

Carahsoft Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Revised 20160504

- 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 Government Order 4800.2H 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 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 termination or cancellation of the Manufacturer's CSA are hereby deemed to be deleted. Termination 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.).

MASTER SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING OR USING THIS SOFTWARE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS:

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS OR USE THE SOFTWARE, AND
- PROMPTLY RETURN THE SOFTWARE TO THE PARTY FROM WHOM YOU ACQUIRED IT

This Agreement was last updated on March 17, 2016.

1. DEFINITIONS

1.1. "Affiliate" means any entity that directly, or indirectly controls, is controlled by, or is under common control with the subject entity, where the term "control" means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.

1.2. "Agent" means a device, either physical or virtual, permitted to use the Software.

1.3. "Consulting Services" means the services provided by Digital Guardian to You under a Consulting Services Schedule.

1.4. "Consulting Services Schedule" means a schedule to this Agreement pursuant to which Digital Guardian agrees to provide Consulting Services to You under the terms of this Agreement.

1.5. "Developments" means any code, portions of code, ideas, know-how, or techniques developed by or for Digital Guardian and provided to You pursuant to a Consulting Services Schedule or as part of the Software Support, including, but not limited to any modifications, enhancements, fixes, versions, updates, upgrades or releases of the Software.

1.6. "Digital Guardian" means Digital Guardian, Inc. with offices located at 860 Winter St., Suite 3, Waltham, MA 02451.

1.7. "Documentation" means the most current version of Digital Guardian user manuals and handbooks for the Software that have been made available by Digital Guardian to You.

1.8. "License Schedule" means a schedule to this Agreement pursuant to which Digital Guardian and You agree to add Software to the scope of this Agreement.

1.9. "Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

1.10. "Order Schedule" means the documents for placing orders hereunder including License Schedules and Consulting Services Schedules that are entered into between You and Digital Guardian from time to time, including addenda thereto. Order Schedules shall be deemed incorporated herein by reference.

1.11. "Software" means the software and any Developments thereto, licensed hereunder and identified in a License Schedule.

1.12. "Software Support" means those support services to be provided by Digital Guardian pursuant to Section 4 (Software Support).

1.13. "Support Terms and Conditions" means the descriptions provided in the attached document.

1.14. "You" and "Your" means the company or other legal entity for which You are accepting this Agreement, and Affiliates of that company or entity.

1.15. "Users" means any individual who has access to the Software. Users shall include any of Your employees, contractors and third party service providers who have access to the Software.

2. LICENSE

2.1. License Grant. Upon Carahsoft Technology Corporation's (Carahsoft's) acceptance of your order, You have the non-exclusive, non-assignable, royalty free, perpetual (unless otherwise specified in the Order Schedule), limited right to use the Software and receive any Services You ordered solely for your internal business operations and subject to the terms of this agreement, including the definitions and rules set forth in the order and the program documentation. You may allow your agents and contractors to use the programs for this purpose. You may not permit access to any person or entity controlling, controlled by or under common control with a person or entity whose primary business is the protection of data, the monitoring and reporting of data access, and the prevention of data loss through software and managed services. You agree that You are responsible for limiting the use of the Software solely to the quantities permitted hereunder and that You will take all steps to protect against unauthorized use of the Software through the use of reasonable security measures. You agree that all Users must comply with all provisions of this Agreement applicable to You and that You are responsible for all use of the Software by such Users.

2.2. Restrictions. You shall not (i) permit any third party to access the Software or Documentation except as permitted herein or in an Order Schedule, (ii) modify or create derivative works based on the Software or Documentation except as authorized herein, (iii) copy, frame or mirror any part or content of the Software or Documentation, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Software, or (v) access the Software or Documentation in order to (a)

build a competitive product or service, or (b) copy any features, functions or graphics of the Software or Documentation.

2.3. Delivery of Software. Digital Guardian will either install the Software on servers at Your location, if Digital Guardian has been engaged to perform such installation, or provide access to Software via File Transfer Protocol.

