



### CONTRACT AMENDMENT #5

This amendment by and between the Contractor and State Entity defined below shall be effective as of the date this Amendment is fully executed.

STATE OF GEORGIA CONTRACT	
<b>State Entity's Name:</b>	Department of Administrative Services
<b>Contractor's Full Legal Name:</b>	<b>Carahsoft Technology Corporation</b>
<b>Contract No.:</b>	99999-SPD-T20190814-0001
<b>Solicitation Title/Event Name:</b>	<b>Cloud Solutions and Services</b>
<b>Contract Award Date:</b>	<b>10/8/2019</b>
<b>Current Contract Term:</b>	<b>10/8/2019-9/15/-2026</b>

This amendment hereinafter referred to as "**Amendment #5**" is made and entered into by and between the Georgia Department of Administrative Services, hereinafter referred to as "DOAS" or "Participating State/Entity" and Carahsoft Technology Corporation, hereinafter referred to as the "**Contractor**".

WHEREAS, the Department and Contractor entered into a Participating Addendum pursuant to NASO ValuePoint Cloud Solutions 2016-2026 Master Agreement No: AR2472 (State Contract Number: 99999-SPD-T20190814-0001), hereinafter referred to as the "**Participating Addendum or PA**", for Cloud Solutions; and,

WHEREAS, the PA needs to be revised to further address the terms and conditions, duties, obligations, and procedures relating to the provision of professional/technical services by Contractor and its

NOW THEREFORE, the parties hereto mutually agree to amend the Contract as follows, effective upon execution of signatures:

- 1) Paragraph 5 entitled "Participation" is deleted and replaced with the following:

This Participating Addendum (and the corresponding NASPO ValuePoint Master Agreement) may be used by all state agencies, institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in the State of Georgia. Pursuant to O.C.G.A. § 50-5-57, DOAS hereby certifies the Contractor as a source of supply to Purchasing Entities for the goods and services available to Purchasing Entities pursuant to this Participating Addendum. Orders shall be placed individually and from time to time by Purchasing Entities. The execution of this Purchasing Addendum only establishes Contractor as an authorized source of supply by DOAS and creates no financial obligation on the part of DOAS. Purchasing Entities are solely and individually financially responsible for their respective purchases. This Participating Addendum does not guarantee any minimum level of purchases. Issues of interpretation and eligibility for participation are solely within the authority of the Deputy Superintendent of State Purchasing.

Executive Branch state agencies, other than those excluded from the definition of "Agency" as provided under O.C.G.A. § 50-25-1 (b)(1), must follow the Georgia Technology Authority's ("GTA") PSG Exemption process and receive prior approval from GTA before making purchases under this Participating Addendum. Entities excluded from the definition of "Agency" include: the Georgia Department of Defense, the University System of Georgia, The Office of the Lieutenant Governor, the Office of the Secretary of State, the Georgia Department of Law, the Georgia Department of Education, the Office of Insurance and Safety Fire Commissioner, the Georgia Department of Agriculture, and the Georgia Department of Labor. Instructions for the agencies to obtain approval is provided in the User Guide for this contract.

With respect to any "Educational Discount Price", offered by Contractor pursuant to this Participating Addendum, the parties agree that the following Purchasing Entities shall be eligible to receive any Educational Discount Price: Board of Regents of the University System of Georgia and all of its colleges and universities, the Technical College System of Georgia and all of its technical schools, the State Board of Education, the Georgia Department of Education, the Georgia Academy for the Blind, the Georgia School for the Deaf, the Atlanta Area School for the Deaf, public K-12 schools, public boards of education, local educational agencies ("LEA"), "local school systems" and "local units of administration as those terms are defined by O.C.G.A. § 20-2-242, and any other Purchasing Entity identified by the parties as an educational entity.

The laws of the State of Georgia shall govern this Participating Addendum. Nothing under this Participating Addendum or the Master Agreement shall be deemed or construed as a waiver of the State's right of sovereign immunity. The Participating State/Entity and Purchasing Entities are agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with Georgia law.

Purchasing Entities located in the State of Georgia may not sign their own Participating Addenda unless approved by the Deputy Superintendent of State Purchasing.

- 2) Paragraphs (i) entitled "Statement of Need" and (ii) entitled "Proposal" of Paragraph 12 of the PA entitled "Purchasing Process" are deleted and replaced with the following:

- (i) Executive Branch state agencies, other than those excluded from the definition of “Agency” as provided under O.C.G.A. § 50-25-1 (b)(1), must follow the Georgia Technology Authority’s (“GTA”) PSG Exemption process and receive prior approval from GTA before making purchases under this Participating Addendum. Entities excluded from the definition of “Agency” include: the Georgia Department of Defense, the University System of Georgia, The Office of the Lieutenant Governor, the Office of the Secretary of State, the Georgia Department of Law, the Georgia Department of Education, the Office of Insurance and Safety Fire Commissioner, the Georgia Department of Agriculture, and the Georgia Department of Labor. Instructions for the agencies to obtain approval is provided in the User Guide for this contract. Contractor must verify GTA’s approval prior to sale.

