



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
525 W. Allegan, Lansing MI 48913
P.O. Box 30026, Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **071B6600108**

between

THE STATE OF MICHIGAN

and

CONTRACTOR	Carahsoft Technology Corp.
	1860 Michael Faraday Drive, STE 100
	Reston, VA 20190
	Bethany Blackwell
	703-130-7435
	Bethany.blackwell@carahsoft.com
9693	

STATE	Program Manager	Jodi Simon	Statewide
		517-241-9277	
	simonj@michigan.gov		
	Contract Administrator	David Hatch	DTMB
517-284-7044			
hatchd@michigan.gov			

CONTRACT SUMMARY			
DESCRIPTION: Salesforce.com & AppExchange Partner Subscription Licensing and Services Enterprise Contract			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
July 22, 2016	July 21, 2016	1,3 or 5	July 21, 2026
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45 Days		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$30,000,000.00

FOR THE CONTRACTOR:

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature
William Pemble, Director IT Division

Name & Title

Agency
DTMB Procurement



STATE OF MICHIGAN

CONTRACT TERMS

Salesforce Cloud Services

This Salesforce Cloud Services Contract (this “**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Carahsoft Technology Corp (“**Contractor**”), a Maryland Corporation. This Contract is effective on July 22, 2016 (“**Effective Date**”), and unless earlier terminated, will expire on July 21, 2026 (the “**Term**”).

This Contract may be renewed for up to 1, 3, and 5 year renewal additional year period(s). Renewal must be by written notice from the State and will automatically extend the Term of this Contract.

1. Definitions.

“**Action**” has the meaning set forth in **Section 15.1**.

“**AppExchange Partner**” means Service Provider’s partners that market and sell applications for deployment to Service Provider’s PaaS offering.

“**Authorized Users**” means all Persons authorized by the State to access and use the Services through the State’s account under this Contract, subject to the maximum number of users specified in the applicable Contractor Order Form.

“**Business Day**” means a day other than a Saturday, Sunday or State Holiday.

“**Change Notice**” has the meaning set forth in **Section 21.10**.

“**Code**” has the meaning set forth in **Section 20**.

“**Confidential Information**” has the meaning set forth in **Section 12.1**.

“**Contract**” has the meaning set forth in the preamble.

“**Contract Administrator**” is the individual appointed by each party to (a) administer the terms of this Contract, and (B) approve and execute any Change Notices under this Contract. Each party’s Contract Administrator will be identified in the cover page to this Contract.

“**Contractor**” has the meaning set forth in the preamble.

“**Contractor Order Form**” means the quote that Contractor provides to the State that outlines Service Provider’s subscription licenses or AppExchange licenses that will be purchased including any period of performance and associated pricing.



“**Contractor Service Manager**” has the meaning set forth in **Section 2.4(a)**.

“**Documentation**” means all generally available documentation relating to the Services, including all user manuals, operating manuals and other instructions, specifications, documents and materials, in any form or media, that describe any component, feature, requirement or other aspect of the Services, including any functionality, testing, operation or use thereof.

“**DR Plan**” has the meaning set forth in **Section 14.3**.

“**Effective Date**” has the meaning set forth in the preamble.

“**Fees**” has the meaning set forth in **Section 8.1**.

“**Force Majeure Event**” has the meaning set forth in **Section 19.1**.

“**HIPAA**” has the meaning set forth in **Section 9.1**.

“**Intellectual Property Rights**” means any and all rights comprising or relating to: (a) patents, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (c) authorship rights, copyrights and copyrightable works (including computer programs) and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

“**Key Personnel**” means any Contractor personnel identified as key personnel in this Contract.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“**Loss**” means all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers. “**Losses**” has a correlative meaning.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

“**Personal Health Information (PHI)**” has the meaning set forth in **Section 9.1**.

“**Personally Identifiable Information (PII)**” has the meaning set forth in **Section 9.1**.

“**Pricing Schedule**” is attached as **Schedule C** to this Contract, and sets forth the fixed, base-level pricing for the Services. The parties may negotiate larger discounts based on the volume of the purchase.



“**Process**” means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy. “**Processing**” and “**Processed**” have correlative meanings.

“**Representatives**” means a party’s employees, officers, directors, consultants, legal advisors and.

“**RFP**” means the State’s request for proposal designed to solicit responses for Services under this Contract.

“**Service Level Agreement**” is attached as **Schedule A** to this Contract, and sets forth the service level agreement that Service provider offers with respect to the Services.

“**Service Provider**” means Salesforce.com, Inc.

“**Service Provider Security Contact**” has the meaning set forth in **Section 2.4(a)**.

“**Service Provider Systems**” has the meaning set forth in **Section 13.3**.

“**Services**” has the meaning set forth in **Section 2.1**.

“**State**” has the meaning set forth in the preamble.

“**State Data**” has the meaning set forth in **Section 9.1**.

“**State Modification**” has the meaning set forth in **Section 15.2(a)**.

“**State Project Manager**” has the meaning set forth in **Section 2.6**.

“**State Purchase Order**” means the purchase order issued by the State after the State has agreed to a corresponding Contractor Order Form.

“**State Systems**” means the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of the State or any of its designees.

“**Support Schedule**” is attached as **Schedule B** to this Contract, and sets forth all support services that Service Provider offers with respect to the Services. Service Provider offers different levels of support depending on the license type.

“**Term**” has the meaning set forth in the preamble.

“**Transition Period**” has the meaning set forth in **Section 7.3**.



“**Transition Responsibilities**” has the meaning set forth in **Section 7.3**.

“**User Data**” means any and all information reflecting the access or use of the Services by or on behalf of the State or any Authorized User, including any end user profile, visit, session, impression, click-through or click-stream data and any statistical or other analysis, information or data based on or derived from any of the foregoing.

2. **Services.**

2.1 “**Services**” are collectively referred to as the following:

(a) Service Provider’s hosting, management and operation of its subscription-based Software as a Service (SaaS) and Platform as a Service (PaaS) offerings and all associated products or services subscribed to as identified in a Contractor Order Form.

(b) App Exchange Partner’s licenses for software applications that will reside on Service Provider’s PaaS offering, and all associated products or services as identified in a Contractor Order Form.

