer may install and use the Client Software on any of Customer's compatible endpoint devices up to the maximum number of permitted Authorized Users and storage limit per Authorized User set forth in the Order Form. In addition, Customer may make copies of the Documentation for its own internal use in connection with its use of the Software and the Cloud Services in accordance with this Agreement, but no more than the amount reasonably necessary.

- (b) **Phoenix Cloud License.** This Section 2(b) applies to a Customer that is licensing Phoenix Cloud as identified in the Order Form. Subject to the restrictions and limitations set forth in this Agreement and Customer's compliance with this Agreement, Druva grants Customer a non-transferable, non-exclusive, limited and restricted license to (i) access and use the Cloud Services solely for Customer's enterprise servers and (ii) install the Server Software on each Customer enterprise server, in each case for Customer's own internal business purposes only in a manner pursuant to this Agreement and the applicable Documentation for the Term unless earlier terminated. Druva will use commercially reasonable efforts to make the Cloud Services available to Customer in accordance with this Agreement, including the service levels attached hereto as Exhibit A, during the Term unless earlier terminated. In addition, Customer may make copies of the Documentation for its own internal use in connection with its use of the Software and the Cloud Services in accordance with this Agreement, but no more than the amount reasonably necessary.

### 3. Security and Privacy.

- (a) **Security.** Without limiting Customer's obligations under Section 4(b), Druva will implement and maintain commercially reasonable measures designed to help Customer secure Customer Data against unauthorized access, disclosure or use. These measures include the following:
- i. Druva will encrypt Customer Data with unique encryption keys generated for Customer.
  - ii. Druva will employ 2-factor encryption pursuant to which Druva will not have Customer's encryption keys and Druva will not have access to Customer Data.
  - iii. Druva will logically segregate Customer Data from data belonging to Druva's other customers.
- In addition to the measures described above, Druva will provide the Cloud Services using an ISAE 3000 Type II / SSAE 16 Type II certified (or equivalent) data center.
- (b) **Privacy.** Customer authorizes Druva to transmit, backup and use Customer Data solely to provide the Cloud Services to Customer and its Affiliates. Druva agrees to comply with its privacy obligations under the Data Processing Addendum, if entered into by the parties, and applicable law.
- (c) **Data Storage.** The parties acknowledge and agree that Customer determines in its sole discretion the Cloud Storage Area at which Customer Data and accompanying metadata obtained from endpoints (e.g., laptops, tablets and smartphones) registered in a Customer Site are processed and stored pursuant to the Cloud Services. The Customer Data and accompanying metadata are processed and stored in the same Cloud Storage Area pursuant to the Cloud Services. The Cloud Services shall process and store Customer Data and accompanying metadata in the Cloud Storage Areas selected by Customer, except as necessary to comply with the law or a valid and binding order of a law enforcement agency. In the event that Druva has the capability and desires to change the location of the Cloud Storage Area for a Customer Site, Druva agrees to promptly notify Customer in writing and provide all relevant details of the desired change to the location of the Cloud Storage Area, and not change the location of the Cloud Storage Area without Customer's prior written approval, which Customer may withhold in its sole discretion.
- (d) **Usage and Configuration Metrics.** Druva, its Affiliates and its third party service providers that perform services in connection with Druva's performance of this Agreement may collect information regarding number of users, number of devices, number of servers, per user storage capacity, aggregate storage usage and storage locations of Customer (which information shall not include any Customer Data, or any "personal identifiable information" or "protected health information" as such terms are defined in applicable U.S. privacy laws) remotely, through functionality integrated with the Software or the Cloud Services or otherwise. Druva and its Affiliates, and its third party service providers may use such information only for their internal business purposes, including to perform and to ensure compliance with, this Agreement. Druva, its Affiliates and its third party service providers agree to keep such information confidential.

### 4. Customer Information.

- (a) **Ownership.** As between Druva and Customer, Customer retains title to and ownership of all right, title and interest in the Customer Data.
- (b) **Customer Responsibility.** Customer is solely responsible for (i) maintaining the confidentiality of its Authorized User credentials, passwords and encryption keys associated with its accounts, (ii) properly configuring and using the Druva products and services and taking its own steps to maintain appropriate security, protection and backup of Customer Data, (iii) all activities that occur with respect to Customer's accounts regardless of whether the activities are undertaken by it, its employees or a third party (including its contractors or agents), (iv) its and its Authorized Users' access and use of the Druva products and services and compliance with this Agreement and the applicable Documentation (v) all Customer Data, and (vi) all product settings, which may override individual end point settings of Authorized users. Druva is not responsible for any alteration, compromise, corruption or loss of Customer Data that arises from any access to, sharing or use of Customer's accounts, credentials, passwords or encryption keys.

