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

1. **Scope.** This Carahsoft Rider and the Manufacturer End User License Agreement (EULA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").

2. **Applicability.** The terms and conditions in the attached Manufacturer EULA www.tintri.com/wp-content/uploads/2012/03/eula.pdf are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41. U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's EULA are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft' s contract #GS-35F-0119Y, including, but not limited to the following:

(a) **Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

(b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.

(c) **Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

(d) **Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering

Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.

(e) Termination. Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

> Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court.

(f) Consent to Government Law / Consent to Jurisdiction. Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

(g) Force Majeure. Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

(h) Assignment. All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.

(i) Waiver of Jury Trial. All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.

(j) Customer Indemnities. All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.

(k) Contractor Indemnities. All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

(l) Renewals. All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.

(m) Future Fees or Penalties. All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

(n) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.

(o) Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.

(p) Installation and Use of the Software. Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.

(q) Dispute Resolution and Venue. Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

(r) Limitation of Liability: Subject to the following:

> Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

(s) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

(t) Public Access to Information. Manufacturer agrees that the EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA and this Rider will be available to the public.

(u)   **Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.

END USER LICENSE AGREEMENT

IMPORTANT: PLEASE READ BEFORE INSTALLATION OR USE OF THE TINTRI, INC. PRODUCT YOU HAVE PURCHASED OR FOR WHICH THE SOFTWARE IS SUPPLIED (THE "HARDWARE" AND "SOFTWARE," RESPECTIVELY, AND COLLECTIVELY, THE "PRODUCT"). BY INSTALLING OR IN ANY WAY USING THE SOFTWARE, YOU OR THE ENTITY OR COMPANY THAT YOU REPRESENT ("CUSTOMER") ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY AND ARE MADE A PARTY TO THIS END USER LICENSE AGREEMENT (THIS "EULA") WITH TINTRI. IF CUSTOMER DOES NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS EULA, INSTALLATION OR USE OF THE SOFTWARE IS STRICTLY PROHIBITED. IF THE TERMS OF THIS EULA ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS.

1.   SOFTWARE LICENSE GRANT. Software is licensed to Customer, not sold. Terms such as sell and purchase, apply only to the extent the Products consist of Hardware items other than Software. Subject to the terms of this EULA, including payment of the purchase price and/or all fees for the Product, Tintri hereby grants Customer a limited, personal, non-sublicensable, non-transferable, non-exclusive license to use the Software only for Customers internal use as part of the Product in which it is contained or for which it is provided and only in accordance with any accompanying documentation. Customer expressly acknowledges and agrees that Customer has no right to and will not sell, transfer, or license any Software to any third party.

2.   LICENSE RESTRICTIONS. Customer shall not, nor permit anyone else to, directly or indirectly: (i) copy (other than for back-up purposes), modify, or distribute the Software; (ii) reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or structure, sequence and organization of the Software (except to the extent the foregoing is expressly prohibited by applicable local law); (iii) rent, lease, or use the Software for timesharing, service bureau purposes or application service provider purposes, or otherwise use the Software on behalf of any third party; iv) use the Software for comparisons or competitive testing or "benchmarking" (except for Customers confidential internal purposes) or publish or disclose the results thereof; (v) make available Software in any form to anyone other than Customer's employees or contractors who agree in writing to be bound by terms at least as protective of the Software and Tintri as those in this EULA; or (vi) sublicense, assign, distribute, make available, pledge, lease, rent, share or otherwise transfer Software to an affiliate or a third party. . Customer shall maintain and not remove or obscure any proprietary notices on the Software. As between the parties, title, ownership rights, and intellectual property rights in and to the Software, and any copies or portions thereof, shall remain in Tintri and its suppliers or licensors. The Software is protected by the copyright laws and treaties. This EULA does not give Customer any rights not expressly granted herein.

3.   OPEN-SOURCE SOFTWARE. The Software may be distributed with certain independent code that is licensed under the GNU General Public License (GPL), the GNU Library/Lesser General Public License (LGPL), the Apache License Version 2.0 (Apache License) and/or other open-source licenses (Open-Source Code). Customer can obtain a copy of the GPL, the LGPL, and the Apache License at www.gnu.org/licenses/. For a period of three (3) years from the date of Customers purchase of the Product, Tintri will, at Customers request, provide to Customer a copy of the source code for code licensed under the GPL or the LGPL, including any modifications made by Tintri. Tintri may charge reasonable shipping and handling charges for such distribution. Please direct requests in writing to: Tintri Inc., 2570 W. El Camino Real, Suite 400, Mountain View, CA 94040.

4.   FEES. Customer shall pay the purchase price and/or all fees for the Product. If the Product is undergoing evaluation, under an Evaluation Agreement not included in this EULA, the Customer must purchase or return the product at the conclusion of the evaluation period.

