

# **THE STATE OF MONTANA**

## **SaaS AGREEMENT**

**BETWEEN**

**Carahsoft Technology Corp.**

**AND**

**The State of Montana**

**Agreement # JUS-RFP2016-0014X-B**

## SaaS AGREEMENT

This Software as a Service (SaaS) Agreement (“**Agreement**”), dated November 1, 2017 (“**Effective Date**”), by and between Carahsoft Technology Corp. in association with Salesforce Services or Salesforce, (“**Provider**”), whose address is 1860 Michael Faraday Drive, STE 100 Reston, VA 20190 and the State of Montana, Department of Corrections Crime Control Bureau (“**the State**”) whose address is 5 S. Last Chance Gulch, Helena, MT 59620. The State and Provider are referred to herein individually as a “**Party**” and collectively as the “**Parties.**” Should there be any conflicting terms between the Salesforce Service Terms, Salesforce Documentation and the SaaS agreement, the order of precedence will be as follows: Salesforce Service Terms, Salesforce Documentation, SaaS Agreement.

**The Parties agree as follows:**

### 1. DEFINITIONS

- 1.1 “**Acceptance Date**” means the first day of the indicated start date of the license period of performance in which the State is provisioned access to the subscription.
- 1.2 “**Affiliate**” means public procurement units, as defined in section 18-4-401, MCA, that have the option of cooperatively purchasing with the State of Montana
- 1.3 “**Application**” means the products identified on Exhibit A hereto, namely the subscription to the Salesforce services (platform, licenses, support of platform, data backup of the Salesforce services and operations of data centers) to which Provider shall provide allow the State to use.
- 1.4 “**Business Day**” means Monday through Friday less holidays observed by the State.
- 1.5 “**Confidential Information**” means, subject to Montana’s Open Records Law, all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential. With respect to the State, Confidential Information shall also include any and all information transmitted to or stored by Provider in connection with performance of its obligations under this Agreement, including, but not limited to, personally identifiable information (“PII”) of residents, employees or people included within the State’s Data, including name, address, phone number, e-mail address, date of birth, social security number, patient records, credit card information, driver’s license number, account numbers, PINs and/or passwords, and any other information that could reasonably identify a person or which is private or in

which a person reasonably has an expectation of privacy.

- 1.6 **“Deliverable”** means a requirement that must be completed or provided as part of a project.
- 1.7 **“Documentation”** means the user manuals and operator instructions related to the Application that are furnished by Provider to the State in any format, including paper and electronic, in conjunction with the Project. The information can be found at [https://help.salesforce.com/articleView?id=getstart\\_help.htm&language=en\\_US&type=0](https://help.salesforce.com/articleView?id=getstart_help.htm&language=en_US&type=0)
- 1.8 **“Intellectual Property Rights”** (IP Rights) means any and all rights that may exist under patent law, copyright law, publicity rights law, moral rights law, trade secret law, trademark law, unfair competition law or other similar protections, whether or not such rights are registered or perfected.
- 1.9 **“Marks”** means, with respect to a Party, all trademarks, trade names, service marks and domain names, and any visual representations thereof, including logos, designs, symbols, word marks, images, colors and color combinations, trade dress and characters, and any other publicity rights or indicia of ownership owned or used by such Party.
- 1.10 **“Object Code”** means the machine-language output of a compiler that is ready for execution on a particular computer.
- 1.11 **“Platform”** means the hardware or software used to host an application or service.
- 1.12 **“Schedule”** means the document representing the initial and subsequent licensing and pricing of the Application, Subscription term, number of allowed users, and access to the Application, Exhibit A.
- 1.13 **“Source Code”** means the human-readable code from which a computer can compile or assemble the Object Code of a computer program, together with a description of the procedure for generating the Object Code.
- 1.14 **“Subscription”** means an agreement to receive or be given access to electronic Services and Applications, over the Internet, provided by Salesforce.com.
- 1.15 **“Subscription Software”** or **“Software”** means the compiled, machine-readable, and/or executable version of the Software and related Documentation now in use by Provider and as may be improved or modified by Provider in the future.
- 1.16 **“Term”** means the period of the Agreement, Oct. 1, 2017 to Sept. 30, 2018.

- 1.17 **“The State”** means any purchaser of Applications from Provider.
- 1.18 **“The State’s Data”** means any data, including the selection, arrangement and organization of such data, entered, uploaded to the Application or otherwise supplied to Provider by the State and any Software and its related Documentation, from whatever source, supplied by the State to Provider in connection with this Agreement.
- 1.19 **“Virus”** means any undocumented malicious data, code, program, or other internal component (e.g., computer worm, computer time bomb or similar component), which could damage, destroy, alter or disrupt any computer program, firmware or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by the Application in any manner.

## 2. EFFECTIVE DATE, DURATION, AND RENEWAL

- 2.1 **Effective Date.** This Agreement takes effect on the Effective Date and remains in effect until termination or expiration of the current Schedule, Exhibit A.
- 2.2 **Renewal.** This Agreement may be renewed, upon mutual agreement between the parties and according to the terms and conditions of the existing Agreement and any mutually agreed upon amendments, in one-year intervals. This Agreement, including any renewals, may not exceed a total of ten years, at the State’s option.
- 2.3 **Expiration.** Provider must notify the State in writing ninety (90) days in advance of Agreement or Schedule expiration date.