(ii) Statement of Need

A Purchasing Entity purchasing Cloud Solutions and/or Professional/Technical Services through this Participating Addendum shall create a Statement of Need each time the Purchasing Entity desires to purchase Cloud Solutions and/or Professional/Technical Services. The Purchasing Entity shall issue a detailed Statement of Need to the Contractor(s) who offer the applicable Cloud Solution(s) and/or Professional/Technical Services. At a minimum, the format of the Statement of Need is left to the discretion of the Purchasing Entity or Participating Entity, but forms submitted by entities of the State of Georgia to purchase Cloud Services must contain the following:

- a. Current State
- b. Desired Scope
- c. Definition of the problem and including the narrative details
- d. Minimum Qualifications
- e. Business Requirements
- f. Pertinent Laws/Policies
- g. Technical Requirements
- h. Functional Requirements

Statements of Need submitted by entities of the State of Georgia to purchase Professional/Technical Services must contain the following:

- a. Current State
- b. Desired Scope
- c. Definition of the problem and including the narrative details
- d. Minimum Qualifications
- e. Business Requirements
- f. Pertinent Laws/Policies
- g. Technical Requirements
- h. Functional Requirements

DOAS reserves the right to require a specific format, information, and pre-approvals on the Statement of Need Forms.

Upon request, Contractor will assist Purchasing Entities in obtaining cloud service

provider contact information and any applicable license agreements, maintenance agreement, or any other documents pertinent to the products and/or services in this Participating Addendum wherever such information and documents have not been made available within the Master Agreement. Contractor shall ensure that such agreements and documents contain static terms and that weblinks are not included in the terms of such agreements and documents.

Although certain cloud service provider license agreements, maintenance agreements, and other documents have been included in the Master Agreement, DOAS intends to further negotiate Infrastructure as a Service (“IaaS”) and Platform as a Service (“PaaS”) agreements. Accordingly, DOAS must approve any applicable IaaS and PaaS license agreements, maintenance agreement, or any other documents pertinent to IaaS and PaaS products and/or services in this Participating Addendum prior to order by a Purchasing Entity that is an entity of the State of Georgia. Contractor is responsible for ensuring that this step takes place and that only agreements approved by DOAS are utilized in conjunction with sales to such Purchasing Entities. All SaaS Terms of Use must be presented to Purchasing Entity at or prior to quote. Contractor is also responsible for ensuring that the Statement of Need process takes place for purchases Cloud Services and for P/T Services.

(iii) Proposal

- a. Contractor shall provide the Purchasing Entity with a Proposal addressing any requested CloudServices. The Proposal may include the following:
  - Price
  - Statement of Work which, at a minimum, addresses all requirements in the Statement of Need issued by the Purchasing Entity
  - Conditions, SLAs, Obligations
  - Additional Terms and Conditions
  - Timeframe
  - Exit Process and Cost
- b. Contractor shall provide the Purchasing entity with a Proposal addressing any requested Professional/Technical Services. The Proposal shall include the following:
  - Price
  - Statement of Work, which at a minimum, which at a minimum addresses all requirements in the Statement of Need issued by the Purchasing Entity
  - Conditions, SLA's, Obligations
  - Additional Terms and Conditions

3) Paragraph 13 of the PA is deleted and replaced with the following:

13. PROFESSIONAL/TECHNCIAL SERVICES (“P/T Services”) P/T Services shall be limited to services within scope of the Master Agreement, including but not limited to data migration, implementation, integration, administration, distribution, installation, configuration, customization,

deployment services, architectural design, support, and training services as further described in the Master Agreement, this PA, and any Statement of Work. Professional/Technical Services shall not include consulting services or any other stand-alone services unrelated to a direct purchase of products, including but not limited to general problem solving such as “fit gap” analysis.

- i. Contractor may provide P/T Services that are within the scope of services available through the Master Agreement through its Fulfillment Partners identified in the Master Agreement and its pricing documentation, including but not limited to Service Provider implementation partners. Fulfillment Partners, including but not limited to Service Provider implementation partners are also referred to as subcontractors herein.
- ii. Contractor shall ensure that all P/T Services and deliverables are provided in accordance with the specifications, requirements, pricing, terms and conditions of this PA (and the Master Agreement as incorporated in the PA), the Statement of Need, and the Statement of Work and any other documents incorporated therein.
- iii. Contractor shall ensure that P/T Services are provided on time, in a workmanlike manner, and consistent with the level of care and skill ordinarily exercised by other providers of similar services at the time such Services are provided.
- iv. Contractor shall be responsible for the performance of its Fulfillment Partners so that they meet or exceed all Service Levels, Deliver all Deliverables in a timely manner
  - a. so as to deliver all Deliverables;
  - b. so as to achieve each Milestone by the applicable Milestone Date;
  - c. in accordance with Best Industry Practice;
  - d. in accordance with all Applicable Laws;
  - e. in accordance with the Consents and the Required Consents;
  - f. in accordance with state policies and Purchasing Entity policies;
  - g. in accordance with any Instruction from Purchasing Entity;
  - h. in accordance with the manufacturer (or vendor) of the Software and/or Machines instructions and guidance and industry best practices to deliver, operate, maintain and secure such technology components; and
- v. Personnel:
  - a. Contractor shall ensure that all individuals providing P/E services are fully skilled, competent, adequately certified, with sufficient experience as is required to provide P/E Services in accordance with the PA, the Order Agreement, Statement of Need, and SOW issued hereunder.
  - b. A SOW may designate certain of subcontractor’s personnel as Key Personnel or Project Managers. Contractor and subcontractor’s obligations with respect to Key Personnel and Project Managers shall be described in the applicable SOW. Failure

- of Contractor or its subcontractor to perform in accordance with such obligations may be deemed a default of this PA or of the applicable SOW.
- c. Contractor shall ensure that all Key Personnel (or any changes thereto) are approved in advance by Purchasing Entity.
  - d. Contractor shall use all reasonable endeavors and shall ensure that subcontractor uses all reasonable endeavors to maintain continuity in respect of Key Personnel for the duration of a SOW.
  - e. Contractor shall immediately inform Purchasing Entity if there is reason to believe that any personnel providing services pursuant to this PA is, or is likely to become a threat to the safety or security of Purchasing Entity's employees, data, or property.
  - f. Contractor shall ensure that the Key Personnel devote substantially their whole time and effort to the performance of the services for which they are designated Key Personnel.
  - g. Contractor shall take reasonable steps to ensure that it and its subcontractors retain the services of the Key Personnel, and will change individual Key Personnel only if:
    - A. Requested to do so by Purchasing Entity;
    - B. Purchasing Entity consents to the change;
    - C. That individual Key Personnel becomes unavailable for a period of one (1) month in any period of three (3) months due to ill health;
    - D. That individual Key Personnel leaves employment of Contractor or its subcontractor;
    - E. In the ordinary course of business that individual Key Personnel applies for and is offered a transfer or promotion with the effect that he or she will no longer be involved in the provision of the services, provided that , the relevant individual will continue in his or her Key Personnel role on the same basis until the Contractor has found and the Purchasing Entity has agreed to a suitable replacement for the relevant individual and a reasonable handover has occurred between the outgoing and incoming employee;
    - F. That individual Key Personnel is dismissed for serious or gross misconduct.
  - h. If any of the Key Personnel become temporarily unavailable, Contractor shall, acting reasonably, take such steps as may be necessary to ensure the continuation of services.
- vi. Acceptance: Services and deliverables shall be deemed accepted when the Purchasing Entity determines that such services and deliverables meet the requirements set forth in the applicable order or SOW. Contractor shall be responsible for ensuring that any individual deliverable functions properly with any other related deliverable provided pursuant to the same SOW. Should a previously accepted deliverable require further modification in order to work properly with any other related deliverable, Contractor shall be responsible for all costs associated with such modification.
- vii. Testing: Testing shall be carried out as provided in the SOW. Where Contractor has satisfied all of the requirements for providing a particular milestone (including providing Purchasing Entity with all applicable deliverables as detailed in the SOW, it shall notify the Purchasing Entity in writing and within such period indicated in the SOW for testing, tests shall be carried out to establish whether the milestone has been achieved. Within ten (10) business days of the tests being completed (or as otherwise provided in the

SOW and/or applicable project plan) , the Purchasing Entity shall notify the Contractor in writing of its achievement of the milestone or nonachievement , including the reasons for such notification, identification of any defects in the relevant deliverables, details of the expected test results and failed test results, and any other reasonably available information that will assist Contractor to identify the reason for the failure. Contractor shall then address the Purchasing Entity's reasons for such notification.

- viii. Purchasing Entity shall commence acceptance testing within ten (10) business days, or within such other period as set forth in the applicable SOW, after receipt of the deliverable. Acceptance testing will be no longer than thirty (30) days, or such longer period as may be agreed in writing between Purchasing Entity and Contractor for each deliverable. Contractor agrees to provide to the Purchasing Entity such assistance and advice as the Purchasing Entity may reasonably require, at no additional cost, during such acceptance testing. Purchasing Entity shall provide to Contractor written notice of acceptance upon completion of installation and successful acceptance testing. Unless otherwise provided in the SOW, should Purchasing Entity fail to provide Contractor written notice of successful or unsuccessful acceptance testing within five (5) business days following the acceptance testing period, the deliverable shall be deemed accepted.
- a. Opportunity to Cure: Contractor shall correct any non-conformities identified hereunder and shall thereafter re-submit such previously non-conforming Service or deliverable for re-testing within seven (7) business days of the appropriate Procuring Entity's written notice of non-conformance, or as otherwise agreed between such Procuring Entity and Contractor. In the event that Contractor fails to deliver a service or deliverable which meets the requirements, the Purchasing Entity may, in its sole discretion: (i) reject the service or deliverable in its entirety and recover amounts previously paid hereunder for services or deliverables that are identified and specified and mutually agreed upon in the SOW as having interdependencies with the non-conforming service or deliverable; (ii) issue a "partial Acceptance" of the service or deliverable with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable service or deliverable while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of a service or a deliverable to meet, in all material respects, the specifications and performance standards after the second set of acceptance tests shall, at the discretion of the Purchasing Entity, constitute cause to terminate the SOW and may at the discretion of DOAS, constitute a default by the Contractor. Notwithstanding the foregoing, DOAS and the Purchasing Entity (individually) shall be entitled to pursue any other remedies that are available to it under this PA and at law or in equity.

If the Purchasing Entity rejects a deliverable in its entirety, the Purchasing Entity may seek to recover amounts previously paid to Contractor for such deliverable.

- b. Non-Achievement of Milestones: If Contractor fails to achieve the relevant milestone following any tests and such failure is due to a defect in a deliverable, Purchasing Entity shall have the option, in addition to any other remedies that may be available to it under the PA or otherwise, to:
1. Engage a Third Party to correct the outstanding defects, in which case Contractor shall reimburse the Purchasing Entity for the

difference between the amount that would have been payable to the Contractor for such deliverable and the amount paid to the relevant third party provided such amount is reasonable in the circumstances. Any amounts paid by Contractor to Purchasing Entity pursuant to this clause shall count towards Contractor's aggregate liability under the PA;

2. Reject any particular deliverable in which the defect(s) exist, and Contractor shall refund in full any monies paid by Purchasing Entity which are directly attributable as set out in the Statement of Work to such rejected deliverable(s) or where the Statement of Work does not set out the monies directly attributable to the relevant deliverable, the amount of the refund shall be as is equitable in the circumstances;
  3. If a deliverable is material to a group of deliverables being delivered and/or created as a whole, and the group of deliverables cannot be used for the express purpose or a material element of it for which they were intended as set out under the Statement of Work without the deliverable, reject the group of deliverables and Contractor shall refund in full any monies paid by Purchasing Entity which are directly attributable to a Statement of Work, or, where the Statement of Work does not set out the monies directly attributable to the relevant deliverable, the amount of the refund shall be as is equitable in the circumstances;
  4. Require Contractor to continue to cure the defects at its own cost as soon as possible; or
  5. Accept the deliverable as partially complete/delivered but with a reasonable adjustment to the charges in respect of that deliverable.
- ii. Notice of Delay: If Contractor becomes aware that it is likely to fail to achieve a milestone by the milestone due date or otherwise fail to perform the services or deliver a deliverable by any applicable time or date, Contractor shall notify the Purchasing Entity accordingly as soon as practicable and, in any event, within 24 hours of Contractor becoming aware. Contractor acknowledges and agrees that any notification under this clause shall not:
- a. Relieve Contractor from its obligations under the PA; or
  - b. Prevent Purchasing Entity from relying upon its or extinguish any of Purchasing Entity's rights and remedies under the PA for the failure or likely failure.
- iii. Contractor acknowledges and agrees that unless otherwise explicitly provided in the SOW, the issuance of an acceptance certificate or other form of formal acceptance by Purchasing Entity, shall be without prejudice to, and shall not amount to a waiver of any rights or remedies of Purchasing Entity under the PA or otherwise.
- 4) Paragraph 14 "OWNERSHIP IN INTELLECTUAL PROPERTY" is deleted and replaced with the following:
- i. Contractor shall ensure that the SOW clearly defines ownership of intellectual property. Unless otherwise provided in the SOW, all intellectual



property developed pursuant to the SOW shall be owned by the Purchasing Entity. If and to the extent that any pre-existing rights are embodied or reflected in the deliverables, Contractor and any of its subcontractors, including but not limited to fulfillment partners, hereby grants to Purchasing Entity an irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, modify, transmit, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such pre-existing rights and any derivative works thereof, and (ii) authorize others to do any or all of the foregoing. It is expressly understood that "perpetual" license rights shall commence upon delivery of the services and deliverables and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the PA.

- ii. Contractor represents and warrants that all the concepts, materials, goods and services produced, or provided to the State pursuant to the terms of this PA shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. The Contractor represents and warrants that the concepts, materials, goods and services and the Purchasing Entity's use of same and the exercise by the Purchasing Entity of the rights granted by the PA shall not infringe upon any other work, other than material provided by the Purchasing Entity to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods, services, and deliverables contemplated by the PA.
- iii. Contractor represents and warrants that it is the sole and exclusive owner, or has the right to use, all deliverables, measurement and benchmarking tools, templates, methodologies, questionnaires, proprietary research and copyrighted material and Contractor data used in the course of Contractor's role in performing Services.
- iv. 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 Purchasing Entity under this PA. Contractor fully indemnifies Purchasing Entities for any loss, damages or actions arising from a breach of this warranty without limitation.