2.2 Changes to Services. Any modifications or changes to the Services will be identified in a new Contractor Order Form. This includes the addition or upgrading of licenses types or the swap of license types (additional Fees may apply and will be outlined in the applicable Contractor Order Form).

2.3 Compliance with Laws. Contractor, Service Provider and App Exchange partners must comply with all applicable Laws as they concern this Contract, including by securing and maintaining all required and appropriate visas, work permits, business licenses and other documentation and clearances necessary for performance of the Services.

2.4 Contractor and Service Provider Personnel. Contractor will:

(a) subject to the prior written approval of the State, appoint: (i) a Contractor employee to serve as a primary contact with respect to the Services who will have the authority to act on behalf of Contractor in matters pertaining to the receipt and processing of Contractor Order Forms (the “**Contractor Service Manager**”), it being understood that such person is considered Key Personnel under this Contract; and (ii) a Service Provider employee to respond to the State’s inquiries regarding the security of the Service Provider Systems who has sufficient knowledge of the security of the Service Provider Systems and the authority to act on behalf of Service Provider in matters pertaining thereto (“**Service Provider Security Contact**”)

(b) maintain the same Contractor Service Manager throughout the Term and such additional period, if any, as Contractor is required to perform the Services, except for changes in such personnel due to: (i) the State’s request pursuant to **Section 2.4(c)**; or (ii) the death, disability, resignation or termination of such personnel or other circumstances outside Contractor’s reasonable control; and

(c) upon the reasonable written request of the State, promptly replace any Key Personnel of Contractor.



2.5 Management and Payment of Contractor and Service Provider Personnel.

(a) Contractor is solely responsible for the payment of Contractor personnel, including all fees, expenses and compensation to, by or on behalf of any Contractor personnel and, if applicable, the withholding of income taxes and payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

(b) Contractor will ensure that no Person who has been convicted of a felony or any misdemeanor involving, in any way, theft, fraud, or bribery provides any Services or has access to any State Data, State Systems or State facilities. On a case-by-case basis, the State may request that Contractor initiate a background check on any Contractor personnel or Service Provider personnel before they may have access to State Data, State Systems or State facilities. Any request for a background check shall be initiated by the State and must be reasonably related to the type of work requested. The scope of the background check is at the discretion of the State and the results shall be used solely to determine the eligibility of Contractor personnel or Service Provider personnel to work with State Data, State Systems or in State facilities. If provided to the State, results of background checks will be promptly returned to Contractor, and will be treated as Confidential Information. All investigations will include a Michigan State Police Background check (ICHAT) and may include a National Crime Information Center (NCIC) Finger Print check. Contractor will present attestation of satisfactory completion of such tests. Contractor is responsible for all costs and expenses associated with such background checks.

2.6 State Project Manager. The State will appoint and, in its reasonable discretion, replace, a State employee to serve as the primary contact with respect to the Services who will have the authority to act on behalf of the State in matters pertaining to the Services, including the submission and processing of Contractor Order Forms (the "**State Project Manager**").

3. **License Grant.**

3.1 Service Provider License Grant. Services are licensed on a subscription basis, as set forth on the applicable Contractor Order Form.

3.2 AppExchange Partner License Grant. License rights for AppExchange Partner applications will be set forth in a separate license agreement attached to the applicable Contractor Order Form.

4. **Service Preparation.**

4.1 Service Preparation. Promptly upon the parties' execution of a Contractor Order Form and issuance of a corresponding State Purchase Order, Contractor will take all steps necessary to make the Services procured thereunder ready and available for the State's use in accordance with the applicable Contractor Order Form and this Contract, including provisioning licenses to the Authorized Users.

5. **Service Level Agreement**

5.1 Service Levels Generally. Contractor and Service Provider will deliver the Services in accordance with the Service Level Agreement.



5.2 Availability Requirement. Contractor and Service Provider will make the Services available as set forth in the Service Level Agreement.

5.3 Service Availability Reports. The State may check availability of Service Provider's uptime availability at any point in its subscription service period at www.trust.salesforce.com.

5.4 Remedies for Service Availability Failures. Any credits or refunds for service level failures are set forth in the Service Level Agreement. Notwithstanding anything to the contrary in the Service Level Agreement, if Contractor and Service Provider fail to meet the service levels set forth in the Service Level Agreement in any two (2) of four (4) consecutive months, then, in addition to all other remedies available to the State, the State may terminate the applicable Contractor Order Form for cause, on written notice to Contractor.

6. Support Services. Contractor will provide support for the Services in accordance with the Support Schedule and the applicable Contractor Order Form. The level of support purchased will vary depending on the license type purchased under the applicable Contractor Order Form.

7. Termination, Expiration and Transition.

7.1 Termination for Cause. In addition to any right of termination set forth elsewhere in this Contract:

(a) The State may terminate this Contract, or individual Contractor Purchase Order, for cause, if Contractor or Service Provider, as determined by the State: (i) endangers the value, integrity, or security of State Systems, State Data, or the State's facilities or personnel; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; or (iii) breaches any of its material duties or obligations under this Contract. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

(b) If the State terminates this Contract, or individual Contractor Purchase Order, under this **Section 7.1**, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of this Contract, the termination will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 7.2**.

(c) Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination.

7.2 Termination for Convenience. The State may terminate this Contract, or individual Contractor Purchase order, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance immediately, or (b) continue to perform in accordance with **Section 7.3**. If the State terminates this Contract, or an individual Contractor Purchase Order, for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available. Further, the State will surrender any prepaid amounts for Services.



7.3 Transition Responsibilities. Upon termination or expiration of this Contract, or individual Contractor Order Form, for any reason, Contractor and Service Provider must, for a period of time specified by the State (not to exceed 90 calendar days; the “**Transition Period**”), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract, or individual Contractor Order Form, to continue without interruption or adverse effect, and to facilitate the orderly transfer of the Services to the State or its designees. Such transition assistance includes: (a) continuing to perform the Services at the established Contractor Order Form rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services to the State or the State’s designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all State Data; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, the “**Transition Responsibilities**”). The State will pay for Transition Responsibilities at the established Contractor Order Form rates, pro-rated for the length of the Transition Period. The Term of this Contract is automatically extended through the end of the Transition Period. Service Provider shall not take any action to erase any State Data for a period of ninety (90) days after the effective date of termination or expiration. After such 90-day period, the Service Provider shall have no obligation to maintain or provide any State Data and shall thereafter, unless legally prohibited, delete all State Data in its systems or otherwise in its possession or under its control.

