

CLOUD SOLUTIONS 2016-2026

Led by the State of **Utah**

Master Agreement #: AR2479

Utah Participating Addendum #: AR2479

Contractor: **DELOITTE CONSULTING LLP**

Participating Entity: **STATE OF UTAH**

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

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

Master Agreement Terms and Conditions:

1. Scope: This addendum covers **Cloud Solutions** led by the State of *Utah* for use by state agencies and other entities located in the Participating State *[or State Entity]* authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Pricing: Prices and rates from the Master Agreement shall flow down to this PA. An amendment to this PA is not required when pricing in the Master Agreement is adjusted / updated.
3. Contract Effective Dates: This PA is effective upon final signature of both parties, and expires upon the expiration or termination of the NASPO ValuePoint Master Agreement. A contract amendment is not necessary in the event of the renewal or extension of the Master Agreement, so long as such renewal/extension was originally provided within the solicitation supporting the master agreement.
4. Order of Precedence: The order of precedence as provided in the NASPO ValuePoint Master Agreement applies to this PA.
5. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Utah. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
6. Access to Cloud Solutions Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer's Office. The State Chief Information Officer means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a state.
7. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

CLOUD SOLUTIONS 2016-2026

Led by the State of Utah

Contractor

Name:	Deloitte Consulting LLP c/o Thomas Beck
Address:	200 Renaissance Center, Suite 3900, Detroit, MI 48343-1313
Telephone:	717-608-6551
Fax:	N/A
Email:	thbeck@deloitte.com

Participating Entity

Name:	Solomon Kingston
Address:	4315 S 2700 W FL 3, Taylorsville, UT 84129-2128
Telephone:	801-957-7142
Fax:	N/A
Email:	skingston@utah.gov

8. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

The following terms and conditions will apply to this participating addendum.

1. DEFINITIONS:

- a. "Access to Secure State Facilities, Data, or Technology" means Contractor will (a) enter upon secure premises controlled, held, leased, or occupied by State of Utah or Eligible User; (b) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by State of Utah or Eligible User; or (c) have access to or receive any State Data or Confidential Information.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors, or agents of Contractor who need Access to Secure State Facilities, Data, or Technology to enable the Contractor to perform its responsibilities under this Contract.
- c. "Background IP" means intellectual property (IP) owned or controlled prior to the effective date of this Contract or that IP developed or acquired from activities independent of the services performed under this Contract, plus any modifications or enhancements thereto and derivative works based thereon, including but not limited to (a) methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services, and (b) processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information of Eligible User or the portions of Custom Deliverables that do not otherwise incorporate Background IP.
- d. "Contract" means this State of Utah Participating Addendum, which is executed pursuant to NASPO ValuePoint master agreement # AR2479 between the State of Utah and Deloitte Consulting LLP (the "Master Agreement"), and all other referenced attachments and documents incorporated herein by reference.
- e. "Contract Period" means the term of this Contract, which will commence on the last date of execution of this Contract and expire concurrent with the Master Agreement.
- f. "Contractor" is Deloitte Consulting LLP, which is the same entity as is defined in the Master Agreement.
- g. "Custom Deliverables" means the deliverables that Contractor is required to design, develop, or customize and deliver to the Eligible User as specifically described under an order executed under this Contract, including in an associated statement of work. This includes every invention, design, development, customization, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, or intellectual property right whatsoever or any interest therein (whether patentable or not

CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice and delivered to the Eligible User by Contractor pursuant to an order executed under this Contract. Custom Deliverables excludes any Background IP that may be included therein.

- h. "Data Breach" means the unauthorized access or acquisition of State Data that compromises the security, confidentiality, or integrity of State Data.
- i. "Division" means the State of Utah Division of Purchasing.
- j. "DTS" means the Utah Department of Technology Services.
- k. "Eligible User(s)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
- l. "Federal Criminal Background Check" means a fingerprint-based, nationwide background check conducted and processed by the FBI.
- m. "Good" means anything identified as a Good in an Order, which shall not include Custom Deliverables or Services.
- n. "Intellectual Property Rights" means all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and other intellectual property rights protection afforded by law to inventions, models, designs, technical information, and applications.
- o. "Non-Public Data" means records or data that are not subject to distribution to the public. Access is restricted because it includes information that is protected by state or federal law. Non-Public Data includes, but is not limited to, a person's name; government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; or Protected Health Information.
- p. "Protected Health Information" (PHI) is as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and its implementing regulations.
- q. "Master Agreement Response" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the Master Agreement's Solicitation.
- r. "Security Incident" means the attempted unauthorized access to State Data that may result in the use, disclosure, or theft of State Data.
- s. "Services" is as defined in the Master Agreement, to the extent included in an order executed under this Contract.
- t. "State Data" means all Confidential Information and Non-Public Data that is created, controlled, maintained, owned, or in any way originating with the State of Utah or Eligible User regardless of where such data or output is stored or maintained.
- u. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities and instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
- v. "Subcontractors" means subcontractors or consultants (including any independent contractor or entity), at any tier, that are under the direct or indirect control or responsibility of Contractor and that is providing or performing services pursuant to an order executed under this Contract.

