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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 Nutanix Inc. ('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

(a) **Error! Unknown document property name.**

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

BY DOWNLOADING, INSTALLING AND/OR USING THE SOFTWARE YOU AGREE TO THE TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT (THE "AGREEMENT"), AND YOU AGREE THAT YOU ARE BOUND BY AND ARE A PARTY TO THIS AGREEMENT. YOU WARRANT THAT YOU ARE AT LEAST EIGHTEEN YEARS OLD AND THAT YOU HAVE THE LEGAL CAPACITY TO ENTER INTO CONTRACTS.

YOUR USE OF THE SOFTWARE IS EXPRESSLY CONDITIONED ON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT INSTALL OR USE THE SOFTWARE.

1. **About This Agreement**. This Agreement applies to all Software and Documentation made available by Nutanix, Inc. ("Nutanix") to you. "Software" means the Nutanix software product which requires acceptance of this Agreement, and any copies made by or on your behalf, in object code format, including without limitation firmware. The term "Software" also includes any updates, upgrades or other new features, functionality or enhancements to the Software made available to you. "Documentation" means any on-line read me, help files, or other related explanatory materials that accompany the Software.

2. **License.** The Software and Documentation are licensed, not sold, to you by Nutanix. Subject to the terms and conditions of this Agreement, including payment of the purchase price and/or all fees, you are hereby granted a personal, limited, non-exclusive, non-sublicensable and non-transferable right to run one copy of the object code version of the Software on one machine for internal use and non-commercial purposes only. You agree to use your best efforts to prevent and protect the contents of the Software and Documentation from unauthorized disclosure or use. Nutanix and its licensors reserve all rights, including but not limited to ownership and intellectual property rights, not expressly granted to you. Nutanix's licensors are the intended third party beneficiaries of this Agreement and have the express right to rely upon and directly enforce the terms set forth herein. There are no implied licenses granted by Nutanix under this Agreement. Except as specified above, you shall have no rights to the Software.

3. **Use.**

    3.1 **Limitation on Use:** You may not use the Software or Documentation except as permitted in this Agreement. Except with Nutanix's prior written consent, you may not: (i) alter, modify or create any derivative works of the Software, the underlying source code, or the Documentation in any way, including without limitation customization, translation or localization; (ii) port, reverse compile, reverse assemble, reverse engineer, or otherwise attempt to separate any of the components of the Software or derive the source code for the Software (except to the extent applicable laws specifically prohibit such restriction, in which case you agree to provide Nutanix with at least ninety (90) days advance written notice of your belief that such action is warranted and permitted, and provided that you give Nutanix the opportunity to determine if such action is warranted under the law); (iii) copy, redistribute, encumber, sell, rent, lease, license, sublicense, or otherwise transfer rights to the Software or Documentation; (iv) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Software or Documentation; (v) block, disable or otherwise affect any advertising, advertisement banner window, links to other sites and services, or other features that constitute an integral part of the Software. You may not release the results of any performance or functional evaluation of any of the Software to any third party without prior written approval of Nutanix for each such release. You may not cause or permit any third party to do any of the foregoing.

    3.2 **Third Party Software**. You acknowledge that the Software may contain copyrighted software of Nutanix's suppliers which are obtained under a license from such suppliers ("Third Party Software"). All third party licensors and suppliers retain all right, title and interest in and to such Third Party Software and all copies thereof, including all copyright and other intellectual property rights. Your use of any Third Party

