



# STATE OF UTAH COOPERATIVE CONTRACT

1. CONTRACTING PARTIES: This contract is between the Utah Division of Purchasing and the following Contractor:

PayIt, LLC

Name

1100 Main St. Suite 700

Street Address

Kansas City

Missouri

64105

City

State

Zip

Vendor # VC250790 Commodity Code #: 920-05 Legal Status of Contractor: For-Profit Corporation

Contact Name: Neil Graham Phone Number: +1 206-890-2071 Email: ngraham@payitgov.com

2. CONTRACT PORTFOLIO NAME: Customer Engagement.

3. GENERAL PURPOSE OF CONTRACT: Citizen Engagement Platform.

4. PROCUREMENT: This contract is entered into as a result of the procurement process on FY2021, Solicitation# KM21-47

5. CONTRACT PERIOD: Effective Date: Wednesday, September 15, 2021. Termination Date: Monday, September 14, 2026 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal Options: two 1 year renewal options.

6. Administrative Fee (if any): One Quarter of One Percent (or 0.25%).

7. Prompt Payment Discount Details (if any): Refer to Attachment C..

8. ATTACHMENT A: NASPO ValuePoint Master Agreement Terms and Conditions

ATTACHMENT B: Scope of Work

ATTACHMENT C: Price Schedule

ATTACHMENT D: End User License Agreements (as applicable)

**Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.**

9. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:

- a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
- b. Utah Procurement Code, Procurement Rules, and Contractor's response to solicitation #KM21-47.

10. Each person signing this Agreement represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver this Agreement and bind the parties hereto. Each signatory represents and warrants to the other that the execution and delivery of the Agreement and the performance of each party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the parties and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed. Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract shall be the date provided within Section 5 above.

## CONTRACTOR

## DIVISION OF PURCHASING

09/13/2021

Contractor's signature

9/9/2021

Date

Director, Division of Purchasing

Date

Michael S. Plunkett, Co-Founder & COO/CFO

Type or Print Name and Title



## ATTACHMENT A

### NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

#### I. Definitions

- 1.1 **Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.
- 1.2 **Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.3 **Embedded Software** means one or more software applications which permanently reside on a computing device.
- 1.4 **Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- 1.5 **Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.6 **Master Agreement** or **Contract** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
- 1.7 **NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.
- 1.8 **Order** or **Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

- 1.9 Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).
- 1.10 Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.
- 1.11 Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.
- 1.12 Product or Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.
- 1.13 Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

## II. Term of Master Agreement

- 2.1 Initial Term.** The initial term of this Master Agreement is for Five (5) years, beginning when the first master agreement under this portfolio is signed. The term of this Master Agreement may be amended beyond the initial term for two (2) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.
- 2.2 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.3 Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

### III. Order of Precedence

- 3.1 Order.** Any Order placed under this Master Agreement will consist of the following documents:
- 3.1.1** A Participating Entity’s Participating Addendum (“PA”);
  - 3.1.2** NASPO ValuePoint Master Agreement, including all attachments thereto;
  - 3.1.3** A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
  - 3.1.4** The Solicitation or, if separately executed after award, the Lead State’s bilateral agreement that integrates applicable provisions;
  - 3.1.5** Contractor’s response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 3.2 Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.
- 3.3 Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

### IV. Participants and Scope

- 4.1 Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.
- 4.2 Applicability of Master Agreement.** NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering

document (e.g., purchase order or contract) used by the Purchasing Entity to place the Order.

- 4.3 Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- 4.4 Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.
- 4.5 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to [pa@naspovaluepoint.org](mailto:pa@naspovaluepoint.org) to support documentation of participation and posting in appropriate databases.
- 4.6 Eligibility for a Participating Addendum.** Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 4.7 Prohibition on Resale.** Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.
- 4.8 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but

not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

- 4.9 Release of Information.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.
- 4.10 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

## **V. NASPO ValuePoint Provisions**

- 5.1 Applicability.** NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

### **5.2 Administrative Fees**

**5.2.1 NASPO ValuePoint Fee.** Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

**5.2.2 State Imposed Fees.** Some states may require an additional fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

### **5.3 NASPO ValuePoint Summary and Detailed Usage Reports**

- 5.3.1 Summary Sales Data.** The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org>. All sales made under this Master Agreement must be reported as cumulative totals by state. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).
- 5.3.2 Detailed Sales Data.** Contractor shall also report detailed sales data in accordance with the instructions in Attachment J.1 and in the format set forth in Attachment J, or as otherwise instructed by NASPO ValuePoint. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports must be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports must include sales information for all sales under Participating Addenda executed under this Master Agreement.
- 5.3.3 Reporting on Personal Use.** Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity ((state and agency, city, county, school district, etc.) under whose authority the employee is purchasing Product for personal use and the amount of sales. No personal identification numbers (e.g., names, addresses, social security numbers or any other numerical identifier) may be submitted with any report.
- 5.3.4 Executive Summary.** Contractor shall, upon request, provide NASPO ValuePoint cooperative contract coordinator with an executive summary that includes, at a minimum and for the preceding quarter, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint cooperative contract coordinator and Contractor will determine the format and content of the executive summary.

**5.3.5 Use of Data.** Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports will have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

#### **5.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review**

**5.4.1 Staff Education.** Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

**5.4.2 Onboarding Plan.** Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

**5.4.3 Annual Contract Performance Review.** Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

**5.4.4 Use of NASPO ValuePoint Logo.** The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

**5.4.5 Most Favored Customer.** Contractor shall, within thirty (30) days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.



**5.5 Cancellation.** In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years] after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

## **VI. Pricing, Payment & Leasing**

- 6.1 Pricing.** The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.
- 6.1.1** All prices and rates must minimally be guaranteed for the first year of the Master Agreement.
  - 6.1.2** Following the first year of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least thirty (30) days prior to the effective date.
  - 6.1.3** Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.
  - 6.1.4** No retroactive adjustments to prices or rates will be allowed.
- 6.2 Payment.** Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.
- 6.3 Leasing or Alternative Financing Methods.** The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and

conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

## **VII. Ordering**

- 7.1 Order Numbers.** Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.
- 7.2 Quotes.** Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an “as needed” basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.
- 7.3 Applicable Rules.** Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities’ rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- 7.4 Required Documentation.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- 7.5 Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.
- 7.5.1** Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.
- 7.5.2** Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.
- 7.5.3** Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- 7.5.4** Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after

the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.

**7.5.5** Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

**7.6 Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:

**7.6.1** The services or supplies being delivered;

**7.6.2** A shipping address and other delivery requirements, if any;

**7.6.3** A billing address;

**7.6.4** Purchasing Entity contact information;

**7.6.5** Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;

**7.6.6** A not-to-exceed total for the products or services being ordered; and

**7.6.7** The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

**7.7 Communication.** All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

**7.8 Contract Provisions for Orders Utilizing Federal Funds.** Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

## **VIII. Shipping and Delivery**

**8.1 Shipping Terms.** All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

**8.1.1** Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity

except as to latent defects, fraud, and Contractor's warranty obligations.