3. CONSULTING SERVICES

3.1. Consulting Services. If applicable, Digital Guardian shall furnish the Consulting Services set forth in the applicable Consulting Services Schedule.

4. SOFTWARE SUPPORT

4.1. Software Support. Subject to payment by You of amounts due hereunder, including the applicable annual fee for Software Support (the "Annual Software Support Fee"), Digital Guardian will provide support for the Software pursuant to the terms and conditions set forth in the Support Terms and Conditions. Software Support for the Software licensed hereunder commences upon the Effective Date of the relevant License Schedule and continues for a term of one year and is automatically renewed each year thereafter, unless notice has been made in writing at least sixty (60) days prior to the anniversary of the Effective Date by either Party.

4.2. Annual Software Support Fee. The first year's Annual Software Support Fee is set forth in the applicable License Schedule. The Annual Software Support Fee in subsequent years shall be due on the anniversary of the Effective Date and is subject to change by Digital Guardian, provided that notice has been made in writing at least sixty (60) days prior to the anniversary of the Effective Date.

5. FEES AND PAYMENT

5.1. Software License Fees. You agree to pay Digital Guardian the license fee (the "Software License Fee") with respect to each Software set forth in the applicable Order Schedule.

5.2. Consulting Service Fees. You agree to pay Digital Guardian the fee (the "Consulting Service Fee") for any Consulting Services performed hereunder as set forth in the applicable Consulting Services Schedule.

5.3. Payment Obligation. Payment obligations are non-cancelable and the fees paid are non-refundable, except as otherwise specified herein or in an Order Schedule.

5.4. Invoices; Currency. Digital Guardian will invoice the Software License Fee and Annual Software Support Fee for the first year of Software Support upon execution of the relevant License Schedule. Digital Guardian will invoice the Consulting Service Fee in accordance with the terms set forth in the applicable Consulting Services Schedule. All invoices will be paid by You thirty (30) days after receipt thereof. Payments shall be made in United States dollars. Any amounts not paid when due shall accrue interest at the rate of 1.5% per month, but not to exceed the maximum amount as allowed by law.

5.5. Out-of-Pocket Expenses. You shall reimburse Digital Guardian for all reasonable out-of-pocket travel and living expenses incurred by Digital Guardian in the delivery of the Software and the provision of the Consulting Services and Software Support. Such expenses will be invoiced at the end of each month for expenses incurred during the month. Digital Guardian will submit supporting documentation for expenses over \$50.00.

5.6. Taxes. Unless otherwise provided hereunder or in an applicable Order Schedule, amounts payable under this Agreement do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If Digital Guardian has the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Digital Guardian with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Digital Guardian is solely responsible for taxes assessable against it based on Digital Guardian income.

5.7 Notwithstanding the foregoing, invoicing, payment of fees, and reimbursement of out-of-pocket expenses and travel shall be in accordance with the General Services Administration Acquisition Regulation (GSAR) 552.212-4(g) and (i) and the Joint Travel Regulation.

6. REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS

6.1. Digital Guardian Representations and Warranties. Digital Guardian represents and warrants that (i) it has the full power, capacity and authority to enter into and perform this Agreement and to make the grant of rights contained herein, (ii) the Software, as of the date of delivery and for a period of thirty (30) days thereafter, shall comply in all material respects with the specifications set forth in the Documentation, (iii) it shall use commercially reasonable efforts to scan and remove any Malicious Code from the Software, (iv) the Consulting Services will be performed in a professional manner, and (v) it shall not (a) use or disclose non-public information obtained from You in violation of any insider trading or other securities laws, (b) violate applicable anti-bribery or anti-corruption laws, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010, and (c) violate applicable anti-money laundering statutes. For any breach of Digital Guardian's warranty herein, Your exclusive remedy shall be for Digital Guardian to repair or replace the Software so that the Software delivered to You comply with such warranty, or, at Digital Guardian's option, terminate this Agreement and refund the Software License Fees paid hereunder with respect to such non-compliant Software.