## 3. APPLICATION SUBSCRIPTION

- 3.1 **Subscription Grant and Fee.** Provider hereby grants the State and its Affiliates a non-transferable, non-exclusive, worldwide Subscription to access and use the Application during the Term by any method. The Subscription fee for the rights granted in this Section 3 during the Term is set forth in Exhibit A, and applies regardless of access mode.
- 3.2 **Non-production Use.** The State may access and use the Application for non-production purposes such as disaster recovery and test environments if these features are purchased.

## 4. STATE’S RESPONSIBILITIES

- 4.1 **State’s Data.** Unless otherwise agreed, the State is responsible for creating and modifying the State’s Data, and keeping the State’s Data input into the Application current and accurate. The Application is pursuant to contract between the State and Carahsoft Technology Corp.

- 4.2 If a new version of the Application becomes available during the contract, contract renewal, or Acceptance Period, the new version is made available to the State at no additional cost.
- 4.3 With the exception of any applicable third party rights, the State exclusively owns all right, title and interest in the State's Data, including all Intellectual Property (IP) Rights. Nothing in this Agreement shall be construed as conveying any rights or interest in the State's Data to Provider.

## 5. PROVIDER RESPONSIBILITIES

### 5.1 Security.

5.1.1 Provider shall provide a secure environment for all of the State's Confidential Information and any hardware and Software (including servers, network and data components) to be provided or used by Provider as part of its performance under this Agreement. Provider represents that the security measures it takes in performance of its obligations under this Agreement are, and will at all times remain, at the highest of the following (collectively referred to as "**Security Best Practices**"): (i) Privacy & IT Security Best Practices (as defined by NIST 800-53, and the State Security Policies and procedures); (ii) the security requirements, obligations, specifications and event reporting procedures set forth in Exhibit B to this Agreement; and (iii) standard procedures for the provision of similar services and access to networks containing Confidential Information. Provider's failure to comply with Security Best Practices in fulfilling its obligations under this Agreement constitutes a breach of this Agreement. Additionally, Provider shall contractually require any partners, Salesforce.com subcontractors or agents with access to the State's Confidential Information to adhere to such Security Best Practices.

5.2 **Compliance with Laws.** The Provider shall, in performance of work under this Agreement, fully comply with all applicable federal, state, or local laws, rules, and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Provider subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Provider agrees that the hiring of persons to perform this Agreement will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this Agreement.

5.3 **Registration with the Secretary of State.** Any business intending to transact business in Montana must register with the Montana Secretary of State.

Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business. If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

- 5.4 Compliance with Workers' Compensation Act.** Provider shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Provider nor its employees are State employees. This insurance/exemption must be valid for the entire contract term. Upon expiration, a renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.
- 5.5 Disability Accommodations.** The State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to the State. Interested parties should provide as much advance notice as possible. The Provider must ensure as far as its responsibilities under this Agreement that there is no discrimination on the basis of disability in admission to, access to, or operation of the application and performance of the Statement of Work.
- 5.6 Technology Access for Blind or Visually Impaired.** The service provider shall, to the extent possible, comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Product Accessibility Status can be found at;  
[https://www.salesforce.com/company/legal/508\\_accessibility.jsp](https://www.salesforce.com/company/legal/508_accessibility.jsp).
- 5.7 Provider's Incorporation.** Provider represents and warrants to the State that (a) Provider is a corporation, duly organized, validly existing and in good standing under the laws of the State of Virginia and has all rights and power necessary to execute, deliver and perform its obligations under this Agreement, including the right to grant the Subscriptions granted and provided under this Agreement and in association with the contract between the State and Carahsoft Technology Corp., dated November 1, 2017; (b) the execution, delivery and performance of this Agreement by Provider (i) has been approved by any necessary company action

and (ii) is not contrary to, or in conflict with, the formation and governance documents of Provider, any agreement to which Provider is bound or any applicable law; (c) Provider's employees assigned to provide the Application have the knowledge, expertise and training necessary for Provider to effectively perform its duties and responsibilities hereunder; and (d) Provider is the sole owner of and has all the necessary IP Rights in the Application to grant the Subscription under this Agreement and that the Applications delivered or to be delivered under this Agreement do not infringe upon, any IP Right of any person or entity and that there are no such claims of infringement as of the date hereof.