- 8.2 Minimum Shipping.** The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.
- 8.3 Inside Deliveries.** To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (e.g., scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.
- 8.4 Packaging.** All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

## **IX. Inspection and Acceptance**

- 9.1 Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.
- 9.2 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.
- 9.3 Inspection.** All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.
  - 9.3.1** Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

**9.3.2** Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

**9.4 Failure to Conform.** If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.

**9.5 Acceptance Testing.** Purchasing Entity may establish a process, in keeping with industry standards, to ascertaining whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

**9.5.1** The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

**9.5.2** If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

**9.5.3** Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

**9.5.4** Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.

**9.5.5** No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

## **X. Warranty**

**10.1 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.

- 10.2 Warranty.** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.
- 10.3 Breach of Warranty.** Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.
- 10.4 Rights Reserved.** The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.
- 10.5 Warranty Period Start Date.** The warranty period will begin upon Acceptance, as set forth in Section IX.

## **XI. Product Title**

- 11.1 Conveyance of Title.** Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.
- 11.2 Embedded Software.** Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.
- 11.3 License of Pre-Existing Intellectual Property.** Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

## **XII. Indemnification**

**12.1 General Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.

**12.2 Intellectual Property Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").

**12.2.1** The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

**12.2.1.1** provided by the Contractor or the Contractor's subsidiaries or affiliates;

**12.2.1.2** specified by the Contractor to work with the Product;

**12.2.1.3** reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

**12.2.1.4** reasonably expected to be used in combination with the Product.

**12.2.2** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

**12.2.3** The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously

pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

- 12.2.4** Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

### **XIII. Insurance**

- 13.1 Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.
- 13.2 Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- 13.3 Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:
- 13.3.1** Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence and \$2 million general aggregate;
- 13.3.2** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- 13.4 Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.
- 13.5 Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions,



and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

- 13.6 Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.
- 13.7 Furnishing of Certificates.** Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
- 13.8 Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

#### **XIV. General Provisions**

##### **14.1 Records Administration and Audit**

- 14.1.1** The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.
- 14.1.2** Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments

inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

- 14.1.3 The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

## 14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

- 14.2.1 **Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

- 14.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").

- 14.2.1.2 Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

- 14.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

- 14.2.2 **Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of

confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

**14.2.2.1** Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

**14.2.2.2** Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

**14.2.2.3** Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

**14.2.2.4** Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

**14.2.3 Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary

for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

**14.2.4 Purchasing Entity Law.** These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

**14.2.5 NASPO ValuePoint.** The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

**14.2.6 Public Information.** This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

### **14.3 Assignment/Subcontracts**

**14.3.1** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

**14.3.2** The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.

**14.4 Changes in Contractor Representation.** The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

**14.5 Independent Contractor.** Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not to hold itself out as agent except as expressly

set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

**14.6 Cancellation.** Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

**14.7 Force Majeure.** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

#### **14.8 Defaults and Remedies**

**14.8.1** The occurrence of any of the following events will be an event of default under this Master Agreement:

**14.8.1.1** Nonperformance of contractual requirements;

**14.8.1.2** A material breach of any term or condition of this Master Agreement;

**14.8.1.3** Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;

**14.8.1.4** Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

**14.8.1.5** Any default specified in another section of this Master Agreement.

**14.8.2** Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in

which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

**14.8.3** If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

**14.8.3.1** Any remedy provided by law;

**14.8.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;

**14.8.3.3** Assessment of liquidated damages as provided in this Master Agreement;

**14.8.3.4** Suspension of Contractor from being able to respond to future bid solicitations;

**14.8.3.5** Suspension of Contractor's performance; and

**14.8.3.6** Withholding of payment until the default is remedied.

**14.8.4** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

**14.9 Waiver of Breach.** Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver

by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.

**14.10 Debarment.** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

#### **14.11 No Waiver of Sovereign Immunity**

**14.11.1** In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

**14.11.2** This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

#### **14.12 Governing Law and Venue**

**14.12.1** The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.

**14.12.2** Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.

**14.12.3** If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

**14.13 Assignment of Antitrust Rights.** Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.



## Exhibit 1 to the Master Agreement: Software-as-a-Service

- 1. Data Ownership:** The Purchasing Entity will own all right, title and interest in its data that is related to the Services provided by this Master Agreement. The Contractor shall not access Purchasing Entity user accounts or Purchasing Entity data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Master Agreement, Participating Addendum, SLA, and/or other contract documents, or (4) at the Purchasing Entity's written request.

Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding a Purchasing Entity's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this Master Agreement.

- 2. Data Protection:** Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of Purchasing Entity information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of Purchasing Entity information and comply with the following conditions:
  - a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and Non-Public Data of similar kind.
  - b. All data obtained by the Contractor in the performance of the Master Agreement shall become and remain the property of the Purchasing Entity.
  - c. All Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the Personal Data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of the Master Agreement.
  - d. Unless otherwise stipulated, the Contractor shall encrypt all Non-Public Data at rest and in transit. The Purchasing Entity shall identify data it deems as Non-Public Data to the Contractor. The level of protection and encryption for all Non-Public Data shall be identified in the SLA.
  - e. At no time shall any data or processes — that either belong to or are intended for the use of a Purchasing Entity or its officers, agents or

employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the Purchasing Entity.

- f. The Contractor shall not use any information collected in connection with the Services issued from this Master Agreement for any purpose other than fulfilling the Services.
- 3. Data Location:** The Contractor shall provide its services to the Purchasing Entity and its end users solely from data centers in the U.S. Storage of Purchasing Entity data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store Purchasing Entity data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access Purchasing Entity data remotely only as required to provide technical support. The Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in a Participating Addendum.
  - 4. Security Incident or Data Breach Notification:**
    - a. Incident Response: Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the Purchasing Entity should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes as mutually agreed upon, defined by law or contained in the Master Agreement.
    - b. Security Incident Reporting Requirements: The Contractor shall report a security incident to the Purchasing Entity identified contact immediately as soon as possible or promptly without out reasonable delay, or as defined in the SLA.
    - c. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any purchasing entity's content that is subject to applicable data breach notification law, the Contractor shall (1) as soon as possible or promptly without out reasonable delay notify the Purchasing Entity, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.
  - 5. Personal Data Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data within the possession or control of the Contractor.
    - a. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate Purchasing Entity identified contact by telephone in

accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.

- b. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate Purchasing Entity identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a Data Breach. The Contractor shall (1) cooperate with the Purchasing Entity as reasonably requested by the Purchasing Entity to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) 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 providing the services, if necessary.
  - c. Unless otherwise stipulated, if a data breach is a direct result of Contractor's breach of its contractual obligation to encrypt personal data or otherwise prevent its release as reasonably determined by the Purchasing Entity, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause.
- 6. Notification of Legal Requests:** The Contractor shall contact the Purchasing Entity upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the Purchasing Entity's data under the Master Agreement, or which in any way might reasonably require access to the data of the Purchasing Entity. The Contractor shall not respond to subpoenas, service of process and other legal requests related to the Purchasing Entity without first notifying and obtaining the approval of the Purchasing Entity, unless prohibited by law from providing such notice.
- 7. Termination and Suspension of Service:**
- a. In the event of a termination of the Master Agreement or applicable Participating Addendum, the Contractor shall implement an orderly return of purchasing entity's data in a CSV or another mutually agreeable format at a time agreed to by the parties or allow the Purchasing Entity to extract it's data and the subsequent secure disposal of purchasing entity's data.

- b. During any period of service suspension, the Contractor shall not take any action to intentionally erase or otherwise dispose of any of the Purchasing Entity's data.
- c. In the event of termination of any services or agreement in entirety, the Contractor shall not take any action to intentionally erase purchasing entity's data for a period of:
  - 10 days after the effective date of termination, if the termination is in accordance with the contract period
  - 30 days after the effective date of termination, if the termination is for convenience
  - 60 days after the effective date of termination, if the termination is for cause

After such period, the Contractor shall have no obligation to maintain or provide any purchasing entity's data and shall thereafter, unless legally prohibited, delete all purchasing entity's data in its systems or otherwise in its possession or under its control.