2. ESSENTIAL PROVISIONS:

- a. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed solely by the laws of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Exclusive venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

- b. **LAWS:** Contractor will comply with all federal and state of Utah laws, including applicable licensure and certification requirements, applicable to Contractor in its performance of the Services under this Contract.
- c. **SOVEREIGN IMMUNITY:** The Division and the State of Utah do not waive any protection, right, defense or immunity under the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101 to 904, as amended, the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court.
- d. **PUBLIC INFORMATION:** This Contract and any purchase orders, invoices, pricing lists, and the Master Agreement Response are public records available for disclosure in accordance with the State of Utah's Government Records Access and Management Act (GRAMA, Utah Code 63G-2-101 et seq.), except to the extent classified as protected in accordance with UCA 63G-2-309. GRAMA takes precedence over any statements of confidentiality or similar notations. Neither the Division, the Eligible User nor the State of Utah will inform Contractor of any request for a copy of this Contract, including any purchase orders, invoices, pricing lists, or the Master Agreement Response.
- e. **CREDITING THE DIVISION IN PUBLICITY:** Any publicity given to this Contract shall identify the Division as the managing agency and shall not be released without prior written approval from the Division, except to respond to public statements made by the Agency.
- f. **SALES TAX EXEMPTION:** Goods, Custom Deliverables, and Services purchased by some Eligible Users are being paid from that Eligible User's funds and used in the exercise of that Eligible User's essential functions as a State of Utah governmental entity. Any such Eligible Users will provide Contractor with a copy of its sales tax exemption number upon request.
- g. **SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
- h. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract, is within the scope/purpose of the Solicitation, and is attached and made part of this Contract. Automatic renewals are prohibited and are deemed void even if listed elsewhere in this Contract.
- i. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any government department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity.
- j. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** This Contract may be terminated in whole or in part at the sole discretion of the Division or Eligible User upon as much prior written notice as reasonably practicable, if the Division or Eligible User determines that (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (b) that a change in available funds affects the Division or Eligible User's ability to pay under this Contract. A change of available funds includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or an order of the President, the Governor, or Executive Director.

The Division or Eligible User, as applicable, will reimburse Contractor for the Goods or Services properly ordered and delivered until the effective date of said termination. The Division and Eligible User are not liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of termination.
- k. **ENTIRE AGREEMENT:** This Contract is the entire agreement between the parties, and supersedes any prior and contemporaneous agreements and understandings between the parties, whether oral or written.
- l. **WAIVER:** The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract. The Eligible User's payment for any Goods or Services required under this Contract shall not be construed to

CLOUD SOLUTIONS 2016-2026

Led by the State of Utah

operate as a waiver by the Eligible User of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract.

- m. **CHANGES IN SCOPE:** Any changes in the scope of work to be performed under an order executed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of work.
 - n. **TRAVEL COSTS:** Unless otherwise agreed to in the contract, all travel costs associated with the delivery of Services will be paid in accordance with the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the Contractor for correction.
3. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by an Eligible User to Contractor. These records shall be retained by Contractor for at least six (6) years after final payment (per Utah Administrative Code R33-12-605 and Utah Code 78B-2-309), or until all audits initiated within the six (6) years have been completed, whichever is later. Upon 72 hours advanced notice, Contractor shall allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records to the extent necessary to substantiate the fees and expenses incurred under this Contract. Records made available to the Division under this Section may be redacted by Contractor to the extent permissible under Section 63G-2-309, Utah Code. Contractor must refund to the applicable Eligible User any confirmed overcharges/overpayments resulting from any such audit and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users. In the case of confirmed underpayments identified in said audit, the Contractor shall be entitled to invoice the applicable Eligible User for any such underpayments.
4. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
- 1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
 - 2) Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) Contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
 - 3) Contractor's failure to comply with this section will be considered a material breach of this Contract.
 - 4) Contractor shall protect, indemnify, and hold harmless the Division, the Eligible Users, and the State of Utah, and anyone that the State of Utah may be liable for, against any third party claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless written disclosure has been made to the Division.
6. **INDEPENDENT CONTRACTOR:** Contractor is an independent contractor, and not an employee or agent of the Division, the Eligible Users, or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor has no authorization, express or implied, to bind the Division, the Eligible Users, or the State of Utah to any agreements, settlements, liabilities, or understandings, and shall not perform any acts as an agent for the Division, the Eligible users, or the State of Utah. Contractor is responsible for all applicable federal, state, and local employment taxes and FICA contributions.

CLOUD SOLUTIONS 2016-2026

Led by the State of Utah

- 7. CRIMINAL BACKGROUND SCREENING:** Depending on the Eligible User's policy, each employee of Contractor and Subcontractor may be required to successfully complete a Federal Criminal Background Check, prior to being granted Access to Secure State Facilities, State Data, or Technology. Contractor or the applicable employee shall provide Eligible Users with sufficient personal information (at Contractor's expense) so that a Federal Criminal Background Check may be completed by the Eligible User, at Eligible User's expense. The Eligible User will provide Contractor with forms which must be filled out by Contractor and returned to the Eligible User. Each employee of Contractor or a Subcontractor who will have Access to Secure State Facilities, State Data, or Technology must be fingerprinted by the Eligible User or local law enforcement a minimum of one week prior to needing access. At the time of fingerprinting, said employee shall disclose all felony or misdemeanor convictions. Eligible Users may conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided and use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) at least every two years. Eligible Users may revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor and the employee or subcontractor shall immediately notify Eligible Users if an arrest or conviction for a felony or misdemeanor of any person that has Access to Secure State Facilities, State Data or Technology occurs during the Contract Period. Eligible Users will determine in its discretion if such person's Access to Secure State Facilities, State Data, or Technology shall remain in effect. Felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred. (DTS Policy 2000-0014 Background Investigations)
- 8. DRUG-FREE WORKPLACE:** Contractor shall abide by the Eligible User's drug-free workplace policies while on the Eligible User's or the State of Utah's premises. Eligible User will provide Contractor with a copy of these written drug-free workplace policies upon request.
- 9. CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor shall follow and enforce the agency applicable code of conduct. Contractor will ensure that each employee receives a copy of the policies and applicable codes of conduct. (DTS Policy 2000-0001 Code of Conduct, DTS Policy 1000-0003 Acceptable Use of Information Technology Resources)
- 10. INDEMNITY AND LIABILITY**