- 5.8 Service Levels.** Carahsoft Technology Corp. warrants that Salesforce Services will use all commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which SFDC shall give at least 8 hours' notice via the Services and which SFDC shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Pacific time Friday to 3:00 a.m. Pacific time Monday), or (b) any unavailability caused by circumstances beyond SFDC'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 SFDC employees), or Internet service provider failures or delays.
- 5.9 Viruses.** Provider warrants that it has used commercially reasonable efforts to ensure against introduction of any Virus into the State's systems. Provider shall immediately advise the State, in writing, upon reasonable suspicion or actual knowledge that the Application may contain a Virus. If a Virus is found to have been introduced into the State's systems by the Application within 30 days after the Effective Date of this Agreement, Provider shall repair or replace the Application within 10 Business Days thereafter. If Provider cannot accomplish the foregoing within such time, then the State shall discontinue use of the Application, and Provider shall refund all money paid for the Application and maintenance under the applicable Exhibit. Provider shall use all reasonable commercial efforts, at no additional charge, to assist the State in reducing the effects of the Virus and, if the Virus causes a loss of operational efficiency or loss of data, to assist the State to the same extent to mitigate and restore such losses. In addition, Provider shall indemnify, defend and hold the State harmless from any claims, suits, damages, liabilities, losses, and attorney fees resulting from any such Viruses. The scope of liability described in Section 12 does not apply to this indemnification obligation.
- 5.10 Warranty and Indemnification.** The Provider, Carahsoft, warrants that it, as an authorized reseller of the Salesforce platform and cloud services, has legal recourse against Salesforce sufficient to require performance or compensation necessary for Carahsoft, the Provider, to perform under this Agreement if in the unlikely event Salesforce does not deliver the platform and cloud services that Carahsoft, the Provider, is legally obligated to deliver to the State of Montana. In the unlikely event of nonperformance by Salesforce, the Provider, Carahsoft will

take the necessary action with Salesforce to obtain timely performance or to obtain compensation to compensate the State for non-performance.

**5.11 Specific Requirements for Cyber/Data Information Security Insurance.** The Provider shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of \$2,000,000 per occurrence to cover the unauthorized acquisition of personal acquisition such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with §2-6-1501, MCA through §2-6-1503, MCA. If the Provider maintains higher limits than the minimums shown above, the State requires and shall be entitled to coverage for the higher limits maintained by the Provider. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third party liability settlements or judgements as may be caused by any act, omission, or negligence of the Provider's officers, agents, representatives, assigns or subcontractors. Note: If occurrence coverage is unavailable or cost-prohibitive, the State will accept 'claims made' coverage provided the following conditions are met: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work; 2) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work; and 3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Provider must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

## **6. RESTRICTIONS**

**6.1 General Use Restrictions.** The State shall not directly or indirectly copy or reproduce all or any part of the Application, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization, without Provider's prior written permission; provided, however, the State may reproduce and distribute any Application output generated from the State's Data.

## **7. ANNUAL SUBSCRIPTION REVIEW**

At the first and each subsequent year, the State shall order Subscriptions based on then current User count.



## 8. CONSIDERATION/PAYMENT

**8.1 Payment Schedule.** In consideration for the Software to be provided, the State shall pay Provider according to the following Schedule:

The total firm fixed price includes the cost of Software and all associated Subscription fees. The Provider will invoice the State for the subscription licenses annually in advance. The subscription license costs shall not exceed an increase of 7% in any given year. See the price schedule in Exhibit A.

**8.2 Payment Terms.** Unless otherwise noted in the solicitation document, the State has 30 days to pay from the date of the delivery of an invoice, as allowed by 17-8-242, MCA. Provider shall provide banking information at the time of Agreement execution in order to facilitate the State's electronic funds transfer payments.

**8.3 Cost Increase by Mutual Agreement.** After the Agreement's Initial Term and if the State agrees to a renewal, the Parties may agree upon a cost increase. The standard cost increase is 7% YOY.

**8.4 Purchasing Card.** The State of Montana has a Purchasing Card Program in place that gives agencies the ability to charge purchases made from this Agreements. The State of Montana prefers this method of payment.

**8.5 Reference to Agreement.** The Agreement number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the Agreement. If the number is not provided, the State is not obligated to pay the invoice.

**8.6 The State is Tax Exempt.** 81-03022402

## 9. PROPRIETARY RIGHTS

**9.1 Marks and Copyrights.** The State shall not permit any of its employees to remove, alter, deface, obscure or otherwise modify any of Provider's Marks that are displayed on the Application, whether such Provider Marks are displayed or otherwise rendered by Software or on printed media. In addition, the State shall not adopt or otherwise utilize any Marks containing confusingly similar names, designs or other indicia to Provider's Marks nor dilute Provider's Marks in any manner. Provider shall not use any of the State's Marks without the State's prior written permission, and shall not adopt or otherwise use any Marks containing confusingly similar names, designs or other indicia to the State's Marks nor dilute the State's Marks in any manner.

## 10. CONFIDENTIAL INFORMATION

**10.1 Ownership of Confidential Information.** The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and shall remain the sole property of the disclosing Party or such third party.

**10.2 Mutual Confidentiality Obligations.** Except as expressly provided otherwise in this Agreement, each Party agrees as follows: (i) to use the Confidential Information only for the purposes described herein; (ii) that such Party will not reproduce the Confidential Information and will hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party; (iii) that neither Party will create any Derivative Work from Confidential Information disclosed to such Party by the other Party; (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access; and (v) to return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement. Notwithstanding the foregoing, the State shall not be required to return Software if the Subscription is paid for and the Subscription terms have not been breached by the State.