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4.   **Proprietary Rights.** You acknowledge and agree that the Software belongs to Nutanix or its licensors. You agree that you neither own nor hereby acquire any claim or right of ownership to the Software and Documentation or to any related patents, copyrights, trademarks or other intellectual property, including all modifications and derivative works of any of the foregoing. Nutanix and its licensors retain all right, title and interest in and to all copies of the Documentation and the Software at all times, regardless of the form or media in or on which the original or other copies may subsequently exist. This license is not a sale of the original or any subsequent copy. The Software and Documentation are protected by copyright and other intellectual property laws and by international treaties. You may not make any copies of the Software except for your own personal use. Any and all other copies of the Software or Documentation made by you are in violation of this license. All content accessed through the Software is the property of the applicable content owner and may be protected by applicable copyright law. This license gives you no rights to such content. All trademarks used in connection with the Software and Documentation are owned by Nutanix, its affiliates and/or its licensors and other suppliers, and no license to use any such trademarks is provided hereunder. All suggestions or feedback provided by you to Nutanix with respect to the Software shall be Nutanix's property and deemed Confidential Information of Nutanix.

5.   **Support**. Nutanix's support obligations for the Software, if any, are set forth in the Support Terms and Conditions, which may be found at www.nutanix.com/support.

6.   **Term and Termination.** This Agreement and your right to use the Software and Documentation may be terminated by you or by Nutanix at any time upon written notice. This Agreement automatically terminates if you fail to comply with its terms and conditions. Immediately upon termination, you shall return or destroy all copies of the Software and Documentation in your possession, custody or control and if requested you shall certify to Nutanix in writing that such return or destruction has occurred. The following sections of this Agreement survive any expiration or termination hereof: 1 and 4 - 14.

7.   **NO WARRANTY.** EXCEPT AS PROVIDED IN THE NUTANIX LIMITED WARRANTIES DOCUMENTATION, YOU AGREE THAT THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND THAT COMPANY AND ITS LICENSORS MAKE NO OTHER WARRANTY AS TO THE SOFTWARE OR DOCUMENTATION, INCLUDING WITHOUT LIMITATION UNINTERRUPTED USE, ACCURACY, AND DATA LOSS. COMPANY AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF COMPANY KNOWS OR SHOULD HAVE KNOW OF SUCH PURPOSE), RELATED TO THE SOFTWARE OR DOCUMENTATION, ITS USE OR ANY INABILITY TO USE IT, THE RESULTS OF ITS USE AND THIS AGREEMENT. COMPANY AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION OR ANY RESULTS OF USE THEREOF WILL BE FREE OF DEFECTS, ERRORS OR VIRUSES, RELIABLE OR ABLE TO OPERATE ON AN UNINTERRUPTED BASIS OR IN A PARTICULAR ENVIRONMENT OR THAT ERRORS THEREIN, IF ANY, WILL BE CORRECTED.

8.   **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL DAMAGES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU AGREE THAT YOU SHALL HAVE THE SOLE RESPONSIBILITY FOR PROTECTING YOUR DATA, BY PERIODIC BACKUP OR OTHERWISE, USED IN

CONNECTION WITH THE SOFTWARE. IN ANY CASE, COMPANY'S SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE THE REPLACEMENT OF THE SOFTWARE FOUND TO BE DEFECTIVE, WITH THE EXCEPTION OF DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF COMPANY TO THE EXTENT APPLICABLE LAW PROHIBITS THE LIMITATION OF DAMAGES IN SUCH CASES.

9. **Infringement.** Nutanix shall defend or settle, at its own expense, any third-party action against you to the extent based upon a claim that the Software infringes any copyright or trademark or misappropriates any trade secret, and will pay such damages or costs as are finally awarded against you attributable to such claim, provided that you (i) notify Nutanix promptly in writing of any such action, (ii) give Nutanix sole control of the defense and/or settlement of such action, and (iii) give Nutanix all reasonable information and assistance, and (iv) are not in material breach of this Agreement. Should the Software become, or in the opinion of Nutanix be likely to become, the subject of such an infringement claim, Nutanix may replace or modify, in whole or in part, the Software to make it non-infringing. Nutanix assumes no liability hereunder for: (i) any method or process in which the Software may be used; (ii) its compliance with your specifically requested specifications; (iii) use of software other than a current unaltered release of the Software; (iv) the combination, operation or use of the Software with non-Nutanix products or services; or (v) use of any older version of the Software when the use of a newer release of the Software made available to you would have avoided the infringement, and you shall indemnify and hold harmless Nutanix and its officers, directors, employees, agents, successors and assigns against any damages, losses, and expenses (including reasonable attorneys' fees) arising from any third-party action to the extent based upon a claim that the Software infringes any copyright or trademark or misappropriates any trade secret due to any of the foregoing factors, and shall give Nutanix all reasonable information and assistance regarding such claim.