 - a. Indemnity Clause:** Contractor shall fully indemnify, defend, and save harmless the Division, Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description (i) attributable to third party claims for bodily injury or death to persons or damage to tangible personal property arising out of Contractor's performance of this Contract, to the extent caused by any intentional act or omission or negligence of Contractor, its agents, employees, officers, partners, and Subcontractors, without limitation, or (ii) brought against the State by any personnel of Contractor performing Services for employment benefits or employment compensation, in each case for which Contractor is responsible and has failed to pay, or (iii) brought against the State by any Subcontractor for payment of its fees to the extent caused by Contractor's failure to pay such fees in accordance with the terms of the applicable subcontract; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage due to the fault of the Division, the Eligible User, or the State of Utah. Any limitations of the Contractor's liability will not apply to bodily injury or death, or to damages to tangible personal property.
 - b. Governmental Immunity Act:** In accordance with the Constitution of the State of Utah and the Governmental Immunity Act of Utah ("the Act", Utah Code §§63G-7-101 to 904, as amended), the Division and the State of Utah have no liability for the operations, acts, or omissions of the Contractor or any third party. Any indemnity obligations of the Division, Eligible Users, or the State of Utah are subject to the Constitution of the State of Utah and the Act and limited to claims that arise from and to the extent caused by the negligent acts or omissions of the Division or the Eligible Users in the performance of the Division's or the Eligible User's obligations under this Contract.
 - c. Intellectual Property Indemnification:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Good or Custom Deliverable delivered under this contract, subject to Section 27 (Ownership in Custom Deliverables). Contractor also warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by the Eligible Users in unaltered form, will not infringe any third party copyrights, patents, trade secrets, or other proprietary rights.

CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

The foregoing and the indemnity in this Section 10(c) shall not apply to the extent that the infringement arises from (i) modification of the Goods, Custom Deliverables, or Services by the Division or its agents which is not at the direction or request of or approved by (with specific reference to confirming an infringement analysis) Contractor, (ii) the failure of the Division to use corrections or modifications provided to the Division by Contractor with written notice that clearly indicates such modifications may be necessary to prevent potential infringement, (iii) the use of the Custom Deliverable or Goods by the Division in combination with any platform, product, network, or data not provided or approved (with specific reference to confirming an infringement analysis) by Contractor or required for proper functioning of the Goods, Custom Deliverables, or Services as set forth in the applicable Order or (iv) information, materials, instructions, specifications, requirements, or designs provided by or on behalf of the Division. If the Division's use of any such Custom Deliverable or Good, or any portion thereof, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, Contractor, and at Contractor's expense, shall have the right to (x) procure for the Division the continued use of such Custom Deliverable or Good, (y) replace such Custom Deliverable or Good with a non-infringing Custom Deliverable or Good, or (z) modify such Custom Deliverable or Good so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by Contractor, the replacement or modified Custom Deliverable or Good is capable of performing the same function. In the event Contractor cannot reasonably procure, replace, or modify such Custom Deliverable or Good in accordance with the immediately preceding sentence, Contractor may require DTS to cease use of such Custom Deliverable or Good and refund the funds paid to Contractor in addition to the State's other remedies in law or equity.

Contractor will release, indemnify, and hold the Division, the Eligible Users, and the State of Utah harmless from liability or damages of any kind or nature, attributable to claims of any third party based upon an allegation that a Good, Custom Deliverable, or Service furnished by Contractor infringes on any right protected by any patent, copyright, trademark, trade secret, and/or intellectual property right, including for any judgments, settlements, costs, and reasonable attorneys' fees resulting from such a claim or liability.

Contractor shall have the sole defense all actions brought upon such matters to be indemnified under this Section 10 and pay all costs and expenses incidental thereto; however, the Eligible Users shall have the right, at its option, to participate in the defense of any such action at its own expense without relieving Contractor of any obligation hereunder. If there are any limitations of liability in this Contract, such limitations will not apply to this section.

- 11. PROFESSIONAL SERVICES WARRANTY:** Contractor warrants that it shall perform the Services in good faith and in a professional manner. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS CONTRACT, CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO THE SERVICES.
- 12. SOFTWARE WARRANTY:** For a period of ninety (90) days (or such other period of time agreed by the parties in the applicable Order) following approval of a Custom Deliverable identified in an Order as being subject to the warranty in this Section 12 (the "Warranty Period"), Contractor warrants that such Custom Deliverable shall operate free of material nonconformities with the specifications for such Custom Deliverable as set forth in the Order or as otherwise agreed by the Eligible User and Contractor in writing that could not have been reasonably identified by the approval process described in Section 19 ("Covered Defects").

The warranty set forth in this Section, and Contractor's warranty obligations under the "Warranty Remedies" section, below, shall not apply with respect to software that is subject to a separate license agreement as contemplated by Section 10, below, of the Participating Addendum. The terms and conditions of the warranty to the Eligible User with respect to such software (including all associated warranty remedies) will be as set forth in the applicable end user license agreement executed directly between the Eligible User and the licensor of such software.