5.   SUPPORT. Support for Software is not provided under this EULA. Support, if purchased by Customer, is provided subject to Tintri's standard Purchase Terms and Conditions and Support Services Terms and Conditions which may be found at http://support.tintri.com/schedules. Any Software that may be made available by Tintri pursuant to such support shall become part of the Software and subject to this EULA.

End User License Agreement

6.   WARRANTY DISCLAIMER. Tintri makes no representation or warranty with respect to any Software under this EULA. Any warranty for the Software is as set forth in the Tintri standard Limited Warranties which may be found at http://support.tintri.com/schedules (the Limited Warranties). EXCEPT AS MAY BE EXPRESSLY MADE IN THE LIMITED WARRANTIES, TINTRI DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE PRODUCTS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO CUSTOMER. TINTRI DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.

7.   LIMITATION OF LIABILITY. WHETHER UNDER ANY WARRANTY, CONTRACT, TORT, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE THEORY, THE FOLLOWING WILL APPLY TO TINTRI AND ITS AFFILIATES AND ALL PRODUCTS, INCLUDING SOFTWARE, AND SERVICES OF TINTRI IN ALL CIRCUMSTANCES (EXCEPT WITH RESPECT TO BODILY INJURY OR DEATH OF A PERSON): (A) TINTRI WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES, LOSS OF PROFITS, OR LOSS OR INACCURACY OF DATA; AND (B) TINTRI'S CUMULATIVE LIABILITY FOR ANY AND ALL DAMAGES IS LIMITED TO AMOUNTS PAID TO TINTRI BY CUSTOMER OR TINTRI'S AUTHORIZED RESELLER FOR THE PARTICULAR PRODUCTS AND/OR SERVICES WITH RESPECT TO WHICH A CLAIM IS MADE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSION MAY NOT APPLY TO CUSTOMER.

8.   TERM AND TERMINATION. This EULA shall continue until terminated as set forth in this Section 8. Customer may terminate this EULA at any time. Tintri may terminate this EULA if Customer violates any material provision of this EULA or any other provision of any agreement with Tintri. Any termination of this EULA shall also terminate the licenses granted hereunder. Upon termination of this EULA for any reason, Customer shall destroy and remove from all computers, hard drives, networks, and other storage media all copies of the Software, and shall so certify to Tintri that such actions have occurred. Tintri shall have the right to inspect and audit Customers facilities to confirm the foregoing. Section 2 and Sections 6 through 12 (inclusive), and all accrued rights to payment, shall survive termination of this EULA.

9.   U.S. GOVERNMENT RIGHTS. The Software is "commercial computer software" as defined in the U.S. Federal Acquisition Regulations (FAR) at 2.101. If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of the EULA as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the "FAR" and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of the EULA as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement ("DFARS") and its successors. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in the Software. Any confidential or proprietary information received by the Government in connection with the EULA is exempt from release under the Freedom of Information Act and is prohibited from release under the Federal Trade Secrets Act, 18 U.S.C. 1905.

10.   EXPORT COMPLIANCE. Customer shall comply with all export laws and regulations of the Applicable Law (as defined in Section 11, below) and of the U.S. Department of Commerce, the U.S. States Department of Treasury Office of Foreign Assets Control, or other U.S. or foreign agency or authority, and Customer shall not export, or allow the export or re-export of any Product in violation of any such laws or regulations. By installing or using the Software, Customer agrees to the foregoing and represents and warrants that Customer is not located in, under the control of, or a national or resident of any restricted country.

11.   <u>CHOICE OF LAW/VENUE</u>. This EULA shall be governed by California law, without regard to the Uniform Computer Information Transactions Act ("Applicable Law"). Choice of law rules and the United Nations Convention on Contracts for the International Sale of Goods will not apply. Notwithstanding the foregoing, Tintri may also seek and obtain appropriate relief in any court of competent jurisdiction for claims regarding (i) the scope of any licenses granted herein or (ii) its intellectual property rights and confidential information. The prevailing party in an action to enforce this EULA shall be entitled to costs and attorneys and experts fees and expenses.

12.   <u>GENERAL</u>. Customer may not assign any rights or delegate any duties under this EULA and any attempt to do so is void and without effect. This EULA, and any other agreement between the parties of which this EULA is a part, is the parties entire agreement relating to the subject matter hereof and supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any communication between the parties relating to its subject matter. No modification to this EULA will be binding unless in writing and signed by an authorized representative of each party. Any express waiver or failure to exercise promptly any right under this EULA will not create a continuing waiver or any expectation of non-enforcement. If any provision of this EULA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. To the extent that any and all provisions of this EULA shall exclude or limit any statutory liability which, according to mandatory provisions of Applicable Law cannot be contractually excluded or limited by mutual agreement of the parties, then such provision shall be given only such effect, if any, as is permitted by the Applicable Law. Neither party will be responsible for any failure or delay in its performance under this EULA, excluding Customers payment obligations, due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, war, terrorism, riot, or natural disasters.