## 5. Ownership.

The Software, any authorized copies that Customer makes, the Cloud Services and the Documentation are the intellectual property of and are owned by Druva and its Affiliates and their licensors, and constitute the confidential information of Druva. As between Druva and Customer, Druva and its Affiliates retain title to and ownership of all right, title and interest in the Software, the Cloud Services and the Documentation, including all intellectual property and other proprietary rights therein, and subject to the applicable limited licenses expressly granted by Druva to Customer in Section 2, Customer does not have any right, title or interest in the Software, the Cloud Services or the Documentation. To the extent that the Software or Cloud Services contains or may be provided with components that are offered under an open source license, Druva agrees to make that license available to Customer and the provisions of that license may expressly override some of the terms set forth in this Agreement for such components. All rights not expressly granted in this Agreement are reserved by Druva and its Affiliates and their licensors.

## 6. Restrictions and Requirements. Customer agrees and agrees to cause its Authorized Users to comply with the following:

- (a) **Proprietary Notices.** Customer and its Authorized Users will not remove or modify any trademarks, trade names, service marks, service names, logos or brands, or copyright or other proprietary notices on the Software, the Cloud Services or the Documentation, or add any other markings or notices to the Software, the Cloud Services or the Documentation.
- (b) **Use Obligations.** Customer and its Authorized Users (i) will access and use the Software and the Cloud Services in accordance with this Agreement and the applicable Documentation, (ii) will not use the Software or the Cloud Services or permit the Software or the Cloud Services to be used to perform any file storage or other services for any third party, (iii) will not upload or permit the Software or the Cloud Services to be used to upload any Customer Data that (A) infringes the intellectual property rights or other proprietary rights of any third party, (B) is unlawful or objectionable material or (C) contains software viruses or other harmful or deleterious computer code, files or programs such as trojan horses, worms, time bombs or cancelbots, (iv) will not use or permit the use of any software, hardware, application or process that (A) interferes with the Software or the Cloud Services, (B) interferes with or disrupts servers, systems or networks connected to the Software or the Cloud Services, or violates the regulations, policies or procedures of such servers, systems or networks, (C) accesses or attempts to access another customer's accounts, servers, systems or networks without authorization, (D) harasses or interferes with another customer's use and enjoyment of the Software or the Cloud Services or (E) in Druva's sole discretion, inordinately burdens the resources of Druva and/or its Affiliates that are providing the Software and/or the Cloud Services, or (v) will not tamper with or breach the security of the Software or the Cloud Services.
- (c) **Prohibited Activities.** Customer and its Authorized Users will not (i) modify, port, adapt, translate or create any derivative work based upon, the Software, the Cloud Services or the Documentation; (ii) reverse engineer, decompile, disassemble or otherwise derive or attempt to derive the source code of the Software or the Cloud Services, except for any non-waivable right to decompile the Software expressly permitted by applicable mandatory law; and (iii) copy, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare, use or offer the Software or the Cloud Services on a service bureau basis, deliver or otherwise transfer the Software or the Cloud Services, in whole or in part.
- (d) **No Illegal or Hazardous Use.** Customer and its Authorized Users will comply with all applicable laws and regulations in its use of the Software and the Cloud Services. Customer acknowledges that the Software and the Cloud Services are not designed, intended or authorized for use in hazardous or mission-critical circumstances or for uses requiring fail-safe performance. Customer and its Authorized Users will not use the Software or the Cloud Services for activities where use or failure of the Software or the Cloud Services could lead to environmental damage, property damage, death or personal injury. Customer, not Druva, is responsible for any applicable vertical or industry-specific regulation compliance.