7.4 Survival. The rights, obligations and conditions set forth in this **Section 7.4** and **Section 1** (Definitions), **Section 7.3** (Effect of Termination; Data Retention), **Section 9** (State Data), **Section 12** (Confidentiality), **Section 13** (Security), **Section 15.1** (Indemnification), **Section 16** (Limitations of Liability), **Section 17** (Representations and Warranties), **Section 18** (Insurance) and **Section 20** (Effect of Contractor Bankruptcy) and **Section 21** (General Provisions), and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Contract, survives any such termination or expiration hereof.

8. Fees and Expenses.

8.1 Fees. Subject to the terms and conditions of this Contract and the applicable Contractor Order Form, including the provisions of this **Section 8**, the State shall pay the fees set forth in the applicable Contractor Order Form, which is capped at the base unit pricing set forth on the attached Pricing Schedule (“**Fees**”). Notwithstanding the foregoing, the parties may negotiate deeper discounts based on the volume of the purchase. Service Provider subscription licenses are invoiced annually, in advance. Any subscriptions that the State may add mid-term shall be prorated to co-term with the existing Contractor Order Form anniversary date.

8.2 Fees During Option Years. Contractor’s pricing is fixed during the initial period of the Term. Contractor may increase base pricing for any renewal period by providing written notice to the State at least sixty (60) calendar days prior to the commencement of such renewal period. An increase in pricing for any renewal period may not exceed four percent (4%) of the pricing effective during the immediately preceding twelve (12) month period. No increase in pricing is effective unless made in compliance with the provisions of this **Section 8.2**.



8.3 Administrative Fee and Reporting. Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

Department of Technology, Management and Budget
Cashiering
P.O. Box 30681
Lansing, MI 48909

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to DTMB-Procurement. The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

8.4 Responsibility for Costs. Contractor is responsible for all costs and expenses incurred in or incidental to the performance of Services, including all costs of any materials supplied by Contractor, all fees, fines, licenses, bonds, or taxes required of or imposed against Contractor, and all other of Contractor's costs of doing business.

8.5 Taxes. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Contract are for the State's exclusive use. Notwithstanding the foregoing, all Fees are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

8.6 Invoices. Contractor will invoice the State for all Fees in electronic format, via such delivery means and to such address as are specified by the State in writing from time to time. If more than one Contractor Order Form is in effect, Contractor shall provide separate invoices for each Contractor Order Form. Each separate invoice must: (a) clearly identify the Contractor Order Form and corresponding State Purchase Order to which it relates, in such manner as is required by the State; (b) list each Fee item and refund (if applicable) separately; and (c) include sufficient detail for each line item to enable the State to verify the calculation thereof.

8.7 Payment Terms. Invoices are due and payable by the State, in accordance with the State's standard payment procedures as specified in 1984 Public Act no. 279, MCL 17.51, *et seq.*, within forty-five (45) calendar days after receipt, provided the State determines that the invoice was properly rendered.

8.8 State Audits of Contractor.

(a) During the Term, and for four (4) years after, Contractor must maintain complete and accurate books and records regarding its business operations relevant to the calculation of Fees and any other information relevant to Contractor's compliance with this **Section 8**. During the Term, and for four (4) years after, upon the State's request, Contractor must make such books and records and appropriate personnel,



including all financial information, available during normal business hours for inspection and audit by the State or its authorized representative, provided that the State: (a) provides Contractor with at least fifteen (15) days prior notice of any audit, and (b) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations.

(b) The State may take copies and abstracts of materials audited. The State will pay the cost of such audits unless an audit reveals an overbilling or over-reporting of five percent (5%) or more, in which case Contractor shall reimburse the State for the reasonable cost of the audit. Contractor must immediately upon written notice from the State pay the State the amount of any overpayment revealed by the audit, together with any reimbursement payable pursuant to the preceding sentence.

8.9 Payment Does Not Imply Acceptance. The making of any payment or payments by the State, or the receipt thereof by Contractor, will in no way affect the responsibility of Contractor to perform the Services in accordance with this Contract, and will not imply the State's Acceptance of any Services or the waiver of any warranties or requirements of this Contract, including any right to Service Credits.

8.10 Support not to be Withheld or Delayed. Contractor may not withhold or delay any Services or fail to perform any other obligations hereunder by reason of: (a) the State's good faith withholding of any payment or amount in accordance with this **Section 8**; or (b) any dispute whatsoever between the parties, including any payment or other dispute arising under or concerning this Contract or any other agreement between the parties.

9. State Data.

9.1 Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) User Data; and (b) the State's data collected, used, processed, stored, or generated in connection with the Services, including but not limited to (i) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and (ii) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Services, which is defined under the Health Insurance Portability and Accountability Act ("**HIPAA**") and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This **Section 9.1** survives termination or expiration of this Contract.

9.2 Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract and applicable law; and (c) not use,



sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This **Section 9.2** survives termination or expiration of this Contract.

9.3 Extraction of State Data. The State shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Service Provider. This includes the ability for the State to import or export data to/from other Service Providers.

9.4 Discovery. Contractor or Service Provider shall immediately notify the State upon receipt of any requests which in any way might reasonably require access to State Data or the State's use of the Services. Contractor shall notify the State Project Manager by the fastest means available and also in writing. In no event shall Contractor provide such notification more than forty-eight (48) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, FOIA requests, and other legal requests related to the State without first notifying the State and obtaining the State's prior approval of Contractor's proposed responses, unless compelled by law. Contractor agrees to provide its completed responses to the State with adequate time for State review, revision and approval.

9.5 Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor or Service Provider that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor or Service Provider that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than forty-eight (48) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the



nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. Notwithstanding the foregoing or anything contrary contained elsewhere in this Contract, Contractor's aggregate liability for violation of this Section will not exceed one million dollars (\$1,000,000). This **Section 9.5** survives termination or expiration of this Contract.