6.2. Your Representations and Warranties. You represent and warrant that (i) You have the full power, capacity and authority to enter into and perform this Agreement, (ii) You

currently possess and will maintain throughout the term of this Agreement all necessary rights and licenses to the third-party software applications used by You, to permit Digital Guardian to perform the Consulting Services and Software Support as contemplated by this Agreement and each Schedule hereto.

6.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICES, SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND WITHOUT ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL. DIGITAL GUARDIAN DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DIGITAL GUARDIAN DOES NOT REPRESENT THAT THE SERVICES OR SOFTWARE WILL BE ERROR FREE.

7. PROPRIETARY RIGHTS

7.1. Ownership. Except for the limited, nonexclusive license granted to You in Section 2 (License), all rights, title and interests in and to the Software and Documentation and all patent, copyright, trademark, trade secret and all other intellectual and industrial property rights therein and thereto, shall remain with and shall be owned exclusively by Digital Guardian and its licensors, and You shall have no right, title or interest therein or thereto. You will not claim any such right, title or interest or take any position adverse to Digital Guardian's ownership of all such rights, title and interests.

7.2. Markings. You shall not alter or remove any patent, copyright, trademark, trade secret, proprietary, and/or other notices contained on or in copies of the Software and Documentation. You shall reproduce all such notices on or in all copies of the Software and Documentation made by You.

7.3. Reporting of Violations. You shall promptly report to Digital Guardian any actual or suspected violation of this Section 7 (Proprietary Rights) and shall take all reasonable further steps, including any reasonable requests by Digital Guardian, to prevent or remedy any such violation. You shall take appropriate action by instruction or agreement with Your employees to satisfy Your obligations under this Section 7 (Proprietary Rights).

7.4. Suggestions. Digital Guardian shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Software or Documentation any suggestions, enhancement requests, recommendations or other feedback provided by You, relating to the operation of the Software.

8. INDEMNIFICATION

8.1. By Digital Guardian. Digital Guardian will defend You, Your officers, directors, employees and consultants against any third party claim, suit, proceeding or regulatory action (each, a "Claim") and indemnify and hold harmless such Parties from the third party damages and liabilities finally awarded by a court or agreed upon in settlement in

connection with any Claim to the extent such Claim alleges that the Software or Documentation infringes any copyright, moral right, trade secret, trade or service mark, or patent issued in the United States, Canada or European Union. Digital Guardian may, at its expense and discretion, attempt to resolve the Claim by: (i) modifying the Software or Documentation to avoid the alleged infringement, (ii) obtaining a license to permit Your use of the Software or Documentation as contemplated by this Agreement, or (iii) terminating the license grant set forth in this Agreement with respect to the Software or Documentation and giving You a refund for a pro rata portion of the applicable Software License Fees based on a five (5) years straight line depreciation. You will cooperate fully with Digital Guardian in the implementation of any above-described resolutions. Digital Guardian will have no liability in connection with any Claim to the extent it is based on the combination of the Software or Documentation with third party products, data or business processes or any use of the Software or Documentation in violation of the terms of this Agreement. Digital Guardian will not indemnify You if (a) You alter the Software or Documentation and such alteration caused the actual or alleged infringement, or (b) You use the Software or Documentation in violation of the terms of this Agreement and such use caused the actual or alleged infringement, or (c) You use a version of the Software or Documentation which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Software or Documentation which was provided to You. Digital Guardian will not indemnify You to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by Digital Guardian.

8.2. By You. You will defend Digital Guardian, its officers, directors, employees and consultants against any Claim and indemnify and hold harmless such Parties from the third party damages and liabilities finally awarded by a court or agreed upon in settlement in connection with any Claim to the extent such Claim arises from Digital Guardian's permitted use of Your Data or Your Metadata or any violation or alleged violation of Section 7 (Proprietary Rights).

