

Nimble Storage
2740 Zanker Road
San Jose, CA 95134

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

- 1. Scope.** This Carahsoft Rider and the Nimble Storage ('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 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.

(a) Error! Unknown document property name.

(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.

NIMBLE STORAGE END USER LICENSE AGREEMENT

By opening this package or using this Product or installing or using any Software (each as defined below), you agree to the terms of this End User License Agreement (“**Agreement**”) between Nimble Storage Inc., located at 2645 Zanker Road, San Jose, CA 95134 (“**Nimble**”), and you (“**Licensee**”). If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to this Agreement, in which case “Licensee” shall refer to such entity. If you do not agree to the terms of this Agreement, you may not use this Product or install or use the Software and you may choose, in the case of a Product containing Embedded Software (defined below), to promptly return such Product for a refund of the Product purchase price. You acknowledge and agree that your license to use the Software shall be limited to use solely in conjunction with the Product purchased by you from Nimble or Nimble’s authorized reseller and for which you have paid the required fee. This Agreement and any other written agreements between you and Nimble with respect to the Product constitute the final, complete, and exclusive agreement between the parties regarding the Product and supersede all prior or contemporaneous agreements, understandings, and communication, whether written or oral.

1. DEFINITIONS

“**Ancillary Software**” means any software that is provided by Nimble for use in conjunction with the Product on a standalone basis and not as pre-installed on, embedded in, or incorporated into the hardware components of a Product.

“**Documentation**” means the Product user documentation furnished by Nimble to users.

“**Embedded Software**” means any software that is provided by Nimble pre-installed on, embedded in, or incorporated into the hardware components of a Product.

“**Product(s)**” means the Nimble product(s) described in the quotation or other order documentation provided by Nimble or Nimble’s authorized reseller, including the hardware and Software components thereof.

“**Software**” means the Ancillary Software and the Embedded Software.

2. LICENSE RIGHTS

2.1 License. Subject to the terms of this Agreement, Nimble grants to Licensee a limited, nonexclusive, perpetual, nontransferable license, without the right to sublicense, to: (a) execute the Embedded Software solely for the purpose of operating the Products incorporating such Embedded Software; (b) install an unlimited number of copies of Ancillary Software, in object code form only, at a location owned or controlled by Licensee; (c) use each copy of the Ancillary Software installed in accordance with (b) solely in conjunction with the Products in accordance with the Documentation and solely for Licensee’s internal purposes; and (d) make one copy of the Ancillary Software for archival and backup purposes only.

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2.3 Open Source Software. Certain items of software included with the Software are subject to “open source” or “free software” licenses (“**Open Source Software**”). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of this Agreement. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Licensee’s rights under, or grants Licensee rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Nimble makes such Open Source Software, and Nimble’s modifications to that Open Source Software, available by written request at the notice address specified above.

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5. INDEMNIFICATION. Nimble will defend at its own expense any action against Licensee brought by a third party to the extent that the action is based upon a claim that the Software infringes any U.S. patents issued as of the effective date of this Agreement, U.S. copyrights, U.S. trademarks, or trade secrets recognized under the Uniform Trade Secrets Act, and Nimble will pay those damages finally awarded against Licensee in any such action that are specifically attributable to such claim or those damages agreed to in a monetary settlement of such action. The foregoing obligation is conditioned on (a) Licensee notifying Nimble promptly in writing of such action, (b) Licensee giving Nimble sole control of the defense thereof and any related settlement negotiations, and (c) Licensee cooperating with Nimble and, at Nimble's request and expense, assisting in such defense. If any Software becomes, or in Nimble's opinion is likely to become, the subject of an infringement claim, Nimble may, at its option and expense, either (a) procure for Licensee the right to

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6. TERM AND TERMINATION. Nimble may terminate this Agreement immediately upon written notice if Licensee materially breaches this Agreement and fails to cure such breach within fifteen days after written notice of breach by Nimble. Sections 1, 2.2, 3, and 4 to 9 will survive the termination or expiration of this Agreement for any reason.

7. OWNERSHIP

7.1 Intellectual Property Rights. Licensee acknowledges and agrees that Nimble and its suppliers exclusively own all right, title, and interest, including all patent, copyright, trade secret, trademark, moral rights, and other intellectual property rights worldwide (collectively, "**Intellectual Property Rights**") in and to the Software, the Documentation, and all Confidential Information. Nimble and its suppliers expressly reserve all rights not expressly granted to Licensee in this Agreement. Licensee shall not engage in any act or omission that would impair any Intellectual Property Right of Nimble or any of its suppliers.

7.2 Feedback. Any questions, comments, or feedback provided by Licensee to Nimble regarding the Software and any other products, services, or materials provided by Nimble (collectively, "**Feedback**") will be deemed non-confidential and non-proprietary information for purposes of this Agreement. Nimble will have no obligation to Licensee or any third party with respect to such Feedback, and be free to use and exploit such

Feedback in any form or manner and for any purpose and without payment of any consideration to Licensee or any third party.

8. CONFIDENTIALITY. The Software, any related benchmark or performance tests, and certain information regarding Nimble’s business, including technical, marketing, financial, employee, planning, and other confidential or proprietary information is considered Nimble’s “**Confidential Information.**” Licensee shall protect the Confidential Information from unauthorized dissemination and use with the same degree of care that Licensee uses to protect its own like information and, in any event, will use no less than a reasonable degree of care in protecting such Confidential Information. Licensee will use the Confidential Information only for those purposes expressly authorized in this Agreement. Licensee will not disclose to third parties the Confidential Information without the prior written consent of Nimble.

9. GENERAL

9.1 Governing Law. This Agreement will be governed by the laws of the State of California, without giving effect to any conflicts of laws principles that require the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought in a state or federal court located in Santa Clara County, California, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding, except that Nimble may file a claim or take action in any court having jurisdiction to protect its intellectual property or confidential information.

9.2 No Maintenance or Support. Nimble will have no obligation under this Agreement to provide Licensee maintenance or support services relating to the Software.

9.3 Autosupport. Licensee acknowledges and agrees that the Software may transmit to Nimble diagnostic data relating to the Products, including without limitation system performance, capacity usage, hardware faults, and other information of a similar nature (collectively, “**Diagnostic Data**”), if Licensee enables such feature. The Diagnostic Data does not include any user data contained within a storage device. The Software may transmit to Nimble Diagnostic Data on a daily or other periodic basis or upon a failure or crash of the Software. Licensee agrees that Nimble will have the right to: (a) use the Diagnostic Data to troubleshoot and monitor the Products and to enhance, improve, and develop current and future Nimble products and services; and (b) disclose the

Diagnostic Data to third parties in an anonymous and aggregated form that does not link such Diagnostic Data to Licensee.

9.4 Miscellaneous. Nimble may freely assign its rights or delegate any of its duties under this Agreement. Licensee may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement without Nimble’s prior written consent. Any attempted assignment or transfer in violation of the foregoing will be void. The Software is deemed irrevocably and unconditionally accepted upon installation or use thereof. 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. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted 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. All notices, consents, and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth above, for Nimble, and on the most recent order documentation, for Licensee, and will be effective upon receipt or five business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving notice of the new address to the other party. Licensee acknowledges that the laws and regulations of the United States may restrict the export and re-export of certain commodities and technical data of United States origin. Licensee agrees that it will not export or re-export the Products in any form without the appropriate United States and/or foreign government licenses. If Licensee is a branch or agency of the United States Government, the following sentence applies. The Software and Documentation are comprised of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3. Unless the context clearly requires otherwise, “includes” and “including” are not limiting.