9.6 HIPAA Compliance. The State, Contractor and Service Provider must comply with all obligations under HIPAA and its accompanying regulations, including but not limited to entering into a business associate agreement, if reasonably necessary to keep the State and Contractor in compliance with HIPAA.

9.7 ADA Compliance. The State is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for software applications. For AppExchange Partners, the State requires that software applications conform, where relevant, to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2. For Service Provider's PaaS Services, the most updated compliance and VPAT information can be found at http://www.salesforce.com/company/legal/508_accessibility.jsp.

10. PCI Compliance.

10.1 Undertaking by Contractor. Contractors that process, transmit, store or affect the security of credit/debit cardholder data, must adhere to the Payment Card Industry Data Security Standard (PCI DSS). The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

10.2 Cooperation to Notify of Breach. The Contractor must notify the State's Contract Administrator (within 48 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the card associations (e.g. Visa, MasterCard, and Discover) and state acquirer representative(s), or a PCI approved third party, to conduct a thorough security review. The Contractor must provide, at the request of the State, the results of such third party security review. The review must validate compliance with the PCI Data Security Standard for protecting cardholder data. At the State's sole discretion, the State may perform its own security review, either by itself or through a PCI approved third party.

10.3 Responsibilities for Costs Incurred. The Contractor is responsible for all costs incurred as the result of the breach. Costs may include, but are not limited to, fines/fees for non-compliance, card reissuance, credit monitoring, and any costs associated with a card association, PCI approved third party, or State initiated security review. Without limiting Contractor's obligations of indemnification as further described in this Contract, Contractor must indemnify, defend, and hold harmless the State for any and all claims, including



reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the breach.

10.4 Disposing of Cardholder Data. The Contractor must dispose of cardholder data when it is no longer needed in compliance with PCI DSS policy. The Contractor must continue to treat cardholder data as confidential upon contract termination.

10.5 Audit by Contractor. The Contractor must provide the State's Contract Administrator with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standard. The Contractor must notify the State's Contract Administrator of all failures to comply with the PCI Data Security Standard.]

11. CEPAS Electronic Receipt Processing Standard. All electronic commerce applications that allow for electronic receipt of credit or debit card and electronic check transactions must be processed via the State's Centralized Electronic Payment Authorization System (CEPAS). To minimize the risk to the State, full credit/debit card numbers, sensitive authentication data, and full bank account information must never be stored on state-owned IT resources.

12. Confidentiality.

12.1 Meaning of Confidential Information. The term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was or is: (a) in the possession of the State and subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). Notwithstanding the above, in all cases and for all matters, State Data is deemed to be Confidential Information.

12.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to the Contractor's subcontractor is permissible where: (a) the subcontractor is a Permitted Subcontractor; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Permitted Subcontractor's responsibilities; and (c) Contractor obligates the Permitted Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any



of the Contractor's Representatives may be required to execute a separate agreement to be bound by the provisions of this **Section 12.2**.

12.3 Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

12.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Contractor Order Form corresponding to the breach or threatened breach.

12.5 Surrender of Confidential Information upon Termination. Upon termination or expiration of this Contract or a Contractor Order Form, in whole or in part, each party must, within five (5) Business Days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. If Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and certify the same in writing within five (5) Business Days from the date of termination to the other party.

13. Security.

13.1 Protection of the State's Confidential Information. Protection of State Data shall be an integral part of the business activities of Service Provider to ensure there is no inappropriate or unauthorized use of State Data at any time. To this end, Service Provider shall safeguard the confidentiality, integrity and availability of State Data and comply with the following conditions:

(a) ensure that the Services and all State Data is securely hosted, supported, administered, and accessed in a data center that resides in the continental United States (only if the State entity has purchased the "Government Cloud Premier+ Success Plan");

(b) implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of State Data. Such security measures shall be in accordance with recognized industry practice (IS027001:2013 standards and controls) and not less stringent than the measures Service Provider applies to its own personal data and non-public data of similar kind;

(c) ensure that all transitions of data in motion between the public jurisdiction and the Services are SSL/TLS encrypted with a 2048-bit Public Key. The Services use International/Global Step Up SSL



certificates, with AES 256-bit encryption by default. The Service includes a feature to encrypt custom text fields (ECF) for data at rest. The fields can be masked appropriately for specific data types;

(d) ensure that at no time shall any data or processes - that either belong to or are intended for the use of a State or its officers, agents or employees - be copied, disclosed or retained by the Service Provider or any party related to the Service Provider for subsequent use in any transaction that does not include the State;

(e) maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in **Schedule C** (Data Security Requirements) and, to the extent such practices and standards are consistent with and not less protective than the foregoing requirements, are at least equal to applicable best industry practices and standards;

(f) provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or Processing of such information that ensure a level of security appropriate to the risks presented by the Processing of the State's Confidential Information and the nature of such Confidential Information, consistent with best industry practice and standards.

(g) take all reasonable measures to:

- (i) secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Service Provider Systems or the information found therein;
- (ii) prevent (A) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (B) the State's Confidential Information from being commingled with or contaminated by the data of other customers or their users of the Services; and (C) unauthorized access to any the State's Confidential Information;

(h) continuously monitor its systems for potential areas where security could be breached.

13.2 Unauthorized Access. Contractor may not access, and shall not permit any access to, State Systems, in whole or in part, whether through Contractor's Systems or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State Systems must be solely in accordance with this Contract, and in no case exceed the scope of the State's authorization pursuant to this **Section 13.2**. All State-authorized connectivity or attempted connectivity to State Systems shall be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in **Schedule C** as the same may be supplemented or amended by the State and provided to Contractor from time to time.

13.3 Service Provider Systems. Contractor and its Service Provider will be solely responsible for the information technology infrastructure, including all software, hardware and networks used by or for Service



Provider to access State Systems or otherwise in connection with the Services (“**Service Provider Systems**”) and shall prevent unauthorized access to State Systems through the Service Provider Systems.