- d. The purchasing entity shall be entitled to any post termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of an SLA.
  - e. Upon termination of the Services or the Agreement in its entirety, Contractor shall securely dispose of all Purchasing Entity's data in all of its forms, such as disk, CD/ DVD, backup tape and paper, unless stipulated otherwise by the Purchasing Entity. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the Purchasing Entity.
- 8. Background Checks:** Upon the request of the Purchasing Entity, the Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Master Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the Purchasing Entity's information among the Contractor's employees and agents. If any of the stated personnel providing services under a Participating Addendum is not acceptable to the Purchasing Entity in its sole opinion as a result of the background or criminal history investigation, the Purchasing Entity, in its' sole option shall have the right to either (1) request immediate replacement of the person, or (2) immediately terminate the Participating Addendum and any related service agreement.

- 9. Access to Security Logs and Reports:** The Contractor shall provide reports on a schedule specified in the SLA to the Purchasing Entity in a format as specified in the SLA agreed to by both the Contractor and the Purchasing Entity. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all public jurisdiction files related to this Master Agreement and applicable Participating Addendum.
- 10. Contract Audit:** The Contractor shall allow the Purchasing Entity to audit conformance to the Master Agreement terms. The Purchasing Entity may perform this audit or contract with a third party at its discretion and at the Purchasing Entity's expense.
- 11. Data Center Audit:** The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide an unredacted version of the audit report upon request to a Purchasing Entity. The Contractor may remove its proprietary information from the unredacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
- 12. Change Control and Advance Notice:** The Contractor shall give a minimum forty eight (48) hour advance notice (or as determined by a Purchasing Entity and included in the SLA) to the Purchasing Entity of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.
- Contractor will make updates and upgrades available to Purchasing Entity at no additional costs when Contractor makes such updates and upgrades generally available to its users.
- No update, upgrade or other charge to the Service may decrease the Service's functionality, adversely affect Purchasing Entity's use of or access to the Service, or increase the cost of the Service to the Purchasing Entity.
- Contractor will notify the Purchasing Entity at least sixty (60) days in advance prior to any major update or upgrade.
- 13. Security:** As requested by a Purchasing Entity, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the Purchasing Entity such that adequate protection and flexibility can be attained between the Purchasing Entity and the Contractor. For example: virus checking and port sniffing — the Purchasing Entity and the Contractor shall understand each other's roles and responsibilities.
- 14. Non-disclosure and Separation of Duties:** The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of Purchasing Entity data to that which is absolutely necessary to perform job duties.

- 15. Import and Export of Data:** The Purchasing Entity shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor at any time during the term of Contractor's contract with the Purchasing Entity. This includes the ability for the Purchasing Entity to import or export data to/from other Contractors. Contractor shall specify if Purchasing Entity is required to provide its' own tools for this purpose, including the optional purchase of Contractors tools if Contractors applications are not able to provide this functionality directly.
- 16. Responsibilities and Uptime Guarantee:** The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the Contractor. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.
- 17. Subcontractor Disclosure:** Contractor shall identify all of its strategic business partners related to services provided under this Master Agreement, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.
- 18. Right to Remove Individuals:** The Purchasing Entity shall have the right at any time to require that the Contractor remove from interaction with Purchasing Entity any Contractor representative who the Purchasing Entity believes is detrimental to its working relationship with the Contractor. The Purchasing Entity shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the Purchasing Entity signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not assign the person to any aspect of the Master Agreement or future work orders without the Purchasing Entity's consent.
- 19. Business Continuity and Disaster Recovery:** The Contractor shall provide a business continuity and disaster recovery plan upon request and ensure that the Purchasing Entity's recovery time objective (RTO) of XXX hours/days is met. (XXX hour/days shall be provided to Contractor by the Purchasing Entity.) Contractor must work with the Purchasing Entity to perform an annual Disaster Recovery test and take action to correct any issues detected during the test in a time frame mutually agreed between the Contractor and the Purchasing Entity.
- 20. Compliance with Accessibility Standards:** The Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973, or any other state laws or administrative regulations identified by the Participating Entity.
- 21. Web Services:** The Contractor shall use Web services exclusively to interface with the Purchasing Entity's data in near real time.

**22. Encryption of Data at Rest:** The Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data, unless the Purchasing Entity approves in writing for the storage of Personal Data on a Contractor portable device in order to accomplish work as defined in the statement of work.

**23. Subscription Terms:** Contractor grants to a Purchasing Entity a license to: (i) access and use the Service for its business purposes; (ii) for SaaS, use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use Contractor's documentation.

No Contractor terms, including standard click through license or website terms or use of privacy policy, shall apply to Purchasing Entities unless such terms are included in this Master Agreement.

## Exhibit 2 to the Master Agreement: Platform-as-a-Service

- 1. Data Ownership:** The Purchasing Entity will own all right, title and interest in its data that is related to the Services provided by this Master Agreement. The Contractor shall not access Purchasing Entity user accounts or Purchasing Entity data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Master Agreement, Participating Addendum, SLA, and/or other contract documents, or (4) at the Purchasing Entity's written request.

Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding a Purchasing Entity's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this Master Agreement.

- 2. Data Protection:** Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of Purchasing Entity information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of Purchasing Entity information and comply with the following conditions:
  - a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and Non-Public Data of similar kind.
  - b. All data obtained by the Contractor in the performance of the Master Agreement shall become and remain the property of the Purchasing Entity.
  - c. All Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the Personal Data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of the Master Agreement.
  - d. Unless otherwise stipulated, the Contractor shall encrypt all Non-Public Data at rest and in transit. The Purchasing Entity shall identify data it deems as Non-Public Data to the Contractor. The level of protection and encryption for all Non-Public Data shall be identified in the SLA.
  - e. At no time shall any data or processes — that either belong to or are intended for the use of a Purchasing Entity or its officers, agents or



employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the Purchasing Entity.

- f. The Contractor shall not use any information collected in connection with the Services issued from this Master Agreement for any purpose other than fulfilling the Services.
- 3. Data Location:** The Contractor shall provide its services to the Purchasing Entity and its end users solely from data centers in the U.S. Storage of Purchasing Entity data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store Purchasing Entity data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access Purchasing Entity data remotely only as required to provide technical support. The Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in a Participating Addendum.
  - 4. Security Incident or Data Breach Notification:** The Contractor shall inform the Purchasing Entity of any security incident or data breach within the possession and control of the Contractor and related to the service provided under the Master Agreement, Participating Addendum, or SLA. Such notice shall include, to the best of Contractor's knowledge at that time, the persons affected, their identities, and the Confidential Information and Data disclosed, or shall include if this information is unknown.
    - a. Incident Response: The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Master Agreement, Participating Addendum, or SLA. Discussing security incidents with the Purchasing Entity should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes as mutually agreed, defined by law or contained in the Master Agreement, Participating Addendum, or SLA.
    - b. Security Incident Reporting Requirements: Unless otherwise stipulated, the Contractor shall immediately report a security incident related to its service under the Master Agreement, Participating Addendum, or SLA to the appropriate Purchasing Entity.
    - c. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any Purchasing Entity data that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify the appropriate Purchasing Entity within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner

- 5. Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data within the possession or control of the Contractor.
- a. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate Purchasing Entity identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.
  - b. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate Purchasing Entity identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a data breach. The Contractor shall (1) cooperate with the Purchasing Entity as reasonably requested by the Purchasing Entity to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) 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 providing the services, if necessary.
  - c. Unless otherwise stipulated, if a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause.
- 6. Notification of Legal Requests:** The Contractor shall contact the Purchasing Entity upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the Purchasing Entity's data under the Master Agreement, or which in any way might reasonably require access to the data of the Purchasing Entity. The Contractor shall not respond to subpoenas, service of process and other legal requests related to the Purchasing Entity without first notifying and obtaining the approval of the Purchasing Entity, unless prohibited by law from providing such notice.
- 7. Termination and Suspension of Service:**
- a. In the event of an early termination of the Master Agreement, Participating or SLA, Contractor shall allow for the Purchasing Entity to retrieve its

digital content and provide for the subsequent secure disposal of the Purchasing Entity's digital content.

