

GovDelivery GSA 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 Ordering Activity, as defined in GSA Order ADM4800.2G and revised from time to time (Recipient). In the event there is a direct conflict between this Agreement and the schedule contract, the terms of the schedule contract shall prevail.

1. Subscription

GovDelivery will provide the Solution procured to Recipient pursuant to the schedule contract and this agreement.

2. Delivery and Disclaimer

- 2.1 All precautions that are standard in the industry are taken to increase the successful delivery.
- 2.2 GovDelivery does not warrant that the Service will perform without error or immaterial interruption.
- 2.3 This clause does not limit or disclaim any of the warranties specified in the GSA Schedule 70 contract under FAR 52.212-4(o). In the event of a breach of warranty, the U.S. Government reserves all rights and remedies under the contract, the Federal Acquisitions Regulations, and the Contracts Disputes Act, 41. U.S.C. 7101-7109.

3. Acceptable Use Policy and Data Ownership

- 3.1 The Solution can only be used by Recipient consistent with the schedule contract and task/purchase order.
- 3.2 Data sources.
 - 3.2.1 Data uploaded into GovDelivery must be brought in from Recipient sources (interactions with end users and opt-in contact lists).
 - 3.2.2 Recipients cannot upload purchased contact information into GovDelivery without GovDelivery’s written permission, which shall not be unreasonably withheld, and professional services support for “list cleansing”.
 - 3.2.3 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.
- 3.3 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.
- 3.4 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.

3.5 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.

3.5.1 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 3.5.2 of this Agreement.

3.5.2 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.

3.6 GovDelivery will comply with its obligations under the UK Data Protection Act of 1998 and other applicable data privacy laws and regulations.

3.7 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.

4. Limitations

The limitations for the Solution are as follows.

4.1 Implementation

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

4.1.2 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.

4.1.3 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.

4.1.4 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.

4.2 Ongoing

4.2.1 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.

4.2.2 Up to 1 Web-hosted training per year per 100,000 in potential users (minimum of 2; maximum of 20).

- 4.2.3 Support for up to 50 active administrators (minimum) and up to 50 per 1 million in potential users over 1 million.
- 4.2.4 Support of 1 GovDelivery account per 1 million potential users.
- 4.2.5 Complete archive of all data created by Recipient, including messages and subscriber history for 18 months (rolling).
- 4.2.6 Support: 24/7 system monitoring, email and phone support during business hours, auto response to inbound messages from end users.
- 4.2.7 Templates, Custom Reporting and Integration Development: Up to 1 hour per 100,000 potential users (minimum 3; maximum 30).
- 4.2.8 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.
- 4.2.9 Unless stated otherwise in Recipient's contract, direct SMS messages included are limited to 500,000 per year.

5. Legally Confidential Information

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 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.

6. Advertising

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.

7. Intellectual Property

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.

8. Limitation of Liability

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.

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. secs. 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 Adjustment - Failure to Provide Accurate Information.)

9. Miscellaneous

9.1 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.

9.2 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.

9.3 Choice of Law and Jurisdiction. This Agreement shall be governed by and interpreted under the laws of the United States.