13.4 Security Audits. During the Term, Contractor and Service Provider will:

(a) maintain complete and accurate records relating to its data protection practices and the security of any of the State’s Confidential Information, including any backup, disaster recovery or other policies, practices or procedures relating to the State’s Confidential Information and any other information relevant to its compliance with this **Section 13**;

(b) the State’s may request a third-party audit of the Service Provider’s security procedures, provided that the State: (i) gives Service Provider at least five Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Service Provider’s normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of this Contract. Such security audits may include penetration and security tests, of any and all Service Provider Systems and their housing facilities and operating environments; and

(c) if Service Provider engages a third party auditor to perform a Statement on Standards for Attestation Engagements No. 16 (SSAE 16) audit of Service Provider’s operations, information security program or disaster recovery/business continuity plan, Service provider will provide a copy of the audit report to the State within thirty (30) days after Service Provider’s receipt of such report. Any such audit reports will be recognized as Service Provider’s Confidential Information.

13.5 Nonexclusive Remedy for Security Breach. Any failure of the Services to meet the requirements of this Contract with respect to the security of any State Data or other Confidential Information of the State, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of this Contract for which the State, at its option, may terminate this Contract, or an individual Contractor Order Form, for cause upon written notice to Contractor with notice and 30 day cure period, and Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination.

14. Redundancy, Data Backup and Disaster Recovery. Contractor must, in accordance with the provisions of this **Section 14**, maintain or cause to be maintained disaster avoidance procedures designed to safeguard State Data and the State’s other Confidential Information, Contractor’s Processing capability and the availability of the Services, in each case throughout the Term and at all times in connection with its actual or required performance of the Services hereunder. The force majeure provisions of **Section 19.1** do not limit Contractor’s obligations under this **Section 14**.

14.1 Redundant Hosting and Connectivity. Contractor will simultaneously operate a mirror system at a location in the United States that is geographically remote from the primary system on which the Services are hosted. Except for its location, the mirror system must: (a) be identical in all respects to the primary system; (b) have hardware and software, network connectivity, power supplies, backup generators and other similar equipment and services that operate independently of the primary system; (c) have fully current backups of all the State Data stored on the primary system; and (d) have the ability to provide the Services in accordance



with this Contract and the Specifications during the performance of routine and remedial maintenance or any outage or failure of the primary system fails. Contractor will operate, monitor and maintain such mirror system so that it may be activated within five (5) hours of any failure of the Services to be Available.

14.2 Data Backup. Contractor will conduct, or cause to be conducted, daily back-ups of State Data and perform, or cause to be performed, other periodic back-ups of State Data on at least a weekly basis.

14.3 Disaster Recovery/Business Continuity. The Services perform real-time replication to disk at each data center, and near real-time data replication between the production data center and the disaster recovery center. Data is transmitted across encrypted links. Disaster recovery tests verify recovery time and integrity of customer data. At the State's request, Service Provider will provide access to its business continuity and disaster recovery plan ("**DR Plan**"). Service Provider will ensure that the State's Recovery Time Objective (RTO) is met under its DR Plan.

15. Indemnification.

15.1 General Indemnification. Contractor must defend, indemnify and hold harmless the State, and the State's agencies, departments, officers, directors, employees, agents, and contractors from and against all Losses arising out of or resulting from any third party claim, suit, action or proceeding (each, an "**Action**") that does or is alleged to arise out of or result from:

(a) the Contractor's breach of any representation, warranty, covenant or obligation of Contractor under this Contract (including, in the case of Contractor, any action or failure to act by any Contractor personnel or Service Provider personnel that, if taken or not taken by Contractor, would constitute such a breach by Contractor); or

(b) any negligence or more culpable act or omission (including recklessness or willful misconduct) in connection with the performance or nonperformance of any Services or other activity actually or required to be performed by or on behalf of, Contractor (including, in the case of Contractor, any Contractor personnel or Service Provider personnel) under this Contract, provided that, to the extent that any Action or Losses described in this **Section 15.1** arises out of, results from, or alleges a claim that any of the Services does or threatens to infringe, misappropriate or otherwise violate any Intellectual Property Rights or other rights of any third party, Contractor's obligations with respect to such Action and Losses, if any, shall be subject to the terms and conditions of **Section 15.2(a)** through **Section 15.2(b)** and **Section 15.3**.

15.2 Infringement Indemnification by Contractor. Contractor must indemnify, defend and hold the State, and the State's agencies, departments, officers, directors, employees, agents, and contractors harmless from and against all Losses arising out of or resulting from any Action that does or is alleged to arise out of or result from a claim that any of the Services, or the State's or any Authorized User's use thereof, actually does or threatens to infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of a third party, provided however, that Contractor shall have no liability or obligation for any Action or Loss to the extent that such Action or Loss arises out of or results from any:

(a) alteration or modification of the Services by or on behalf of the State or any Authorized User without Contractor's authorization (each, a "**State Modification**"), provided that no infringement,



misappropriation or other violation of third party rights would have occurred without such State Modification and provided further that any alteration or modification made by or for Contractor at the State's request shall not be excluded from Contractor's indemnification obligations hereunder unless (i) such alteration or modification has been made pursuant to the State's written specifications and (ii) the Services, as altered or modified in accordance with the State's specifications, would not have violated such third party rights but for the manner in which the alteration or modification was implemented by or for Contractor; and

(b) use of the Services by the State or an Authorized User pursuant to this Contract in combination with any software or service not provided, authorized or approved by or on behalf of Contractor, if (i) no violation of third party rights would have occurred without such combination and (ii) such software or service is not commercially available and not standard in Contractor's or the State's industry and there are no Specifications, Documentation, or other materials indicating Contractor's specification, authorization or approval of the use of the Services in combination therewith.

15.3 Mitigation.

(a) If Contractor receives or otherwise learns of any threat, warning or notice alleging that all, or any component or feature, of the Services violates a third party's rights, Contractor must promptly notify the State of such fact in writing, and take all commercially reasonable actions necessary to ensure the State's continued right to access and use such Services and otherwise protect the State from any Losses in connection therewith, including investigating such allegation and obtaining a credible opinion of counsel that it is without merit.