- b. During any period of service suspension, the Contractor shall not take any action to intentionally erase or otherwise dispose of any of the Purchasing Entity's data.
- c. In the event of early termination of any Services or agreement in entirety, the Contractor shall not take any action to intentionally erase any Purchasing Entity's data for a period of 1) 45 days after the effective date of termination, if the termination is for convenience; or 2) 60 days after the effective date of termination, if the termination is for cause. After such day period, the Contractor shall have no obligation to maintain or provide any Purchasing Entity data and shall thereafter, unless legally prohibited, delete all Purchasing Entity data in its systems or otherwise in its possession or under its control. In the event of either termination for cause, the Contractor will impose no fees for access and retrieval of digital content to the Purchasing Entity.
- d. The Purchasing Entity shall be entitled to any post termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of an SLA.
- e. Upon termination of the Services or the Agreement in its entirety, Contractor shall securely dispose of all Purchasing Entity's data in all of its forms, such as disk, CD/ DVD, backup tape and paper, unless stipulated otherwise by the Purchasing Entity. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the Purchasing Entity.

#### **8. Background Checks:**

- a. Upon the request of the Purchasing Entity, the Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Master Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the Purchasing Entity's information among the Contractor's employees and agents.
- b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.

- c. If any of the stated personnel providing services under a Participating Addendum is not acceptable to the Purchasing Entity in its sole opinion as a result of the background or criminal history investigation, the Purchasing Entity, in its' sole option shall have the right to either (1) request immediate replacement of the person, or (2) immediately terminate the Participating Addendum and any related service agreement.

**9. Access to Security Logs and Reports:**

- a. The Contractor shall provide reports on a schedule specified in the SLA to the Purchasing Entity in a format as specified in the SLA and agreed to by both the Contractor and the Purchasing Entity. Reports will include latency statistics, user access, user access IP address, user access history and security logs for all Purchasing Entity files related to the Master Agreement, Participating Addendum, or SLA.
- b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.

**10. Contract Audit:** The Contractor shall allow the Purchasing Entity to audit conformance to the Master Agreement terms. The Purchasing Entity may perform this audit or contract with a third party at its discretion and at the Purchasing Entity's expense.

**11. Data Center Audit:** The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide an unredacted version of the audit report upon request to a Purchasing Entity. The Contractor may remove its proprietary information from the unredacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

**12. Change Control and Advance Notice:** The Contractor shall give a minimum forty eight (48) hour advance notice (or as determined by a Purchasing Entity and included in the SLA) to the Purchasing Entity of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

Contractor will make updates and upgrades available to Purchasing Entity at no additional costs when Contractor makes such updates and upgrades generally available to its users.

No update, upgrade or other charge to the Service may decrease the Service's functionality, adversely affect Purchasing Entity's use of or access to the Service, or increase the cost of the Service to the Purchasing Entity.

Contractor will notify the Purchasing Entity at least sixty (60) days in advance prior to any major update or upgrade.

- 13. Security:** As requested by a Purchasing Entity, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the Purchasing Entity such that adequate protection and flexibility can be attained between the Purchasing Entity and the Contractor. For example: virus checking and port sniffing — the Purchasing Entity and the Contractor shall understand each other's roles and responsibilities.
- 14. Non-disclosure and Separation of Duties:** The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of Purchasing Entity data to that which is absolutely necessary to perform job duties.
- 15. Import and Export of Data:** The Purchasing Entity shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor at any time during the term of Contractor's contract with the Purchasing Entity. This includes the ability for the Purchasing Entity to import or export data to/from other Contractors. Contractor shall specify if Purchasing Entity is required to provide its' own tools for this purpose, including the optional purchase of Contractors tools if Contractors applications are not able to provide this functionality directly.
- 16. Responsibilities and Uptime Guarantee:** The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the Contractor. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.
- 17. Subcontractor Disclosure:** Contractor shall identify all of its strategic business partners related to services provided under this Master Agreement, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.
- 18. Business Continuity and Disaster Recovery:** The Contractor shall provide a business continuity and disaster recovery plan upon request and ensure that the Purchasing Entity's recovery time objective (RTO) of XXX hours/days is met. (XXX hour/days shall be provided to Contractor by the Purchasing Entity.) Contractor must work with the Purchasing Entity to perform an annual Disaster Recovery test and take action to correct any issues detected during the test in a time frame mutually agreed between the Contractor and the Purchasing Entity.
- 19. Compliance with Accessibility Standards:** The Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the

Rehabilitation Act of 1973 or any other state laws or administrative regulations identified by the Participating Entity.

**20. Web Services:** The Contractor shall use Web services exclusively to interface with the Purchasing Entity's data in near real time.

**21. Encryption of Data at Rest:** The Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data as identified in the SLA, unless the Contractor presents a justifiable position that is approved by the Purchasing Entity that Personal Data, is required to be stored on a Contractor portable device in order to accomplish work as defined in the scope of work.

**22. Subscription Terms:** Contractor grants to a Purchasing Entity a license to: (i) access and use the Service for its business purposes; (ii) for PaaS, use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use Contractor's documentation.

No Contractor terms, including standard click through license or website terms or use of privacy policy, shall apply to Purchasing Entities unless such terms are included in this Master Agreement.

## **Attachment B – Scope of Work**

Contractor – PayIt, LLC

### **I. Awarded Scope / Executive Summary**

The scope of this contract award includes the following category(ies):

Category 4 – Customer Engagement - A software solution that provides a centralized platform to manage multiple interactions (financial or non-financial) with customers. Provides a platform for studying customer behavior through all channels and touchpoints of interaction such as phone, in-person, or online.

Additional Value Add Items / Services may be offered by Contractor within the Award Category listed above. Such value-added solutions may include, but are not limited to, solutions as - identity management, referrals engine, user behavior analytics, digital wallets, web hosting, Website & web app development, eCommerce services and payment processing.

When deployed as part of a complete eGovernment solution – including a modern, comprehensive web presence – the PayIt Platform will deliver reduced walk-in traffic, reduce the time dedicated to managing physically mailed checks, and empower agency staff to spend more time serving constituents than managing web payment and ecommerce services.

Services are centralized on a user’s dashboard, and PayIt offers the payment services users and agencies demand, including ready access to receipts and payment methods (user wallet); automatic, partial, and equal bill payments; and eBilling, notifications, and email reminders.