- 13. WARRANTY REMEDIES:** If, within the Warranty Period, the Eligible User notifies Contractor in writing of a Covered Defect, Contractor shall modify such Custom Deliverable within a reasonable period of time or as otherwise agreed to between Contractor and the Eligible User to bring it into compliance with the warranty under Section 12, above, at no additional cost to the Eligible User. Contractor shall have no obligation to make warranty modifications attributable to: (i) modification of the Custom Deliverable other than by Contractor or its subcontractors, or use thereof in a manner not contemplated by the applicable Order; (ii) Eligible User's failure to use any corrections or modifications made available by Contractor; (iii) Eligible User's failure to reasonably

CLOUD SOLUTIONS 2016-2026

Led by the State of Utah

cooperate with the Contractor in the resolution of the Covered Defect; (iv) the quality or integrity of data from other automated or manual systems with which the Custom Deliverable interfaces; or (vii) hardware, software, networks or systems not a part of the Custom Deliverable which do not meet the specifications provided by Contractor to allow proper operation of the Custom Deliverable.

- 14. UPDATES AND UPGRADES:** The obligation, if any, to provide (and the associated license terms applicable to) updates and upgrades shall be documented in (a) the applicable Order or Scope of Work for Eligible User for Custom Deliverables; or (b) the applicable End User License Agreement for Software as a Service purchased by Eligible User. Upgrades and updates, if any, provided pursuant to subsection (a) are subject to the terms of this Contract.
- 15. BUG FIXING AND REMOTE DIAGNOSTICS:** The obligation, if any, to provide work-around solutions or patches to reported software problems, including through the use of remote diagnostics to the extent authorized by the Eligible User, shall be documented in (a) applicable Order or Scope of Work for Eligible User for Custom Deliverables; or (b) the applicable End User License Agreement for Software as a Service purchased by Eligible User. If the Eligible User declines remote diagnostics, Contractor and the Eligible User may agree in the Order to on-site technical support, subject to the terms of the Contract.
- 16. TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is required by the applicable Order, Contractor will use commercially reasonable efforts to respond to the Eligible User in a reasonable time, and in all events, in accordance with the specific timeframes detailed in the applicable Order, when the Eligible User makes technical support or maintenance requests.
- 17. RESERVED.**
- 18. ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good or Custom Deliverable to the Eligible User or provide any Good and Custom Deliverable for download from the Internet, if pre-approved in writing by the Eligible User. The parties will agree on the processes and procedures to be used with respect to any such transmissions in the specific order. Contractor warrants that it shall use industry standard practices to prevent Contractor's introduction of any computer viruses into the Eligible User's computer and network environment while performing the Services. The Eligible User shall employ industry-standard virus detection and back-up procedures.
- 19. ACCEPTANCE PERIOD:** THE STATE OF UTAH DOES NOT ACCEPT ANY PROCUREMENT ITEM "AS-IS". Eligible User shall approve each Good, or Custom Deliverable furnished under this Contract that conforms in accordance with the specifications identified in the applicable order. If the Goods and Custom Deliverables delivered do not conform to the specifications identified in the applicable order ("Defects"), the Eligible User shall within fifteen (15) calendar days of the delivery date or other such period as mutually agreed in writing by the parties ("Acceptance Period") notify Contractor in writing of the Defects, with references to the applicable specifications and the Defects preventing approval. Upon receiving notice, Contractor shall use reasonable efforts to correct the Defects within fourteen (14) calendar days or other such period as mutually agreed in writing by the parties ("Cure Period"). The Eligible User's acceptance of a Good, or Custom Deliverable occurs at the end of the Acceptance Period or Cure Period, whichever is later.

If after the Cure Period, a Good, or Custom Deliverable still has Defects, then the Eligible User may, at its option: (a) receive a refund or credit of professional fees paid to Contractor hereunder with respect to the nonconforming Goods or Custom Deliverable, in which case Eligible User shall return the non-conforming Custom Deliverable; or (b) continue the Cure Period for an additional time period agreed upon by the Eligible User and Contractor in writing. No Custom Deliverable shall be deemed accepted until the end of the Acceptance Period or Cure Period, whichever is later, and no invoices shall be paid until acceptance.

Approval shall be granted if a Custom Deliverable contains minor non-conformities (including format or style nonconformities that do not negatively impact the functionality of the Custom Deliverable and that require only minor or cosmetic corrections and do not require extensive re-review by the Eligible User) for which Contractor has agreed to provide corrections within specified times.

- 20. SECURE PROTECTION AND HANDLING OF STATE DATA:** If Contractor is given access to State Data as part of this Contract, the protection of State Data shall be an integral part of the business activities of Contractor, and Contractor shall maintain safeguards designed ensure that there is no inappropriate or unauthorized use of State Data. To the extent that Contractor has access to State Data, Contractor shall maintain safeguards designed to

CLOUD SOLUTIONS 2016-2026

Led by the State of Utah

protect the confidentiality, integrity, and availability of the State Data and comply with the conditions outlined below, as applicable to Contractor in its performance of the Services. The Eligible User reserves the right to meet with Contractor personnel to discuss Contractor's policies and practices in order to verify Contractor's adherence to the following conditions:

