

Agreement # _____

Legistar # _____

AGREEMENT CONTRACT ROUTING SHEET

Date Prepared: _____

Need Date: _____

PROCESSING DEPARTMENT:

CONTRACTOR:

Department: _____

Name: _____

Dept. Contact: _____

Address: _____

Phone: _____

Phone: _____

Department _____

Head Signature: _____

Org Code: _____

Project # _____

(if applicable): _____

Funding Source: _____

CONTRACTING DEPARTMENT: _____

Service Requested: _____

Description: _____

Contract Term: _____ Contract Value: _____

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: _____ Disapproved: _____ Date: _____ By: _____

Approved: _____ Disapproved: _____ Date: _____ By: _____

HR APPROVAL: WILL BE REVIEWED THROUGH WORKFLOW

RISK MANAGEMENT: WILL BE REVIEWED THROUGH WORKFLOW

**PLEASE EMAIL SIGNED DOCUMENT TO:
Thank you!**



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Led by the State of Utah

Master Agreement #: AR2472

Contractor: **CARASOFT TECHNOLOGY CORPORATION**

Participating Entity: **STATE OF UTAH**

The following products or services are included in this contract portfolio:

- *All products, services, and accessories listed on the Contractor page of the NASPO ValuePoint website.*

1. **Scope:** This addendum covers **Cloud Solutions** led by the State of Utah for use by state agencies and other entities authorized by Utah's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. **Participation:** This NASPO ValuePoint Master Agreement may be used by the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. **Department of Technology Services Approval:** State executive branch agencies who are subject to the authority and prior approval of the Department of Technology Services (DTS) must obtain such approval prior to making purchases under this contract.
4. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Bethany Blackwell
Telephone:	703-230-7435
Email:	NASPO@carahsoft.com

Participating Entity

Name:	Spencer Hall
Telephone:	801-538-3307
Email:	spencerh@utah.gov

5. **Subcontractors, Partners, Resellers:** Contractor must ensure that any subcontractor, fulfillment partner, dealer, or reseller who makes sales under this Participating Addendum complies with the terms of the Master Agreement and this Participating Addendum. Contractor must maintain on a website accessible to eligible users a list of subcontractors, partners, resellers, or fulfillment partners who are authorized by Contractor to sell under this Participating Addendum in the State of Utah.

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6. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

7. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

1. DEFINITIONS:

- a. "Access to Secure Public Facilities, Public Data, and Technology" means Contractor will (A) enter upon secure premises controlled, held, leased, or occupied by the State of Utah or an Eligible User; (B) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by the State of Utah or an Eligible User; or (C) have access to or receive any Public Data or Confidential Information during the course of performing this Contract.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors or other agents of Contractor who need to access Public Data to enable the Contractor to perform its responsibilities under this Contract.
- c. "Confidential Information". The Master Agreement definition of "Confidential Information" applies (Section 2 of Attachment A).
- d. "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. This Contract may include any purchase orders that result from the parties entering into this Contract.
- e. [RESERVED].
- f. "Contractor". The Master Agreement definition of "Contractor" applies (Section 2 of Attachment A).
- g. "Custom Deliverable" means the Work Product that Contractor is required to deliver to Eligible Users under this Contract.
- h. "Data Breach". The Master Agreement definition of "Data Breach" applies (Section 2 of Attachment A).
- i. "Division" means the State of Utah Division of Purchasing.
- j. "DTS" means the Department of Technology Services.
- k. "Eligible User(s)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts will be allowed to use this Contract.

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- l. "Federal Criminal Background Check" means an in depth background check conducted and processed by the FBI that covers all states. Federal Criminal Background Check reports will show if applicant has had any criminal cases filed against them that violated federal criminal law.
 - m. "Good" means any deliverable not classified as a Custom Deliverable or Service that Contractor is required to deliver to the Eligible Users under this Contract.
 - n. "Non-Public Data". The Master Agreement definition of "Non-Public Data" applies (Section 2 of Attachment A).
 - o. "Personal Data" . The Master Agreement definition of "Personal Data" applies (Section 2 of Attachment A).
 - p. "Proposal" means Contractor's response documents, including attachments, to the Division's Solicitation.
 - q. "Protected Health Information" . The Master Agreement definition of "Protected Health Information" applies (Section 2 of Attachment A).
 - r. "Security Incident" means the potentially unauthorized access by non-authorized persons to Public Data that Contractor believes could reasonably result in the use, disclosure or theft of Public Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach. It is within an Eligible User's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
 - s. "Services" . The Master Agreement definition of "Services" applies (Section 2 of Attachment A).
 - t. "Solicitation" . The Master Agreement definition of "Solicitation" applies (Section 2 of Attachment A).
 - u. "Public Data" means all Confidential Information, Non-Public Data, Personal Data, and Protected Health Information that is created or in any way originating with the State of Utah or an Eligible User whether such data or output is stored on the State of Utah's or an Eligible User's hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State of Utah, an Eligible User, or by Contractor. Public Data includes any federal data, that the State of Utah or an Eligible User controls or maintains, that is protected under federal laws, statutes, and regulations.
 - v. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - w. "Subcontractors" means subcontractors or subconsultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, and includes all independent contractors, agents, employees, or anyone else for whom the Contractor may be liable, at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
 - x. "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the ordering Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial

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District Court for Salt Lake County.