8.3. Conditions. As a condition of the obligations set forth in this Section 8 (Indemnification), a Party entitled to indemnification under this Agreement (the "Indemnified Party") will: (i) provide prompt written notice of the applicable Claim to the other Party (the "Indemnifying Party"), (ii) provide the Indemnifying Party with sole control of the applicable defense and settlement, and (iii) cooperate as reasonably requested by the Indemnifying Party, at the Indemnifying Party's expense. The Indemnifying Party will not agree to any settlement without the Indemnified Party's prior written consent unless such settlement includes a full release of the Claim against the Indemnified Party and does not impose any liability or obligation on the Indemnified Party.

8.4. Entire Liability. This Section 8 (Indemnification) sets forth the Indemnifying Party's entire liability to the Indemnified Party, and the Indemnified Party's sole and exclusive remedy, with respect to the third party suits and proceedings described in this Section 8 (Indemnification). Each Party agrees that any and all implied indemnification obligations that may apply to this Agreement are hereby excluded.

9. LIMITATION OF LIABILITY

9.1. EXCEPT FOR DAMAGES INCURRED IN CONNECTION WITH EACH PARTY'S OBLIGATIONS IN SECTION 8 (INDEMNIFICATION) HEREUNDER, YOUR BREACH OF SECTION 7 (PROPRIETARY RIGHTS) AND EITHER PARTY'S BREACH OF SECTION 10 (CONFIDENTIALITY), NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER OR ARISING OUT OF, OR IN ANY WAY RELATED TO THIS AGREEMENT, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE, AND INCLUDING ANY LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL, LOSS OF DATA OR USE OF DATA, INTERRUPTION OF BUSINESS, EVEN IF SUCH PARTY OR YOUR REPRESENTATIVES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS. EXCEPT FOR DAMAGES INCURRED IN CONNECTION WITH EACH PARTY'S OBLIGATIONS IN SECTION 8 (INDEMNIFICATION) HEREUNDER, YOUR BREACH OF SECTION 7 (PROPRIETARY RIGHTS) AND EITHER PARTY'S BREACH OF SECTION 10 (CONFIDENTIALITY), HEREUNDER, THE CUMULATIVE LIABILITY OF EACH PARTY TO THE OTHER PARTY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY YOU TO DIGITAL GUARDIAN FOR SOFTWARE AND CONSULTING SERVICES PROVIDED HEREUNDER AND UPON WHICH THE CLAIM IS BASED. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE PARTIES AGREE THAT THE FEES AND THE PROVISIONS OF THIS SECTION 9 (LIMITATION OF LIABILITY) REFLECT AN AGREED-TO ALLOCATION OF RISKS AND LIMITATION OF LIABILITY. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS CONTAINED IN THIS AGREEMENT APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN YOUR ESSENTIAL PURPOSE.

10. CONFIDENTIALITY

10.1. Confidential Information. By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Confidential Information shall be limited to information marked as confidential or with any other restricted use legend, except that no such legend shall be required in the case of information obtained by or disclosed to the receiving party if the circumstances under which such information was obtained or disclosed were such that a reasonable person would know

that the information should be treated as Confidential Information of the other party. In addition, the Software and Documentation, or any portions thereof, and other documentation and materials related to the Consulting Services provided hereunder shall be the Confidential Information of Digital Guardian.

10.2. Confidential Information; Exceptions. A party's Confidential Information shall not include information which the other party can demonstrate: (i) is or becomes a part of the public domain through no act or omission of the other party, (ii) was in the other party's possession without restriction as to use or disclosure prior to the disclosure hereunder, (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure, or (iv) is independently developed by the other party without breach of this Agreement and without reference to the disclosing party's Confidential Information. Notwithstanding the foregoing, the parties agree that Confidential Information of Digital Guardian shall include results of benchmark tests run by You and any technical information relating to the Software.