### **II. Value Add Solutions**

#### **a. Value Add Items**

#### **Value Added Item #1: Secure Payment Services**

How will this add value? Interactions which require a payment are frequently challenging for agencies and constituents alike. Compliance with payment security measures such as PCI and NACHA are extremely costly, card brand rules are complex and ever-changing, and requirements for security protocols change rapidly. The cost of a non-compliance - or to mitigate a data breach incident - begin in the tens of thousands of dollars, and can erode a constituent’s trust in an agency.

Documented Performance: Agencies who shift payment processing and compliance to PayIt have seen internal savings ranging from hundreds of thousands of dollars in processing fees (Wyandotte County, KS; Jackson County, MO), to millions of dollars in internal overhead for management and provisioning of payment services (North Carolina).

Cost Impact (%): No Impact    Schedule Impact (%): No Impact

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### **Value Added Item #2: Implementation with Unisys**

How will this add value? State organizations and large City or County agencies frequently have complex back-office system architectures, with multiple disparate databases and financial systems which must interact with a solution such as PayIt to offer optimal context during interactions. Implementations and integrations at scale require deep knowledge of these systems, demanding a consultative approach to delivering an optimal solution. Unisys prides itself on our 150-year history of providing solutions across the Globe. Unisys has a large Public Sector footprint providing Datacenter and technology services and is a premier provider for public cloud services including Azure, AWS, Oracle and Google. Unisys understands the complexities of government programs and has the expertise to deliver PayIt in a successful and efficient manner.

Documented Performance: Our repeatable implementation framework (Discover, Analyze, Strategize, Plan, Deliver) has been highly effective removing cost and risk for complex public sector solutions for Citizen Experience services like PayIt.

Cost Impact (%): \$202.43/hr. Schedule Impact (%): No Impact

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### **Value Added Item #3: Client Success**

How will this add value? The ongoing health of our relationship with our clients is critical at PayIt. Every client works closely with a Client Success Manager who is tasked with driving ongoing client success, ensuring that requests from staff or platform issues are addressed rapidly, and acting as a thought leader throughout the duration of the relationship.

Documented Performance: Agencies who align and engage with their Client Success Manager see the greatest revenue capture improvements - 89% on average over a previous provider, with a cross-platform online revenue capture growth of over 35% YoY.

Cost Impact (%): No Impact Schedule Impact (%): No Impact

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### **Value Added Item #4: Marketing Support**

How will this add value? Marketing is complex and can be time-consuming for agencies who do not have a dedicated marketing and communications team. PayIt's Marketing team is deeply experienced in deploying campaigns which drive adoption, improve awareness, and result in significant revenue capture increases for agencies. Standard marketing support (digital, social, and email campaigns and printed assets) are included in base transaction or subscription fees. Premium marketing packages are available to further accelerate success.

Documented Performance: Clients see an average of 89% increase in digital adoption over previous solution providers when they leverage PayIt's Marketing support.

Cost Impact (%): No Impact Schedule Impact (%): No Impact

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### **Value Added Item #5: Citizen-facing Platform Support**

How will this add value? Not only is platform support provided to our clients, but is extended to our citizen users as well. PayIt Customer Care staff are available by phone during standard business hours, and email is accepted 24/7. FAQs are also available in every PayIt Profile. Shifting customer support from agencies to PayIt is just another way that overhead is shifted from agency staff to PayIt, further driving ROI and improving adoption outcomes.

Documented Performance: Across the platform, less than 2% of interactions result in a call to support, and those calls that are submitted to PayIt Support are overwhelmingly resolved over the phone or within 4 hours. Premium support, including chat, extended phone hours, and accelerated response times for agency support requests are available at an additional cost.

Cost Impact (%): No Impact Schedule Impact (%): No Impact

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#### **b. Value Add Solutions That Involve Third-Party Software Solutions**

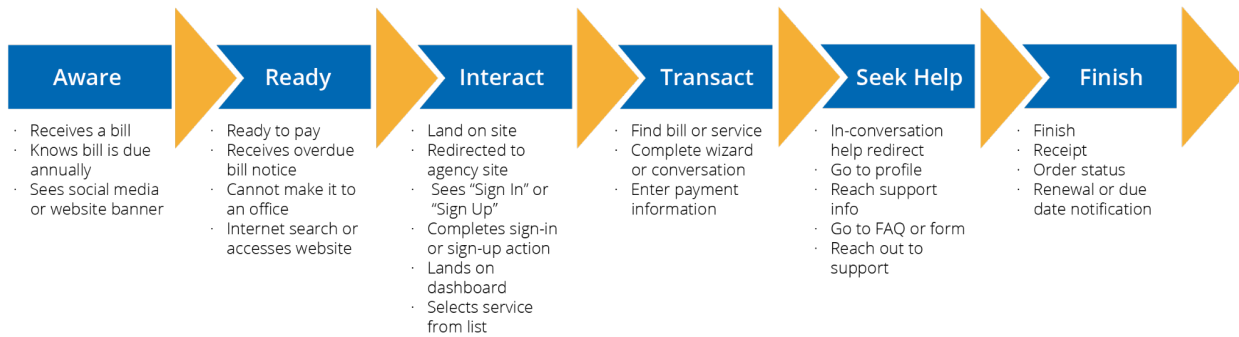
Contractor must be the original software publisher of the solutions offered within its Awarded Scope. Contractor may nonetheless submit value added solutions that involve third-party software solutions. As Contractor chooses to offer third-party software solutions as part of its value-added offerings any third-party end user licensing agreements (distributed with such software) are included in this Master Agreement through Attachment E. supplemental documents with its proposal.

The third-party end user license agreements will be at the discretion of each Participating State or Participating Entity to review, negotiate and/or utilize these documents within their Participating Addendum. Purchasing Entities that acquire third-party software solutions shall be subject to the end user licensing agreements distributed with such software, unless otherwise stated in a Participating Addendum or as negotiated between the Purchasing Entity and third-party software provider.

### **III. Service Approach.**

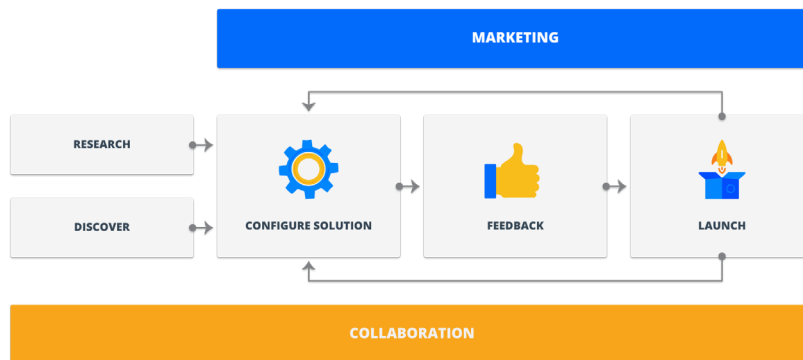
Citizen engagement solutions must be designed to ensure that the user experience is based on known user behaviors, and that information presented is contextual to the citizen's interaction. In support of this, PayIt takes a user-centered approach to the design and deployment of its services in tandem with an iterative development process that incorporates an agency's business rules and

workflows.



First, the user journey is identified and understood based on PayIt historical information in addition to input from the agency. This includes current interaction channels, and any applicable business rules which apply to the interaction itself (for example, a user must have passed a driver test administered by a State-sponsored instructor in-person to apply for a driver license online). These business rules drive the information that is presented to the citizen user, based on configurable workflows that dictate how a user proceeds through the interaction.