(b) Subject to the exclusions set forth in clauses (a) and (b) of **Section 15.2**, if any of the Services or any component or feature thereof is ruled to infringe or otherwise violate the rights of any third party by any court of competent jurisdiction, or if any use of any Services or any component thereof is threatened to be enjoined, or is likely to be enjoined or otherwise the subject of an infringement or misappropriation claim, Contractor must, at Contractor's sole cost and expense:

- (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching warranties,
- (ii) obtain a license for the States continued use of that Service in accordance with this Agreement, or
- (iii) terminate the States subscriptions for that Service upon 30 days' written notice and refund State any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim against the State arises from State Data, a Non-Service Provider application or the States use of the Services in violation of this Contract, the Documentation or applicable Contractor Order Forms.

15.4 Indemnification Procedure. The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these



obligations. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 14.3**, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

16. Limitation of Liability.

16.1 Neither party shall be liable to the other party for consequential, incidental, indirect, punitive or special damages, or loss of profits, data, business or goodwill, regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose, or otherwise, and even if advised of the likelihood of such damages. Excluding breaches of intellectual property rights and indemnification obligations, neither party's total liability to the other party shall exceed one times contract value of services for the twelve-month subscription period immediately preceding the event.

17. Contractor Representations and Warranties.

17.1 Authority and Bid Response. Contractor represents and warrants to the State that:

- (a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented under this Contract under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;
- (b) it has the full right, power, and authority to enter into this Contract, to grant the rights and licenses granted under this Contract, and to perform its contractual obligations;
- (c) the execution of this Contract by its Representative has been duly authorized by all necessary organizational action;
- (d) when executed and delivered by Contractor, this Contract will constitute the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms;
- (e) the prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder to the RFP; and no attempt was made by Contractor to induce any other Person to submit or not submit a proposal for the purpose of restricting competition;
- (f) all written information furnished to the State by or for Contractor in connection with this Contract, including Contractor's bid response to the RFP, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading; and



(g) Contractor is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.

17.2 Service Warranties. Contractor represents and warrants to the State that:

(a) solely for the benefit of the State, that Service Provider (i) will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) owns or otherwise has sufficient rights to the Services and the Service Provider Systems to grant the rights and licenses granted herein; and (iii) the Service and Service Provider Systems do not infringe any intellectual property rights of any third party. This warranty does not apply to any damage resulting from unauthorized use or negligence on the part of the State.

(b) the service as described in the Contract, the Service Level Agreement, and the applicable Contractor Order Form will not decrease in functionality over the course of the subscription term; (ii) that use of Services will not infringe on the intellectual property rights of any third party; (iii) that Service Provider will not share or disclose State Data in any manner to any third party without first obtaining the State's prior written consent; (iv) that Services will be free from viruses and other destructive code; and (v) that Service Provider will not suspend or disrupt Services for any reason without giving the State notice and a 30 day right to cure prior to suspension or disruption of service.

17.3 No Other Warranties. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND. SERVICE PROVIDER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE SERVICES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE. SERVICE PROVIDER DOES NOT WARRANT THAT THE SERVICE WILL OPERATE UNINTERRUPTED OR BE ERROR-FREE, OR THAT ALL DEFECTS WILL BE CORRECTED.

18. Insurance.

18.1 Required Coverage.

(a) **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better and a financial size of VII or better.



(b)

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<p><u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations</p> <p><u>Deductible Maximum:</u> \$50,000 Each Occurrence</p>	<p>Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.</p>
Umbrella or Excess Liability Insurance	
<p><u>Minimal Limits:</u> \$5,000,000 General Aggregate</p>	<p>Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds.</p>
Automobile Liability Insurance	
<p><u>Minimal Limits:</u> \$1,000,000 Per Occurrence</p>	<p>Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.</p>
Workers' Compensation Insurance	
<p><u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.</p>	<p>Waiver of subrogation, except where waiver is prohibited by law.</p>
Employers Liability Insurance	



<p><u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.</p>	
<p>Privacy and Security Liability (Cyber Liability) Insurance</p>	
<p><u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate</p>	<p>Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.</p>
<p>Crime (Fidelity) Insurance</p>	
<p><u>Minimal Limits:</u> \$1,000,000 Employee Theft Per Loss</p>	<p>Contractor must have their policy: (1) cover forgery and alteration, theft of money and securities, robbery and safe burglary, computer fraud, funds transfer fraud, money order and counterfeit currency, and (2) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as Loss Payees.</p>
<p>Professional Liability (Errors and Omissions) Insurance</p>	
<p><u>Minimal Limits:</u> \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate</p> <p><u>Deductible Maximum:</u> \$50,000 Per Loss</p>	



(c) If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

(d) If any of the required policies provide **claims-made** coverage, Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of contract work; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the contract of work; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

(e) Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the Contract number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

18.2 Non-waiver. This **Section 18** is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

19. Force Majeure.

19.1 Force Majeure Events. Subject to **Section 19.2**, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Contract, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a "**Force Majeure Event**"), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

19.2 State Performance; Termination. In the event of a Force Majeure Event affecting Contractor's performance under this Contract, the State may suspend its performance hereunder until such time as Contractor resumes performance. The State may terminate this Contract by written notice to Contractor if a Force Majeure Event affecting Contractor's performance hereunder continues substantially uninterrupted for a period of five (5) Business Days or more. Unless the State terminates this Contract pursuant to the preceding sentence, any date specifically designated for Contractor's performance under this Contract will automatically be extended for a period up to the duration of the Force Majeure Event.



19.3 Exclusions; Non-suspended Obligations. Notwithstanding the foregoing or any other provisions of this Contract:

(a) in no event will any of the following be considered a Force Majeure Event:

- (i) shutdowns, disruptions or malfunctions of the Service Provider Systems or any of Contractor's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to the Service Provider Systems; or
- (ii) the delay or failure of any Contractor personnel or Service Provider personnel to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event; and

(b) no Force Majeure Event modifies or excuses Contractor's obligations under the Service Level Agreement, **Section 9** (State Data), **Section 12** (Confidentiality), **Section 13** (Security), **Section 14** (Data Backup and Disaster Recovery) or **Section 15** (Indemnification).

20. Effect of Contractor Bankruptcy. All rights and licenses granted by Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this agreement, including the Services, is and shall be deemed to be "embodiments" of "intellectual property" for purposes of and as such terms are used in and interpreted under section 365(n) of the United States Bankruptcy Code (the "**Code**") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract. Without limiting the generality of the foregoing, if Contractor or its estate becomes subject to any bankruptcy or similar proceeding, subject to the State's rights of election, all rights and licenses granted to the State under this Contract will continue subject to the respective terms and conditions of this Contract, and will not be affected, even by Contractor's rejection of this Contract.

21. General Provisions.

21.1 Further Assurances. Each party will, upon the reasonable request of the other party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Contract.

21.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Contract is to be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party has authority to contract for or bind the other party in any manner whatsoever.

21.3 Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to this Contract or project to which it relates must not be made without the prior written approval of the State, and then only in accordance with the explicit written instructions of the State.



21.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder, other than routine communications having no legal effect, must be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):

If to Contractor:

Attention: Patrick Gallagher

Title: Vice President

E-mail: Patrick.gallagher@carahsoft.com

If to the State:

Attention: David Hatch

Title: IT Buyer

E-mail: Hatchd@michigan.gov

Address: Department of Technology, Management, and Budget

525 W. Allegan, Lansing, MI 48913 PO BOX 30026, Lansing MI 48909

Notices sent in accordance with this **Section 21.4** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

21.5 Extended Purchasing Program. This Contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon written agreement between the State and Contractor, this Contract may also be extended to: (a) State of Michigan employees, and (b) other states (including governmental subdivisions and authorized entities). If extended, Contractor must supply all Contract Activities at the established Contract prices and terms, and the State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions. Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

21.6 Headings. The headings in this Contract are for reference only and do not affect the interpretation of this Contract.



21.7 Entire Agreement. This Contract, including all Statements of Work and other Schedules and Exhibits, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms of this Contract and those of any Schedule, Exhibit or other document, the following order of precedence governs: (a) first, this Contract, excluding its Exhibits and Schedules; and (b) second, the Exhibits and Schedules to this Contract as of the Effective Date. NO TERMS ON CONTRACTORS WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE SERVICES, OR DOCUMENTATION HEREUNDER WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

21.8 Assignment. Contractor may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Contract, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the State's prior written consent. The State has the right to terminate this Contract in its entirety or any Services or Statements of Work hereunder, pursuant to **Section 7.2**, if Contractor delegates or otherwise transfers any of its obligations or performance hereunder, whether voluntarily, involuntarily, by operation of law or otherwise, and no such delegation or other transfer will relieve Contractor of any of such obligations or performance. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Contractor (regardless of whether Contractor is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Contract for which the State's prior written consent is required. Any purported assignment, delegation, or transfer in violation of this **Section 21.8** is void.

21.9 No Third-party Beneficiaries. This Contract is for the sole benefit of the parties and nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract.

21.10 Amendment and Modification; Waiver. This Contract may only be amended, modified or supplemented by an agreement in writing signed by each party's Contract Administrator, and will be enter as a change notice to the Contract ("**Change Notice**"). No waiver by any party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Contract, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Contract will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

21.11 Severability. If any term or provision of this Contract is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will



negotiate in good faith to modify this Contract so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

21.12 Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. Contractor waives any objections, such as lack of personal jurisdiction or forum non conveniens. Contractor must appoint agents in Michigan to receive service of process

21.13 Equitable Relief. Each party to this Contract acknowledges and agrees that (a) a breach or threatened breach by such party of any of its obligations under this Contract would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto is, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each party to this Contract agrees that such party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this **Section 21.13**.

21.14 Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

21.15 Unfair Labor Practice. Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A contractor of the State, in relation to the contract, must not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any contract if, after award of the contract, the contractor as an employer or the name of the subcontractor, manufacturer or supplier of the contractor appears in the register.

21.16 Schedules All Schedules that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:



Schedule A	Service Level Agreement
Schedule B	Support Schedule
Schedule C	Pricing

21.17 Counterparts. This Contract may be executed in counterparts, each of which will be deemed an original, but all of which together are deemed to be one and the same agreement and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Contract. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission (to which a signed copy is attached) is deemed to have the same legal effect as delivery of an original signed copy of this Contract.

[Signature Page Follows]



IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as of the Effective Date by their duly authorized Representatives.

Contractor

The State

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

SCHEDULE A

SERVICE LEVEL AGREEMENT

Service Level Agreement availability, remedies, reporting, claims, notices, and general terms are as follows:

- (a) Availability - Service Provider shall make the Service available 99% of the time, except as provided below. Availability will be calculated per calendar quarter, as follows:

$$\left[\left(\frac{\text{total} - \text{nonexcluded} - \text{excluded}}{\text{total} - \text{excluded}} \right) * 100 \right] \geq 99\%$$

(b) Where:

- total means the total number of minutes in the calendar quarter;
- nonexcluded means downtime that is not excluded; and

• excluded means:

- o Any planned downtime of which Service Provider gives 24 or more hours' notice in accordance with the Agreement or via a conspicuous on-screen message in the Service. Service Provider will use commercially reasonable efforts to schedule all planned downtime during the hours from 6:00 p.m. Friday to 3:00 a.m. Monday, U.S. Pacific Time.
- o Any period of unavailability lasting less than 15 minutes.
- o Any unavailability caused by circumstances beyond Service Provider's reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Service Provider employees), denial-of-service attacks, or third-party Internet service provider failures or delays.

For any partial calendar quarter during which Customer subscribes to the Service, availability will be calculated based on the entire calendar quarter, not just the portion for which Customer subscribed.

Remedies - Should Service Provider fail to make the Service available as set forth in Section 1 above in a calendar quarter, Customer may continue to use the Service but receive a refund for one full day of subscription fees for each active subscription on the affected Service instance in that quarter, for each full or partial hour of Service unavailability below the percentage specified in Section 1 above. In no case shall the total refund for any quarter exceed the lesser of \$100,000 or 33% of the subscription fees paid by Customer for such quarter. Should Service Provider fail to make the Service available as set forth in Section 1 above in two consecutive calendar quarters, Customer may, in lieu of receiving the above-described refund for the second quarter, terminate the Agreement by providing notice of termination in accordance with Section 3 below, in which case Service Provider will refund to Customer any prepaid fees for the remainder of the Service subscription term(s) following the date of termination. The remedies described in this paragraph shall be the sole remedies available to Customer for breach of this SLA.