10.3. Restrictions on Use and Disclosure. Each party agree not to (i) disclose the other's Confidential Information to any third party and (ii) use the other's Confidential Information for any purpose other than the implementation of this Agreement. The restrictions contained herein shall survive for a period of five (5) years after the termination or expiration of this Agreement, except that such non-disclosure period shall be perpetual in the case of Software and Documentation.

10.4. Return of Confidential Information. Upon written request from either Party, the Receiving Party shall promptly return any of the Disclosing Party's Confidential Information (and all copies thereof) to the Disclosing Party or certify in writing the destruction thereof.

10.5. Equitable Relief. The Receiving Party agrees that money damages will not be adequate to remedy the harm that might result from the violation of this Section 10 (Confidentiality) by the Receiving Party, and agrees that, if necessary, the Disclosing Party may (in addition to pursuing any other remedy) seek to obtain an injunction in court to enjoin or prevent such violation, without the need to prove the inadequacy of money damages or to post bond or other security.

11. TERM AND TERMINATION

11.1. Term of Agreement. This Agreement is effective upon acceptance of Your order by Carahsoft and will continue in force until terminated as provided in this Section 11 (Term and Termination).

11.2. Termination of Software Support. Digital Guardian may terminate Software Support for non-payment of amounts due hereunder. You may terminate Software Support, either in its entirety or for individual Software, at any time upon sixty (60) days prior written notice. Notwithstanding the foregoing, except where You terminate Software Support in its entirety, Software Support for any User licenses may not be separately

terminated. In the event of termination, Digital Guardian will provide a pro-rata refund for the periods after the effective date of termination to You of the Software Support Fees paid by You for Software for which Software Support was terminated. Termination of Software Support shall not constitute a termination of the Agreement. If, subsequent to termination of Software Support, You wish to reinstate Software Support, You must pay the accumulated Software Support fees beginning the effective date of termination for all periods for which Software Support fees were not paid. In no event shall any termination relieve You of the obligation to pay any fees payable to Digital Guardian for the period prior to the effective date of termination.

11.3. Termination for Cause. A Party may terminate this Agreement for cause: (i) upon 30 days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period, 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.

11.4. Effect of Termination. Upon any other termination of this Agreement, all rights and licenses granted to You under this Agreement shall immediately be terminated. Within thirty (30) days after termination of this Agreement, You shall pay Digital Guardian all accrued and unpaid amounts owed by You to Digital Guardian hereunder. Notwithstanding the foregoing, upon any termination for cause by You and if You have paid the Software License Fees for all Software licensed, then the licenses granted to You pursuant to Section 2 (License) shall survive such termination. This survival is subject to Your continued compliance with all terms and conditions of this Agreement relating to Your use of the Software and Documentation. Your failure to comply with such terms and conditions shall, without limiting any other remedies of Digital Guardian, result in the immediate and automatic termination of all licenses.

11.5. Removal of Digital Guardian Software. Within thirty (30) days after any termination of an Order Schedule or any Service purchased thereunder, You agree to remove from Your systems and Your Affiliates' systems, all Digital Guardian Software, including copies, compilations, translations, partial copies, updates, and modifications, if any. If requested by Digital Guardian, You will provide a statement in writing that the Digital Guardian Software has been completely removed as noted above.

11.6. Survival. Any terms of this Agreement which by their nature should survive the termination of this Agreement shall survive such termination, including but not limited to the Sections titled Disclaimer, Fees and Payment, Suggestions, Proprietary Rights, Indemnification, Limitation of Liability, Confidentiality, Effect of Termination, Removal of Digital Guardian Software, and General Provisions shall survive any termination or expiration of this Agreement.

12. GENERAL PROVISIONS

12.1. Entire Agreement and Controlling Documents. This Agreement, including any Exhibits and Schedules, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the Parties relating thereto and is binding upon the Parties and their permitted successors and assigns. This Agreement may not be modified, supplemented, or amended except in writing signed by an authorized representative of each party. In the event of inconsistencies between the terms contained in an Order Schedule, the terms and conditions of Carahsoft's Schedule 70 Contract, and the body of this Agreement, the conflict shall be resolved in accordance with GSAR 552.212-4(s) Order of Precedence. This Agreement shall apply to all Software and Services ordered by You or delivered to You by Digital Guardian pursuant to an Order Schedule created under this Agreement.

12.2. Assignment. This Agreement shall be binding upon and for the benefit of Digital Guardian, You and Your permitted successors and assigns. Either Party may assign this Agreement as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Except as expressly stated in this Agreement, neither Party may otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other Party, and any attempted assignment or delegation without such consent will be void.

12.3. Force Majeure. Neither Party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; an act of God; pandemic, electrical, internet, or telecommunication outage that is not caused by the obligated Party; government restrictions (including the denial or cancellation of any export, import or other license); or another event outside the reasonable control of the obligated Party. Both Parties will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either Party may cancel unperformed affected Order Schedules upon written notice. This Section 12.3 (Force Majeure) does not excuse either Party's obligation to take reasonable steps to follow its normal disaster obligation to pay for Products and Services ordered or delivered.

12.4. Independent Contractors. The relationship of Digital Guardian to You is that of an independent contractor, and this Agreement shall not constitute, or be deemed to constitute, either party as an employee, agent, partner or joint venturer of the other for any purpose. Neither party has the right or authority under this Agreement to assume or to create any obligation or responsibility on behalf of the other party.

12.5. Governing Law; Language. This Agreement shall be construed and interpreted in accordance with the laws of the United States of America and the State of Delaware, excluding their choice of law rules, and both parties consent to the

jurisdiction of the state and federal courts sitting in Dover, Delaware, U.S.A. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. The language of this Agreement and all Documentation shall be the American usage of the English language and the parties hereby agree that the English language version of this Agreement shall control for all purposes and shall be valid and enforceable notwithstanding any translation into a language other than English.

12.6. Export Restrictions; Government Restricted Rights. You acknowledge that the export of any Software is subject to export or import controls and You agree to comply with any and all applicable U.S. and foreign laws and regulations on exportation and importation of the Software and Documentation and all applicable laws and regulations relating in any way to Your performance under this Agreement including, without limitation, obtaining all necessary licenses or permits and any other government approval necessary for the import or export of Software and Documentation. The Software has been developed at private expense and is sold commercially. It is provided under any U.S. government contracts or subcontracts with the most restricted and the most limited rights permitted by law and regulation. Whenever so permitted, the government and any intermediate buyers will obtain only those rights specified in Digital Guardian's standard commercial license. The Software provided by Digital Guardian hereunder, which is provided to any agency of the U.S. Government or U.S. Government contractor or subcontractor at any tier shall be subject to the maximum restrictions on use as permitted by FAR 52.227-19 (June 1987) or DFARS 227.7202-3(a) (Jan. 1, 2000) or successor regulations.

12.7. Audit and Inspection. You agree that Digital Guardian may, from time to time but no more frequently than one (1) time per year, upon reasonable advance written notice to You, audit Your use of the Software and Documentation, at Your facilities and during Your regular business hours, to verify Your compliance with the terms of this Agreement.

12.8. Notices. Any demand, notice, consent, or other communication required by this Agreement must be given in writing and shall be deemed delivered upon receipt when delivered personally or upon confirmation of receipt following delivery by internationally recognized overnight courier service, in each case addressed to the receiving Party at its address set forth on an Order Schedule. Either Party may change its address by giving written notice of such change to the other Party.

12.9. Headings; Counterparts. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be an original instrument. After

signature, any reproduction of this Agreement made by reliable electronic means shall be considered an original.

12.10. Waiver and Severability. Performance of any obligation required by a Party hereunder may be waived only by a written waiver signed by an authorized representative of the other Party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either Party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

12.11. No High Risk Use. You may not use the Software in any situation where failure or fault of the Software could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, You may not use, or permit any other person to use the Software in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities.