After the user journey has been established based on the use case (“research” in the below graphic), PayIt employs an iterative launch process that is designed to carefully identify and record business requirements and dependencies (“discover” in the below graphic), then build those rules into the interaction workflow. This is known at PayIt as the “Rapid Launch Process.



During the latter stages of the Rapid Launch process, the research compiled and business rules discovered drive solution configuration. At each step of the configuration process, key stakeholders across the agency provide feedback and input, which is integrated into the solution configuration using sprints. After all feedback has been captured and stakeholders sign off on the solution, PayIt launches the application on Web and Mobile (if applicable) platforms. Throughout the launch process, and in the first 30 to 60 days following launch, PayIt escalates all interactions, bugs, and configuration changes to ensure that solution rollout is smooth.

This iterative approach - which focuses on configuration of low-code workflows and modules as opposed to custom-coded builds - means that PayIt solutions can be deployed in as few as 12

weeks for low- to moderate-complexity solutions (e.g., property taxes or citations with documented business requirements and readily available data access). More complex solutions, such as business or professional licensing or motor vehicle solutions (driver license and vehicle registrations) may take slightly longer - but on average, a PayIt client has a solution up and running in less than 6 months from contract signature to launch. This is far shorter than a typical implementation cycle for custom-coded, COTS solutions which last from 12 to 18 months, on average.

As a solution provider solely focused on government entities, PayIt's Rapid Launch approach to solution development is designed to be very low resource intensive for agencies both during and after solution launch. This means that not only can the PayIt Platform drive improved citizen experiences, but throughout the process it allows agency staff to continue focusing on serving constituents throughout the configuration and deployment process. Following the implementation, the PayIt solution is fully maintained by PayIt engineers, client and end-user support teams, and an assigned client success manager to drive ongoing solution success.

#### **IV. Service Assumptions**

The PayIt Platform is strictly a citizen customer-facing solution designed to simplify interactions between citizens and agencies.

PayIt requires integration into a back-office solution or database. PayIt does not house citizen data such as property tax assessment amounts, monthly water or solid waste bills, or outstanding balances for citations or court fees. The assumption is that the Participating Entity has a back-office financial system which houses this data (in addition to business rules surrounding late fees or fines) in place. PayIt has many options for integrating or interfacing with these systems to present this data at the point of purchase.

Agencies who wish for live data integrations should have a web services or open API available to back office systems, or acquire such an API in order to deliver a real-time integration. PayIt is responsible only for writing its API to connect to an agency system, if there is an API available to the system.

PayIt's web interface is provided only for secure transaction processing and workflow-based applications such as business licenses or social services. PayIt is not a web developer, and does not provide customer-facing web interfaces for agencies outside of the PayIt Platform.

#### **V. Roles, Responsibilities, & Exceptions**

##### **Participating Entity Responsibilities**

**Deployment:** Provide a single point of contract for the configuration process and provide adequate access to staff and resources to support the goal of being live quickly post kickoff.

**Integration:** Provide timely access to data required for the services in the Participating Addendum. For example: bi-directional access to customer account detail, payable detail,

payable balance, subtotals with descriptions, and total with any fees or fee type descriptions. Data can be provided via web services API (preferred) or delivered on a recurring basis via secure FTP.

### **Go-Live:**

- Launch the Application, in coordination with PayIt, when configuration of services is complete, including the redirect of any and all web addresses for applicable services to the web Application.
- Provide marketing support, in coordination with PayIt, adequate to drive customer/constituent adoption of the Applications. For this purpose, marketing support provided by Participating Entity may include:
  - Place online notifications and mobile intercept screens prominently on Participating Entity website and department landing pages, as well as any e-newsletters or emails
  - Place notification(s) on all billing communications (including citations, etc.)
  - Include notification(s) information in any printed signage, newsletters, and blogs

### **PayIt Roles and Responsibilities**

#### **Configuration:**

- Provide the services in the subsequent Participating Addendum; deploy, configure, host, and manage the PayIt Platform.
- Provide a single point of contact for the configuration process, with a dedicated project team and a goal to launch service in production quickly post kickoff.
- Provide training to Participating Entity personnel.

#### **Integration:**

- Configure necessary systems to integrate the PayIt Platform with Client systems using existing data, APIs, or web services components provided by the Client. If additional data, APIs, or web services components are required, PayIt will discuss options, scope, and required costs to develop these with Client and gain approval prior to commencing work.

#### **Management After Go-Live:**

- Provide ongoing support to both Participating Entity and Constituents.
- Meet regularly to review performance, track against shared goals, and share upcoming platform enhancements as well as identify opportunities for service-level improvements.

#### **Settlement & Disbursement:**

- Collect payment from Constituent Users and deposit collected funds into designated Participating Entity accounts, based on settlement rules and disbursement schedules established during the implementation process.
- Handle NSF, refunds, and chargebacks based on Client business rules and specifications.

## **VI. Risk Management Plan**

### **Risk #1 Description: Availability of API**

Solution: Working with 3rd party systems of record can pose a risk in terms of data availability to optimize the user experience. When data is unavailable, or 3rd party partners are unwilling to collaborate, the implementation can be blocked and progress can stall. We will work with the agency to minimize the risk by connecting with a client's technical point of contact during the Kickoff to determine the best method to integrate, and to provide resources if needed. We further mitigate this risk by having integration options - including Flat File, API, or even direct database connection if other options are unavailable. By establishing a work plan to gain access to the data early on in the process with the pertinent stakeholder, delays and risk to the project timeline will be mitigated.

### **Risk #2 Description: Inadequate Participating Entity Staff**

Solution: Adequate resources available from the Participating Entity to provide PayIt with enough information to implement properly is a risk. We mitigate this risk by providing abundant resources on our side - project management, implementation and platform specialists, integration specialists, QA, etc. We further mitigate this risk by providing a detailed overview of our implementation approach during initial conversations, and a detailed schedule at the kick off meeting to ensure resource allocation is well understood and any concerns can be raised early and mitigated properly.

### **Risk #3 Description: Agency Team Engagement**

Solution: To ensure that we receive buy-in from the agency team during the implementation, we will ensure our project champion outlines success for the agency team, to align working teams on mission and intended outcomes. The working teams will hold weekly check-ins to get frequent approval and acknowledgement of project progress and goals so the champion and any other stakeholders are informed on any needs for a successful launch.

### **Risk #4 Description: Misalignment on the Business Cycle with Client**

Solution: PayIt provides a few methods to help counter the risk of misaligning implementation timeline with a busy cycle for the agency business cycle. A high-level project timeline is provided early on during initial discussions with the agency to ensure alignment with the timing of our implementation cycle. This allows the partnership to move forward step in step with the client around upcoming deadlines that may alter our shared goals. Second, once a contract has been signed, our pre-kickoff and kickoff phases will include a timeline review to develop a critical path of work required in order to meet both timelines.