## 7. Payment Terms.

- (a) **InSync Fees.** Customer agrees to pay Druva, directly or through the reseller with which Customer contracted, the subscription fees, overages (if applicable) and other amounts for Druva's products and services ordered by Customer, in United States currency (unless otherwise specified in the Order Form) (collectively, the "Fees"). For Phoenix Products, Subscription Fees are based on the type of Phoenix Subscription plan (Business, Enterprise, or Elite) Customer has contracted for. Overages will be calculated and invoiced quarterly. All payment obligations are non-cancellable, and all Fees paid to Druva are non-refundable except as expressly set forth in this Agreement.
- (b) Customer acknowledges and agrees that all services are deemed a 100% complete at the time of availability of Cloud Services and/or installation of the Client Software, regardless of the percentage of deployed licenses.
- (c) **Terms of Payment.** All Fees will be invoiced in advance in accordance with the Order Form. Unless otherwise set forth in the Order Form, all Fees are due and payable Net 30 days after the date of the applicable invoice. All invoices that are not paid within 30 days, and all credit accounts that are delinquent, shall be assessed a 1.5% late payment charge (or, if less, the highest legal rate under applicable law) for each month the invoice is not paid or the account is delinquent.
- (d) **Taxes.** The Fees do not include any taxes, duties, fees or other amounts assessed or imposed by any government authority. Customer is responsible for paying all such taxes, duties, fees and other amounts, other than taxes imposed on Druva's income.

## 8. Limited Warranty.

- (a) **Authority.** Each of Druva and Customer represents and warrants that (i) this Agreement has been duly entered into and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (ii) no authorization or approval from any third party is required in connection with such party's entering into or performance of this Agreement; and (iii) the entering into and performance of this Agreement does not violate the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.
- (b) **Limited Warranty.** Druva warrants that inSync Cloud and Phoenix Cloud will perform substantially in accordance with the applicable published specifications when used in accordance with this Agreement and the Documentation for the period during which Customer has paid Druva for support services. Non-substantial variations of performance from the published specifications or other Documentation do not establish a warranty right. This limited warranty is void if failure of the Software or the Cloud Services has resulted from installation, deployment, use, maintenance or support not in accordance with the Documentation, modification by Customer, an Authorized User or a third party not authorized by Druva, force majeure, or any breach of this Agreement by Customer or an Authorized User. In the event of a Software and/or Cloud Services warranty claim, Customer's sole and exclusive remedy and Druva's entire obligation and liability shall be, at Druva's sole option, to either (i) provide a correction, update or upgrade of the Software or the Cloud Services, (ii) correct or replace the Cloud Services or (iii) refund Customer, directly or through the reseller with which Customer contracted, a pro-rated amount of the applicable Fees pre-paid by Customer covering the whole months that would have remained, absent such early termination, in the Term following the effective date of such early termination and terminate this Agreement. Any corrected, upgraded or updated version of the Software will be warranted for the remainder of the warranty period. All warranty claims must be made to Druva in writing within such warranty period.
- (c) **General Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 8(a) AND 8(b), THE SOFTWARE AND THE CLOUD SERVICES ARE PROVIDED "AS IS" AND (i) DRUVA SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (ii) DRUVA DOES NOT WARRANT THAT THE SOFTWARE, CLOUD SERVICES OR ANY PART THEREOF, OR USE THEREOF WILL BE UNINTERRUPTED, ERROR-FREE, UNBREACHABLE OR VIRUS FREE, OR WILL MEET CUSTOMER'S QUALITY AND PERFORMANCE REQUIREMENTS. CUSTOMER ASSUMES THE ENTIRE RISK OF AND SHALL NOT HOLD DRUVA RESPONSIBLE FOR ANY ALTERATION, COMPROMISE, CORRUPTION OR LOSS OF CUSTOMER DATA, NOTWITHSTANDING ANY SECURITY OR OTHER MEASURE THAT MAY BE PROVIDED BY DRUVA.

## 9. Indemnification.

- (a) **IP Infringement.** Druva, if notified promptly in writing and given authority, control, information and assistance at Druva's expense for defense and settlement of same, shall defend Customer against any third party action, suit or proceeding brought against Customer so far as it is based on a claim that the use of the Software or the Cloud Services furnished under this Agreement infringes a United States patent that has been issued as of the installation or deployment date, as the case may be. If Druva reasonably believes that Customer's use of the Software or the Cloud Services is likely to be enjoined, or if the Software or the Cloud Services are held to infringe such patent and all use of such Software or Cloud Services by Customer is thereby enjoined, Druva shall, at its expense and at its sole option, (i) procure for Customer the right to continue using the Software or the Cloud Services, (ii) replace the Software or the Cloud Services with other non-infringing software or services of substantially equivalent functionality or (iii) modify the Software or the Cloud Services so that there is no infringement, provided that such modified software or services provide substantially equivalent functionality. If, in Druva's opinion, the remedies in clauses (i), (ii) and (iii) above are infeasible or commercially impracticable, Druva may, in its sole discretion, refund Customer, directly or through the reseller with which Customer contracted, a pro-rated amount of the applicable Fees pre-paid by Customer covering the whole months that would have remained, absent such early termination, in the Term following the effective date of such early termination and terminate this Agreement. Customer shall not settle any matter without the prior written approval of Druva.
- (b) **Exceptions.** The indemnification obligation in this Section 9 will not apply to the extent the infringement is caused by any of the following: (i) the Software or the Cloud Services is modified in an unauthorized manner, (ii) the Software or the Cloud Services is combined with other software, hardware, application or process not authorized by Druva, (iii) the Software or the Cloud Services is used in violation of this Agreement or the Documentation, (iv) any third party deliverables or components contained within the Software or the Cloud Services that are not provided by Druva or (v) any materials, data or information provided by Customer, including Customer Data.
- (c) **Sole Remedy.** THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND DRUVA'S ENTIRE OBLIGATION AND LIABILITY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

## 10. Limitation of Liability.

EXCEPT FOR DRUVA'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9, AND CUSTOMER'S MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF BUSINESS, GOODWILL, REVENUE, USE OR OTHER ECONOMIC ADVANTAGE, BUSINESS INTERRUPTION, OR ANY ALTERATION,



COMPROMISE, CORRUPTION OR LOSS OF CUSTOMER DATA) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SOFTWARE, THE CLOUD SERVICES, THE DOCUMENTATION OR USE THEREOF OR THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE EXCLUSIONS SET FORTH IN THE PRECEDING SENTENCE, EACH PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID AND PAYABLE BY CUSTOMER FOR THE SOFTWARE AND THE CLOUD SERVICES FOR THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. FOR CLARITY, THE ABOVE LIMITATIONS SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 7. No claim against Druva may be brought more than one year after the facts giving rise to such claim have arisen. The limitations of liability and exclusions of damages in this Section 10 form an essential basis of the bargain between the parties and shall survive and apply even if any remedy specified in this Agreement is found to have failed its essential purpose.

11. **Insurance.**

Druva agrees to maintain at its expense during the Term workers' compensation insurance as required by applicable law, and commercial general liability insurance, errors and omissions liability insurance, cyber security insurance, and umbrella liability insurance from financially sound insurance companies having coverages and limits of liability that are commercially reasonable. Upon request, Druva will provide Customer with proof of such insurance.

12. **Suspension; Termination.**

- (a) **Suspension.** In the event of any actual or threatened breach of this Agreement by Customer (including non-payment of fees), without limiting Druva's other rights and remedies and notwithstanding anything in this Agreement to the contrary, Druva may immediately suspend Customer's use of the Software and the Cloud Services.
- (b) **Termination.** This Agreement may only be terminated by a party upon written notice to the other party (i) if the other party breaches a material term of this Agreement that is uncured within 30 days (or, in the case of non-payment, 15 days) after delivery of notice of such breach, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors not dismissed within 30 days. Notwithstanding the above, Druva may immediately terminate this Agreement without prior written notice or an opportunity to cure in the event of an actual or threatened breach of Section 2, 5 or 6.
- (c) **Fees.** Upon expiration of this Agreement, Customer will pay Druva, directly or through the reseller with which Customer contracted, any unpaid amounts that are owed to Druva for the Term. Upon termination of this Agreement based on Customer's breach (following any applicable cure period), Customer will pay Druva any unpaid amounts that would have been owed to Druva for the remainder of the then-current Term if such early termination had not occurred as well as any other amounts owed to Druva under this Agreement, without limiting Druva's other rights and remedies. Upon termination of this Agreement based on Druva's breach (following any applicable cure period), Druva will refund Customer, directly or through the reseller with which Customer contracted, any amounts pre-paid pursuant to this Agreement for the remaining full calendar months in the then-current Term.
- (d) **Effect (Insync).** Upon expiration or termination of this Agreement, the license rights granted by Druva to Customer pursuant to this Agreement will cease immediately and Customer will immediately cease all use of the Software and the Cloud Services, as applicable, and delete (or, at Druva's request, return) all Software, related Documentation, passwords and any Druva confidential information in its possession or control. Upon expiration or termination of this Agreement (other than termination by Druva for breach), at the Customer's written request made within 30 days after expiration, Druva will provide Customer with temporary access to the Software solely for Customer to retrieve its then-current back-up of the Customer Data (but not for any other purpose) and/or provide, at its standard export fee, a copy of its Customer Data on a portable storage device. If applicable, and after such 30-day period, Druva will have no obligation to maintain or provide access to the Customer Data and will thereafter, unless legally prohibited, delete all Customer Data stored on the Cloud Services.

**Effect (Phoenix)** . Upon expiration or termination of this Agreement, the license rights granted by Druva to Customer pursuant to this Agreement will cease immediately and Customer will immediately cease all use of the Software and the Cloud Services, as applicable, and delete (or, at Druva's request, return) all Software, related Documentation, passwords and any Druva confidential information in its possession or control. Customer will have 90 days following the termination or expiration of this Agreement to use up the remaining credits and retrieve its then-current back-up of the Customer Data and/or provide, at its standard export fee, a copy of its Customer Data on a portable storage device. After such 90-day period Druva will have no obligation to maintain or provide access to the Customer Data and will thereafter, unless legally prohibited, delete all Customer Data stored on the Cloud Services.

- (e) **Survival.** Sections 4, 5, 6, 7, 8, 9, 10, 13 and 14 will survive any expiration or termination of this Agreement.

### 13. General.

- (a) **Parties.** Druva and Customer are independent contractors. Nothing in this Agreement shall be deemed to constitute a joint venture or partnership between the parties, nor constitute any party as the agent of the other party for any purpose, or entitle any party to commit or bind the other party in any manner. Nothing in this Agreement, express or implied, (nor if this Agreement is governed by Singapore law, under the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore) is intended to confer upon any party other than the parties hereto, Druva's Affiliates and their licensors and their respective successors and permitted assigns any rights or obligations.
- (b) **Governing Law, Jurisdiction and Attorneys' Fees.** This Agreement shall be governed by the federal laws of the United States.
- (c) **Export Laws.** Customer understands that the Software, the Cloud Services and the export and re-export of data via the Software and Cloud Services may be controlled by the laws of one or more countries governing technology use and transfer, including U.S. Export Administration Regulations. Customer will not use or transfer any technology or data in violation of such laws.
- (d) **Entire Agreement; Amendment; Waiver.** This Agreement, together with the terms and conditions of Carahsoft's Multiple Award Schedule Contract, the Exhibit and the Order Form(s), is the parties' entire agreement with respect to its subject matter, and supersedes any prior communications, discussions, understandings or agreements. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived with the written consent of duly authorized representatives of GSA and Carahsoft Technology Corporation.
- (e) **Severability.** If any provision of this Agreement is held to be unenforceable, the unenforceable provision shall be replaced by an enforceable provision that comes closest to the parties' intentions underlying the unenforceable provision, and the remaining provisions of this Agreement shall remain in full force and effect. The unenforceability of any provision in any jurisdiction shall not affect the enforceability of such provision in any other jurisdiction.
- (f) **Subcontracts; Assignment.** Druva may subcontract any services to be performed pursuant to this Agreement without Customer's consent and without providing notice. Druva may assign or transfer this Agreement, in whole or in part, to any Affiliate or in connection with any acquisition, consolidation, merger, reorganization, transfer of all or substantially all of its assets or other business combination, or by operation of law without Customer's consent and without providing notice. Customer may not assign or transfer any part of this Agreement by business combination, operation of law or otherwise without Druva's prior written consent. Subject to the foregoing, this Agreement will bind and benefit the parties and their respective successors and permitted assigns.
- (g) **Force Majeure.** Druva shall not be liable for its inadequate performance caused by any condition beyond the reasonable control of Druva or its suppliers, including accidents, acts of God or nature, government acts, civil unrest, acts of war or terrorism, third party criminal acts, strikes or other labor problems, failures in computer, hardware, telecommunications, internet service provider or hosting facilities, power shortages and denial of service attacks.
- (h) **Notices.** All notices given pursuant to this Agreement shall be in writing and shall be deemed given upon the earlier of actual receipt or: (i) when sent, if sent by email during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (ii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iii) one business day after the business day of deposit with an internationally recognized overnight courier, freight prepaid, specifying priority delivery, with written verification of receipt. All notices shall be sent to the parties at their respective address on the Order Form, or to such email address, facsimile number or address as subsequently modified by written notice given in accordance with this Section.
- (i) **Uninstall Instructions.** The Client Software may be uninstalled by following the instructions accessible through the following: [http://docs.druva.com/KnowledgeBase/Articles/InSync\\_Client/Uninstalling\\_inSync\\_Client](http://docs.druva.com/KnowledgeBase/Articles/InSync_Client/Uninstalling_inSync_Client).