THIS SECTION 9 SETS FORTH NUTANIX'S ENTIRE LIABILITY AND OBLIGATION AND YOUR SOLE REMEDY FOR ANY CLAIM OF INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

10. **Confidentiality**. "Confidential Information" shall mean the Software and Documentation and all other information disclosed to you that Nutanix characterizes as confidential at the time of its disclosure either in writing or orally, except for information which you can demonstrate: (a) is previously rightfully known to you without restriction on disclosure; (b) is or becomes, from no act or failure to act on your part, generally known in the relevant industry or public domain; (c) is disclosed to you by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by you without access to the Confidential Information. You shall use your best efforts to preserve and protect the confidentiality of the Confidential Information at all times, both during the term hereof and for a period of at least 3 years after termination of this Agreement, provided, however, that any source code you receive shall be held in confidence in perpetuity. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of Nutanix. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify Nutanix in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with Nutanix in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If you are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, you will (i) immediately notify Nutanix prior to such disclosure to allow Nutanix an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with Nutanix in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, you shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements.

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11.   **Injunctive Relief**. You acknowledge and agree that your breach or threatened breach of this Agreement shall cause Nutanix irreparable damage for which recovery of money damages would be inadequate and that Nutanix therefore may obtain timely injunctive relief to protect its rights under this Agreement in addition to any and all other remedies available at law or in equity.

12.   **Export Controls.**   The Software and Documentation and the underlying information and technology may not be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) any country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the Software and/or Documentation, you are agreeing to the foregoing and you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list and you agree to comply with all export laws and other applicable laws.

13.   **U.S. Government End Users.**   The Software and Documentation each were developed by private financing and constitute "Commercial Items," as that term is defined at 48 C.F.R. §2.101. The Software consists of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §227.7202-1 through 227.7202-4, all U.S. Government End Users acquire only those rights in the Software and the Documentation that are specifically provided by this Agreement. Consistent with 48 C.F.R. §12.211, all U.S. Government End Users acquire only technical data and the rights in that data customarily as specifically provided in this Agreement.

14.   **Miscellaneous.**   (a) This Agreement is a part of the Purchase Terms and Conditions, which may be found at www.nutanix.com/support, and may only be modified by a written amendment signed by an authorized executive of Nutanix. Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions. (b) Except to the extent applicable law, if any, provides otherwise, this Agreement shall be governed by the laws of California, U.S.A., excluding its conflict of law provisions. (c) You expressly agree that jurisdiction for any claim or dispute arising from the use of the Nutanix Software resides in the federal and state courts situated in the Santa Clara County, California, U.S.A., and you consent to the personal jurisdiction thereof. (d) This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. (e) If any part of this Agreement is held invalid or unenforceable, that part shall be construed to reflect the parties' original intent, and the remaining portions remain in full force and effect, or Nutanix may at its option terminate this Agreement. (f) The controlling language of this Agreement is English. If you have received a translation into another language, it has been provided for your convenience only. (g) A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. (h) You may not assign or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein. Nutanix may assign this Agreement to any person or entity at its sole discretion. (i) This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and permitted assigns.

15.   **User Outside the U.S.**   If you are using the Software or Documentation outside the U.S.A., then the following shall apply: (a) You confirm that this Agreement and all related documentation is and will be in the English language; (b) you are responsible for complying with any local laws in your jurisdiction which might impact your right to import, export or use the Software and Documentation, and you represent that you have complied with any regulations or registration procedures required by applicable law to make this license enforceable.

End User License Agreement
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