

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

Master Agreement #: **AR2472**

Contractor: **CARASOFT TECHNOLOGY CORPORATION**

Participating Entity: **STATE OF NORTH DAKOTA**

The following products or services are included in this contract portfolio as listed in the "Carahsoft NASPO Price Catalog [dated] 9.16.2022":

- *Service Cloud Unlimited Edition, Salesforce.com, Inc. – 121-0093*
- *Lightning Platform Starter, Salesforce.com, Inc. - 121-0155*
- *Customer Community – Logins; Unlimited; Per Month, Salesforce.com, Inc. - 121-0130*

The following products or services are not included in this agreement:

- Any product not listed as "included in this contract portfolio" above is excluded from this Participating Addendum.

Master Agreement Terms and Conditions:

1. Scope: This addendum covers **Cloud Solutions** lead by the State of *Utah* for use by state agencies and other entities located in the Participating State of *North Dakota* authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in the State of *North Dakota*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Access to Cloud Solutions Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer's Office. The State Chief Information Officer means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a state.
4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):



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Contractor

Name:	Carahsoft Technology Corp.
Address:	11493 Sunset Hills Rd, Suite 100, Reston VA, 20190
Telephone:	703-871-8500
Fax:	703-871-8505
Email:	contracts@carahsoft.com

Participating Entity

Name:	State of North Dakota, ND State Procurement Office
Address:	4th Floor, 600 E Boulevard Ave, Bismarck, ND 58505
Telephone:	701-328-2779
Fax:	N/A
Email:	ankscherben@nd.gov

5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

Subcontractors: All contractors, dealers, and resellers authorized in the State of *North Dakota*, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

6. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

Contractor's "Salesforce Government Price Quotation" form is amended as shown in attachment A to this Participating Addendum.

7. Coterminous. The term of this Participating Addendum shall be coterminous with the Master Agreement, State of Utah Contract Number AR2472. In the event an order placed under this Participating Addendum has a term identified that extends beyond the effective termination of the Master Agreement, the term of the Order Form shall survive with the terms and

conditions of this Participating Addendum and the Master Agreement remaining as the controlling terms and conditions of the Order Form.

8. Confidentiality. Contractor shall not use or disclose any information it receives from Purchasing Entity under this Participating Addendum that Purchasing Entity has previously identified as confidential or exempt from mandatory public disclosure except from mandatory public disclosure except as necessary to carry out the purposes of this Participating Addendum or as authorized in advance by Purchasing Entity. Purchasing Entity shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that Purchasing Entity determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code (N.D.C.C.) ch. 44-04. The duty of Purchasing Entity and Contractor to maintain confidentiality of information under this section continues beyond the term of this Participating Addendum.

9. Compliance with public records laws. Under the North Dakota public records law and subject to the Confidentiality clause of this Participating Addendum, certain records may be open to the public upon request.

Public records may include: (a) records Purchasing Entity receives from Contractor under this Participating Addendum, (b) records obtained by either Party under this Participating Addendum, and (c) records generated by either Party under this Participating Addendum.

Contractor agrees to contact Purchasing Entity immediately upon receiving a request for information under the public records law and to comply with Purchasing Entity's instructions on how to respond to such request.

10. Spoliation. Contractor shall notify Purchasing Entity of all potential claims that Contractor is aware of that arise as a result of Contractor's performance under this Participating Addendum. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Purchasing Entity the opportunity to review and inspect the evidence, including the scene of an accident.

11. Cooperative Purchasing Contract. This Participating Addendum is a cooperative purchasing contract established pursuant to N.D.C.C. § 54-44.4-13. This Participating Addendum is made available to state entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C. ch. 39-04.2, and the International Peace Garden. Any qualifying entity that issues a Purchase Order against the Master Agreement and this Participating Addendum shall be referred to as a Purchasing Entity. Participation in this open-ended contract is not mandated; therefore, the estimated volume of this Participating Addendum is not known.

12. Governing Law and Venue. This Participating Addendum is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Participating Addendum must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

13. Insurance. Contractor shall secure and keep in force during the term of this Participating Addendum and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this Participating Addendum, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
- 3) Workers' compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this Participating Addendum.
- 4) Employer's liability or "stop gap" insurance of not less than \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of Contractor.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by Participating Entity. The policies shall be in form and terms approved by Participating Entity.
- 3) The duty to defend, indemnify, and hold harmless Purchasing Entity under this Participating Addendum shall not be limited by the insurance required in this Participating Addendum.
- 4) The state of North Dakota and its agencies, officers, and employees (State or Participating Entity) shall be endorsed on the commercial general liability policy on a primary and noncontributory basis, including any excess policies (to the extent applicable), as additional insured. Participating Entity shall have all the benefits, rights, and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this Participating Addendum or by the contractual indemnity obligations of Contractor.
- 5) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against Participating Entity.