- a. **Network Security:** Contractor shall maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, and regular penetration testing. Contractor shall maintain network security that conforms to one of the following:
 - 1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy, attached hereto as Exhibit A*
 - 2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or
 - 3) Any generally recognized comparable standard that Contractor then applies to its own network and pre-approved by the Eligible User in writing.
- b. **State Data Security:** Contractor shall protect and maintain the security of State Data with protection that is at least as good as or better than that maintained by the State of Utah as identified in Exhibit A - *DTS Policy 5000-0002*. These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification). The Eligible User reserves the right to determine if Contractor's level of protection meets the Eligible User's security requirements.
- c. **State Data Transmission:** Contractor agrees that all transmission or exchange of system application data with the Eligible User and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).
- d. **State Data Storage:** All State Data will be stored and maintained in data centers in the United States. No State Data will be processed on or transferred to any portable or laptop computing device or portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process.
- e. **Access:** Contractor shall permit its employees and Subcontractors to remotely access non-State Data only as required to provide technical support or as otherwise permitted by this Contract.
- f. **State Data Encryption:** Contractor shall store all data provided to Contractor, including State, as well as any backups made of that data, in encrypted form using no less than 128 bit key and include all data as part of a designated backup and recovery process.
- g. **Password Protection:** Any portable or laptop computer that has access to the Eligible User's or State of Utah networks, or stores any Eligible User data shall be equipped with strong and secure password protection.
- h. **Confidential Information Certification:** Contractor shall sign a Confidential Information Certification, substantially in the form attached as Exhibit B, prior to being given access to confidential computerized records pursuant to an Order.
- i. **State Data Re-Use:** All data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. No State Data of any kind may be transmitted, exchanged, or provided to other contractors or third parties except on a case-by-case basis as specifically agreed to in writing by the Eligible User.
- j. **State Data Destruction:** Upon expiration or termination of this Contract, Contractor shall erase, destroy, and render unreadable all State Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the Eligible User, whichever shall come first, unless the Eligible User provides Contractor with a written directive. The Eligible User's written directive may require that certain data be preserved in accordance with applicable law.
- k. **Services Shall Be Performed Within United States:** ALL OF THE SERVICES REQUIRING ACCESS TO STATE DATA OR SYSTEMS SHALL BE PERFORMED WITHIN THE BORDERS AND JURISDICTION OF THE UNITED STATES.

CLOUD SOLUTIONS 2016-2026
Led by the State of **Utah**

- I. **User Support:** Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.
21. **SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** Contractor shall immediately inform the Eligible User following the Contractor's discovery of any Security Incident or Data Breach where misuse of State Data maintained by Contractor occurs or is reasonably likely to occur. It is within the Eligible User's discretion to determine whether any Security Incident is a Data Breach.
 - a. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the Eligible User should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.
 - b. **Security Incident Reporting Requirements:** Contractor shall promptly report such a Security Incident to the Eligible User.
 - c. **Breach Reporting Requirements:** If required by Utah Code 13-44-202 or any other applicable law, Contractor shall immediately, following Contractor's discovery, notify the Eligible User of a Data Breach that affects the security of State Data maintained by Contractor where misuse of such State Data occurs or is reasonably likely to occur.
22. **DATA BREACH RESPONSIBILITIES:** This Section only applies when a Data Breach occurs. Contractor shall comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification (*DTS Policy 5000-0002 Enterprise Information Security Policy*). In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the Eligible User by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; and (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the Eligible User. To the extent a Data Breach is caused by Contractor's breach of its privacy and information security obligations set forth in this contract, Contractor is responsible for reimbursing the Eligible User for all legally required notifications to affected individuals, which amount is not subject to the limitation of damages in Section 56, below. Such remedy is non-exclusive and does not limit any other remedies available to the Division under this Contract or at law.
23. **STATE INFORMATION TECHNOLOGY POLICIES:** If Contractor is providing an Executive Branch Agency of the State of Utah with Goods or Custom Deliverables, Contractor shall comply with policies and procedures that meet or exceed those DTS follows for internally developed goods and deliverables to minimize security risk, ensure applicable Utah and Federal laws are followed, address issues with accessibility and mobile device access, and prevent outages and data breaches within the State of Utah's environment. Contractor shall comply with the following DTS Policies to the extent applicable to Contractor in its performance of the Services:
 - a. **DTS Policy 4000-0001, Enterprise Application and Database Deployment Policy:** A Contractor developing software for the State to develop and establish proper controls that will ensure a clear separation of duties between developing and deploying applications and databases to minimize security risk; to meet due diligence requirements pursuant to applicable Utah and federal regulations; to enforce contractual obligations; and to protect the State's electronic information and information technology assets.
 - b. **DTS policy 4000-0002, Enterprise Password Standards Policy:** A Contractor developing software for the State must ensure it complies with the password requirements of the Enterprise Password Standards Policy.
 - c. **DTS Policy 4000-0003, Software Development Life Cycle Policy:** A Contractor developing software for the State shall work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance.
 - d. **DTS Policy 4000-0004, Change Management Policy:** Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify DTS's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee.

CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

- 24. CONFIDENTIALITY:** This section does not apply to records where disclosure is regulated under Federal or State laws.

GRAMA applies only to records, therefore if information (other than Non-Public Data, Public Health Information, or State Data) is disclosed orally by either party which either party wishes to remain confidential, then each party shall adhere to the following:

Each party will: (a) limit disclosure of any such information to Authorized Persons who have a need to know such information in connection with the current or contemplated business relationship between the parties to which this Contract relates, and only for that purpose; (b) advise its Authorized Persons of the proprietary nature of the information and of the obligations set forth in this Contract and require such Authorized Persons to keep the information confidential; (c) shall keep all information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any such information received by it to any third parties, except as otherwise permitted under this Contract, agreed to in writing by the disclosing party, or required by law or regulation (including GRAMA). Each party will notify the other of any misuse or misappropriation of such information that comes to said party's attention.

The parties agree that this Section will not apply to information that (A) is or becomes publicly available other than as the result of a disclosure in breach of contract, (B) becomes available to the receiving party on a nonconfidential basis from a source that receiving party reasonably believes is not prohibited from disclosing such information to the receiving party, (C) the receiving party can demonstrate (i) is already known by the receiving party without any obligation of confidentiality with respect thereto, or (i) is developed by the receiving party independently of any disclosures made to the receiving party hereunder, or (D) is required .

This duty of confidentiality shall be ongoing and survive the Contract Period.

25. Reserved

- 26. OWNERSHIP IN INTELLECTUAL PROPERTY:** The Parties recognize that each has no right, title, or interest, proprietary or otherwise, in or to the name, logo, or intellectual property owned or licensed by the other. The Parties shall not, without the prior written consent of the other or as authorized in this Contract, use the name, logo, or intellectual property owned or licensed by the other.

- 27. OWNERSHIP IN CUSTOM DELIVERABLES:** Contractor conveys full ownership, clear title free of all liens and encumbrances to any Custom Deliverable delivered to the Eligible User. Contractor conveys the ownership in Custom Deliverables (as defined in Section 8(1)(g), above) to the Eligible User. All intellectual property rights, title and interest in the Custom Deliverables shall transfer to the Eligible User, subject to the following:

- a. Contractor has received full payment for the Custom Deliverables,
- b. Each party will retain all rights to Background IP, even if embedded in the Custom Deliverables.
- c. Custom Deliverables, excluding Contractor's Background IP may not be marketed or distributed without written approval by the Eligible User.

Upon full payment, Contractor shall grant to the Eligible User a perpetual, irrevocable, royalty-free license to use Contractor's Background IP as defined above, solely for the Eligible User to use the Custom Deliverables. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Background IP.

- 28. LICENSE FOR GOODS:** If applicable, software licenses shall be as described in an individual Order or associated End User License Agreement.

- 29. OWNERSHIP, PROTECTION, AND USE OF RECORDS:** Subject to Section 27, (a) the Eligible User shall own exclusive title to all information and data gathered, reports developed, and conclusions reached by the Eligible User in performance of this Contract, and (b) Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached by the Eligible User in performance of this Contract without the express written consent of the Eligible User.

- 30. OWNERSHIP, PROTECTION, AND USE OF DATA:** The Eligible User shall own and retain unlimited rights to use, disclose, or duplicate all State information and data (copyrighted or otherwise) provided to Contractor under this

CLOUD SOLUTIONS 2016-2026

Led by the State of Utah

Contract. Contractor, and any Subcontractors under its control, expressly agrees not to use Non-Public Data without prior written permission from the Eligible User.

31. OWNERSHIP, PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, UTAH, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES: In the event that the Eligible User provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, either orally or in writing, the provisions of Section 24 shall apply.

32. OWNERSHIP, PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION: All documents and data that were provided by the State to Contractor in connection with the work required by this Contract will remain the property of the Eligible User, and must be delivered to the Eligible User within thirty (30) working days after termination or expiration of this Contract, and without restriction or limitation to their future use. Any State Data returned under this section must either be in the format as originally provided, in a format that is readily usable by the Eligible User, or formatted in a way that it can be used. The costs for returning documents and data to the Eligible User are included in this Contract.

33. ORDERING AND INVOICING: For State of Utah Executive Branch Agencies, a purchase order must be sent to the Contractor by DTS prior to any work being initiated, product shipped, or invoices cut under any Order executed under this Contract. Terms and conditions appearing on a purchase order shall not apply to or become part of this Contract or any Order regardless of any statement to the contrary in such purchase order. Contractor will promptly submit invoices (within 30 days after the invoice date agreed to in an applicable Order) to the appropriate Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by the Eligible User shall not exceed prices listed in this Contract. The Eligible User shall adjust or return any invoice reflecting incorrect pricing. For Executive Branch Agencies, Contractor must send all invoices no later than July 10, or the last working day prior, to the State for all work completed or items received during the State's fiscal year of July 1-June 30.

34. PAYMENT AND NOTICE:

- a. Payments will be made within thirty (30) days from the date a correct invoice is received. For Executive Branch Agencies, a correct invoice will contain the contract and purchase order numbers as indicated in Section 33. After sixty (60) days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to the interest rate paid by the IRS on refund claims, plus two percent, computed in accordance with Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended.
- b. The contract total may be changed only by written amendment. Unless otherwise stated in this Contract, all payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Eligible User's purchasing card (major credit card). The Division will not pay electronic payment fees of any kind.
- c. Any written protest of the final contract payment must be filed with the Eligible User within fifteen (15) working days of receipt of final payment. If no protest is received, the Eligible User, the Division, and the State of Utah are released from all claims and all liability to Contractor for fees and costs pursuant to this Contract.
- d. [[Reserved.]]

35. CONTRACTOR'S INSURANCE RESPONSIBILITY: The Contractor shall maintain the following insurance coverage:

- a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
- b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate. The insurance limits may be satisfied through any combination or primary and/or umbrella/excess liability policies.
- c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be

CLOUD SOLUTIONS 2016-2026

Led by the State of Utah

applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.

- d. Other insurance policies specified in the Solicitation.

Industry standard Acord Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence. Failure to provide proof of insurance as required will be deemed a material breach of this Contract.

Contractor's failure to maintain this insurance requirement for the Contract Period will be grounds for immediate termination.