**10.3 Confidentiality Exceptions.** The provisions of Sections 10.1 and 10.2 do not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient Party by persons not bound by confidentiality obligations; (iv) is already in the recipient's possession free of any confidentiality obligations with respect to the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Despite the foregoing, each Party may disclose Confidential Information to the limited extent required (a) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall, as early as reasonably possible under the circumstances, give written notice to the other Party and assist the other Party's reasonable effort to obtain a protective order; or (b) to assist the other Party, at its expense, in establishing its rights under this Agreement, including to make such court filings as it may be required to do.

## 11. INFRINGEMENT DEFENSE AND INDEMNITY PROTECTION

**11.1** This defense and indemnification obligation is conditioned on the following:

**11.1.1** The State shall promptly notify the Provider of the claim in writing; and

**11.1.2** The State will cooperate with the Provider in the defense and any related settlement negotiations, provided that:

**11.1.2.1** The Provider shall permit the State to participate in the defense and settlement of any such claim, at the State's own expense, with counsel of its choosing; and

**11.1.2.2** The Provider shall not enter into or agree to any settlement containing any admission of or stipulation to any guilt, fault, liability or wrongdoing on the part of the State, its elected and appointed officials, agents or employees without the State's prior written consent.

**11.2 Application Subject of Claim.** If any Application furnished is likely to or does become the subject of a claim of infringement of a third party's IP Rights, then the Provider may, at its option, procure for the State the right to continue using the alleged infringing Application, or modify the Application so that it becomes non-infringing or replace it with one that is at least functionally equivalent. If none of the above options can be accomplished, or if the use of such Application by the State shall be prevented by injunction, the State shall return the Application to the Provider on written request. The Provider shall then give the State a credit equal to the amount paid to the Provider for the creation of the Application, prorated to the remaining time on contract. The State is not precluded from seeking other remedies available to it hereunder, including Section 15, and in equity or law for any damages it may sustain due to its inability to continue using such Application. The Scope of Liability under Section 12 does not apply to Provider's obligations under this Section 11 and the State's right to seek additional remedies arising from Provider's infringement of a third party's IP Rights.

## **12. SCOPE OF LIABILITY**

Remedies available to the State for material breach of this Agreement by Provider include remedies available pursuant to this Agreement and remedies available at law or in equity. Remedies for Provider's injury to persons or tangible property or arising from any Provider indemnification under this Agreement include remedies available pursuant to this Agreement and remedies at law or in equity.

## **13. AGREEMENT TERMINATION FOR REASONS OTHER THAN DEFAULT**

**13.1 Noncompliance with Department of Administration Requirements.** The Department of Administration, pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Department's Plan for Information Technology, the State

Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract execution. In the event of such termination, the State will pay for Applications and Services delivered to date and any applicable termination fee specified in the statement of work or work order. Any modifications to this Agreement must be mutually agreed to by the parties and be put in writing.

**13.2 Reduction of Funding.** The State must by law terminate this Agreement if funds are not appropriated or otherwise made available to support the State's continuation of performance of this Agreement in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the State budgeting process to support continued performance of this Agreement (whether at an initial Agreement payment level or any Agreement increases to that initial level) in subsequent fiscal periods, the State shall terminate this Agreement as required by law. The State shall provide Provider the date the State's termination shall take effect. The State shall not be liable to Provider for any payment that would have been payable had the Agreement not been terminated under this provision. As stated above, the State shall be liable to Provider only for the payment, or prorated portion of that payment, owed to Provider up to the date the State's termination takes effect. This is Provider's sole remedy. The State shall not be liable to Provider for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

**13.3 Termination for Convenience.** The State, by providing at least thirty (30) days prior written notice to the Provider, may terminate for convenience this Agreement and any Schedules. If this Agreement is terminated for the convenience of the State, the State shall pay for all accepted work or Services performed and completed in conformance with this Agreement up to the date of termination. This is the Provider's sole remedy.

## 14. SURVIVAL

The rights and obligations of the Parties which, by their nature must survive termination or expiration of this Agreement to achieve its fundamental purposes, include without limitation, the provisions of the following sections: The State Representations and Warranties Section, Provider Representations and Warranties, Confidential Information, Disclaimer of Warranties, Indemnification, Scope of Liability, Access and Retention of Records, Miscellaneous and this paragraph (Survival).

## 15. EVENT OF BREACH – REMEDIES

**15.1 Actions in Event of Breach.** Upon the occurrence of any material breach of this Agreement, either party may:

**15.1.1** Give the breaching party a written notice specifying the event of breach and requiring it to be remedied within, in the absence of a greater specification of time, thirty (30) days from the date of the notice; and if the event of breach is not timely remedied, terminate this Agreement upon giving the breaching party notice of termination and pursue any of its remedies at law or in equity or both; or

**15.1.2** Treat this Agreement as materially breached and pursue any of its remedies at law or in equity, or both.

## **16. CONTINUATION**

In the event of a dispute the Provider shall continue Subscription Services uninterrupted for a period of at least thirty (30) days. Should the continuation overlap with a subscription renewal date, the state will provide payment for time during continuation.