## VII. Deliverables

Specific deliverables for the Participating Entity's solution are detailed in any Participating Addendum. Generally, deliverables will include the following:

A web or mobile application that allows constituent users to:

- Search for one or many payables OR complete a multi-step Application established by a Participating Entity
- Make payments for all required fees utilizing Visa, MasterCard, Discover, American Express, or ACH/eCheck (if required)
- Store tokenized payment methods in the User Wallet (if required)
- Receive confirmation of payment and/or completed Application via email and User Profile
- Review payment and transaction history and/or application status
- Receive notifications and reminders regarding upcoming payables and/or Application action items in the PayIt Solution and via email

The Participating Entity will be provided with:

- Reports requisite for financial reconciliation
- Daily transaction reports
- Access to administrative features for management of Applications and transactions
- Receive monies deposited into one or multiple Participating Entity bank accounts

## VIII. Financial Summary

Any sum due Contractor (PayIt) for the services for which payment is not otherwise specified shall be due and payable forty-five (45) business days after receipt by the Participating Entity of an invoice from Contractor. Any Payment Processing Fees or Citizen Transaction fees specified in a Participating Addendum will be collected by the Contractor, with approval by the Participating Entity. Such approval is not to be unreasonably withheld by the Participating Entity.

**Billing Procedures.** Contractor shall collect all sums due pursuant to a Participating Addendum as outlined in the Participating Addendum.

**Taxes.** Contractor represents and warrants that it is an independent contractor for purposes of federal, state, and local taxes. Contractor agrees that Participating Entity is not responsible to collect or withhold any such taxes, including income tax withholding and social security contributions, for Contractor. Any and all taxes, interest, or penalties, including any federal, state, or local withholding or employment taxes, imposed, assessed, or levied as a result of this Master Agreement shall be paid or withheld by Contractor.

**Non-Binding Terms.** Any terms and conditions included in a Participating Addendum or invoice, as the case may be, shall be deemed to be solely for the convenience of the respective party, and no such term or condition shall be binding upon the parties.

**Auditable Records.** Contractor shall maintain accurate records of all fees billable to, and payments made by, Participating Entity in a format that will permit audit by Participating Entity for a period of no less than three (3) years from when a fee was incurred or a payment was made. The foregoing obligation of Contractor shall survive the termination of this agreement.

**No Suspension of Services.** Contractor shall not suspend any part of the Services where: (a) Participating Entity is reasonably disputing any amount due to Contractor; or (b) any unpaid but undisputed amount due to Contractor is less than ninety (90) business days in arrears.

**IX. Contractor Contact List**

Role	Name & Title	Email	Phone
Executive Sponsor	Michael S. Plunkett, Co-Founder & COO/CFO	<a href="mailto:mike@payitgov.com">mike@payitgov.com</a>	(913) 314-3825
Sales Contact	Neil Graham, CRO	<a href="mailto:ngraham@payitgov.com">ngraham@payitgov.com</a>	(206) 890-2071
Invoicing	Sarah Wells, Finance Manager	<a href="mailto:accounting@payitgov.com">accounting@payitgov.com</a>	
SOW Requests & Participating Addendum Support	Katie Beth Deschepper, Director of Revenue Operations	<a href="mailto:katiebeth@payitgov.com">katiebeth@payitgov.com</a>	

-- END OF ATTACHMENT B --

**Attachment C - Price Schedule  
AR3761 - Paylt, LLC**

Manufacturer	Description	Vendor Part No	Price
Paylt, LLC	Professional/Business Licensing: Payment for a license or certification issued by a government agency	TRX-LIC-01	\$7.50 per Transaction
Paylt, LLC	DMV & Driver License Services: Payment for various DMV and driver license services.	TRX-REG-01	\$3.50 per Transaction
Paylt, LLC	Records Order: Payment for a record from a government agency.	TRX-RCD-01	\$10.00 per Transaction
Paylt, LLC	Tax Services: Payment of various agency tax types.	TRX-TAX-01	\$3.50 per Transaction
Paylt, LLC	Utility Account Services: Payment of city or county utilities such as water, solid waste, or electricit	TRX-UTL-04	\$3.50 per Transaction
Paylt, LLC	Court Fees and Citations: Payment for various court fees and citations issued by a government ag	TRX-CRT-06	\$5.00 per Transaction
Paylt, LLC	Subscription Service Level 1: Per-month subscription for agencies serving up to 250,000 populatio	PLT-SUB-01	\$5,000 per Month
Paylt, LLC	Subscription Service Level 2: Per-month subscription for agencies serving from 250,000 to 399,999	PLT-SUB-02	\$8,000 per Month
Paylt, LLC	Subscription Service Level 3: Per-month subscription for agencies serving from 400,000 to 999,999	PLT-SUB-03	\$10,000 per Month
Paylt, LLC	Subscription Service Level 4: Per-month subscription for agencies serving populations from 1,000,	PLT-SUB-04	\$20,000 per Month
Paylt, LLC	Subscription Service Level 5: Additional \$5,000 per month per 250,000 citizens over 1,500,000 (PL	PLT-SUB-05	\$5,000 per Month
Paylt, LLC	Payment Platform: Credit and Debit processing	PMT-TRX-CC	2.50% of Transaction
Paylt, LLC	Payment Platform: ACH processing	PMT-TRX-ACH	\$1.50 per Transaction
Paylt, LLC	Premium Implementation: Unisys consulting	IMP-UIS-01	\$202.43 per hour



## **End User License Agreement Paylt Platform NASPO Citizen Engagement**

### **RECITALS**

WHEREAS, Participant requires third-party hosted “software as a service” with respect to a transaction processing platform;

WHEREAS, Participant has selected Service Provider to provide and manage the Services;

WHEREAS, the Services include Service Provider providing to Participating Entity (Participant) services that facilitate Participant’s acceptance of card payments, e-check, and/or ACH payments for goods and services provided, and Service Provider as an agent for Participant, may accept settlement payments from the Acquirer on behalf of Participant;

WHEREAS, Service Provider is party to an agreement with an Acquirer and a Bank under which Acquirer and Bank provide payment processing and Association sponsorship services to Service Provider on behalf of Participant and other sub-merchants of Service Provider;

WHEREAS, as a condition of providing services to Service Provider on behalf of Participant, Acquirer, and Bank require that Service Provider include certain terms and conditions in this Agreement relating to the payment processing services being provided to Participant;

WHEREAS, Service Provider wishes to perform the Services; and,

WHEREAS, Service Provider has agreed to provide the Services to Participant, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. **The Services.** This Agreement sets forth the terms and conditions under which Service Provider agrees to provide to Participant certain hosted software (“Software”) and all other services necessary for productive use of such software as set forth on a Statement of Work (collectively, the “Services”). Multiple Statements of Work (SOWs) may be executed in parallel.
2. The Agreement shall remain in effect unless terminated as provided for herein.
  - 2.1. **Control and Location of Services.** The method and means of providing the Services shall be under the exclusive control, management, and supervision of Service Provider, giving due and reasonable consideration to the requests of Participant. The Services (including data storage), shall be provided solely from within the continental United States and on computing and data storage devices residing therein.
3. **Payment Processing Services.**
  - 3.1. **Capacity of Service Provider and Participant.** On and subject to the terms and conditions hereof, Service Provider is: (i) acting in the capacity of a “Payment Service Provider” (under the Visa Rules) and a “Payment Facilitator” (under the MasterCard Rules) and will provide Participant card processing services as a Sub-Merchant as described herein; and (ii) will provide Participant with additional services as agreed by

the Parties. Service Provider provides processing services with respect to credit card transactions including Visa U.S.A., Inc. ("Visa"), MasterCard Worldwide ("MasterCard"), DFS Services LLC ("Discover Network"), American Express, PayPal, JCB, Discover, Diners Club ("Associations"), as well as e-check and ACH transactions.