36. ADDITIONAL INSURANCE REQUIREMENTS:

- a. Professional liability insurance in the amount as described in the Solicitation for this Contract, if applicable.
- b. Any other insurance policies described or referenced in the Solicitation for this Contract.
- c. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, Utah, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.
- d. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Contractor must provide proof of the above listed policies within thirty (30) days of being awarded this Contract.

- 37. ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Division. Contractor agrees to be responsible to the Division for the services performed by its subcontractors hereunder and for such subcontractor's failure to comply with the relevant provisions of this Agreement or the applicable Order, to the same extent that Contractor would be responsible to the Division if the Contractor had performed such services or had failed to comply with such provisions.

- 38. TERMINATION:** This Contract or any Order hereunder may be terminated for cause by either party upon written notice being given by the other party. The party in violation will be given twenty (20) calendar days, or as otherwise agreed upon in writing, after notification to correct and cease the violations, after which, if the violation has not been cured, this Contract or the applicable Order may be terminated for cause immediately upon written notice and subject to the remedies below. This Contract may also be terminated without cause (for convenience) by either party, upon thirty (30) calendar days written termination notice being given to the other party. In addition, the Division or Eligible User may terminate without cause (for convenience) any Order, upon thirty (30) calendar days written termination notice being given to the Contractor. The Division and the Contractor may agree to terminate this Contract or any Order, in whole or in part, at any time by mutual written agreement. In the event of any termination of this Contract, this Contract shall continue to apply to all Orders that are in existence at the effective date of such termination and under which the Services have not been completed. If any Order is terminated pursuant to this Contract, this Contract shall continue to apply to all Orders that have not been terminated.

Contractor shall be compensated for the Services properly performed and goods properly provided pursuant to this Contract up to the effective date of termination as stated in the notice. Contractor agrees that in the event of termination for cause or without cause, Contractor's sole remedy and monetary recovery from the Division, the Eligible User, or the State of Utah is limited to payment for all work properly performed as authorized under this Contract up to the date of termination, and any reasonable pro-rated monies that may be owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract, after receipt and verification of documented evidence of those terminated contracts.

- 39. TERMINATION UPON DEFAULT:** In the event this Contract is terminated for default by Contractor, the Division may procure Goods, Custom Deliverables, or Services similar to those terminated, and the Division can seek from Contractor as direct damages the amount, if any, that the Division pays to an alternative provider for the terminated services not yet performed in excess of the amount the Division would have paid Contractor hereunder for such services.

CLOUD SOLUTIONS 2016-2026

Led by the State of Utah

- 40. SUSPENSION OF WORK:** The Division may suspend Contractor's responsibilities under an Order without terminating this Contract upon five (5) business days written notice, including the reason for and duration of the suspension, which shall not extend longer than sixty (60) calendar days (such period of time, the "Suspension Period"). Contractor's responsibilities under the applicable Order may then be reinstated upon written notice from the Division, subject to the prior execution of a written amendment to the Order to address any impacts of such suspension and the mutually agreed recommencement date. If the parties do not execute such an amendment prior to the end of the Suspension Period, either may terminate the applicable Order for convenience immediately upon written notice to the other party.
- 41. DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract or an Order (a) Contractor's material nonperformance of its contractual requirements under this Contract or the applicable Order or (b) Contractor's material breach of this Contract or the applicable Order. The Division will issue a written notice of default and may provide a thirty (30) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the Division may (a) exercise any remedy provided by law; (b) terminate this Contract or the applicable Order hereunder immediately upon written notice as provided in Section 38; (c) impose liquidated damages, if liquidated damages are listed in the applicable Order; (d) suspend or debar Contractor from receiving future solicitations; or (e) prior to commencing any legal proceedings, parties shall seek a good faith negotiation and non-binding mediation, which as part of such, may include a request for a full refund of the Goods, Custom Deliverables, or Services furnished by Contractor that were inadequately performed under this Contract.
- 42. FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God, or war which is beyond that party's reasonable control. The Division may immediately terminate this Contract upon written notice to Contractor after determining such delay will reasonably prevent successful performance of this Contract.
- 43. CONFLICT OF TERMS:** Terms and conditions listed or referenced on a Contractor's website, quotation/sales order, purchase orders, or invoice or any State purchase order shall not apply to or become part of this Contract or any Order regardless of any statement to the contrary in such purchase order. In the event of any conflict in the contract terms and conditions, the order of precedence is as outlined in the Master Agreement Attachment A section 1.
- 44. SURVIVORSHIP:** The contractual provisions that will remain in effect after expiration or termination of this Contract are: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of State Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records, including Residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, Utah, or Local Government Internal Business Processes, including residuals of such confidential business processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration, completion, or termination of this contract.
- 45. RELEVANT STATE AND FEDERAL LAWS**
- a. **Conflict of Interest with State Employees:** Contractor shall comply and cooperate in good faith with all applicable conflict of interest and ethic laws, including Section 63G-6a-2404, Utah Procurement Code, as amended.
 - b. **Procurement Ethics:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6a-2304.5, Utah Procurement Code, as amended).
 - c. **Contact Information:** To the extent Utah Code §§63G-6a-107.7 35A-2-203 is applicable, the State may make Contractor's contact information available to the State of Utah Department of Workforce Services, and the

CLOUD SOLUTIONS 2016-2026

Led by the State of Utah

State of Utah Department of Workforce Services may post information regarding Contractor's job vacancies on its website.