## **17. WAIVER OF BREACH**

Any term or condition of this Agreement may be waived at any time by the Party entitled to the benefit of that term or condition. However, no such waiver is effective unless done in writing executed by or on behalf of the Party waiving such term or condition. No waiver by a Party of any Agreement term or condition, in one or more instances, may be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

## **18. GENERAL PROVISIONS**

### **18.1 Required Insurance**

**18.1.1 General Requirements.** Provider shall maintain for the duration of the Agreement, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Provider, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**18.1.2 Primary Insurance.** Provider's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of Provider's insurance and shall not contribute with it.

**18.1.3 Specific Requirements for Commercial General Liability.** Provider shall purchase and maintain occurrence coverage with combined single

limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Provider or its officers, agents, representatives, assigns or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of Provider, including the insured's general supervision of Provider; products, and completed operations, and the premises owned, leased, occupied, or used.

**18.1.4 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and be approved by the State. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of Provider, Provider shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**18.1.5 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, shall be received by the State Procurement Bureau, PO Box 200135, Helena MT 59620-0135. Provider must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

**18.2 Assignment.** The Provider shall not assign, transfer or subcontract any portion of this Agreement without the State's express written consent. Provider is responsible to the State for the acts and omissions of all subcontractors, Salesforce, or agents and of persons directly or indirectly employed by such subcontractors, Salesforce or agents and for the acts omissions of persons employed directly by Provider. No contractual relationships exist between any subcontractor, agents or Salesforce and the State under this contract.

**18.3 Access and Retention of Records.** The Provider shall provide the State, Legislative Auditor, or their authorized agents access to any records required to be made available by 18-1-118, MCA, in order to determine Agreement compliance. The Provider shall create and retain records supporting this Agreement for a period of eight years after either the completion date of this Agreement or the conclusion of any claim, litigation, or exception relating to this Agreement taken by the State of Montana or a third party.

**18.4 Customer Data Backup.** Salesforce maintains a copy of customer data for disaster recovery purposes, but it is important for customers to develop a data

backup and recovery strategy as part of their overall data management and security model. Additional information on data backup can be found at <https://help.salesforce.com/articleView?id=000213366&type=1>

**18.5 Force Majeure.** Neither Party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party is using its best efforts to remedy such failure or delays.

**18.6 Notices.** All notices, reports, invoices and other communications required or permitted hereunder to be given to or made upon any Party hereto in writing, shall be addressed as provided below and shall be considered as properly given if (a) sent by an express courier delivery service which provides signed acknowledgments of receipt; or (b) deposited in the U.S. certified or registered first class mail, postage prepaid, return receipt requested. All notices shall be effective upon receipt. For the purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that either Party shall have the right to change its address for notice hereunder to any other location by giving not less than 5 days' prior written notice to the other Party in the manner set forth above.

**State:** Montana Dept. of Corrections Crime Control Bureau  
5 S. Last Chance Gulch  
Helena, MT 59620-1408  
Attn: Tina Chamberlain  
Phone: (406) 444-4763  
Fax: (406) 444-4722

**Provider:** Carahsoft Technology Corp.  
1860 Michael Faraday Drive, STE 100  
Reston, VA 20190  
Attn: Allison Mackin  
Phone: (703) 889-9819  
Fax: (703)

**18.7 Choice of Law and Venue.** This Agreement is governed by the laws of Montana. The parties agree that any litigation concerning this Agreement, related bid or proposal must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (18-1-401, MCA)

**18.8 Severability.** A declaration by any court, or any other binding legal source, that any provision this Agreement is illegal and void shall not affect the legality and

enforceability of any other provision of the Agreement, unless the provisions are mutually dependent.

**18.9 Relationship of the Parties.** Nothing in this Agreement is intended or shall be construed to create or establish any agency, partnership or joint venture relationship between the Parties. The Parties expressly disclaim such relationship, agree that they are acting solely as independent contractors hereunder and agree that the Parties have no fiduciary duty to one another or any other special or implied duties that are not expressly stated in this Agreement. Provider has no authority to act as agent for, or to incur any obligations on behalf of or in the name of, the State or its Affiliates.

**18.10 Ownership.** With the exception of any applicable third party rights, the State exclusively owns all right, title and interest in the State's Data, including all Intellectual Property (IP) Rights. Nothing in this Agreement shall be construed as conveying any rights or interest in the State's Data to Provider.

## **19. SCOPE, AMENDMENT, AND INTERPRETATION**

**19.1 Agreement.** This Agreement consists of 26 numbered pages, Exhibits A, B, and C, D,

**19.1 Entire Agreement.** This Agreement contain the entire agreement of the Parties. Any enlargement, alteration or modification requires a written amendment signed by both Parties.