- 3.2. Acceptance of Cards. The parties agree they will honor a card by accepting it for payment. The parties will not engage in any acceptance practice or procedure that discriminates against, or discourages the use of, any particular card type elected and approved by Service Provider, in favor of any competing card brand also elected and approved. Both parties understand and agree that they are expressly prohibited from presenting sales transactions for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities. For all Cards issued by U.S. Issuers, the parties will honor all cards within the card types elected and approved in accordance with this Agreement.
- 3.3. Participant Obligations and Requirements. The Participant shall comply with the Associations' operating rules ("Operating Rules"), including the Operating Rules applicable to the Visa PSP and MasterCard Payment Facilitator programs and all applicable local, state, and federal laws, rules, and regulations ("Applicable Laws"). The Operating Rules are available on websites, such as <http://www.usa.visa.com/merchants> and <http://www.mastercardmerchant.com>, as updated from time to time. Further, Participant acknowledges receipt and review of the Bank Card Merchant Rules and Regulations (the "Rules Summary"), as amended from time to time, which are incorporated into this Agreement by reference. Participant agrees to fully comply with, all of the terms and obligations in the then current Rules Summary, as changed or updated by Acquirer from time to time. Without limiting the foregoing, Participant agrees that it will fully comply, with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), the Associations, including but not limited to Payment Card Industry Data Security Standard ("PCI"), the Visa Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations. In the event of any inconsistency between any provisions hereof and the Operating Rules, the Operating Rules will govern to the fullest extent possible under Applicable Laws.
- 3.4. Processing Locations. On an ongoing basis and as applicable, Participant must promptly provide Service Provider with the current address of each location, all "doing business as" (DBA) names used by Participant, and a complete description of goods sold and services provided by Participant.
- 3.5. Identify of Participant to Cardholders. To the extent Participant interacts with a Cardholder, Participant will prominently and unequivocally inform the Cardholder of the identity of the Participant at all points of interaction so that the Cardholder readily can distinguish the Participant from the Service Provider or any other party, such as another supplier of products or services to Participant. Further, Participant must ensure that the Cardholder understands who is responsible for the card transaction, including delivery of the products (whether physical or digital) or provision of the services that are the subject of the card transaction, and for customer service and dispute resolution, all in accordance with the terms applicable to the card transaction.
- 3.6. Third Parties. Service Provider and Participant may use one or more third party service providers ("TPSP's") in connection with the Services and/or the processing of some or all of its Card transactions. In no event shall Participant use a TPSP unless

such TPSP is compliant with PCI and/or the Payment Application Data Security Standard (“PA-DSS”), depending on the type of TPSP, as required by the Operating Rules. Participant acknowledges and agrees that Participant shall cause its TPSP to complete any steps or certifications required by any Association (e.g., registrations, PA-DSS, PCI, audits, etc). Participant shall cause its TPSP to cooperate with Acquirer in completing any such steps or certifications (if applicable), and in performing any necessary due diligence on such TPSP. Participant shall be solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such steps, registrations and certifications. Participant expressly agrees that neither Acquirer, Bank, or Service Provider shall in any event be liable to Participant or any third party for any actions or inactions of any TPSP used by Participant.

- 3.7. Auditing. Service Provider may audit from time to time Participant’s compliance with the terms of this Agreement. Participant shall provide all reasonable information requested by Paylt necessary to complete the audit. Participant shall assist Service Provider in any and all investigations of Transactions in a timely manner and will provide written reports of investigated transactions to Service Provider upon request. Participant authorizes Service Provider to make on-site visits to any and all of the Participant’s locations with regard to all information necessary or pertinent to the Services.

#### 4. **Support Services; Maintenance; Additional Services.**

- 4.1. Support Services. Service Provider shall provide the Support Services described in a Statement of Work. The Services Fees shall be inclusive of the fees for the Support Services.

- 4.2. Maintenance. Service Provider shall provide bug fixes, corrections, modifications, enhancements, upgrades, and new releases to the Services to ensure: (a) the functionality of the Services, as described in a Statement of Work, is available; and (b) the functionality of the Services in accordance with the representations and warranties set forth herein, including but not limited to, the Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in a Statement of Work.

5. **Non-Disclosure of Confidential Information**. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section shall survive the termination of this Agreement.

- 5.1. Meaning of Confidential Information. For the purposes of this Agreement, the term “Confidential Information” shall mean all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; or, (c) should reasonably be recognized as confidential information of the disclosing party. The term “Confidential Information” does not include any information or documentation that was: (a) already in the possession of the receiving party without an obligation of confidentiality; (b) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (c) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly

available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party).

- 5.2. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.
- 5.3. Cooperation to Prevent Disclosure of Confidential Information. Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- 5.4. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of Participant, at the sole election of Participant, the immediate termination, without liability to Participant, of this Agreement or any Statement of Work corresponding to the breach or threatened breach.
- 5.5. These confidentiality provisions are subject to the Public Records Act of the State of Missouri.

## 6. **Proprietary Rights**.

- 6.1. Pre-existing Materials. Participant acknowledges that, in the course of performing the Services, Service Provider may use software and related processes, instructions, methods, and techniques that have been previously developed by Service Provider (collectively, the "Pre-existing Materials," which shall include the Services) and that the same shall remain the sole and exclusive property of Service Provider.
- 6.2. No License. Except as expressly set forth herein, no license is granted by either party to the other with respect to the Confidential Information or Pre-existing Materials. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information or Pre-existing Materials, except as may be provided under a license specifically applicable to such Confidential Information or Pre-existing Materials.
- 6.3. Ownership of Software. The Software and all inventions, developments, deliverables, improvements, know-how, materials, and all other output prepared, authored, developed or created by Service Provider or its employees, agents and representatives, either alone or in combination with third parties, for Participant resulting from Service Provider's provision of the Services under this Agreement

(collectively, "Service Provider IP") will become and remain Service Provider's exclusive property. Participant is strictly prohibited from copying any of the Service Provider IP, making derivative works of any of the Service Provider IP, or violating any of the Limitations on Use stated below.

- 6.3.1. LIMITATIONS ON USE - Participant's use of the Service Provider IP must be in accordance with this Agreement and is subject to the following restrictions. Participant shall not (nor shall allow any of its Representatives or any other third party to): a) decompile, disassemble, or reverse engineer any Service Provider IP or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of any Service Provider IP by any means whatsoever; b) copy, duplicate, distribute, transfer, sell, sublicense, rent, give, lease or use any Service Provider IP, or rights to use any Service Provider IP to any other person or entity for any purpose whatsoever, including but not limited to, use, joint use, time sharing, hosting, reselling or demonstration, or like purposes; c) remove any product identification, proprietary, copyright, trademarks or notices contained in any Service Provider IP; d) alter, enhance, change, modify any part of any Service Provider IP, create a derivative work of any part of any Service Provider IP, or incorporate any Service Provider IP into or with other software, except to the extent expressly authorized in writing by Service Provider; or e) subject to Missouri public records laws, publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to any Service Provider IP.

6.4. The provisions of this Section shall survive the termination of this Agreement.

Executed on the dates set forth below by the undersigned authorized representative of Participant and Service Provider to be effective as of the Effective Date.

**Participant/Participant Name**

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

Name:

Title:

Date:

**PayIt, LLC (Service Provider)**

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

Name: Michael S. Plunkett

Title: Co-Founder and COO/CFO

Date: