

Socrata, Inc.  
83 S. King St.  
Suite 107  
Seattle, WA 98104  
www.socrata.com

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

- 1. Scope.** This Carahsoft Rider and the Manufacturer Agreement 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 Agreement 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 Agreement's 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 Government contracts as set forth in Government Order 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
  - (b) Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.
  - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - (d) Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this

Agreement.

- (e) **Termination.** Clauses in the Manufacturer Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement are hereby deemed to be deleted.
- (j) **Customer Indemnities.** All Manufacturer Agreement clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All Manufacturer Agreement 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 Agreement 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 Agreement 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 Agreement, 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 Agreement 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 Agreement and this Rider contain no confidential or proprietary information and acknowledges the Agreement 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.

## **Manufacturer End User License Agreement**

1. Client or Licensee, hereinafter, "Subscriber" is granted only a nonexclusive right to use and access the Manufacturer's service (Service) up to the capacity purchased. Herein, Manufacturer and Carahsoft are referred to collectively as "Provider".
2. Subscriber is granted a limited, nonexclusive, non-sublicensable, non-transferable term license to access and use the Service and the online software applications made available by Provider, if any, for use by Subscriber with the Service (Site Applications), including the right to load, store and display Subscriber Content (defined below) on the Service.

Subscriber may not: operate or use the Service or the Site Applications on behalf of other entities or persons, other than as may be approved by Provider; modify or otherwise make any derivative uses of the Service or the Site Applications, or any portion thereof; or use of the Service or the Site Applications other than for their intended purposes.

Subscriber must use the Service and Site Applications in conformance with applicable laws, rules and regulations including, without limitation, all applicable privacy laws. Any use of the Service and the Site Applications other than as specifically authorized, without the prior written permission of Provider, is prohibited and may result in Provider terminating access.

3. Provider regularly upgrades and updates the Service and Site Applications. This means that the Services and Site Applications are continually evolving. Some of these changes will occur automatically, while others may require Subscriber to schedule and implement the changes. The changes may also mean that Subscriber needs to upgrade its equipment in order to make efficient use of the Services. Provider will provide Subscriber with advance notification in this case.
4. Subscriber must (i) maintain the security of Subscriber's password or key provided by Provider to access and load Subscriber Content on the Service; and (ii) accept all risks of unauthorized access to the Subscriber Content or other information Subscriber provides to Provider. Subscriber is responsible for all activity that occurs under Subscriber's account, and Subscriber should not share password with any third party. The Subscriber, using the Service user interface, will control access of users to private content.
5. Subscriber may not upload any content: (i) that is unlawful, libelous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, fraudulent or otherwise objection; (ii) that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law; or (iii) that may infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party.
6. By posting any Subscriber Content, Subscriber represents and warrants to Provider: (i) that it has the lawful right to distribute and reproduce such Subscriber Content; (ii) that none of the Subscriber Content impersonates any person or entity or otherwise misrepresents Subscriber's affiliation with a person or entity; (iii) that none of the Subscriber Content is subject to any export control laws or regulations; (iv) that there are no unsolicited promotions, political campaigning, advertising or solicitations; (v) that the private information of any third party, including, without limitation, addresses, phone numbers, email addresses, Social Security numbers and credit card numbers is not provided or, with the prior written specific consent of Provider is provided with the authorization of such third party; (vi) there are no viruses, corrupted data or other harmful, disruptive or destructive files; and (vii) that the Subscriber Content that is not objectionable or which may expose Provider or the users to any harm or liability of any type.
7. During the term of this Agreement, Subscriber grants Provider and their affiliates a nonexclusive, royalty-free, perpetual, irrevocable and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, analyze, perform and display Subscriber Content (excluding the rights constituting publication for private Subscriber Content) on or in connection with the Service, for the provision of Services or to provide services to users. Once Subscriber Content is provided, Provider and user have a limited ability to control or delete such content.

8. Subscriber grants Provider and their affiliates and sublicensees the right to display and use Subscriber's name, trademark and/or logos provided by Subscriber (Subscriber Marks) in connection with the Subscriber Content and the Service. All goodwill associated with Provider's use of the Subscriber Marks will inure to the benefit of Subscriber and Provider will comply with Subscriber's Trademark guidelines.
9. Provider takes no responsibility and assumes no liability for any Subscriber Content or user content posted, stored or uploaded to the Services by Subscriber or any third party, or for any loss or damage thereto, nor is Provider liable for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity that Subscriber and its end users may encounter. Subscriber's reliance on any content that it obtains through use of the Service and the Site Applications is at Subscriber's own risk. Although Provider has no obligation to screen, edit or monitor any of the Subscriber content or other non-Provider provided content posted on the Service, PROVIDER RESERVES THE RIGHT, AND HAS ABSOLUTE DISCRETION, TO REMOVE, SCREEN OR EDIT ANY CONTENT POSTED OR STORED ON THE SERVICE OR UPLOADED TO THE SERVICE AT ANY TIME AND FOR ANY REASON WITHOUT NOTICE OR TO REQUIRE SUBSCRIBER TO DO THE SAME, AND SUBSCRIBER IS SOLELY RESPONSIBLE FOR CREATING BACKUP COPIES OF AND REPLACING ANY SUBSCRIBER CONTENT POSTED OR STORED ON THE SERVICE AT SUBSCRIBER'S SOLE COST AND EXPENSE. Any use of the Service and the Site Applications in violation of the foregoing violates this Agreement.
10. THE SERVICE AND THE SITE APPLICATIONS ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. PROVIDER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AS TO THE INFORMATION, CONTENT AND MATERIALS WITHIN THE SERVICE. WHILE PROVIDER WILL ATTEMPT TO MAKE SUBSCRIBER'S ACCESS AND USE OF THE SERVICE AND SITE APPLICATIONS SAFE, PROVIDER CANNOT AND DOES NOT REPRESENT OR WARRANT THAT THE SERVICE OR THE SITE APPLICATIONS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS THAT ARE OUTSIDE PROVIDER'S REASONABLE CONTROL.
11. Neither Reseller nor its suppliers are liable to the Subscriber for any indirect, consequential, incidental or special damages (including without limitation, lost profits and lost data, information or content) arising out of the use of the Service, regardless of the theory of liability (including negligence and strict liability). This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government's right to express remedies provided in the GSA Schedule contract (e.g., clause 552.238-75 – Price Reductions, clause 52.212-4(h) – Patent Indemnification, and GSAR 552.215-72 – Price Adjustments – Failure to Provide Accurate Information).
12. The Service and Site Applications are commercial products, developed at private expense, and provided with restricted rights. Use, reproduction, release, modification or disclosure of the Service and Site Applications, or any part thereof, including technical data, by the United States Government is restricted in accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies.
13. Socrata, Inc. as Manufacturer is an intended third party beneficiary of the contract between Carahsoft and the Subscriber.
14. *Subscriber Content* means any datasets, discussion forums, and other interactive areas, features or services which Subscriber creates, posts or stores or uploads to the Service, including, without limitation, any content, messages, materials, data, datasets, data structures, spreadsheets, entries, information, text, music, sound, photos, video, graphics, code or other items or materials that Subscriber has not designated as private.