**20. EXECUTION**


**THE PARTIES HERETO** have caused the Agreement to be executed by their duly authorized representatives as of the Effective Date. This Agreement is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**MONTANA DEPT. OF CORRECTIONS  
CRIME CONTROL BUREAU**  
5 Last Chance Gulch  
Helena, MT 59620

**CARAHSOFT TECHNOLOGY CORP.**  
1860 Michael Faraday Drive, Suite 100  
Reston, VA 20190  
FEDERAL ID # 52-2189693

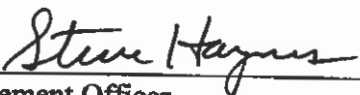
  
\_\_\_\_\_  
Adrienne Cotton, (Date) 11-15-17  
Criminal Justice Relations Director

  
\_\_\_\_\_  
Allison Mackin, Account Lead (Date)

  
\_\_\_\_\_  
John Daugherty (Date) 11-9-17  
Information Technology Division Administrator

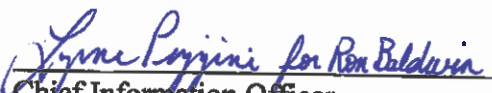
  
\_\_\_\_\_  
Yvonne Schneider (Date) Nov. 7, 2017  
Department of Corrections Legal Counsel

Approved as to Form:

  
\_\_\_\_\_  
Steve Haynes (Date) 11/16/17  
Procurement Officer  
State Procurement Bureau

Chief Information Officer Approval:

Provider is notified that, under the provisions of 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

  
\_\_\_\_\_  
Lynn Pajcini for Ron Baldwin (Date) 11-17-17  
Chief Information Officer  
Department of Administration

**EXHIBIT A**  
**SCHEDULE/SUBSCRIPTION AGREEMENT**

Provider Contact		State Contact	
Name	Carahsoft Technology Corp.	Name	Tina Chamberlain
Address	1860 Michael Faraday Dr.	Title	Program Specialist
City	Reston	Phone	406-444-4763
State	VA	Email	tchamberlain@mt.gov
Zip	20190	<b>Accounts Payable Contact</b>	
Website	www.carahsoft.com	Name	
		Phone	
		Email	
		PO #	
Reference Agreement Number		Agreement # <b>JUS-RFP2016-0014X-B</b>	
Payment Terms		Net 30 days	
PO #			


Subscription Term		
Anniversary Start Date	Term	Anniversary End Date
November 1, 2017	12 Months	October 31, 2018

Description of Subscription					
Subscription Services	Number of Users	Price/Process User	Term (Months)	Annual Subscription Fee	Total Subscription Fee
Lightning Service Cloud Unlimited Edition	3	\$3,183.16	12	\$3,183.16	\$9,549.48
Unlimited Edition Government Cloud – Lightning Service Cloud	1	\$3,300.65	12	\$3,300.65	\$3,300.65
Customer Community Plus Members - Unlimited	150	\$156.38	12	\$23,457.00	\$23,457.00
				<b>TOTAL PRICE</b>	<b>\$36,307.13</b>

Conditions and Notes
<p><b>Subscription Services:</b></p> <ol style="list-style-type: none"> <li>1. Price / Process User / Month not to increase more than seven percent (7%) at first renewal period (Anniversary End Date).</li> <li>2. The State may add Process Users in packs of five (5). Additional Subscription Fees will be pro-rated to the Anniversary End date.</li> <li>3. Customer Support is included in the Annual Subscription Fee.</li> <li>4. All System upgrades are to be performed by the Provider and are included in the Annual Subscription Fee.</li> </ol> <p><b>Hosting:</b></p> <ol style="list-style-type: none"> <li>1. A shared Application server for State's instances.</li> <li>2. A secure hosted infrastructure is included in the Annual Subscription Fee.</li> </ol>


Execution

Montana Dept. of Corrections  
Crime Control Bureau

  
\_\_\_\_\_  
Signature - Adrienne Cotton  
Criminal Justice Relations Director

11.15.17  
\_\_\_\_\_  
Date

Carahsoft Technology Corp.

  
\_\_\_\_\_  
Signature - Allison Mackin  
Account Lead

11/20/17  
\_\_\_\_\_  
Date

**EXHIBIT B**  
**SERVICE LEVEL AGREEMENT**

**1. SERVICE AVAILABILITY**

**1.1 Service Level Definitions.** The Provider components are generally available 24 hours a day seven days a week. Provider only ensures Provider availability and the associated service levels during the Standard Hours of Operation, defined as follows:

Standard Hours of Operation means 6:00 am – 7:00 pm Mountain Time, Monday – Friday less holidays observed by the State.

**1.2 Provider Web Site.** [www.salesforce.com](http://www.salesforce.com)

**1.2.1** Provider guarantees 99.99% availability of their service to the State's network environment during business hours.

**1.2.2** For purposes of this Service Level Agreement (SLA), the uptime guarantee does not include the operating system used by the State.

**EXHIBIT C**  
**PRIVACY AND IT SECURITY**

The following is not intended to be an all-inclusive list of security Services and obligations necessary to comply with Security Best Practices, but is intended to capture key elements of such a program. The State reserves the right to modify the obligations set forth in this Exhibit A or add new obligations, and any such modified or new security requirement, specification or event reporting procedures shall become effective thirty (30) days after written notice thereof from the State.

