

**Carahsoft Rider to Manufacturer Commercial Supplier Agreements  
(for U.S. Government End Users)  
Revised 20161213**

- 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 General Services Administration Order OGP 4800.2I, 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 suspension, termination or cancellation of the Manufacturer's CSA, the License, or the Customer's Account are hereby deemed to be deleted. Termination, suspension or cancellation 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.).

## EXHIBIT A REQUIRED TERMS

Services. “Services” means the proprietary hosted virtual call center software and system provided by Five9, Inc. (“Five9”).

Use Restrictions. Customer agrees not to (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make the Services available to any third party in any way; (ii) modify or make derivative works based upon the Services; (iii) create unauthorized Internet "links" to the Services or "frame" or "mirror" any content on any other server or wireless or Internet-based device; or (iv) reverse engineer the Services.

Suspension or Termination by Five9. Five9 may suspend or cancel Customer’s access to the Services if Five9 has a good faith belief that Customer (x) is using the Services in a manner that may cause immediate and ongoing harm to Five9 or to a third party, including but not limited to, actions that violate federal, state or local laws, rules or regulations, such as compliance with "Do Not Call Lists"; (y) is compromising the security of the Services and the privacy of Five9's other customers; or (z) is engaging in other activity not specifically identified herein that could reasonably be construed as causing or potentially causing harm to Five9 or a third party.

Data Use. During the normal operation of the Services, Five9 will collect and store on its systems certain information and data provided or collected by the Customer (“Customer Data”). Customer authorizes Five9 to store Customer Data on its secure internal systems and to use and copy Customer Data solely for the purpose of providing the Services to Customer. Additionally, Customer agrees that Five9 may use non-individually identifiable Customer Data in perpetuity for internal business purposes, solely to test, analyze and improve the Services. Five9 will not resell or share any Customer Data with a third party without Customer’s express written authorization.

Data Retention. Due to the storage demands on the Services, Five9 retains the right to periodically purge Customer Data from Five9’s servers to maximize system performance. Five9’s data retention practices are set forth and can be found at [www.five9.com/4433](http://www.five9.com/4433).

No Requirement to Offer Emergency Services. Customer understands and acknowledges that Five9 does not and is not required to provide Emergency Service, where “Emergency Service” is defined as services that connect a user to emergency services personnel or a public safety answering point ("PSAP"), pursuant to applicable regulatory requirements. In the United States, Emergency Service is provided by dialing the digits "911" on a wired or a wireless telephone. Services provided by Five9 do not permit the dialing of "911" or any other emergency telephone numbers. Services are not telephone or telecommunications services that can provide a connection to emergency services personnel or a PSAP under any circumstances. Customer recognizes and agrees that Five9 is not required to offer Emergency Service, pursuant to any applicable laws, rules or regulations. Customer further recognizes and agrees that Five9 is not a replacement for Customer's primary telephone service. CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT FIVE9'S SERVICES DO NOT INCLUDE EMERGENCY SERVICE. CUSTOMER UNDERSTANDS AND AGREES THAT ADDITIONAL ARRANGEMENTS

WITH A THIRD PARTY MUST BE MADE BY CUSTOMER TO ACCESS EMERGENCY SERVICE.

Specific Disclaimer of Liability for Emergency Service. Five9 does not provide Emergency Service in conjunction with the Services or any other services that may be used by Customer in connection with the Five9's Services. Neither Five9, its officers, directors, employees, shareholders, affiliates nor agents will be liable for any claim, damage, or loss arising from, or relating to, Customer's use of the Five 9's Services or any other service provided hereunder to contact a PSAP or Emergency Services personnel. Customer specifically waives, to the maximum extent permitted by applicable law, any and all such claims or causes of action, arising from or relating to the Five9's Services or any other service provided hereunder to contact a PSAP or other Emergency Services personnel.

Legal and Regulatory Compliance. Customer agrees to comply with all federal, state and/or local law related to or connected with providing, selling, licensing and delivering information services and telecommunications services and products. Customer assumes all liability and responsibility for its use of the Services in compliance with any federal, state or local laws, rules or regulations pertaining to the use of telephones, email, fax, automated telephonic equipment (e.g. "Predictive Dialer") and other telephony and telecommunications products and services. Customer's limitations on its use of the Services may include but are not limited to: advertisements; delivering artificial or prerecorded telephonic messages to homes without the prior consent of the called party; and restrictions on the time of day in which such calls are permissible. A violation of any such laws may result in substantial penalties and other sanctions. Any person intending to use the Services for solicitation purposes and/or for any other purpose regulated by federal, state or local laws should consult with his or her own legal counsel, prior to entering into this Agreement to determine the extent of permissible activities. Customer agrees that Five9 will not be responsible for Customer's illegal or fraudulent use of the Services.

Consents. Customer is solely responsible for obtaining the consent of or a release from those persons or entities, to whom or to which Customer intends to send communications using the Services. Customer agrees to periodically review the list of recipients to be contacted, to contact only those persons who the Customer is legally permitted to contact from Customer's customer data, and only in the manner permitted, under federal, state and local law, and to delete those recipients that no longer wish to receive communications from Customer.

"Do Not Call" Compliance. If Customer is advised by any party that they do not wish to receive communications from Customer via the Services, then Customer agrees to promptly add those parties to its internal company-specific Do Not Call List in the Services account, and thereafter refrain from calling such parties until such time as Customer's policies require.

Disclaimer of Five9 Warranties. FIVE9 IS PROVIDING THE SERVICES AS HOSTED SERVICES AND THE SERVICES ARE DELIVERED ON AN "AS IS" AND "AS AVAILABLE" BASIS. FIVE9 DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR THAT ALL COMMUNICATIONS WILL BE DELIVERED, NOR DOES FIVE9 MAKE ANY WARRANTY AS TO ANY RESULTS THAT MAY BE OBTAINED BY USE OF THE SERVICES. FIVE9 MAKES NO WARRANTIES

EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN RELATION TO THE SERVICES. Customer understands that the Services may be inaccessible or inoperable due to scheduled periodic maintenance and upgrades pursuant, or for reasons beyond Five9's reasonable control including but not limited to (i) Customer or Five9 equipment malfunctions; or (ii) service interruptions caused by independent telecommunications providers that provide voice and data connectivity to Five9's or the Customer's data centers.

Ownership of Materials and Rights. The Services is proprietary to Five9 and are protected by intellectual property laws and international intellectual property treaties. Customer Data and Customer's text, recorded messages and/or voice conversations transmitted over the Services are proprietary to Customer. Except for the access to and use the Services granted to Customer in this Agreement, nothing in this Agreement shall convey, transfer or assign any right, title or interest in the Services to Customer. The Services are not sold. All rights not granted by Five9 herein are expressly reserved.