

## GovDelivery

GovDelivery, 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 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 (<http://www.govdelivery.com/pdfs/subscription-agreement.pdf>) 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 2000) (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 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.

## GovDelivery Solution Subscription Agreement

This Software as a Service Solution (the “Solution”) Subscription Agreement (“Agreement”) is made by and between GovDelivery, Inc., a Minnesota corporation, with its principal place of business at 408 Saint Peter Street, Suite 600, Saint Paul, MN 55102 (“GovDelivery”) and the party procuring the Solution (Recipient). By accessing the Solution, Recipient accepts this Agreement. In the event there is a direct conflict between this Agreement and any other contract the client has for the Solution (“Contract”), the terms of the Contract shall prevail. Due to the rapidly changing nature of digital communication, this Agreement may be updated from time to time at GovDelivery’s discretion. Notification to Recipient will be via email or posting to GovDelivery’s website.

### 1. Subscription

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GovDelivery will provide the Solution procured to Recipient pursuant to its standard policies and procedures then in effect.

### 2. Fees

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- 2.1 Fees are typically charged based on potential or actual system usage together with the capabilities and support services required. Any new programs or online properties that materially change total potential system usage may require reconsideration of fees.
- 2.2 GovDelivery technology may use third party systems such as text messaging channels that are subject to abrupt changes in fees and other terms; GovDelivery will make every effort to accommodate Recipients within current fees and structure when such changes occur. Changes to terms of use and fees that are beyond GovDelivery’s control will, whenever possible, be made upon contract renewal.

### 3. Delivery and Disclaimer

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- 3.1 All precautions that are standard in the industry are taken to increase the successful delivery; however, GovDelivery makes no representation or warranty regarding the delivery of messages.
- 3.2 The Solution is provided “AS IS” and as available. GovDelivery makes no warranties, either express or implied. Without limiting the generality of the foregoing, GovDelivery does not warrant that the Service will perform without error or immaterial interruption.

### 4. Acceptable Use Policy and Data Ownership

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- 4.1 The Solution can only be used by personnel employed within the Recipient organization and by approved contractors.
- 4.2 Data sources.
  - 4.2.1 Data uploaded into GovDelivery must be brought in from Recipient sources (interactions with end users and opt-in contact lists).
  - 4.2.2 Recipients cannot upload purchased contact information into GovDelivery without GovDelivery’s written permission and professional services support for “list cleansing”.
  - 4.2.3 GovDelivery may require that any subset of data go through a cleansing process to support end users re-confirmation of data and contact interests. This typically occurs with large data sets and old data sets where contact information is not recently verified.

- 4.3 Recipients can only use GovDelivery to share content that is created by and owned by the Recipient and/or content for related organizations provided that it is in support of other organizations but not as a primary communication vehicle for other organizations that do not have a GovDelivery license. Any content deemed inappropriate for a public audience or in support of programs or topics that are unrelated to the Recipient, can be removed or limited by GovDelivery.
- 4.4 Data provided by Recipient and contact information gathered through Recipient's own Web properties or activities will remain the property of Recipient, including any and all personally identifiable information (PII). GovDelivery will not release the data without the express written permission of Recipient, unless required by law.
- 4.5 GovDelivery Advanced Network. GovDelivery is highly effective in helping organizations work together to reach more people. Organizations expect the data obtained through this network to be protected and used for public sector purposes; therefore, transferring this data outside of GovDelivery is an unappealing risk that limits participation in the GovDelivery Network.
- 4.5.1 To maintain the integrity of the Solution, subscribers added to Recipient's audience via the GovDelivery Advanced Network ("Network Subscribers") are available for use only while Recipient is under an active subscription with GovDelivery. Network Subscribers will not transfer to Recipient upon termination of any GovDelivery Contract. Recipient shall not use or transfer any of the Network Subscribers after termination of its Contract with GovDelivery. All information related to Network Subscribers must be destroyed by Recipient within 15 calendar days of the Contract with GovDelivery terminating, unless provided for under 4.5.2 of this Agreement.
- 4.5.2 During the last 10 calendar days of Recipient's Contract with GovDelivery, Recipient may send an opt-in email to Network Subscribers that shall include an explanation of Recipient's relationship with GovDelivery terminating and that the Network Subscribers may visit Recipient's website to subscribe to further updates from the Recipient in the future. Any Network Subscriber that does not opt-in will not be transferred with the subscriber list provided to Recipient upon termination.
- 4.6 GovDelivery will comply with its obligations under the UK Data Protection Act of 1998 and other applicable data privacy laws and regulations.
- 4.7 GovDelivery shall maintain sole ownership of the GovDelivery system and all modifications made to the system, regardless of whether these modifications are made specifically to accommodate Recipient's content within GovDelivery.

