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.).

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1. **Ownership**. The App is protected by copyrights and other intellectual property rights owned by UXStorm. You agree that all worldwide copyright and other intellectual property rights in the App, and all copies of the App however made, are the exclusive property of UXStorm and its licensors. All rights in and to the App not expressly granted to You in this Agreement are reserved by UXStorm. There are no express or implied licenses under this Agreement.

2. **Subscription**. Upon payment by You of the applicable subscription fees, or in the event UXStorm in its sole discretion provides you the App for a fixed period of time at no cost to you, the App will be enabled for Your own internal use, during the Term (defined below), through a single authorized Production instance of the ServiceNow Platform and any Non-Production ServiceNow instances supporting that Production instance. No license is granted to You under this Agreement to use or access the ServiceNow Platform. Access to the ServiceNow Platform must be separately purchased from ServiceNow. You are not entitled to delivery of a copy of the App apart from its deployment on Your single authorized instance of the ServiceNow Platform and any Non-Production instances supporting that Production instance. In the event ServiceNow determines in its sole discretion that one or more additional ServiceNow license(s) are required by You in order to enable the UXStorm App for Your own use, then You shall be required to acquire such license(s) from ServiceNow. ServiceNow will invoice You for any fees associated with such license(s) to ServiceNow.

3. **Restrictions on Use**. You may not do (or permit others to do) any of the following: (a) modify, adapt, alter, translate, or create derivative works of the App, except that You may

configure and customize the App solely to the extent that it is possible to do so using the features and functionalities of the ServiceNow Platform in their ordinary and intended manner; (b) sublicense, lease, rent, loan, assign or otherwise transfer the App or any license hereunder to any third-party; (c) host, upload, use or access the App via a time sharing, service bureau, virtualization, hosting or other remote access arrangement, except for Your single authorized instance of the ServiceNow Platform as hosted by ServiceNow; (d) reverse engineer, decompile or disassemble the App or otherwise attempt to derive the source code of the App except and only to the limited that such activities are expressly permitted by applicable law notwithstanding this limitation; (e) remove, alter, or obscure any confidentiality or proprietary notices (including copyright or trademark notices) of UXStorm or its suppliers on, in or displayed by the App; (f) reproduce or use the App except as expressly authorized under Section 2 (without limiting the foregoing, You may not use the App apart from the ServiceNow Platform); or (g) circumvent, or provide or use a program intended to circumvent, technological measures provided by UXStorm to control access to or use of the App.

4. **Services**. Upon payment by You of the applicable subscription fees, UXStorm shall provide to you limited customer support, to be made available to you during the hours, and via the contact information, provided by UXStorm on the ServiceNow Store or elsewhere as determined by UXStorm in its sole discretion. Such hours and contact information are subject to change in UXStorm's sole discretion. If UXStorm provides you the App for a fixed period of time at no cost to you, then no maintenance, support or other services are provided to You under this Agreement.

5. **Fees and Payment**. Your rights to utilize the App are conditioned upon: (i) your compliance with all of the terms and conditions set forth in this Agreement; and (ii) unless UXStorm provides you the App for a fixed period of time at no cost to you, payment by You of the applicable subscription fees to UXStorm (either directly or through the ServiceNow® Store). UXStorm Subscription fees are payable annually in advance unless a monthly payment option is offered to you (i) through the ServiceNow® Store (in which case subscription fees are payable monthly in advance) or (ii) directly by UXStorm in its sole discretion. All fees paid to UXStorm are non-refundable and non-cancellable except as expressly provided in this Agreement and do not include sales and use taxes, value-added taxes, goods and services taxes, excise, business, service, withholding tax, shipping, or customs duties and similar transactional taxes and fees, all of which You are responsible for paying above and beyond the subscription fees due to UXStorm. Fees not paid when due will accrue interest at a rate of one and one-half percent (1.5%) per month or the legal maximum interest rate, whichever is lower, applied as of the date of invoice. Failure to pay fees when due may result in the withdrawal of Your app from Your instance.

6. **Disclaimer of Warranty**. THE APP IS PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. UXSTORM EXCLUDES AND DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING (WITHOUT LIMITATION) ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, NON-INFRINGEMENT, TITLE, RESULTS, EFFORTS OR QUIET ENJOYMENT. THERE IS NO WARRANTY THAT THE APP IS ERROR-FREE OR WILL FUNCTION WITHOUT INTERRUPTION. YOU ASSUME THE ENTIRE RISK ARISING OUT OF THE PERFORMANCE

OR USE OF THE APP. TO THE EXTENT THAT UXSTORM MAY NOT DISCLAIM ANY WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