**1. Definitions.**

“**Security Policies**” mean statements of basic principles for securing Provider information consistent with Security Best Practices and applicable laws and regulations. Typically, Security Policies are high level instructions to management on how the organization is to be run with respect to Security Best Practices.

“**Security Procedures**” mean step-by-step actions taken to achieve and maintain compliance with Security Best Practices.

“**Security Technical Controls**” mean any hardware, Software or administrative mechanisms necessary to enforce Security Best Practices in accordance with the terms of this Agreement as methods for addressing security risks to information technology systems and relevant physical locations, or implementing related policies. Security Technical Controls specify technologies, methodologies, implementation procedures, and other detailed factors or other processes to be used to implement Security Policy elements relevant to specific groups, individuals, or technologies.

**2. Information Security Policy.** Provider represents and warrants that it has established and during the Term it will at all times enforce:

- (a) Security Policies, Security Procedures, and Security Technical Controls;
- (b) A security incident management program; and
- (c) A security awareness program.

**3. Logical Access.** Provider represents and warrants that it has established and during the Term it will at all times enforce:

- (a) Appropriate mechanisms for user authentication and authorization;
- (
- (d) Processes to ensure assignment of unique IDs to each person with computer
- (g) Processes to immediately revoke accesses of inactive accounts or terminated/transferred users.

**4. Security Architecture and Design.** Provider, in conjunction with Salesforce.com represents and warrants that it has established and during the Term it will at all times

maintain:

- (a) A security architecture that reasonably assures delivery of Security Best Practices;
- (b) Documented and enforced technology configuration standards;
- (c) Processes to encrypt Confidential Information in transmission;
- (d) Processes to ensure regular testing of security systems and processes;
- (f)

**5. System and Network Management.** Provider, in conjunction with Salesforce.com represents and warrants that it has established and during the Term it will at all times maintain:

- (a) Mechanisms to keep security patches current;
- (b) Processes to monitor, analyze, and respond to security alerts;
- (c) Appropriate network security design elements that provide for segregation of data;
- (d) Anti-Virus Software; and
- (e) Processes to regularly verify the integrity of installed Software.



## EXHIBIT D

### HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum (this “**Addendum**”) is made a part of, and incorporated into, the Agreement. The purpose of this Addendum is to implement certain of the requirements of the Health Insurance Portability and Accountability Act of 1996 and the rules and regulations promulgated thereunder as supplemented and amended by the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health (HITECH) Act provisions of the American Recovery and Reinvestment Act of 2009 and the rules and regulations promulgated thereunder (collectively, “**HIPAA**”). The parties acknowledge that those regulations include both the federal privacy regulations, as amended from time to time, issued pursuant to HIPAA and codified at 45 CFR Parts 160 and 164 (Subparts A & E) (the “**Privacy Rule**”) and the federal security regulations, as amended from time to time, issued pursuant to HIPAA and codified at 45 CFR Parts 160 and 164 (Subparts A & C) (the “**Security Rule**”).

In the course of providing those Services branded by SFDC as Force.com, Sales Cloud, Service Cloud, Communities, Site.com, Database.com, and Chatter (the “Salesforce Services”) to Customer pursuant to the Agreement, SFDC may, on behalf of Customer, receive, maintain or transmit information entered into the Salesforce Services as Customer Data that constitutes Protected Health Information, as defined in 45 CFR §160.103 (“**PHI**”), and as a result may, for certain purposes and under certain circumstances, be deemed a Business Associate, as such term is defined in 45 CFR §160.103, under HIPAA. “Documentation” means SFDC’s online user guides, documentation, and help and training materials, as updated from time to time, accessible via help.salesforce.com or login to the applicable Services. For clarity, Customer acknowledges that neither SFDC nor its Subcontractors “create” Protected Health Information in the provision of the Salesforce Services. This Addendum governs Customer’s and SFDC’s respective responsibilities with respect to such PHI to the extent SFDC acts as a Business Associate to Customer, including SFDC’s Use and Disclosure of PHI, as such terms are defined in 45 CFR §160.103. A capitalized term not defined herein shall have the meaning ascribed to that term in the Agreement, or, if any such term has no meaning ascribed in the Agreement, then such term shall have the meaning ascribed to it under HIPAA.

Accordingly, the parties agree as follows:

1. **Use and Disclosure of PHI by Customer.** Customer shall Use and Disclose PHI only as permitted by HIPAA. Customer shall not authorize, request or require SFDC to Use or Disclose PHI in any manner that would violate HIPAA if the Use or Disclosure were carried out by Customer except as permitted under HIPAA and set forth in this Addendum.

