

STEALTHbits Technologies, Inc
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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 STEALTHbits Technologies, 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.



STEALTHbits Technologies, Inc. Software License Agreement

This Software License Agreement (the "Agreement") is made between STEALTHbits Technologies Inc, a New Jersey corporation located at 55 Harristown Road, Suite 106, Glen Rock, NJ 07452, USA ("STEALTHbits") and _____, a _____ corporation located at _____ the Customer, (hereafter referred to as "Licensee").

1. Definitions. The following terms shall have the meanings assigned to them below:

- (a) "Affiliate" means any entity controlled by, controlling, or under common control with Licensee.
- (b) "Quotation Form" means the STEALTHbits ordering document which describes the Software and or services being ordered by Licensee and which incorporates this Agreement by reference.
- (c) "Documentation" means the published user manuals and documentation that STEALTHbits makes generally available for the Software.
- (d) "Services" means all services provided by STEALTHbits under this Agreement.
- (e) "Software" means (i) the machine-readable object code version of the software made generally available by STEALTHbits and described in the applicable Quotation Form (ii) the related Documentation, (iii) corrections, enhancements, and upgrades to the Software that STEALTHbits may make available pursuant to Section 10 below and (iv) all copies of the foregoing.

2. License. Subject to the terms and conditions of this Agreement, and for the license fees specified on the applicable Quotation Form, STEALTHbits hereby grants to Licensee, and Licensee accepts from STEALTHbits, a perpetual, worldwide, non-exclusive and non-sub licensable right to use the Software described on the applicable Quotation Form. This license consists of the right for Licensee to install, use, access, run, or otherwise interact with the Software within the scope of license granted on the applicable Quotation Form, in and for Licensee's own internal business operations, and in accordance with the related Documentation. Licensee may also make a reasonable number of additional copies of the Software solely for non-productive archival purposes, so long as each copy contains all titles, trademarks, and copyrights and restricted rights notices as in the original. Nothing in this Agreement entitles Licensee to receive source code for any part of the Software.

3. Affiliate Usage. Licensee and its Affiliates may place orders for and use Software and Services under this Agreement by signing and delivering a Quotation Form to STEALTHbits. Licensee shall be liable for its Affiliates' compliance with the terms and conditions of this Agreement.

4. Restrictions. STEALTHbits reserves any rights not expressly granted to Licensee and retains all rights, title and interest in and to the Software. Licensee agrees that it has no right whatsoever to modify the Software or any portion thereof in any manner. Licensee shall not reverse engineer, decompile, disassemble, modify, adapt, rent, lease, loan or create derivative works based upon the Software or any part thereof.

5. Assignment. Licensee may not assign or transfer its rights and obligations under this Agreement without prior written consent of STEALTHbits and any purported assignment without STEALTHbits consent shall be null and void.

6. Payment. Payment shall be made in full within thirty (30) days from the date of the applicable invoice. Any amounts payable by Licensee that remain unpaid after the due date shall be subject to a late charge equal to 1.5% of the invoice amount per month from the due date until such amount is paid, or the maximum rate permitted by law if less.

7. Taxes. The fees listed in the Quotation Form do not include taxes; if STEALTHbits is required to pay sales, use, property, value-added or other taxes based on the Software or services provided under this Agreement or on Licensee's use of Software or Services, then such taxes shall be billed to and paid by Licensee. This Section does not apply to taxes based on STEALTHbits' income.

8. Termination. This Agreement or an individual license granted hereunder may be terminated (a) by mutual agreement of STEALTHbits and Licensee, (b) by Licensee, upon 30 days prior written notice to STEALTHbits, and (c) by STEALTHbits, if Licensee or its Affiliate breaches this Agreement and fails to cure such breach to STEALTHbits reasonable satisfaction within 30 days following receipt of STEALTHbits notice thereof. Upon any termination of this Agreement or a license granted hereunder, Licensee shall cease use of the applicable Software and certify to STEALTHbits Within 30days after termination that Licensee has destroyed or returned to STEALTHbits such Software and all copies thereof. Termination of this Agreement shall not limit either party from pursuing any remedies available to it, including injunctive relief, or relieve Licensee of its obligation to pay all fees that have accrued or have become payable by Licensee hereunder. The provisions of Sections 4, 6, 8, 11, 12, 13 and 14 will survive termination of this Agreement.

9. Export Law Assurances. Licensee shall not export or re-export, or allow the export or re-export of the Software or any copy, portion or direct product of the foregoing, in violation of any export laws, restrictions, national security controls or regulations of the United States or other applicable foreign agency or authority.

10. Maintenance and Other Services. During any Maintenance Period and for the applicable fees, STEALTHbits shall provide the Maintenance Services as listed in this Section 10. The "Maintenance Period" is a twelve (12) month period. The first Maintenance Period begins on the date of the first invoice for the Software and ends twelve (12) months thereafter. Each Maintenance Period shall automatically renew for another twelve (12) months unless the renewal has been cancelled by either party's giving written notice at least sixty (60) days prior to the first day of the renewal Maintenance Period. STEALTHbits will bill for Maintenance Services in advance of renewal. STEALTHbits will provide other services (other than Maintenance Services) subject to availability and under the terms and conditions, including service rates, as indicated on the applicable Quotation Form.

Maintenance Services consist of the following:

- STEALTHbits shall make new versions and releases of the Software available to Licensee, including Software corrections, enhancements and upgrades, if and when it makes them generally available without charge under a maintenance subscription for such Software.
- STEALTHbits shall respond to unlimited communications from Licensee that report software failures not previously reported to STEALTHbits.
- STEALTHbits shall respond to a reasonable number of communications from Licensee that request consultation on the operational/technical aspects of the Software.
- Maintenance Services For all Software, support services are available during standard support hours or 8am to 5pm ET.
- For all Software, STEALTHbits support service shall be available via the Web, email, or telephone.

11. Limited Warranty. STEALTHbits warrants that for a period of thirty (30) days from the date of delivery (i) the media provided by STEALTHbits, if any, on which the Software is recorded will be free from material defects in materials and workmanship under normal use, and (ii) the operation of the Software, as provided by STEALTHbits, will substantially conform to the Documentation applicable to the Software.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF. AND STEALTHBITS HEREBY DISCLAIMS, ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Licensee must report in writing any breach of the foregoing warranties to STEALTHbits during the warranty period, and Licensee's exclusive remedy, and STEALTHbits sole obligation, for any such breach of warranty shall be for STEALTHbits to replace defective media and to correct or provide a workaround for reproducible errors that cause a breach of the warranty within a reasonable time considering the severity of the error and its effect on Licensee, or, at STEALTHbits option, refund the license fees paid for the nonconforming Software upon return of such Software to STEALTHbits and termination of the related license hereunder.

12. Infringement. STEALTHbits will at its own expense defend or settle any claim, suit, action, or proceeding brought against Licensee by a third party (a "Claim") to the extent that the Claim is based on an allegation that use of the then-current version of the Software in accordance with this Agreement directly infringes any patent, copyright or trademark, or misappropriates any trade secret ("Infringes"); provided that Licensee (i) shall have given prompt written notice of such Claim to STEALTHbits; (ii) permits STEALTHbits to retain sole control of the investigation, defense or settlement of such Claim, and (iii) shall provide STEALTHbits with such cooperation and assistance as STEALTHbits may reasonably request from time to time in connection with the investigation, defense or settlement thereof. STEALTHbits shall have no obligation hereunder to indemnify Licensee for any claim (a) resulting from use of the Software other than as authorized in this Agreement and in the manner described in the Documentation, (b) resulting from a modification of the Software other than by STEALTHbits, or (c) based on Licensee's use of the Software after STEALTHbits recommends discontinuation because of possible or actual infringement or use of a superseded or altered release of Software if the infringement would have been avoided by use of a current unaltered release of the Software made available to Licensee.

If the Software is adjudged by a court of competent jurisdiction to Infringe, and Licensee's use of such Software is enjoined, STEALTHbits shall, at its expense and option either (i) obtain for Licensee the right to continue using the Software, (ii) replace the Software with a functionally equivalent non-Infringing product, (iii) modify the Software so that it is non-Infringing, or (iv) accept the return of the Infringing Software and refund a pro-rated portion of the license fee paid for the Infringing Software, based on a five (5) year product life. This Section 12 states the entire liability of STEALTHbits, and Licensee's sole and exclusive remedy, with respect to infringement of intellectual property rights.

13. Limitation of Remedies and Damages. IN NO EVENT WILL STEALTHBITS OR ITS SUPPLIERS OR LICENSEE BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION AND THE LIKE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. STEALTHBITS'S CUMULATIVE LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY FOR DAMAGES FROM ANY CAUSE RELATED TO OR ARISING FROM THIS AGREEMENT, AND REGARDLESS OF THE FORM OF THE ACTION, WILL BE LIMITED TO NO GREATER THAN THE AMOUNT OF FEES PAID TO STEALTHBITS UNDER THIS AGREEMENT, AND IF SUCH DAMAGES RELATE TO PARTICULAR ITEMS OF SOFTWARE OR SERVICES PROVIDED BY STEALTHBITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES PAID FOR THE RELEVANT SOFTWARE OR SERVICES. NO ACTION MAY BE BROUGHT AGAINST STEALTHBITS LATER THAN ONE YEAR AFTER THE CAUSE OF ACTION OCCURRED, AND EXCEPT AS PROVIDED IN SECTION 12 ABOVE. IN NO EVENT WILL STEALTHBITS BE LIABLE FOR ANY CLAIMS, DEMANDS OR ACTIONS OF ANY NATURE BROUGHT BY ANY THIRD PARTY AGAINST LICENSEE.

14. Nondisclosure. "Confidential Information" means the Software, source code, object code and any proprietary tools, proprietary knowledge or proprietary methodologies disclosed by one party (the "Disclosing Party") to the other (the "Receiving Party") and not generally known by non-party personnel, which the Receiving Party may gain access to or knowledge of as a result of this Agreement. The Receiving Party shall observe complete confidentiality with respect to the Confidential Information, and shall use its best efforts and take all reasonable steps to protect the Confidential Information from any use, reproduction, publication, disclosure, or distribution except as specifically authorized by this Agreement. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized use or disclosure of the Software and will cooperate with the Disclosing Party in any litigation brought by the Disclosing Party against third parties to protect its proprietary rights.

15. Injunctive Relief. Each party acknowledges and agrees that in the event of a material breach of this Agreement, including but not limited to a breach of Section 4 or Section 14 of this Agreement, the non-breaching party shall be entitled to seek immediate injunctive relief, without limiting its other rights and remedies.

16. Usage Verification. At STEALTHbits request, but not more frequently than annually, Licensee shall furnish STEALTHbits with a document signed by Licensee's authorized representative verifying Licensee's usage of the Software. Licensee will permit STEALTHbits to review Licensee's deployment and use of the Software for compliance with the terms of the license agreement at STEALTHbits expense. Any reviews shall be scheduled at least 15 days in advance, shall be conducted during normal business hours at Licensee's facilities, and shall not unreasonably interfere with Licensee's business activities. If Licensee's use of the Software is found to be greater than contracted for, Licensee will be invoiced for the additional licenses or license upgrades (based on the applicable units of measure, e.g., servers, server tiers or users) and the unpaid license fees shall be payable in accordance with this Agreement. Additionally, if the unpaid fees exceed 5% of the license fees paid for the subject software, then Licensee shall also pay STEALTHbits reasonable costs of conducting the audit.

17. General.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, excluding its conflicts of laws and principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the state or federal courts located in the State of New Jersey, United States of America. Each party hereby agrees to submit to the jurisdiction of such courts.

(b) If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this Agreement will remain in full force and effect.

(c) The Software is a "commercial item," "commercial computer software" and/or "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Software by the U.S. government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted herein.

(d) All notices, requests, demands or communications required or permitted hereunder shall be in writing, delivered personally, or mailed by first class mail, postage prepaid, addressed to the parties as set forth above or at such other address as shall be specified in writing by either of the parties to the other in accordance with this Paragraph 17(d). All notices, requests, demands or communications shall be deemed effective upon personal delivery or four (4) days following deposit in the U.S. mail in accordance with this paragraph.

(e) Licensee agrees that STEALTHbits may include Licensee in its listing of customers and may announce Licensee's selection of STEALTHbits in its marketing communications.

(f) 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.

(g) Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures.

(h) A Quotation Form becomes effective upon execution by Licensee and a duly authorized representative of STEALTHbits. The terms and conditions of this Agreement shall apply to all such Quotation Forms. The terms of any Quotation Form shall incorporate the terms and conditions of this Agreement and shall control over any conflicting terms and conditions contained in this Agreement.

(i) This Agreement, together with the attached exhibits, if any, and Quotation Forms which are incorporated herein by reference, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement and such exhibits or Quotation Forms. The terms and conditions of this Agreement and in any Quotation Form shall control in the event there are different or additional terms set forth in any purchase order submitted by Licensee. Terms or conditions contained in Licensee's purchase orders shall apply only to the extent they confirm the Software and services ordered, the applicable fees and the requested shipment date. Neither this Agreement nor any Quotation Form may be modified or amended except by a writing executed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement.

Licensee

STEALTHbits Technologies, Inc.

Name

Name

Signature

Signature

Title

Date

Title

Date