7. **Limitation of Liability**. EXCEPT TO THE EXTENT THAT DISCLAIMER OF LIABILITY IS PROHIBITED UNDER APPLICABLE LAW, IN NO EVENT WILL UXSTORM, SERVICENOW, OR ANY OF THEIR RESPECTIVE AFFILIATES, LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS AND DIRECTORS BE LIABLE TO YOU FOR DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE APP, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES ARISING FROM LOSS OF REVENUE, USE, DATA, OR PROFITS, INJURY TO REPUTATION OR GOODWILL, OR THE COST OF SUBSTITUTE GOODS OR SERVICES) WHETHER SUCH DAMAGES ARISE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER LEGAL THEORY, AND EVEN IF SUCH DAMAGES ARE FORESEEABLE. IF, UNDER APPLICABLE LAW, LIABILITY FOR DIRECT DAMAGES CANNOT BE EXCLUDED (NOTWITHSTANDING THE FOREGOING), THEN THE TOTAL CUMULATIVE LIABILITY OF UXSTORM (OR ANY OTHER PERSON) IN CONNECTION WITH THIS AGREEMENT AND THE APP, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL NOT EXCEED THE GREATER OF US$5.00 OR THE AMOUNT OF SUBSCRIPTION FEES (IF ANY) THAT YOU PAID TO UXSTORM FOR USE THE APP GIVING RISE TO LIABILITY. THE EXISTENCE OF MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMIT. YOU ACKNOWLEDGE THAT THE SUBSCRIPTION FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT UXSTORM WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, SERVICENOW WILL HAVE NO LIABILITY TO YOU, WHETHER IN CONTRACT, IN TORT OR OTHERWISE UNDER THIS AGREEMENT OR IN RELATION TO THE APP. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION WILL APPLY EVEN IF AN EXCLUSIVE REMEDY UNDER THIS AGREEMENT HAS FAILED OF ITS ESSENTIAL PURPOSE.

8. **Term and Termination.** The term of Agreement ("Term") will commence upon Your acceptance and will remain in effect for one (1) year; thereafter the Term shall automatically renew for successive one (1) year periods, subject to payment by You of all applicable subscription fees, unless UXStorm notifies you of its intention not to renew prior to expiration of the then-current Term. You may terminate this Agreement at any time and for any reason by giving written notice to UXStorm; provided, however, that You will not be entitled to a refund of any fees paid hereunder. UXStorm may terminate this Agreement, effective immediately upon written notice to You if You: (a) fail to pay any portion of the subscription fees when due and fail to cure such non-payment within thirty (30) days after receipt of notice of same; or (b) if You otherwise breach any provision of this Agreement. Upon expiration or termination of this Agreement, Your rights to use or access the App terminate, and the App must be removed from Your instance of the ServiceNow Platform. Sections 1, 5, 6, 7 and 8 will survive expiration or termination of this Agreement for any reason.

9. **General Provisions.**

9.1. **Choice of Law and Venue**. This Agreement will be governed by Federal law The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (USA) do not apply to this Agreement.

9.2. **Compliance with Laws**. You will comply with all applicable export and import control laws and regulations in Your use of the App and, in particular, You will not export or re-export the App without all required government licenses. Regardless of any disclosure made to UXStorm of an ultimate destination of the App and accompanying technical documentation, You acknowledge that all such materials are being released or transferred to You in the United States and may be subject to U.S. export control laws and regulations including regulations of the U.S. Bureau of Industry and Security. You will defend, indemnify, and hold harmless UXStorm and its licensors, suppliers and resellers (including ServiceNow) from and against any violation of such laws or regulations by You.

9.3. **U.S**. **Government Rights**. If You are a branch or agency of the U.S. Government, then You acknowledge that the App is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Any technical data provided with such App is commercial technical data as defined in 48 C.F.R. 12.211. Consistent with 48 C.F.R. 12.211 through 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, and 48 C.F.R. 252.227-7015, all U.S. Government end users acquire the App with only those rights set forth in this Agreement.

9.4. **Relationship between the Parties**. The parties are independent contractors neither party is the agent, partner, employee, fiduciary or joint venturer of the other party under this Agreement. ServiceNow is an express third-party beneficiary of those provisions excluding or limiting its warranties and liabilities to You.

9.5. **Assignments**. You may not assign or transfer, by operation of law or otherwise, any of Your rights under this Agreement (including Your licenses with respect to the App) to any third-party without UXStorm's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be void. UXStorm may freely assign its rights or delegate its obligations under this Agreement.

9.6. **Language**. This Agreement is in the English language and its English language version will be controlling over any translation, except and to the extent when required by applicable law.

9.7. **Remedies**. Except as otherwise provided herein, the parties' rights and remedies under this Agreement are cumulative.

9.8. **Waivers**. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

9.9. **Severability**. If any provision of this Agreement is held unenforceable by a court, such provision may be changed and interpreted by the court to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, You agree that Sections 6 and 7 will remain in effect notwithstanding the unenforceability of any other provision of this Agreement.

9.10. **Entire Agreement**. This Agreement and the terms and conditions of GSA Schedule 70 Contract GS-35F-0119Y constitutes the final and entire agreement between the parties regarding the subject of this Agreement and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. The terms of any purchase order or similar document submitted by You to UXStorm or ServiceNow will not be effective to alter the terms of this Agreement.

9.11. You acknowledge that the Terms and Conditions set forth in this Agreement are binding upon: (i) You, (ii) all holders of a legal or beneficial interest in You, (iii) all of Your officers, directors, executives, managers and members of Your professional staff, (iv) all of Your employees, agents and representatives, and, (v) any partner, independent contractor, fiduciary or joint venturer of Yours. Specifically, You agree and acknowledge that You shall be liable for any breach of the Terms and Conditions contained herein by any of the parties specified in subsections (i) – (iv) above.