4. Warranties:

- a. The warranty period for deliverables shall be Ninety (90) days from acceptance of the deliverable, or such period as may be agreed to in the applicable SOW.
- b. Contractor warrants that all Cloud Services and P/T Services are free from any and all defects in materials, workmanship, and design. Contractor warrants that all Cloud Services are free from any and all viruses, malware, and other harmful or malicious code. Contractor must scan all source code for vulnerabilities, including before and after any source code changes are made and again before

being placed into production, and must promptly remediate any and all vulnerabilities. Contractor must follow best practices for application code review and the most current version of the OWASP top 10.

- c. Contractor warrants that the hardware, software, solution or system provided under the PA shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors, shall insert any shutdown device following delivery of the hardware, software solution or system.
- d. The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to the PA are or will be fully satisfied by the Contractor so that the Purchasing Entity will not have any obligations with respect thereto.
- e. The Contractor represents and expressly warrants that all aspects of the services provided or used by it shall at a minimum conform to industry standards. This requirement shall be in addition to any express warranties, representations, and specifications included in the PA, which shall take precedence.
- f. Contractor warrants that all persons assigned to perform services under this PA are either lawful employees of Contractor or lawful employees of a subcontractor authorized by the Purchasing Entity. Contractor shall ensure that all persons assigned to perform services under this PA shall be qualified to perform such services. Personnel assigned by Contractor shall have all professional licenses required to perform the services.

5) Insurance:

Notwithstanding any limitation of liabilities in the Contract, the Contractor shall be liable for damages to the extent such damages are within the insurance limit. For purposes of clarification, the foregoing sentence shall in no way limit the Contractor's liability.

6) Indemnification: Paragraph 16 entitled "Indemnification" is deleted and replaced with the following:

- (i) The Master Agreement's Indemnification (Section 13, subpart a) provision controls. The Master Agreement's Limitation of Liability clause (Section 13, subpart c) is deleted and replaced with the following:

The limit of liability shall be as follows:

- a. Contractor's liability for any claim, loss or liability arising out of, or connected with the products or services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the products or services, or parts thereof forming the basis of the Purchasing Entity's claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) two million dollars (\$2,000,000) per purchase by a Purchasing Entity,

whichever is greater.

- b. . The Purchasing Entity may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Purchasing Entity unless Contractor at the time of the presentation of claim shall demonstrate to the Purchasing Entity's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
- c. Notwithstanding the above, neither the Contractor nor the Purchasing Entity shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Purchasing Entity, the Contractor, or by others. For purposes of clarity, damages relating to data breach are considered to be direct damages.
- d. The limitations of liability will not apply to claims for bodily injury or death as set forth in Section 13 and Section 30 under the Master Agreement, when made applicable under a specific Purchase Order. The limitations of liability shall not apply to damages due to data breach either by Contractor, including those related to any solution or services provided by Contractor.
- e. In addition to the obligations of the Master Agreement, Contractor shall defend Purchasing Entity against any and all claims by a third party arising from or in connection with any of the following:
- f. any default (actual or alleged) by Contractor under any Contractor held:  
(a) licenses for any third-party intellectual property rights; or (b) Third party service contracts in connection with the services (including any transferring contract); or
- g. any infringement (actual or alleged) of any third party's intellectual property rights; or
- h. any claims brought by Contractor personnel due to any act of Contractor and/or due to their employment by the Contractor;
- i. any failure by Contractor to comply with the security obligations set forth in the Contract; or
- j. Contractor's failure to pay applicable taxes that are the responsibility of the Contractor to pay in relation to the PA, including, payroll and other employment-related taxes; or
- k. any fines imposed on Purchasing Entity as a result of any non-compliance by Contractor;

- I. any death or bodily Injury of any person which arises out of any act and/or omission of Contractor for which Contractor is legally liable;
- m. any breach by Contractor or a subcontractor of the data protection obligations under Schedule 3 (Data Protection).

Notwithstanding any language to the contrary, no interpretation of this PA shall find that the State of Georgia or its agencies have agreed to indemnify Contractor or any third parties, Any term or conditions otherwise is null and void,

- (ii) **Coordination of Defense.** In connection with indemnification of a Purchasing Entity or DOAS, when a Georgia state entity is a named defendant in any lawsuit, the defense of the Georgia state entity shall be coordinated by the Attorney General of Georgia, The Attorney General of Georgia may, but has no obligation to, authorize Contractor to control the defense and any related settlement negotiations; provided, however, that, in such event, Contractor shall not agree to any settlement of claims against the State of Georgia without first obtaining a concurrence from the Attorney General of Georgia, If the Attorney General of Georgia does not authorize sole control of the defense and settlement negotiations for Contractor, Contractor shall be granted authorization to participate in any proceeding related to this section; provided however notwithstanding anything of the contrarily herein, Contractor shall continue to be obligated to indemnify the participating entity and, to the extent applicable, any and all purchasing entities, in accordance with and to the extent Contractor provides such indemnity under this Master Agreement

7) **Security.**

- a. Purchasing Entity requires that a criminal background investigation be made of any and all Contractor personnel utilized to provide services and deliverables pursuant to this PA. Contractor represents and warrants that Contractor shall refrain from assigning personnel to any task under this PA if such investigation reveals a disregard for the law or other background that indicates a security risk. The Contractor's employees, agents and subcontractors may be granted access to state computers, hardware, software, programs and/or information technology infrastructure or operations to the extent necessary to carry out the Contractor's responsibilities under the PA. Such access may be terminated at the sole discretion of the Purchasing Entity. The Contractor shall provide immediate notice to DOAS and Purchasing Entities of any employees, agents and/or subcontractors suspected of abusing or misusing such access privilege. The Contractor represents and warrants that Contractor shall provide notice to DOAS and Purchasing Entities of the changed status of any employee, agent or subcontractor granted access to state computers, hardware, software, programs and/or information technology infrastructure or operations, including, but not limited to, termination or change of the position or contract relationship.
- b. Unless otherwise provided in the SOW, all products, services, and deliverables provided hereunder must meet National Institute of Standards and Technology standards, NIST 800-53 for Health Information Portability and Accountability Act

(HIPAA) and personally identifiable information (PII) and conform to the State IT Policies, Standards, and Procedures, including but limited to those which may be found at <https://gta.georgia.gov/psg/> or a successor URL(s), as are pertinent to Contractor's operation and provision of services and deliverables. These policies also include the requirement that all remote data storage services are confined to domestic sites. Contractor further agrees to comply with all provisions of the relevant Purchasing Entity's then-current security procedures as are pertinent to Contractor's operation and the provision of services and which have been supplied to Contractor by Purchasing Entity. Contractor shall also comply with all applicable federal, state and local laws and regulations. For any individual Purchasing Entity, location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Contractor's employees or agents. Contractor and its subcontractors may, at any time, be required to execute and complete, for each individual Contractor or subcontractor employee or agent, additional forms which may include non-disclosure agreements to be signed by Contractor's employees or agents acknowledging that all Purchasing Entity information with which such employees and agents come into contact with is confidential and proprietary. Any unauthorized release of proprietary or personal information maintained or provided by the Purchasing Entity, by the Contractor or an employee, Subcontractor, Subcontractor employee, or agent of Contractor shall constitute a breach of Contractor's obligations under this PA.

- c. Contractor shall indemnify, defend, and hold the State of Georgia, DOAS, GTA, and Purchasing Entity, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses, including but not limited to legal costs suffered by, accrued against, or charged to or recoverable from the State of Georgia, DOAS, GTA, the Purchasing Entity, their officers, directors, agents or employees, on account of the failure of Contractor to perform its obligations pursuant .

- 8) Attachment A to this Amendment, entitled ""State of Georgia Data Security Terms and Conditions" is hereby incorporated into the PA as Attachment A "State of Georgia Data Security Terms and Conditions. Contractor shall ensure that all technology, goods, services, and deliverables comply with the requirements and shall ensure that all providers of technology goods, services, and deliverables including but not limited to its subcontractors are required to comply with Attachment A in provision of technology, goods, services, and deliverables to DOAS and Purchasing Entities pursuant to the PA.

Except as amended herein, all other terms and conditions of the PA, and subsequent amendments to the PA, if any, shall remain in full force and effect.

CONTRACTOR

GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES



By: \_\_\_\_\_

By: \_\_\_\_\_

Colby Bender  
Contracts Team Lead

Jim Barnaby  
Deputy Commissioner  
State Purchasing Division  
6/1/2022

Date: 05/26/2022

Date: \_\_\_\_\_

**Attachment A**  
**STATE OF GEORGIA**  
**DATA SECURITY TERMS AND CONDITIONS**

**A. DEFINITIONS AND GENERAL INFORMATION**

1. **Definitions.** The following words shall be defined as set forth below:

- (i) **"Authorized Persons"** means Contractor and its employees, subcontractors, or other agents to the extent necessary for such persons to access Sensitive State Data to enable Contractor to perform the services under the PA.
- (ii) **"Data Breach"** means a security-relevant event in which the security of a system or procedure used to create, obtain, transmit, maintain, use, process, store, or dispose of data is breached and Sensitive State Data is exposed to unauthorized access, use, disclosure, alteration, or theft.
- (iii) **"Personally Identifiable Information"** includes, but is not limited to, personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; Personal Information as defined in O.C.G.A. 10-1-911 and/or any successor laws of the State of Georgia; Personally Identifiable Information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g; Medical Information as defined in Georgia Code Section 32.1-127.1:05; Protected Health Information" as that term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; Nonpublic Personal Information as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 USC 6809; credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; other financial account numbers, access codes, driver's license numbers; and state- or federal-identification numbers such as passport, visa or state identity card numbers.
- (iv) **"Personal Data"** as defined in O.C.G.A. § 10-1-911 means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted:
  - a. Social security number;
  - b. Driver's license number or state identification card number;
  - c. Account number, credit card number, or debit card number, if circumstances exist wherein such a number could be used without additional identifying information, access codes, or passwords;

- d. Account passwords or personal identification numbers or other access codes; or
  - e. Any of the items contained in subparagraphs (A) through (D) of this paragraph when not in connection with the individual's first name or first initial and last name, if the information compromised would be sufficient to perform or attempt to perform identity theft against the person whose information was compromised.
- (v) **“Sensitive State Data”** means all Personally Identifiable Information and other information that is not intentionally made available by the State on public websites or publications, including but not limited to business, administrative, and financial data, intellectual property, and patient, student, and personnel data and records not required to be publicly disclosed under the Georgia Open Records Act , O.C.G.A. § 50-18-72 et seq., including any plan, blueprint, or material which if made public would compromise security. Sensitive State Data includes data created or in any way originating with or on behalf of the State, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the State, whether such data or output is stored on the State’s hardware, Contractor’s hardware or exists in any system owned, maintained or otherwise controlled by the State or Contractor.
- (vi) **“Security Incident”** means the potentially unauthorized access by non-Authorized Persons to Sensitive State Data Contractor believes could reasonably result in the use, disclosure, alteration, or theft of the Sensitive State Data within the possession or control of Contractor or any cyber-attack, data breach, or identified use of malware that may create a life-safety event, substantially impair the security of data or information systems, or affect critical systems, equipment, or service delivery. A security incident may or may not turn into a Data Breach.

## **B. Data Ownership and Protection**

1. **Data Ownership.** The State will own all right, title and interest, including all intellectual property rights, in its data that is related to the services provided under this Agreement. Contractor shall not access Sensitive State Data, except 1) in the course of data center operations, 2) in response to service or technical issues, 3) as required by Contractor to perform the services covered by this PA or 4) at the State’s request. Contractor has a limited, non-exclusive license to use Sensitive State Data solely for the purpose of performing its obligations under this PA.
2. **Data Protection.** Protection of personal privacy and data shall be an integral part of the business activities of Contractor and designed to ensure that there is no inappropriate or unauthorized access to or use of Sensitive State Data at any time. To this end, Contractor shall safeguard the confidentiality, integrity, and availability of Sensitive State Data and comply with the following conditions:

- (i) Contractor shall maintain appropriate administrative, physical, and technical security measures to safeguard against unauthorized access, use, disclosure, alteration, or theft of Sensitive State Data. Such security measures shall be in accordance with current NIST 800-53 standards commensurate with the FISMA data classification specified by the State. If no data classification is specified by the State, in accordance with the measures applicable to the FISMA moderate classification.
- (ii) Contractor shall use industry best practices and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services under this PA.
- (iii) Where the security objectives of confidentiality, authentication, non-repudiation, or data integrity are categorized FISMA compliance level moderate or higher, all electronic Sensitive State Data shall be encrypted at rest on portable devices controlled by Contractor and in transit across public networks with controlled access. Unless otherwise provided in the PA, Contractor is responsible for encryption of the Sensitive State Data.
- (iv) Unless otherwise provided in the PA Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of Sensitive State Data to that which is absolutely necessary to perform job duties.
- (v) Contractor shall not disclose Sensitive State Data to any third party without the prior written consent of the State except as otherwise provided by the PA or required by law. Contractor shall ensure that its employees and agents who will have potential access to Sensitive State Data have passed appropriate, industry standard background screening and possess the qualifications and training to comply with the terms of this PA. Contractor shall promote and maintain an awareness of the importance of securing Sensitive State Data among Contractor's employees and agents.

**3. Data Location.** Contractor shall provide its services to the State solely from location(s) or data centers in the U.S. and Contractor shall notify State of such locations. Storage of Sensitive State Data at rest shall be located solely in location(s) or data centers in the U.S. and Contractor shall notify State of such locations. Contractor shall not allow its personnel or Authorized Persons to store Sensitive State Data on portable devices, including personal computers, except for devices that are used and kept only at U.S. location(s) or data centers. Contractor shall permit its personnel and consultants to access Sensitive State Data remotely only as required to perform services under this PA.

**C. Security Incident and Data Breach Responsibilities.** Contractor shall inform the State of any Security Incident or Data Breach.



- 1. Incident Response.** Contractor may need to communicate with outside parties regarding a Security Incident or data Breach, which may include contacting law enforcement, fielding media inquiries, and seeking external expertise as mutually agreed upon, defined by law, or contained in the PA. Discussing security incidents with the State should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes as mutually agreed upon, defined by law, or contained in the PA. Any contacting of law enforcement on matters regarding State systems or data must be followed by a report to the Georgia Information Analysis and Sharing Center (G-ISAC) at (404) 561-8497.
- 2. Security Incident Reporting Requirements.** Contractor shall report a Security Incident to the appropriate State identified contact within two hours of discovery.
- 3. Breach Reporting Requirements.** Upon becoming aware of a Data Breach or Security Incident, Contractor shall
  - (i) Promptly notify the State identified contact within two hours of discovery or sooner, unless shorter time is required by the PA or applicable law;
  - (ii) Fully investigate the incident and cooperate fully with the State's investigation of and response to the incident. Except as otherwise required by law, Contractor shall not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the State;
  - (iii) promptly implement necessary remedial measures reasonably determined by the State; and
  - (iv) document responsible actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary

#### **D. Liability.**

- 1.** If Contractor will under this PA create, obtain, transmit, use, maintain, process, or dispose of the subset of Sensitive State Data known as Personally Identifiable Information, the following provisions apply: In addition to any other remedies available to the State under law or equity, Contractor shall reimburse the State in full for all costs incurred by the State in investigation and remediation of any Data Breach or Security Incident caused by Contractor, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; a website or toll-free number and call center for affected individuals required by law, providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines,

and other fees imposed by regulatory agencies or contracting partners as a result of the Data Breach or Security Incident.

2. If Contractor will NOT under this PA create, obtain, transmit, use, maintain, process, or dispose of the subset of Sensitive State Data known as Personally Identifiable Information, the following provisions apply: In addition to any other remedies available to the State under law or equity, Contractor will reimburse the State in full for all costs reasonably incurred by the State in investigation and remediation of any Data Breach or Security Incident caused by Contractor.

## **E. Security**

1. **Data Center Audit.** If applicable in the performance of the services covered by this PA, Contractor shall ensure an independent audit or provide ISO 27001 certification of its data centers at least annually at its expense and provide a copy of the audit report upon request. A Service Organization Control (SOC) 2 audit report or approved equivalent (the ISO 27001 certification) sets the minimum level of a third-party audit.
2. **Security Processes.** Contractor shall disclose its non-proprietary security processes and technical limitations to the State such that adequate protection and flexibility can be attained between the State and Contractor.
3. **Encryption of Data at Rest.** For data categorized as moderate or high in Federal Information Processing Standard 199, Contractor shall ensure confidentiality and integrity of information at rest consistent with security control SC-28, Protection of Information at Rest, in NIST Special Publication 800-53

## **F. Response to Legal Orders, Demands, or Requests for Data**

1. Except as otherwise expressly prohibited by law, Contractor shall:
  - (i) immediately notify the State of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking Sensitive State Data;
  - (ii) consult with the State regarding its response;
  - (iii) cooperate with the State's reasonable requests in connection with efforts by the State to intervene and quash or modify the legal order, demand or request; and
  - (iv) upon the State's request, provide the State with a copy of its response.
2. If the State receives a subpoena, warrant, or other legal order, demand (including request pursuant to the Georgia Open Records Act) or request seeking Sensitive State Data maintained by Contractor, the State shall promptly provide a copy to Contractor. Contractor shall promptly supply the State with copies of data required for the State to respond and shall cooperate with the State's reasonable requests in connection with its response.

## **G. Termination Obligations.**

Upon termination or expiration of the PA, Contractor shall implement In the State's sole discretion, a secure, orderly (1) destruction of, or (2) return of Sensitive State Data in the format and at a time specified by State. Transfer to State or a third party designated by State shall occur without significant interruption of service and, to the extent technologically feasible, State shall have access to Sensitive State Data during the transfer. Following such transfer, Contractor shall securely destroy Sensitive State Data in its possession or control. Contractor shall not destroy any Sensitive State Data that has not been returned to State in the event of ongoing contract or other disputes between the parties or for so long as amounts remain payable by State.

Destroyed Sensitive State Data shall be permanently deleted and shall not be recoverable according to National Institute of Standards and Technology (NIST) approved methods. Certificates of destruction shall be provided to the State. Contractor may retain a copy of Sensitive State Data if necessary to comply with law or its applicable professional standards.

## **H. Compliance**

1. Contractor shall comply with all applicable laws and industry standards in performing services under this PA. Any Contractor personnel visiting the State's facilities will comply with all applicable State policies regarding access to, use of, and conduct within such facilities. The State shall provide copies of such policies to Contractor upon request.
2. Contractor warrants that the service it will provide to the State is fully compliant with relevant laws, regulations, and guidance that may be applicable to the service, such as: the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA), Federal Export Administration Regulations, and Defense Federal Acquisitions Regulations.
3. If the Payment Card Industry Data Security Standards (PCI-DSS) are applicable to the service provided to the State, Contractor shall, upon written request, furnish proof of compliance with PCI-DSS within 10 business days of the Request.