3. **LAWS AND REGULATIONS.** The Master Agreement's Laws and Regulations clause applies (Section 17 of Attachment A).
4. **NO WAIVER OF SOVEREIGN IMMUNITY:** In no event shall this Contract be considered a waiver by the Division, an Eligible User, or the State of Utah of any form of defense or immunity, whether sovereign immunity, governmental immunity, or any other immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
5. **RECORDS ADMINISTRATION.** The Master Agreement's records Administration and Audit clause applies (Section 26 of Attachment A).
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 - (1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
 - (2) Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
 - (3) Contractor's failure to comply with this section will be considered a material breach of this Contract.
 - (4) Contractor shall protect, indemnify, and hold harmless the Division, the Eligible Users, and the State of Utah, and anyone that the State of Utah may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made to the Division.
8. **CONFLICT OF INTEREST WITH STATE EMPLOYEES:** Contractor agrees to comply and cooperate in good faith will all conflict of interest and ethic laws including Section 63G-6a-2404, Utah Procurement Code, as amended.
9. **INDEPENDENT CONTRACTOR:** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the Division, the Eligible Users, or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor, as an independent contractor, shall have no authorization, express or implied, to bind the Division, the Eligible Users, or the State of Utah to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the Division, the Eligible Users, or the State of Utah. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.
10. **CONTRACTOR ACCESS TO SECURE PUBLIC FACILITIES, PUBLIC DATA, AND TECHNOLOGY:** When moderate risk or high risk data as defined in the Master Agreement is being handled, an employee of Contractor or a Subcontractor may be required to complete a Federal Criminal Background Check, if said employee of Contractor or a Subcontractor will have Access to Secure Public Facilities, Public Data, and Technology. Prior to Contractor's or Subcontractor's employee obtaining Access to Secure Public Facilities, Public Data, and Technology, Contractor shall provide the Eligible User with sufficient personal information (at Contractor's own expense) so that a Federal Criminal Background Check may be completed by the Eligible User, at the Eligible User's expense. The Eligible User will also provide Contractor with a Disclosure Form and Confidentiality

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Agreement which must be filled out by Contractor and returned to the Eligible User. Additionally, each employee of Contractor or a Subcontractor, who will have Access to Secure Public Facilities, Public Data, and Technology, will be scheduled by the Eligible User to be fingerprinted, at a minimum of one week prior to having such access. At the time of fingerprinting, said employee of Contractor or a Subcontractor will disclose, in full, any past record of felony or misdemeanor convictions. The Eligible User is authorized to conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided. The Eligible User may use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) every two years and reserves the right to revoke Access to Secure State Facilities, Public Data, and Technology granted in the event of any negative results. Contractor agrees to notify the Eligible User if an arrest or conviction of any employee of Contractor or a Subcontractor that has Access to Secure Public Facilities, Public Data and Technology occurs during this Contract. Contractor, in executing any duty or exercising any right under this Contract, shall not cause or permit any of its employees or employees of a Subcontractor (if any) who have been convicted of a felony or misdemeanor to have Access to Secure Public Facilities, Public Data, and Technology. A felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred.

11. **DRUG-FREE WORKPLACE:** Contractor agrees to abide by the Eligible User's drug-free workplace policies while on the Eligible User's or the State of Utah's premises.
12. **CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor agrees to follow and enforce the applicable code of conduct which will be provided upon request by Contractor to the Eligible User. Contractor will assure that each employee or each employee of Subcontractor(s) under Contractor's supervision receives a copy of such code of conduct.
13. **INDEMNITY CLAUSE.** The Master Agreement's Indemnification and Limitation of Liability clause applies (Section 13 of Attachment A).
14. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.
15. **SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
16. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract.
17. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract, by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
18. **TERMINATION:** Unless otherwise stated in this Contract, this Contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given fourteen (14) calendar days after notification to correct and cease the violations, after which this Contract may be terminated for cause at any time. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon sixty (60) calendar days prior written notice being given the other party. The parties may also agree to terminate this Contract prior to the expiration of this Contract by written agreement.

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If Services apply to this Contract, then Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the Division, the Eligible Users, or the State of Utah is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract.

- 19. SUSPENSION OF WORK:** Should circumstances arise which would cause the Division to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Division.
- 20. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Division or an Eligible User, if it is reasonably determined that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, the Eligible User will reimburse Contractor for the Goods or Services properly ordered until the effective date of said notice. The Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

- 21. SALES TAX EXEMPTION:** The Goods, Custom Deliverables, or Services being purchased by the Eligible Users under this Contract are being paid from the Eligible User's funds and used in the exercise of the Eligible User's essential function as an Eligible User. The Eligible User will provide Contractor with a copy of its sales tax exemption number upon request. It is the Contractor's responsibility to request the sales tax exemption number from the Eligible User.
- 22. TITLE AND OWNERSHIP WARRANTY:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Good or Custom Deliverable delivered to the Eligible Users under this Contract. Contractor fully indemnifies the Eligible Users for any loss, damages or actions arising from a breach of this warranty without limitation.
- 23. HARDWARE WARRANTY:** Contractor agrees to warrant and assume responsibility for all hardware portions of any Good or Custom Deliverable, that it licenses, contracts, or sells under this Contract, for a period of at least one (1) year. Contractor acknowledges that all warranties granted to the Division and Eligible Users by the Uniform Commercial Code of the State of Utah apply to this Contract. Product liability disclaimers and/or warranty disclaimers from Contractor are not applicable to this Contract. In general, the Contractor warrants that the hardware: (a) will perform as specified in the Proposal; (b) will live up to all specific claims listed in the Proposal; (c) will be suitable for the ordinary purposes for which the hardware is used; (d) will be suitable for any special purposes that the Division has relied on Contractor's skill or judgment to consider when it advised the Division about the hardware in the Proposal; (e) the hardware has been properly designed and manufactured; and (f) is free of significant defects or unusual problems about which Eligible User has not been warned.
- 24. SOFTWARE WARRANTY:** Contractor warrants that for a period of at least ninety (90) days from the date of Acceptance that the software portions of the Goods and Custom Deliverables, that Contractor licenses, contracts, or sells to the Eligible Users under this Contract, will: (a) perform in accordance with the specific claims provided in the Proposal; (b) be suitable for the ordinary purposes for which such Goods and Custom Deliverables are used; (c) be suitable for any special purposes that the Eligible User has relied on Contractor's skill or judgment to consider when it advised the Eligible User about the Goods or Custom Deliverables in its Proposal; (d) have been properly designed and manufactured; and (e) be free of significant defects or unusual problems. Contractor agrees to provide the Eligible Users with bug fixes, including informing the Eligible Users of any known software bugs or software defects that may affect the Eligible User's use of the software during the Contract.

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- 25. WARRANTY REMEDIES:** Upon breach of the hardware or software warranty, Contractor will repair or replace (at no charge to the Eligible Users) the Goods or Custom Deliverables whose nonconformance is discovered and made known to Contractor. If the repaired and/or replaced products prove to be inadequate, or fail to meet the performance of its essential purpose, Contractor will refund the full amount of any payments that have been made for the failing products. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity.
- 26. UPDATES AND UPGRADES:** Contractor grants to the Eligible Users a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the term of this Contract. Such upgrades and updates are subject to the terms of this Contract. The Eligible Users shall download, distribute, and install all updates as released by Contractor during this Contract, and Contractor strongly suggests that the Eligible Users also download, distribute, and install all upgrades as released by Contractor during this Contract.
- 27. BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With an Eligible User's prior written authorization, Contractor may perform remote diagnostics to work on reported problems, subject to Contractor's obligation of this Contract. In the event that an Eligible User declines remote diagnostics, Contractor and the Eligible User may agree to on-site technical support, subject to the terms of this Contract.
- 28. TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is a part of the Goods or Custom Deliverables that Contractor provides under this Contract, Contractor will use commercially reasonable efforts to respond, in a reasonable time, when technical support or maintenance requests regarding the Goods or Custom Deliverables are made to Contractor.
- 29. SECURE PROTECTION AND HANDLING OF PUBLIC DATA:** If Contractor is given Public Data as part of this Contract, the protection of Public Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of Public Data. To the extent that Contractor is given Public Data, Contractor shall safeguard the confidentiality, integrity and availability of the Public Data and comply with the following conditions outlined below. Eligible Users reserve the right to verify Contractor's adherence to the following conditions to ensure they are met during the life of the contract:
1. **Network Security:** Contractor agrees at all times to maintain network security that - at a minimum - includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Contractor also agrees to maintain network security that conforms to one of the following:
 - (1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy* (copy available upon request);
 - (2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or
 - (3) Any generally recognized comparable standard that Contractor then applies to its own network and approved by DTS in writing.
 2. **Public Data Security:** Contractor agrees to protect and maintain the security of Public Data with protection that is at least as good as or better than that maintained by the State of Utah which will be provided by an Eligible User upon Contractor's request. These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification). Eligible User reserves the right to determine if Contractor's level of protection adequately meets the Eligible User's security requirements.
 3. **Public Data Transmission:** Contractor agrees that any and all transmission or exchange of system application data with the Eligible Users and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).
 4. **Public Data Storage:** Contractor agrees that all Public Data will be stored and maintained in data centers in the United States. Contractor agrees that no Public Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process. Contractor shall permit its employees and Subcontractors to access non-Public

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Data remotely only as required to provide technical support. Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.

5. **Public Data Encryption:** Contractor agrees to store all data provided to Contractor, including State, as part of its designated backup and recovery process in encrypted form, using no less than 128 bit key and include all data as part of a designated backup and recovery process.
6. **Password Protection:** Contractor agrees that any portable or laptop computer that has access to the Eligible Users or State of Utah networks, or stores any Public Data is equipped with strong and secure password protection.
7. **Public Data Re-Use:** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. Contractor further agrees that no Public Data of any kind shall be transmitted, exchanged, or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the Eligible Users.
8. **Public Data Destruction:** The Contractor agrees that upon expiration or termination of this Contract it shall erase, destroy, and render unreadable all Public Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the Eligible User, whichever shall come first, unless the Eligible User provides Contractor with a written directive. It is understood by the parties that the Eligible User's written directive may request that certain data be preserved in accordance with applicable law.
9. **Services Shall Be Performed Within United States:** Contractor agrees that all of the Services related to Public Data that it provides to the Eligible Users will be performed by Contractor and Subcontractor(s) within the borders and jurisdiction of the United States.
30. **SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** Contractor shall immediately inform an Eligible User of any Security Incident or Data Breach.
 1. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the Eligible User should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.
 2. **Security Incident Reporting Requirements:** Contractor shall report a Security Incident to the Eligible User immediately if Contractor reasonably believes there has been a Security Incident.
 3. **Breach Reporting Requirements:** If Contractor has actual knowledge of a confirmed Data Breach that affects the security of any Public Data that is subject to applicable data breach notification law, Contractor shall:
 - (a) promptly notify the Eligible User within 24 hours or sooner, unless shorter time is required by applicable law;
 - (b) take commercially reasonable measures to address the Data Breach in a timely manner; and
 - (c) be responsible for its Data Breach responsibilities, as provided in the next Section.
31. **DATA BREACH RESPONSIBILITIES:** This Section only applies when a Data Breach occurs. Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification in accordance with DTS Policy 5000-0002 Enterprise Information Security Policy (copy available upon request). In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall:
 - (a) cooperate with the Eligible User by sharing information relevant to the Data Breach;
 - (b) promptly implement necessary remedial measures, if necessary;
 - (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach; and
 - (d) in accordance with applicable laws indemnify, hold harmless, and defend DTS and the State of Utah against any claims, damages, or other harm related to such Data Breach to the extent of the liability limits set forth in Section 13(c) of Attachment A1 of the Master Agreement. If the Data Breach requires public notification, all communication shall be coordinated with the Eligible User. Contractor shall be responsible for notification and remedial costs and damages to the extent of the liability limits set forth in Section 13(c) of Attachment A1 of the Master Agreement.

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- 32. STATE INFORMATION TECHNOLOGY POLICIES:** If Contractor is providing an Executive Branch Agency of the State of Utah with Goods or Custom Deliverables it is important that contractors follow the same policies and procedures that DTS follows for their own internally developed goods and deliverables to minimize security risk, ensure applicable State and Federal laws are followed, address issues with accessibility and mobile device access, and prevent outages and data breaches within the State of Utah's environment. Contractor agrees to comply with the following DTS Policies which are available upon request:
- 1. DTS Policy 4000-0001, Enterprise Application and Database Deployment Policy:** The Enterprise Application and Database Deployment Policy requires any Contractor developing software for the State to develop and establish proper controls that will ensure a clear separation of duties between developing and deploying applications and databases to minimize security risk; to meet due diligence requirements pursuant to applicable state and federal regulations; to enforce contractual obligations; and to protect the State's electronic information and information technology assets.
 - 2. DTS policy 4000-0002, Enterprise Password Standards Policy:** Any Contractor developing software for the State must ensure it is built to follow the password requirements outlined in the Enterprise Password Standards Policy.
 - 3. DTS Policy 4000-0003, Software Development Life Cycle Policy:** The Software Development Life Cycle Policy requires any Contractor developing software for the State to work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance.
 - 4. DTS Policy 4000-0004, Change Management Policy:** Per the Change Management Policy, any Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify DTS's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. Following this notification, any outages or Data Breaches which are a direct result of Contractor's failure to comply with DTS instructions and policies following notification will result in Contractor's liability for any and all damages resulting from or associated with the outage or Data Breach.
- 33. PUBLIC INFORMATION:** Contractor agrees that this Contract, any related purchase orders, related invoices, related pricing lists, and the Proposal will be public documents, and may be available for distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, any related purchase orders, related invoices, related pricing lists, and Proposal in accordance with GRAMA. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation. The Division, the Eligible Users, or the State of Utah will not inform Contractor of any request for a copy of this Contract, including any related purchase orders, related invoices, related pricing lists, or the Proposal.
- 34. DELIVERY:** Unless otherwise specified in this Contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Contractor is responsible for including any freight charges due by the Eligible User to Contractor when providing quotes to the Eligible User unless otherwise specified in this Contract. Invoices listing freight charges that were not identified in the quote prior to shipment, unless otherwise specified in this Contract, will be returned to the Contractor to remove such costs. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Eligible Users except as to latent defects, fraud, and Contractor's warranty obligations.
- 35. ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good or Custom Deliverable to Eligible Users or provide any Good and Custom Deliverable for download from the Internet, if approved in writing by the Eligible Users. Contractor should take all reasonable and necessary steps to ensure that the confidentiality of those electronic deliveries is preserved in the electronic delivery process, and are reminded that failure to do so may constitute a breach of obligations owed to the Eligible Users under this Contract. Contractor warrants that all electronic deliveries will be free of known, within reasonable industry standards, malware, bugs, Trojan horses, etc. Any electronic delivery that includes Public Data that Contractor processes or stores must be delivered within the specifications of this Contract.
- 36. ACCEPTANCE PERIOD:** A Good, Custom Deliverable, or Service furnished under this Contract shall function in accordance with the specifications identified in this Contract and Solicitation. If the Goods and Custom

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Deliverables delivered do not conform to the specifications identified in this Contract and Solicitation ("Defects"), the Eligible Users shall within thirty (30) calendar days of the delivery date ("Acceptance Period") to notify Contractor in writing of the Defects. Contractor agrees that upon receiving such notice, it shall use reasonable efforts to correct the Defects within fifteen (15) calendar days ("Cure Period"). The Eligible User's acceptance of a Good, Custom Deliverable, or Services occurs at the end of the Acceptance Period or Cure Period.

If after the Cure Period, a Good, Custom Deliverable, or Service still has Defects, then the Eligible User may, at its option: (a) declare Contractor to be in breach and terminate this Contract; (b) demand replacement conforming Goods, Custom Deliverables, or Services from Contractor at no additional cost to the Eligible User; or (c) continue the Cure Period for an additional time period agreed upon by the Eligible User and Contractor in writing. Contractor shall pay all costs related to the preparation and shipping of the products returned pursuant to this section. No products shall be accepted and no charges shall be paid until acceptance is met. The warranty period will begin upon the end of the Acceptance Period.

37. ORDERING AND INVOICING: All orders will be shipped promptly in accordance with the delivery schedule. Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the appropriate Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by the Eligible Users will be those prices listed in this Contract. The Eligible Users have the right to adjust or return any invoice reflecting incorrect pricing.

38. PROMPT PAYMENT DISCOUNT: Contractor may quote a prompt payment discount based upon early payment. Contractor shall list payment discount terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received.

39. PAYMENT:

1. Payments will be made within thirty (30) days from a correct invoice is received, whichever is later. After sixty (60) days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.

2. Unless otherwise stated in this Contract, all payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Eligible User's purchasing card (major credit card). The Division will not allow Contractor to charge electronic payment fees of any kind.

3. The acceptance by Contractor of final payment without a written protest filed with the Eligible User within ten (10) working days of receipt of final payment shall release the Eligible User, the Division, and the State of Utah from all claims and all liability to Contractor for fees and costs pursuant to this Contract.

4. Contractor agrees that if during, or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Eligible Users to Contractor, then Contractor shall, upon written request, immediately refund to the Eligible Users any such overpayments.

40. INDEMNIFICATION – INTELLECTUAL PROPERTY: Contractor warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by the Eligible Users in unaltered form, will not, to Contractor's knowledge, infringe any third party copyrights, patents, trade secrets, and/or other proprietary rights that exist on the effective date of this Contract and/or that arise or are enforceable under the law of the United States of America.

Contractor will release, indemnify, and hold the Division, the Eligible Users, and the State of Utah harmless from liability or damages of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in Contractor's performance of this Contract. Additionally, if such a claim or liability is based upon an allegation that a Good, Custom Deliverable, or Service furnished by Contractor infringes on any right protected by any patent, copyright, trademark, trade secret, and/or proprietary right of any third party, Contractor agrees to indemnify and hold harmless the Division, the Eligible Users, and the State of Utah for any judgments, settlements, reasonable

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costs, and reasonable attorneys' fees resulting from such a claim or liability. Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto; however, the Eligible Users shall have the right, at its option, to participate in the defense of any such action without relieving Contractor of any obligation hereunder. The parties agree that if there are any limitations of liability, including a limitation of liability clause in this Contract, such limitations of liability will not apply to this Section.

41. OWNERSHIP IN INTELLECTUAL PROPERTY: The parties each recognize that each has no right, title, or interest, proprietary or otherwise, in or to the name or any logo, or intellectual property owned or licensed by the other. Each agree that, without prior written consent of the other or as described in this Contract, it shall not use the name, any logo, or intellectual property owned or licensed by the other.

42. OWNERSHIP IN CUSTOM DELIVERABLES: In the event that Contractor provides Custom Deliverables to the Eligible Users, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for Eligible Users and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible Users, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible Users any and all copyrights in and to the Custom Deliverables, subject to the following:

1. Contractor has received payment for the Custom Deliverables,
2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of Eligible Users (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible Users.

Contractor agrees to grant to the Eligible Users a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible Users and the State of Utah to use the Custom Deliverables. The Eligible Users reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's internal business operation under this Contract. The Eligible User and the Division may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

43. OWNERSHIP, PROTECTION AND USE OF RECORDS: Except for confidential medical records held by direct care providers, the Eligible Users shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of the Eligible User. Contractor agrees to maintain the confidentiality of records it holds for the Eligible Users as required by applicable federal, state, or local laws. Eligible Users shall own and retain unlimited rights to use, disclose, or duplicate all information and data

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(copyrighted or otherwise) developed, derived, documented, stored, or furnished by Contractor under this Contract. Contractor, and any Subcontractors under its control, expressly agrees not to use an Eligible User's confidential data without prior written permission from Eligible User.

- 44. PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES:** In the event that the Eligible User provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor agrees to hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Contract. The improper use or disclosure by any party of protected internal federal or state business processes, policies, procedures, or practices is prohibited. Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by Contractor or its Subcontractors, except for the performance of this Contract, unless prior written consent has been obtained in advance from the Eligible User.
- 45. PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION:** All documents and data pertaining to work required by this Contract will be the property of the Eligible Users, and must be delivered to the Eligible Users within thirty (30) working days after termination or expiration of this Contract, regardless of the reason for contract termination, and without restriction or limitation to their future use. The costs for returning documents and data to the Eligible Users are included in this Contract.
- 46. CONFIDENTIALITY:** Confidential Information may be disclosed to the Contractor under the terms of this Contract. If Confidential Information is disclosed to Contractor then Contractor agrees to adhere to the following:
- Contractor will: (a) limit disclosure of any Confidential Information to Authorized Persons who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Contract relates, and only for that purpose; (b) advise its Authorized Persons of the proprietary nature of the Confidential Information and of the obligations set forth in this Contract and require such Authorized Persons to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties, except as otherwise agreed to in writing by the Eligible Users. Contractor will promptly notify the Eligible Users of any misuse or misappropriation of Confidential Information that comes to Contractor's attention.
- Contractor shall be responsible for any breach of this duty of confidentiality contract by any of their officers, agents, subcontractors at any tier, and any of their respective representatives, including any required remedies and/or notifications under applicable law (Utah Code Section 13-44-101 thru 301 et al). Contractor shall indemnify, hold harmless, and defend the Division, the Eligible Users, and State of Utah from claims related to a breach of these confidentiality requirements by Contractor or anyone for whom the Contractor is liable. This duty of confidentiality shall be ongoing and survive the term of this Contract.
- 47. ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Division.
- 48. DEFAULT AND REMEDIES:** The Master Agreement's Defaults and Remedies clause applies (Section 10 of Attachment A1).
- 49. TERMINATION UPON DEFAULT:** In the event this Contract is terminated as a result of a default by Contractor, the Division may procure or otherwise obtain, upon such terms and conditions as the Division deems appropriate, Goods, Custom Deliverables, or Services similar to those terminated, and Contractor shall be liable to the Division for any and all cover costs and damages arising therefrom, including attorneys' fees, excess costs and fees, and cost of cover together with incidental or consequential damages, incurred by the Division in obtaining similar Goods, Custom Deliverables, or Services.
- 50. FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Division and the Eligible Users may immediately terminate this Contract after determining such delay will reasonably prevent successful performance of this Contract.

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- 51. PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
- 52. WORKERS' COMPENSATION:** The Master Agreement's Insurance clause applies (Section 16.b.3 of Attachment A).
- 53. LIABILITY INSURANCE.** The Master Agreement's Insurance clause applies (Section 16 of Attachment A).
- 54. CONFLICT OF TERMS:** Contractor terms and conditions that apply must be in writing and attached to this Contract. No other terms and conditions will apply to this Contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, purchase orders, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: (a) this Attachment A; (b) Contract Signature Page(s); (c) State of Utah's Additional Terms and Conditions, if any; and (d) Contractor Terms and Conditions, if any. Attachment A will be given precedence over any provisions including, limitation of liability, indemnification, standard of care, insurance, or warranty, and will not be nullified by or exception created by more specific terms elsewhere in this Contract.
- 55. ENTIRE AGREEMENT:** This Contract shall constitute the entire agreement between the parties, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
- 56. SURVIVORSHIP:** This paragraph defines the specific contractual provisions that will remain in effect after expiration of, the completion of, or termination of this Contract, for whatever reason: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of Public Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records, including Residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, State, or Local Government Internal Business Processes, including Residuals of such confidential business processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration of, completion, or termination of this contract.
- 57. WAIVER:** The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract.
- 58. CONTRACT INFORMATION:** During the duration of this Contract, the Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.
- 59. COMPLIANCE WITH ACCESSIBILITY STANDARDS:** Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractors must also adhere to Utah Administrative rule R895-14-1-3-3, which states that vendors developing new websites or applications are required to meet accessibility guidelines subject to rule R895 and correct any items that do not meet these guidelines at no cost to the agency; and Rule R895-14-1-4-2, which states that vendors proposing IT products and services shall provide Voluntary Product Accessibility Template® (VPAT™) documents. Contractor acknowledges that all Goods and Custom Deliverables that it licenses, contracts, or sells to DTS under this contract are accessible to people with disabilities.
- 60. RIGHT TO AUDIT:** Contractor agrees to, upon written request, permit Division, or a third party designated by the Division, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel; physical premises; records; technical and physical infrastructures; and any other person, place, or object which may



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assist the Division or its designee in completing such assessment. In addition, upon request, Contractor shall provide the Division with the results of any audit performed by or on behalf of Contractor that would assist the Division or its designee in confirming Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards.

61. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
62. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions and prices of this Contract.
63. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
64. **QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
65. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.

66. REPORTS AND FEES:

1. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be 1% (one percent) and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
2. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The quarterly report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address: salesreports@utah.gov.
3. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31
4. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

If Services are applicable to this Contract, the following terms and conditions apply to this Contract:

67. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence.

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- 68. PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
- 69. [RESERVED]**
- 70. STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.
- 71. STATE REVIEWS, LIMITATIONS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor.
- 72. TRAVEL COSTS:** The following will apply unless otherwise agreed to in the contract: All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the Contractor for correction.
- 73. CONTRACT DATES:** The Master Agreement effective and expiration dates apply to this participating addendum. A contract amendment is not necessary in the event of the renewal or extension of the Master Agreement.

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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of Utah	Contractor: Carahsoft Technology Corporation
Signature: 	Signature: 
Name: Jennifer Salts	Name: Ellen Lord
Title: Assistant Director	Title: Contracts Manager
Date: 12.5.2016	Date: December 5 th , 2016

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@naspovaluepoint.org

Please email fully executed PDF copy of this document to
PA@naspovaluepoint.org
to support documentation of participation and posting in appropriate databases.

STATE OF CALIFORNIA
PARTICIPATING ADDENDUM NO. 7-17-70-40-05

Cloud Solutions
Utah NASPO ValuePoint Master Agreement No. AR2472
Carahsoft Technology Corp.

This Participating Addendum Number 7-17-70-40-05 is entered into between the State of California, Department of General Services (hereafter referred to as "State" or "DGS") and Carahsoft Technology Corp. (hereafter referred to as "Contractor") under the lead State of Utah NASPO ValuePoint Master Agreement Number AR2472.

1. SCOPE

- A. This Participating Addendum covers the purchase of Cloud Solutions under the Utah NASPO ValuePoint Master Agreement. The Utah NASPO ValuePoint Master Agreement Number AR2472 is hereby incorporated by reference. The cloud solution services are identified in Section 5 (Available Services).
- B. This Participating Addendum is available for use by all State Agencies including the Executive, Judicial and Legislative branches, and will include all California political subdivisions/local governments. A subdivision/local government is defined as any city, county, city and county, district, or other local governmental body or corporation, including the California State Universities (CSU) and University of California (UC) systems, K-12 schools and community colleges empowered to expend public funds.
- C. Each political subdivision/local government is to make its own determination whether this Participating Addendum and the Utah NASPO ValuePoint Master Agreement are consistent with its procurement policies and regulations.

2. TERM

- A. The term of this Participating Addendum shall begin upon signature approval by the State and will end September 15, 2026, or upon termination by the State, whichever occurs first.
- B. Lead State amendments to extend the Master Price Agreement term date are not automatically incorporated into this Participating Addendum. Extension(s) to the term of this Participating Addendum will be through a written amendment upon mutual agreement between the State and the Contractor.

3. TERMS AND CONDITIONS/INCORPORATION OF DOCUMENTS

- A. Terms and conditions listed below are hereby incorporated by reference and made a part of this Participating Addendum as if attached herein and shall apply to the purchase of services made under this Participating Addendum.

- 1) **General Provisions – Information Technology (GSPD-401IT)**, effective 9/5/2014.
The twelve (12) page document can be viewed at:
http://www.documents.dgs.ca.gov/pd/poliproc/GSPD401IT14_0905.pdf.
Exception: Article 11 of the General Provisions – Information Technology, is superseded by Section 4 (Order of Precedence) below.
- 2) **Cloud Computing Special Provisions for Software as a Service (SaaS)**, effective 9/3/14. The five (5) page document can be viewed at:
http://www.documents.dgs.ca.gov/pd/poliproc/CLOUDCOMPUTINGSERVICESPECIALPROVISIONS_14_0903.docx

4. ORDER OF PRECEDENCE

In the event of any inconsistency between the articles, attachments, or provisions which constitute this agreement, the following descending order of precedence shall apply:

- A. California Participating Addendum Number 7-17-70-40-05
- B. Utah NASPO ValuePoint Master Agreement Number AR2472
- C. Utah Solicitation CH16012 including all Addendums
- D. Contractor's response to Utah's Solicitation

5. AVAILABLE SERVICES

The following service offering from the Utah NASPO ValuePoint Master Agreement Number AR2472 are allowed under this Participating Addendum:

Software as a Service (SaaS)

6. RESTRICTIONS/DISALLOWED SERVICES – These restrictions are not applicable to political subdivisions/local governments.

- A. The following service offerings are prohibited under this Participating Addendum:
 1. Infrastructure as a Service (IaaS)
 2. Platform as a Service (PaaS)
 3. Value Added Services, including Additional Value Added Services such as Maintenance Services; Deployment Services; Consulting/Advisory Services; Architectural Design Services; Statement of Work Services; Partner Services, and Training Deployment Services
- B. Product and service categories that are available on mandatory California statewide contracts cannot be purchased from this Participating Addendum by State Departments without an exemption. Prior to issuing a purchase order, State Departments are responsible for obtaining an exemption from DGS, and/or California Department of Technology (CDT).

7. PRICING

- A. Contractor shall submit a Price Schedule identifying all services offered under this Participating Addendum for the State's approval.
- B. The Price Schedule shall include the following:
 - 1) Service Category (SaaS) Description
 - 2) List Price
 - 3) Discount off List Price
 - 4) Contract Price
- C. Contractor shall obtain prior approval from Utah NASPO ValuePoint Contract Administrator, and submit a written notice of price increases/decreases and a revised Price List for the State's approval.
- D. State-approved Price List will be posted on the State's Cal eProcure website.

8. SERVICE ADDITIONS/DELETIONS

- A. Contractor may add or delete services introduced or removed from the market by the manufacturer under the following conditions:
 - 1) Service is within existing awarded categories under the NASPO ValuePoint Master Price Agreement;
 - 2) Contractor has obtained prior approval from the Utah NASPO ValuePoint Contract Administrator; and
 - 3) Contractor receives written approval from the California State Contract Administrator.
- B. Contractor shall submit a written notice of service (s) additions/deletions and a revised Price Schedule for the State's approval.

9. FULFILLMENT PARTNERS/AUTHORIZED RESELLERS

Authorized Resellers are available for this Participating Addendum:

ISSUE PURCHASE ORDER TO

Orders may be placed with Carahsoft Technology Corp. or with an Authorized Reseller as indicated below:

Orders placed with Carahsoft Technology Corp.

SUBMIT ORDERS TO:

Carahsoft Technology Corp.
1860 Michael Faraday Drive, Suite 100

Contact: Karina Woods
Phone: 703/871-8500
Fax No.: 703/871-8505
E-mail: OM@carahsoft.com

Orders placed with an Authorized Reseller must be addressed as shown below, and payment must be made payable to the Authorized Reseller identified on the invoice as shown below:

SUBMIT ORDERS TO:

Carahsoft Technology Corp.
c/o DynTek Services, Inc.
4440 Von Karman, Suite 200, Newport Beach, CA 92660

Contact: Kelsea Pratt-Acosta
Phone: 949/271-6780
Fax No.: 949/271-6794
E-mail: CAsales@dyntek.com

SUBMIT ORDERS TO:

Carahsoft Technology Corp.
c/o NWN Solutions Corporation
2969 Prospect Park Drive, Suite 225, Rancho Cordova, CA 95670

Contact: Team Meade
Phone: 916/637-2160
Fax No.: 916/596-4800
E-mail: TMeade@nwnit.com

SUBMIT ORDERS TO:

Carahsoft Technology Corp.
c/o Taborda Solutions, Inc.
9580 Oak Ave Pkwy, Suite 7-180, Folsom, CA 95630

Contact: Bear Williams
Phone: 916/717-8711
Fax No.: 916/200-0353
E-mail: bear.williams@tabordasolutions.com

For invoicing purposes, each State Accounting office must have a copy of the reseller's Payee Data Record (Std. 204) in order to process payment of the invoice. Agencies should forward a copy of the Std. 204 to their respective accounting office. Without the Std. 204, payment may be unnecessarily delayed.

AUTHORIZED RESELLERS ARE RESPONSIBLE FOR SENDING A COPY OF ALL PURCHASE ORDERS TO CARAHSOFT TECHNOLOGY CORP. FOR COOPERATIVE AGREEMENTS (NASPO VALUEPOINT) QUARTERLY REPORTING REQUIREMENTS.

When issuing an order to an authorized reseller listed on Cooperative Agreements, it is the agency's responsibility to ensure that the reseller holds a valid California Seller's Permit.

NOTE: Contractor shall be responsible for successful performance and compliance with all requirements in accordance with the terms and conditions under this Participating Addendum, even if work is performed by Servicing Subcontractors. All State policies, guidelines, and requirements shall apply to Authorized Resellers.

10. ORDERING AGENCY RESPONSIBILITIES

- A. State department and political subdivision/local government use of this Participating Addendum is optional.
- B. State departments and political subdivision/local governments must follow the ordering procedures outlined within the User Instructions guide, administered by the State Contract Administrator, to execute orders against this Participating Addendum.

11. INVOICING AND PAYMENT

- A. Payment terms for this Participating Addendum are net forty-five (45) days. Payment will be made in accordance with IT General Provisions Paragraph 30 (Required Payment Date).
- B. Invoices shall be sent to the address identified in the Ordering Agency's purchase order. The State Participating Addendum Number and Ordering Agency Purchase Order Number shall appear on each invoice for all purchases placed under this Participating Addendum.
- C. Contractor will accept the State of California credit card (CAL-Card) for payment of invoices.

12. USAGE REPORTING

- A. Contractor shall submit usage reports on a quarterly basis to the State Contract Administrator for all California entity purchases using the report template attached hereto as Attachment A. The report is due even when there is no activity.
- B. The report shall be an Excel spreadsheet transmitted electronically to the DGS mailbox at PDCooperatives@dgs.ca.gov.
- C. Any report that does not follow the required format or that excludes information will be deemed incomplete. Contractor will be responsible for submitting corrected reports within five business days of the date of written notification from the State.
- D. Tax must not be included in the report, even if it is on the purchase order.
- E. Reports are due for each quarter as follows:

Reporting Period	Due Date
JUL 1 to SEP 30	OCT 31
OCT 1 to DEC 31	JAN 31
JAN 1 to MAR 31	APR 30
APR 1 to JUN 30	JUL 31

- F. Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of this contract.

- G. Amendments for term extensions may be approved only if all due reports have been submitted to the State.

13. ADMINISTRATIVE FEE

- A. Contractor shall submit a check, payable to the State of California, remitted to the Cooperative Agreement Unit for the calculated amount equal to one percent (0.01) of the sales for the quarterly period.
- B. Contractor must include the Participating Addendum Number on the check. Those checks submitted to the State without the Participating Addendum Number will be returned to Contractor for additional identifying information.
- C. Administrative fee checks shall be submitted to:

State of California
Department of General Services, Procurement Division
Attention: Cooperative Agreement Program
707 3rd Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605

- D. The administrative fee shall not be included as an adjustment to Contractor's NASPO ValuePoint Master Agreement pricing.
- E. The administrative fee shall not be invoiced or charged to the ordering agency.
- F. Payment of the administrative fee is due irrespective of payment status on orders or service contracts from a purchasing entity.
- G. Administrative fee checks are due for each quarter as follows:

JUL 1 to SEP 30	OCT 31
OCT 1 to DEC 31	JAN 31
JAN 1 to MAR 31	APR 30
APR 1 to JUN 30	JUL 31

- H. Failure to meet administrative fee requirements and submit fees on a timely basis shall constitute grounds for suspension of this contract.

14. CONTRACT MANAGEMENT

- A. The primary Contractor Contract Manager for this Participating Addendum shall be as follows:

Contractor: Carahsoft Technology Corp.
Name: Jack Dixon
Phone: 703-230-7545
Fax: 703-871-8505
E-Mail: naspo@carahsoft.com
Address: 1860 Michael Faraday Drive, Ste 100
Reston, VA 20190

- B. The State Contract Administrator for this Participating Addendum shall be as follows:

Name: Yolanda Tutt
Phone: 916.375.4408
Fax: 916.375.4663
E-Mail: yolanda.tutt@dgs.ca.gov
Address: State of California
Department of General Services
Procurement Division
707 Third Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605

- C. Should the contact information for either party change, the party will provide written notice with updated information no later than ten business days after the change.

15. Termination of Agreement

The State may terminate this Participating Addendum at any time upon 30 days prior written notice to the Contractor. Upon termination or other expiration of this Participating Addendum, each party will assist the other party in orderly termination of the Participating Addendum and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party. This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

16. Amendment

No amendment or variation of the terms of this Participating Addendum shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Participating Addendum is binding on any of the parties.

17. Agreement

- A. This Participating Addendum and the Master Agreement together with its exhibits and/or amendments, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Agreement, together with its exhibits and/or amendments, shall not be added to or incorporated into this Participating Addendum or the Master Agreement and its exhibits and/or amendments, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Master Agreement and its exhibits and/or amendments shall prevail and govern in the case of any such inconsistent or additional terms.
- B. By signing below Contractor agrees to offer the same services as on the Utah NASPO ValuePoint Master Agreement Number AR2472, at prices equal to or lower than the prices on that contract.
- C. IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

STATE OF CALIFORNIA

CONTRACTOR

Department of General Services


Agency Name

 9/15/2017
Signature of Authorized Signer *Date Signed*

Carahsoft Technology Corp.

Contractor Name

 August 9, 2017
Signature of Authorized Signer *Date Signed*

 Ricardo Martinez, Acting Deputy Director
Printed Name and Title of Authorized Signer

707 Third Street
West Sacramento, CA 95605

Address

Ellen Lord, Contracts Manager

Printed Name and Title of Authorized Signer

1860 Michael Faraday Drive, Suite 100
Reston, VA 20190

Address