- d. **Employment Practices:** Contractor shall abide by the following employment laws to the extent applicable to Contractor: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the work place. Contractor shall abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.
- e. **Compliance with Accessibility Standards:** Contractor shall comply with the Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973 as applicable. Contractor shall comply with Utah Administrative Code R895-14-3(3), which states that contractors developing new websites or applications for State agencies are required to meet accessibility guidelines subject to rule R895 and correct any items identified during the Acceptance Period (or other applicable warranty period, if any) that do not meet these guidelines at no cost to the agency. Contractor shall comply with Utah Administrative Code R895-14-4(2), which states that contractors proposing IT products and services shall provide Voluntary Product Accessibility Template® (VPAT™) documents.

46. [[RIGHT TO MONITOR PERFORMANCE AND AUDIT

- a. **Audit:** To the extent required by law, Contractor shall, upon reasonable advanced written notification permit the Division, or a third party designated by the Division, to audit Contractor's records associated with this Contract in order to confirm Contractor's compliance with this Contract. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel; physical premises; and the applicable records.
- b. **Monitor Performance:** The Division and Eligible Users reserve the right to evaluate Contractor's performance, perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. This includes Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
- c. **Security Controls Report.** Deloitte LLP ("DLLP"), the parent entity of Contractor, has engaged a third party (the "Service Provider") to (a) apply procedures based upon a version of the Shared Assessments Program Agreed Upon Procedures with respect to the information technology controls of DLLP's infrastructure support services system and to prepare a report with respect thereto (the "Shared Assessments Report"), (b) conduct an examination in accordance with AT-C Sections 100 and 200 of the Statement on Standards for Attestation Engagements to report on controls at a Service Organization relevant to security and availability, established by the American Institute of Certified Public Accountants (AICPA) ("AICPA Standards") and, subject to AICPA Standards, prepare a Type 2 service organization controls report with respect thereto (the "SOC 2 Report"), and (c) certify that DLLP's Information Security Management System that manages its clients' confidential information complies with the requirements of ISO/IEC 27001:2013 ("ISO 27001 Certificate") (collectively, "Third-Party Security Reports"). Upon written request, DLLP shall promptly provide to the Division with one copy of (i) the Shared Assessments Report, provided, that the Division executes any documentation required by the Service Provider to become a specified user thereof, (ii) the SOC 2 Report, (iii) the ISO 27001 Certificate, or (iv) a report prepared by a third party that is designed to provide similar information as such Third-Party Security Reports. The Division shall not disclose such Third-Party Security Reports, or refer to such Third-Party Security Reports in any communication, to any person or entity other than the Division. In the event that the Divisions has any questions regarding such Third-Party Security Reports, DLLP shall make appropriate personnel reasonably available to discuss the contents thereof.
- d. For clarity, nothing in this Section 46 or elsewhere in the Contract shall permit the Division or any other entity to perform audits or inspections of Contractor's software, hardware (including laptops or other devices), workpapers or any access to Contractor computer systems.

CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

- 47. TIMELY PERFORMANCE:** The Services shall be completed and Goods and Custom Deliverables delivered by any applicable deadline stated in this Contract, except to the extent delays are caused by Eligible User.
- 48. STANDARD OF CARE:** For Services of Contractor which require licenses and certifications, such Services shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.
- 49. LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
- 50. ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions and prices of this Contract.
- 51. INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
- 52. QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
- 53. ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
- 54. REPORTS AND FEES:**
- a. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be one percent (or 1%), and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
 - b. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor>.
 - c. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31
 - d. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
- 55. Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in breach of this Contract.
- 56. Limitation on Damages:** Contractor, its subsidiaries, subcontractors, and their respective personnel shall not be liable to the State or any Eligible User for any claims, liabilities, or expenses relating to this Contract or the services

CLOUD SOLUTIONS 2016-2026
Led by the State of **Utah**

("Claims") for an aggregate amount in excess of the greater of total fees paid by the applicable Eligible User to Contractor under the applicable order over the twenty-four (24)-month period immediately preceding the date on which the first cause of action giving rise to a Claim under the order accrues or \$1,000,000.00. Such limitation does not apply to damages resulting from the recklessness, bad faith or intentional misconduct of Contractor or its subcontractors, and does not apply for damages that Contractor is obligated under this Contract to indemnify against for IP infringement. In no event shall either party or its subsidiaries, subcontractors, or their respective personnel be liable for any loss of goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense, relating to this engagement.

9. Subcontractors: All contactors, dealers, and resellers authorized in the State of *Utah*, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
10. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order. To the extent any product or service provided by Deloitte Consulting to the Participating Entity or any Purchasing Entity hereunder constitutes inventory within the meaning of section 471 of the Internal Revenue Code, such service/product is provided/licensed to the Participating Entity or Purchasing Entity by Deloitte Consulting as agent for its product company subsidiary on the terms and conditions contained herein.

Notwithstanding the foregoing, as set forth in the Master Agreement, orders may include the licensing of specific software programs pursuant to individual end user license agreements, in a form substantially similar to the license agreement for the applicable software as attached to the Master Agreement. In each such case, the end user license agreements will be executed directly between the Participating Entity or Purchasing Entity and the applicable software vendor.

PARTICIPATING ADDENDUM**CLOUD SOLUTIONS 2016-2026**Led by the State of **Utah**

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

Participating Entity: State of Utah Division of Purchasing & General Services	Contractor: Deloitte Consulting LLP
Signature: 	Signature: 
Name: Christopher Hughes	Name: Thomas Beck
Title: Chief Procurement Officer	Title: Principal
Date: 10/30/2020	Date: 10/28/2020