## Exhibit A

### Service Level Agreement (SLA) for Cloud Services

#### Cloud Services Availability

The Cloud Services will be available 24 hours per day, 7 days per week, excluding any scheduled maintenance as described below.

#### **Category 1 – Scheduled Maintenance.**

**InSync:** A weekly scheduled maintenance period may be scheduled every Saturday between **2AM** Pacific Time to **8AM** Pacific Time to perform system maintenance, backup, and upgrade functions for the Cloud Services. If scheduled maintenance is required outside of the weekly scheduled maintenance period described above, Druva will notify Customer at least three business (3) days in advance.

**Phoenix:** A weekly scheduled maintenance period may be scheduled on the first and third Monday of each month at **5am** UTC (Phoenix Cloud) and at **8am** UTC (Phoenix GovCloud) for a maximum duration of 90 minutes to perform system maintenance, backup, and upgrade functions for the Cloud Services. If scheduled maintenance is required outside of the weekly scheduled maintenance period described above, Druva will notify Customer at least three business (3) days in advance.

**Category 2 – Unscheduled Maintenance.** Unscheduled maintenance may be required to resolve issues that are critical for Customer and/or performance of the Cloud Services. Druva will use its commercially reasonable efforts to notify Customer via email at least six (6) hours prior to the unscheduled maintenance.

#### Durability of Customer Data

Druva shall ensure 99.99999% Customer Data durability, which includes up to 3-way data redundancy across data centers.

#### Uptime and Service Credits

Please reference the following table (Reporting Period = Calendar Month), which details the credit available to Customer in the event Cloud Services Availability falls below the indicated thresholds:

#### InSync

Cloud Services Availability	Credits
< 99.5% in one Reporting Period	5% of one (1) month of Fees
< 99% in one Reporting Period	10% of one (1) month of Fees

#### Phoenix

Cloud Services Availability	Credits
< 99.5% in one Reporting Period	5% of one (1) month of pre-paid Subscription Fees
< 99% in one Reporting Period	10% of one (1) month of pre-paid Subscription Fees

Additionally, if the Cloud Services Availability falls below 90% for three (3) consecutive Reporting Periods, Customer shall have the right to terminate this Agreement and such right must be exercised within ten (10) days of the end of such three (3) month period or Customer shall be deemed to have waived its termination right with respect to that particular three (3) month period.

#### Calculation of Cloud Services Availability

Cloud Services Availability = (Total Hours in Reporting Period – Unscheduled Maintenance which causes unavailability – Scheduled Maintenance – Excluded\*) / (Total Hours in Reporting Period – Scheduled Maintenance – Excluded\*) X 100%.

\*Excluded means the following: (i) unavailability caused by force majeure; (ii) any problems resulting from Customer combining or merging the Cloud Services with any hardware or software not supplied by Druva or not identified by Druva in writing as compatible with the Cloud Services; (iii) interruptions or delays in providing the Cloud Services resulting from telecommunications or Internet service provider failures; or (iv) any interruption or unavailability resulting from Customer's use of the Cloud Services in an unauthorized or unlawful manner or any interruption resulting from the misuse, improper use, alteration or damage of the Cloud Services.

#### Request for Credit for Cloud Services Availability

Any Customer request for a credit that Customer is entitled to under this SLA may only be made on a calendar month basis and must be submitted within ten (10) days after the end of the relevant calendar month or shall be deemed to have been waived by Customer.

For those periods at the end of a Term that do not coincide with the end of a calendar month, Customer must make a claim for a credit within ten (10) days after the expiration of the Term or the claim for credit shall be deemed to have been waived by Customer. The total of all credits applicable

to or accruing in any given Reporting Period shall not exceed 50% of the Fees paid or payable to Druva by Customer, directly or through the reseller with which Customer contracted, for the Reporting Period.

The right to a credit and/or the right to terminate this Agreement pursuant to this SLA and this Agreement shall be the sole and exclusive remedy available to Customer in the event of unavailability of the Cloud Services and, under no circumstance, shall the unavailability of the Cloud Services be deemed a breach by Druva of its obligations under this Agreement.

All credit requests will be verified against Druva's system records.