## **5. Limitations**

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The limitations for the Solution are as follows. Services outside of the limitations will be subject to additional fees.

### **5.1 Implementation**

- 5.1.1 The implementation consultant will be assigned to Recipient during the setup process for up to 90 days.

- 5.1.2 Unlimited access to Web-based recorded trainings and online help for administrations on the following topics: standard Messaging, the GovDelivery Network, Automation, Mobile and Analytics.
  - 5.1.3 Up to 1 Web-hosted training per 100,000 potential users (minimum of 2; maximum of 20). Must be used within 180 days of kickoff.
  - 5.1.4 Templates, Custom Reporting and Integration Development: Up to 2 hours per 100,000 potential users (minimum 5; maximum 50). Hours must be used within 90 days of kickoff.
- 5.2 Ongoing
- 5.2.1 Unlimited access to Web-based recorded trainings and online help for administrations on the following topics: standard Messaging, the GovDelivery Network, Automation, Mobile and Analytics.
  - 5.2.2 Up to 1 Web-hosted training per year per 100,000 in potential users (minimum of 2; maximum of 20).
  - 5.2.3 Support for up to 50 active administrators (minimum) and up to 50 per 1 million in potential users over 1 million.
  - 5.2.4 Support of 1 GovDelivery account per 1 million potential users.
  - 5.2.5 Complete archive of all data created by Recipient, including messages and subscriber history for 18 months (rolling).
  - 5.2.6 Support: 24/7 system monitoring, email and phone support during business hours, auto response to inbound messages from end users.
  - 5.2.7 Templates, Custom Reporting and Integration Development: Up to 1 hour per 100,000 potential users (minimum 3; maximum 30).
  - 5.2.8 Subscription topics: up to 100 topics for all accounts and up to 100 additional topics (also known as, subscription lists) per 1 million in potential users after 1 million.
  - 5.2.9 Unless stated otherwise in Recipient's contract, direct SMS messages included are limited to 500,000 per year.

## **6. Legally Confidential Information**

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In the event that the Solution will be used to store and/or send legally confidential information, GovDelivery must be notified in writing, in advance of the storage or sending. GovDelivery must also provide written consent of the storage and/or sending. GovDelivery recommends that confidential or sensitive information be stored behind a secure interface and that Solution be used only to notify people of updates to the information that can be accessed after authentication against a secure interface managed by the recipient.

Recipient is ultimately accountable for the security and privacy of data held by GovDelivery on their behalf.

## **7. Advertising**

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The Solution shall not be used for any product sales or advertising unless approved in writing, in advance by GovDelivery. GovDelivery's financial viability depends on its ability to charge users for access to the GovDelivery Network for building digital audiences, GovDelivery reserves the right to request the details of any agreement between the Recipient and a third party that compensates the Recipient for the right to have information included in messages sent through the Solution prior to approving the presence of Advertising within GovDelivery.

## **8. Intellectual Property**

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GovDelivery retains all right, title, and interest in and to the Solution, including without limitation all software used to provide the Service and all logos and trademarks reproduced through the Service, and this Agreement does not grant Recipient any intellectual property rights in or to the Service or any of its components.

## **9. Limitation of Liability**

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IN NO EVENT: (a) WILL GOVDELIVERY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNT PAID UNDER THE RECIPIENT'S CONTRACT FOR THE SOLUTION OVER THE PRIOR 6 MONTH PERIOD; AND (b) WILL GOVDELIVERY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES. THE LIABILITIES LIMITED BY THIS SECTION APPLY: (i) TO LIABILITY FOR NEGLIGENCE; (ii) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (iii) EVEN IF GOVDELIVERY IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (iv) EVEN IF RECIPIENT'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Section, GovDelivery's liability will be limited to the maximum extent permissible.

## **10. Miscellaneous**

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- 10.1 Force Majeure. Neither party shall be in breach of this Agreement solely due to breach caused by circumstances beyond the control and without the fault or negligence of the party failing to perform. Such causes include but are not limited to acts of God, wars, fires, floods, and strikes.
- 10.2 Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 10.3 Choice of Law and Jurisdiction. This Agreement shall be governed by and interpreted under the laws of the State of Minnesota, without reference to the State's principles of conflicts of law. The parties expressly consent and submit to the exclusive jurisdiction of the state and federal courts of Ramsey County, Minnesota.