- (c) Reporting, Claims and Notices-To claim a remedy under this SLA, Customer shall send Service Provider a notice, via email addressed to salesforce@carahsoft.com, containing the following details:
- Billing information, including company name, billing address, billing contact and billing contact



- phone number
- Downtime information with dates and time periods for each instance of downtime during the relevant period
- An explanation of the claim, including any relevant calculations.

Claims may be made on a calendar-quarter basis only and must be submitted within 10 business days after the end of the applicable quarter, except where a Service subscription ends on a date other than the last day of a calendar quarter, in which case any claim related to that subscription must be submitted within 10 business days after the subscription end date.

All claims will be verified against Service Provider's system records. Should Service Provider dispute any period of unavailability alleged by Customer, Service Provider will provide to Customer a record of Service availability for the applicable period. Service Provider will provide such records only in response to claims made by Customer in good faith.

- (d) General - Services designated in writing as beta, limited release, developer preview, development or test bed environments, or by descriptions of similar import are excluded from this SLA. Service Provider shall have no obligations under this SLA during any period in which Customer is in material breach of the Agreement, including any period in which Customer has failed to meet its payment obligations thereunder.



SCHEDULE B

SUPPORT SCHEDULE

PLEASE SEE THE SALESFORCE SUPPORT PLAN PAGE FOR MOST UP TO DATE INFORMATION ABOUT SALESFORCE SUPPORT:

[HTTP://WWW.SALESFORCE.COM/SERVICES-TRAINING/PREMIER-SUCCESS-PLANS.JSP](http://www.salesforce.com/services-training/premier-success-plans.jsp)



SCHEDULE C

PRICING

MINIMUM LICENSE DISCOUNT: 5%

ADDITIONAL DISCOUNTS AVAILABLE BASED ON VOLUME.

Pricing Addendum for State Contract #071B6600108

The following terms and conditions set forth in this Pricing Addendum shall govern the fees applicable to the Salesforce products that may be ordered under the Agreement.

The terms of the Addendum shall apply only to purchases made by the State pursuant to Enterprise License Agreement #071B6600108

1. Discount Pricing. The State may purchase Salesforce subscriptions at the discount pricing indicated in the “Discount Pricing” section below during the Contract Term; provided that each purchase placed against the contract hereunder has:
 - a. an Order Start Date prior to the expiration date of the Discount Pricing Term with a 12 month contract term; and
 - b. a reference to the terms and conditions of this Pricing Addendum.
2. Existing User Subscriptions. Under no circumstances shall any existing Salesforce subscriptions under a contract which was executed prior to the start date of the Pricing Addendum be subject to re-pricing as a result of the discount offering described herein.
3. Discount Pricing. Michigan may purchase the products at the discounts noted in Table 1. The tiered discounted pricing levels in Table 1 are based upon Michigan’s Total Annual Spend with SFDC, calculated each quarter. Total Annual Spend means the total annual fees of all eligible full-use (*i.e.*, not contractually restricted as to function and/or feature) Service subscriptions purchased by Michigan pursuant to this Pricing Addendum as calculated by the total fees paid by Michigan to Carahsoft, calculated and reported quarterly, based on a rolling 12 month lookback period. Volume discounts do not accumulate across contract terms. All pricing under this section shall not be in addition to any other discounting provided by Carahsoft. Any price decreases shall have no effect on previously purchased Salesforce subscriptions.

The pricing set forth in the table below is available to all Accounts. (An “Account” is defined as a unique instance of the Services (“Organization” or “Org”) specific to a single ordering entity. A single ordering entity may have multiple Accounts.) This pricing is applicable to the listed Services available on both the Government and commercial clouds.



Table 1

Products	Total Annual Spend: New + Renewals			
	\$0-2M	\$2M-4M	\$4M-6M	\$6M-10M
Lightning Sales Cloud, Lightning Service Cloud, Lightning CRM, Lightning Force 100, Lightning Force 100 (Administrator), Customer Community (Members or Logins), Customer Community Plus (Members or Logins) and Partner Community (Members or Logins) (collectively “CRM Base Subscription Products”)*	20%**	28%**	37%**	47%**
Add-ons products to CRM Base Subscription Products*	20%**	28%**	37%**	37%**

* For the avoidance of doubt, this only includes subscription products that are generally available (“GA”) on the effective date of the Pricing Addendum and shall not include any subscription product that Salesforce prices based on a percentage of an associated product.

** This discount is off of Salesforce’s then current list price in effect at the time the order is placed with Salesforce.

6. Renewals.

(a) This section is subject to Section 8.2 of the Terms.

(b) During the Discount Pricing Term and for products purchased pursuant to this Pricing Addendum, any pricing increase during a renewal order term, unless expressly noted, shall not exceed 4% of the pricing for the relevant Services in the immediately prior subscription term provided: (1) the renewal is for a 12 month term, (2) the same level of support associated with the previous order in the immediately preceding term is maintained and ordered, (3) the number of subscriptions by product ordered is equal to or greater than the number of subscriptions by product in the immediately preceding term and (4) the Total Annual Spend has not dropped to a lower tier prior to the renewal. Thereafter, any increase in subscription and support pricing will be in accordance with SFDC’s pricing and policies in effect at the time of the renewal or as otherwise agreed to by the parties.

(c) Under no circumstances shall any existing Salesforce subscriptions under contract order which was executed prior to the start date of the Discount Pricing Term (“Pre-Existing Contracts”), be subject to re-pricing as a result of the discount offering described herein either (i) during the term of such Contracts or (ii) upon expiration of the term of such Contracts. For the avoidance of doubt, subscriptions under Pre-Existing Contracts may be renewed at pricing either as set forth in the Pre-Existing Contracts or as negotiated in good faith between Carahsoft and the State but under no circumstance will the State have the right to renew such subscriptions pursuant to this Pricing Addendum absent Carahsoft’s agreement.



Table 2 – AppExchange Products

	Total AppExchange Credits			
Product	0-10,000k	10,001-50,000	50,001-100,000	100,001+
Credits*	0%	5%	10%	15%

*1 Credit=\$1

**The State may use AppExchange credits to purchase the AppExchange products and associated installation services offered by Carahsoft. For a listing of products please visit: <http://www.carahsoft.com/vendors/Salesforce#appexchange>

**Additional products may be available for purchase