2. **Use and Disclosure of PHI by SFDC.** SFDC shall Use or Disclose PHI only in the manner and for the purposes set forth in this Addendum or in accordance with the Agreement and not in any other manner or for any other purposes. Without limiting the generality of the foregoing, Customer hereby authorizes SFDC to do the following:
  - (i) Use and Disclose PHI as necessary to provide the Salesforce Services, to prevent or address service or technical problems and, to perform customer support services to Customer; and
  - (ii) Use and Disclose PHI as Required by Law.
3. **Protection of PHI.** In connection with its receipt, maintenance or transmission of PHI on behalf of Customer, SFDC agrees to do the following:
  - (i) in accordance with 45 CFR § 164.502(e)(1), ensure that any Subcontractors that receive, maintain or transmit PHI on behalf of SFDC agree to restrictions and conditions no less restrictive than those that apply to SFDC in this Addendum with respect to such PHI;
  - (ii) use appropriate administrative, technical and physical safeguards, and comply, where applicable, with the Security Rule with respect to any PHI that constitutes Electronic Protected Health Information, to prevent Use or Disclosure of PHI other than as provided for by this Addendum; and
  - (iii) to the extent SFDC carries out the Customer's obligations under the Privacy Rule, if applicable, comply with the requirements of the Privacy Rule that apply to the Customer in the performance of those obligations; notwithstanding the foregoing, the parties acknowledge that, under the Agreement and this Addendum, unless otherwise agreed upon by the parties in writing, SFDC has no obligations to carry out any of Customer's obligations under the Privacy Rule.
4. **Breach Notification.**
  - (i) SFDC shall report to Customer any Use or Disclosure of PHI not provided for in this Addendum of which SFDC becomes aware, including any Breach of Unsecured Protected Health Information in accordance with 45 CFR § 164.410. SFDC shall provide to the Customer all information required by 45 CFR § 164.410(c) to the extent known and provide any additional available information reasonably requested by Customer for purposes of investigating the Breach as required by HIPAA. For purposes of this Addendum, "**Breach**" means the acquisition, access, Use or Disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exclusions set forth, in 45 CFR § 164.402.
  - (ii) SFDC shall be required to report to Customer, without unreasonable delay, only successful Security Incidents pertaining to PHI of which SFDC becomes aware. SFDC hereby provides Customer with notice in this Section 4(ii) of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents, which



include, but are not limited to, pings and other broadcast attacks on SFDC's firewall, port scans, unsuccessful log-in attempts, denials of service attacks and any combination of the above, so long such incidents do not result in unauthorized access, Use or Disclosure of PHI. The parties agree that no further notice of unsuccessful Security Incidents is required.

5. **Access by HHS.** SFDC shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary of the United States Department of Health and Human Services for purposes of determining Customer's compliance with HIPAA.
6. **Individual Access Requests.** SFDC shall forward to Customer any requests SFDC receives from an Individual for access to the Individual's PHI that is entered in the Salesforce Services by Customer to which Customer shall respond in accordance with the requirements of 45 CFR § 164.524. The parties agree that, by virtue of providing the Salesforce Services, SFDC will make available to Customer all PHI that is entered in the Salesforce Services by Customer, including PHI about an Individual, to facilitate Customer's compliance with the requirements of 45 CFR § 164.524.
7. **Individual Amendment Requests.** Customer shall be exclusively responsible for responding to all requests by Individuals for amendment to their PHI in accordance with HIPAA. The parties agree that, by virtue of providing the Salesforce Services, SFDC will make available to Customer all PHI that is entered in the Salesforce Services by Customer, including any PHI required to be made available for amendment in accordance with 45 CFR § 164.526, in a manner that allows the Customer to reasonably incorporate any amendments to the PHI in accordance with 45 CFR § 164.526.
8. **Individual Accounting Requests.** SFDC shall in accordance with and as required by 45 CFR § 164.504(e)(2) document Disclosures of PHI made by SFDC and maintain information related to such Disclosures. SFDC shall make related information reasonably available to Customer to assist Customer comply with its legal obligations under 45 CFR § 164.528 and for Customer to respond to requests by Individuals for an accounting of Disclosures of their respective PHI.
9. **Termination.** Upon request by Customer made in accordance with the terms of the Agreement after the effective date of termination or expiration of the Agreement, SFDC will make the Customer Data submitted to the Salesforce Services available to Customer for return, export, or download as provided in the Documentation. SFDC will otherwise have no obligation to maintain or provide any Customer Data, and will delete, overwrite, or destroy all copies of Customer Data in its systems or otherwise in its possession or control as provided in the Documentation, unless legally prohibited. If return or destruction of Customer Data that constitutes PHI is not feasible, SFDC shall extend the confidentiality and security protections of this Addendum to that Customer Data and limit further Uses and Disclosures of such Customer Data to those purposes that make the return or destruction of the Customer Data infeasible.

10. **Non-Compliance.** In the event either party becomes aware that the other party has engaged in a pattern of activity or practice that constitutes a material breach or violation of this Addendum, the non-breaching party may request in writing that the breaching party cure the breach or violation. If the breach or violation is not cured within 30 days of the written notice, the non-breaching party may terminate this Addendum and the Agreement.
11. **Amendment.** The parties shall take such action as is necessary to amend the Agreement and this Addendum from time to time as is necessary for the parties to comply with changes to the rules and regulations under HIPAA. If the parties cannot agree as to a necessary amendment, either party may terminate the Agreement and this Addendum with 30 days prior written notice to the other party.
12. **Interpretation.** Any ambiguity in this Addendum shall be resolved to permit the parties to comply with HIPAA.