- 6) Contractor shall furnish a certificate of insurance to the undersigned Participating Entity representative prior to commencement of this Participating Addendum. All endorsements shall be provided as soon as practicable.
 - 7) Failure to provide insurance as required in this Participating Addendum is a material breach of contract entitling Participating Addendum to terminate this Participating Addendum immediately.
 - 8) Contractor shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the Participating Addendum. A renewal certificate will be provided ten (10) days prior to coverage expiration.
14. Indemnification. In addition to any indemnity obligations found within the Master Agreement, Contractor agrees that any attorney appointed to represent Participating Entity must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08.
15. Limitation of Liability. The limitation of liability of Contractor set forth in the Master Agreement Section 13 is DELETED and REPLACED with the following:
- Except as otherwise set forth in the Indemnification Paragraphs [of the Master Agreement and this Participating Addendum], the limit of liability shall be as follows:
- i. Contractor's liability for any claim, loss or liability arising out of, or connected with the Services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Services, or parts thereof forming the basis of the Purchasing Entity's claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) two million dollars (\$2,000,000), whichever is greater.
 - ii. The Purchasing Entity may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against Contractor unless Contractor at the time of the presentation of claim shall demonstrate to the Purchasing Entity's satisfaction that sufficient monies are set aside by Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
 - iii. Notwithstanding the above, neither Contractor nor Purchasing Entity shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by Purchasing Entity or Contractor.
 - iv. Pursuant to N.D.C.C. § 32-12.2-15, these limitations of liability shall not limit any loss to the Purchasing Entity resulting from fraud or other intentional or willful misconduct, breach of




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confidentiality obligations, or loss resulting from tangible property damage, personal injury, or death.

- 16. Alternative dispute resolution – jury trial. Participating Entity does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. Participating Entity does not waive any right to a jury trial.
- 17. Attorney fees. In the event a lawsuit is instituted by Participating Entity to obtain performance due under this Participating Addendum, and Participating Entity is the prevailing party, Contractor shall, except when prohibited by N.D.C.C. § 28-26-04, pay Participating Entity’s reasonable attorney fees and costs in connection with the lawsuit.
- 18. Master Price Agreement Number: All purchase orders issued by Purchasing Entities within the jurisdiction of this Participating Addendum shall include the NASPO ValuePoint Master Agreement: AR2472

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

Participating Entity: State of North Dakota, ND State Procurement Office	Contractor: Carahsoft Technology Corp.
Signature: 	Signature: 
Name: Angie Scherbenske	Name: Kristina Smith
Title: IT Procurement Officer	Title: Contracts Director
Date: 9/29/2022	Date: 9/27/2022

[Additional signatures may be added if required by the Participating Entity]



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For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@naspovaluepoint.org

***Please email fully executed PDF copy of this document
to
PA@naspovaluepoint.org
to support documentation of participation and posting
in appropriate data bases.***

Attachment A
Amendment of Salesforce Government Price Quotation – Quote Special Terms

“Quote Special Terms” are DELETED and REPLACED with the following:

Customer (Purchasing Entity) and Contractor acknowledge that, only to the extent expressly permissible under applicable law, these subscriptions are also subject to the Salesforce.org Supplemental Terms available at <https://www.salesforce.com/company/legal/agreements.jsp>, which are hereby made part of this Order Form. Specifically, Contractor agrees to provide the Salesforce Services in the absence of a separate agreement between Customer (Purchasing Entity) and Salesforce regarding the applicability of the Salesforce Master Services Agreement terms and conditions.

Customer (Purchasing Entity) must reference Quote number on Purchase Order.

Should Customer (Purchasing Entity) purchase via Reseller all terms of Carahsoft Quote must be incorporated in Reseller quote and Customer Purchase Order to Reseller.

Any increase in subscription and support pricing will be in accordance with SFDC's pricing and policies in effect at the time of the renewal or as otherwise agreed to by the parties.

Licensee (Purchasing Entity) and Contractor agree that, only to the extent expressly permissible under applicable law, any order for Salesforce Services will be governed by the terms and conditions of the Carahsoft Salesforce Service Terms, copies of which are found at <https://carah.io/SFDC-TOU> (as amended in Attachment B to this Participating Addendum) and all Schedules and Documentation referenced by the Terms are made a part hereof. The parties agree that any term or condition stated in a Customer (Purchasing Entity) purchase order or in any other Customer (Purchasing Entity) order documentation (excluding Quotes) is void. In the event of any conflict or inconsistency among documents, the order of precedence shall be in accordance with the Master Agreement.

All current standard Government Cloud Premier+ Support customers will migrate to the Government Cloud Plus infrastructure as Government Cloud Premier+ Support is going end of life. The following terms shall apply: <http://www.carahsoft.com/government-cloud-terms>. A list of currently available FedRAMP/IL4 Authorized Salesforce products can be found here:

https://help.salesforce.com/articleView?id=000270080&language=en_US&type=1

Product Terms Directory: <http://carah.io/Product-Terms-Directory>

Help & Training: <http://carah.io/Help>

Attachment B
Amendment to SFDC Terms of Use

The parties to this Participating Addendum agree that the SFDC Terms of Use (TOU) are amended as follows:

All references to the applicability of the "Acceptable Use and External Facing Services Policy at <https://www.salesforce.com/company/legal/agreements.jsp>" shall be enforceable only to the extent agreed in Attachment A to this Participating Addendum and any conflict in document terms and conditions is controlled by this Participating Addendum and the Master Agreement.

7. Indemnification. This section is DELETED in its ENTIRETY. Customer does not have legal authority to indemnify.

8. No Liability. References to limitation of liability or no liability for direct damages are deleted. The following language is added to the section: Any limitation of liability for direct loss to the Customer is governed by this Participating Addendum and is pursuant to North Dakota Century Code (N.D.C.C.) § 32-12.2-15.

10.7. Order of Precedence. This section is DELETED and REPLACED with the following: Any conflict in documents is controlled by the Master Agreement.