12.12. Subcontractors. Digital Guardian may engage a subcontractor to perform all or any portion of its duties under this Agreement, provided that any such subcontractor agrees in writing to be bound by confidentiality obligations at least as protective as the terms of this Agreement regarding confidentiality and Digital Guardian remains responsible for the performance of such subcontractor. Digital Guardian is liable for all breaches of this Agreement by its subcontractors.

12.13. Insurance. Digital Guardian shall at its sole cost and expense maintain adequate insurance coverages for a business of its type, including without limitation workers' compensation, commercial general liability, business automobile liability, professional liability, including cyber liability coverage. Upon Your request, Digital Guardian will deliver a certificate of insurance stating the types of insurance and policy limits that it carries.

12.14. Exhibits, Statement(s) of Work and Addenda. All Exhibits, Statement(s) of Work, and Addenda that are referenced herein and appended hereto, or are signed by the Parties on or after the date of this Agreement, are hereby incorporated by reference.

SUPPORT TERMS AND CONDITIONS
v. 042715

Digital Guardian provides maintenance and support services as defined herein in accordance with this Maintenance and Support Policy ("Maintenance Policy"). Terms in this Maintenance Policy which are capitalized have the meanings set forth below or in the Master Software License and Professional Services Agreement.

DEFINITIONS

1.1 **Maintenance Hours** are 24X7, 365 Days per year.

1.2 **Maintenance Services** consist of (a) reasonable telephone, e-mail, and web portal (including knowledge base) support (b) reasonable efforts to correct errors to keep the Software in conformance with the Documentation, and (c) releases, modifications and enhancements made to the Software which are provided to Digital Guardian's general client base at no additional charge beyond Maintenance Fees (collectively, the "Refinements"). Digital Guardian shall have no obligation to develop Refinements. All Maintenance Services will be delivered in English. Software products that are marketed by Digital Guardian as separate products or as upgrades for which additional fees are generally charged are not considered Refinements.

1.3 **Version** is the generally available release of a Software product designated by the number which is immediately to the left or right of the left-most decimal point in a Software version number, as follows: (x).x.x or x.(x).x.

1.4 An **Exclusion** is:

(i) a fault experienced by Customer when using the Software is not reproducible by Digital Guardian;

(ii) a fault experienced by Customer when using the Software results a) from any unauthorized combination of the Software with third party software or hardware, or b) from changes by third party software developers to their code which causes un-anticipated incompatibility with the Software unless there is a known workaround or Digital Guardian is in the process of developing a workaround; or

(iii) if patches, upgrades/new releases or maintenance updates previously supplied by Digital Guardian have not been promptly installed by Customer within 12 months of release.

2. MAINTENANCE POLICY

Digital Guardian provides Maintenance Services for (i) its most current Version of a Software product (including all Refinements for such Version) and (ii) the immediately preceding Version of such Software for a period of 12 months from the commercial release date of a new Version. Digital Guardian shall not provide Maintenance Services for any hardware.

3. SERVICE RESPONSIBILITIES

3.1 Provided Customer is in compliance with the Master Software License and Professional Services Agreement and has paid all applicable Maintenance Fees on all Order Schedules, Digital Guardian will provide Customer during Maintenance Hours the Maintenance Services described in this Maintenance Policy with respect to Software. Maintenance Services will be performed in a timely and professional manner by qualified maintenance technicians familiar with the Software and its operation. Digital Guardian will provide, upon Customer's request, periodic reports on the status of Maintenance Services requested by Customer.

3.2 Digital Guardian will provide to the Customer the Digital Guardian customer support telephone number, customer support email address, and access to the Digital Guardian customer support web portal.

3.3 If Customer desires Maintenance Services, Customer will contact Digital Guardian by telephone, e-mail or web portal. Digital Guardian's duly qualified personnel will use commercially reasonable efforts to respond to Customer's initial telephone call or e-mail with offsite telephone or e-mail consultation, assistance, and advice relating to maintenance of the Software as described in Section 3.5.

3.4 When a suspected error is reported, Digital Guardian will analyze the information provided by Customer and will classify the error. Digital Guardian will use commercially reasonable efforts to repair any major inherent malfunction or error in Software, or replace the malfunctioning Software, in each case when attributable to Digital Guardian. The remedy set forth in this Section 3.4 shall be Customer's sole and exclusive remedy with respect to any malfunction or error in the Software during the Maintenance Term. Digital Guardian shall have no obligation to provide Maintenance Services, including, without limitation any Refinements, with respect to any Software error or malfunctions caused by, related to or arising out of an Exclusion.

3.5 Service Levels and Definitions. Digital Guardian shall use commercially reasonable efforts to correct any reproducible malfunction in the product reported to Digital Guardian by Customer.

A "malfunction" means any defect, problem or condition that prevents the product from performing substantially in accordance with the operating specifications in the then current Documentation. Digital Guardian's Customer Support personnel will contact Customer's designated support contact(s), within the timeframes designated below to explore the nature of the malfunction experienced by Customer, determine whether the malfunction is related to the product and reasonably assign a priority level to the malfunction in accordance with definitions in the table below.

A "response time" means the elapsed time between the first contact by a designated support contact to report an issue, and the target time within which Digital Guardian's Customer Support personnel report back to the designated support contact to acknowledge receipt and define an action plan for resolution. A response time is a guarantee of communication timeframes; Digital Guardian does not guarantee a problem fix, workaround, or other final disposition within these timeframes.

An "action plan" is a formal verbal or written description of the tasks to be taken by both Digital Guardian and Customer to diagnose, triage, and address a support issue, along with an approximate timeframe for the processing and completion of each task.

PRIORITY	DEFINITION	RESPONSE TIME (within)
1– Escalated	Customer reports a malfunction that (i) renders the product inoperative or intermittently operative; or (ii) causes any material feature to be unavailable or substantially impaired; or (iii) compromises overall system integrity or data integrity when the product is installed and operational in a production environment (that is, causes a system crash or hang, or causes loss or corruption of data); or (iv) causes a complete failure of the Product.	2 hours
2 – High	Customer reports a malfunction that (i) renders a required program or feature of the product inoperative or intermittently operative; or (ii) substantially degrades performance in a production environment.	4 hours
3-Medium	Customer reports a malfunction that (i) renders an optional program or feature inoperative or intermittently operative; or (ii) causes only a minor impact on Customer’s use of product.	12 hours
4 -Normal	Customer reports a malfunction (i) that has only a minor effect on product functionality; or (ii) cosmetic flaws; or (iii) inquiries and questions about configuration and management of the Product.	24 hours

4. CUSTOMER RESPONSIBILITIES

4.1 Before contacting Digital Guardian with a suspected error, Customer undertakes to: (i) analyze the suspected error to determine if it is the result of Customer’s misuse or misunderstanding of Software, the performance of a third party or some other Exclusion or cause beyond Digital Guardian’s reasonable control, (ii) ascertain that the error can be replicated and (iii) collect and provide to Digital Guardian all relevant information relating to the error (iv) for Escalated issues the Customer must contact Digital Guardian by phone (800) 558-5305 or from outside the United States +1 (781) 902-5792.

4.2 If Digital Guardian determines that a reported error is directly related to an Exclusion, then upon written notice to Customer, Digital Guardian may charge for employee time expended at Digital Guardian’s prevailing time and material rates, plus reasonable out-of-pocket expenses, and Digital Guardian will be released from Maintenance Services obligations for any modified portion of the Software to the extent such modifications were made to correct such errors.

5. Licensing Rules

5.1 Software is licensed per operating system instance, notwithstanding whether running on physical machine or virtual machines. For a multiuser environment running on a single physical or virtual machine, each session shall be deemed to be using a quantity of 1 agent.

5.2 Your license of the Software includes the right to run the licensed program(s) on an unlicensed spare computer in a failover environment for up to a total of ten separate days in any given calendar year. Any use beyond the right granted in the previous sentence must be licensed separately.