



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 4

CONTRACT #: AR2480

Starting Date: Unchanged

Expiration Date: Unchanged

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and DLT Solutions (Referred to as CONTRACTOR).

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Attachment E is amended to include the following, attached additional End User License Agreements:

- USU Solutions SaaS AGREEMENT

Effective Date of Amendment: as of the last signature date below.

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH

Contractor's Signature

Digitally signed
by AJ Ezersky

Director, State of Utah Division of Purchasing

10/05/2021

Date

Contractor's Name (Print)

Date:

Ezersky 2021.10.04

Title (Print)

16:50:28 -04'00'

For Division of Purchasing Internal Use

| Purchasing Agent | Phone # | E-mail Address | Contract # |
|------------------|--------------|--------------------|------------|
| Solomon Kingston | 801-957-7142 | skingston@utah.gov | AR2480 |

SaaS AGREEMENT

This SaaS Agreement (the "Agreement") is by and between _____ USU Solutions Inc., a Delaware corporation located at 119 Braintree St, Suite 602, Boston, MA 02134 ("USU"), and _____, a _____ corporation located at _____ ("Licensee")

TERMS AND CONDITIONS

1. LICENSE GRANT. Subject to the terms, conditions and restrictions set forth in this Agreement, including payment of the Subscription Fee set forth in an Order Schedule (which contains the information set forth in Exhibit A), USU hereby grants, and Licensee hereby accepts, a non-exclusive, non-transferable, right and license, without the right to grant sublicenses, to use, solely for its internal business use (i) the Software set forth on Exhibit A (the "Software"), on a hosted basis, in accordance with the Documentation (as defined below), and (ii) the operating manuals, including a description of the functions performed by the Software, user instructions, technical literature and all other related materials which may, from time to time, be supplied to Licensee by USU to facilitate the use of the Software (the "Documentation"), each for the Subscription Term set forth in an applicable Order Schedule. Use if further limited by the number of devices, desktops, nodes or servers described in the Order Schedule. Other restrictions on the scope and type of use of the Software may be set forth in the applicable Order Schedule. USU may, in its sole discretion, grant Licensee a license to evaluate the Software. In such cases, the applicable evaluation terms will be set forth in the Order Schedule, and Licensee may use the Software solely for evaluation purposes, and not in a production instance, for the evaluation term in the Order Schedule.

2. RESTRICTIONS. All right, title, and interest in the Software and any updates, upgrades or modifications thereof, or in any ideas, know-how, and programs developed by USU during the term of the Agreement are the property of USU. Licensee will not: (i) disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the Software; (ii) modify, adapt, create derivative works based upon, or translate the Software; (iii) copy, install or use the Software on any of its computer systems, servers, or networks; (iv) assign, re-license or sublicense the Software or the use of the Software; or (v) transfer, lease, loan, resell for profit, distribute or otherwise grant any rights in the Software in any form to any other party, including commercial time-sharing, rental, or service bureau use.

3. SERVICES. Licensee shall receive maintenance, support and hosting services for the Software in accordance with the policies set forth at https://www.USU.com/file/134349/USU_support_terms_and_conditions and https://www.USU.com/file/134350/USU_hosting_terms_and_conditions. The cost of maintenance, support and hosting services is included in the Subscription Fee. If USU is asked to provide professional services to Licensee, the terms for such professional services shall be mutually agreed upon and specified in a written and signed Statement of Work attached to this Agreement. The cost of professional services is not included in the Subscription Fee. Travel and living expenses incurred by Company in connection with maintenance, support, hosting and professional services are not included in the Subscription Fee. Licensee shall pay all reasonable travel and living expenses, including transportation, lodging, meals and other direct expenses incurred, which will be billed at actual cost

4. TERM OF AGREEMENT AND COMMERCIAL TERMS. The Subscription Term and Fees are set forth in the Order Form. The total initial Subscription Fee shall be invoiced in full upon the Effective Date (as set forth below). All invoices are due and payable in full within thirty (30) days of the date of invoice. Licensee will be responsible for all sales taxes, use taxes and any other similar taxes and charges of any kind imposed by any federal, state or local governmental entity on the transactions contemplated by this Agreement, excluding only taxes based solely upon Company's income.

5. CONFIDENTIALITY. Each party acknowledges that it has had and will continue to have access to certain confidential information of the other party ("Confidential Information") including, without limitation, the Software, the terms and pricing under this Agreement, and all materials or information identified as confidential. Each party agrees that during the Term, and for five (5) years after the expiration or termination of this Agreement, (a) it will hold the Confidential Information of the other party in confidence with at least the same level of care as it uses for its own confidential information of the same nature, but not less than a reasonable level of care; (b) it will not use all or any portion of the Confidential Information for its own account or the account of any third party, except as expressly permitted by this Agreement; (c) unless required by law, it will not disclose any Confidential Information to any third party, except such party's attorneys, accountants and other advisors as reasonably necessary. Information will not be deemed Confidential Information if the receiving party can demonstrate that such information: (A) was known to the receiving party prior to receipt from the disclosing party from a source other than one having an obligation of confidentiality to the disclosing party; (B) became known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (C) was independently developed by the receiving party without reference to the Confidential Information of the disclosing party or (D) such information becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party.

6. LIMITED WARRANTY; DISCLAIMER. Subject to the limitations and exceptions set forth in this Agreement, USU warrants that for a period of ninety (90) days from the delivery, the Software will perform substantially in accordance with the specifications set forth in the Documentation. Licensee's sole and exclusive remedy and USU's sole and exclusive obligation under this warranty shall be, at USU's sole discretion, (i) for USU to correct any failure of the affected Software to perform as warranted, (ii) for USU to replace the affected Software with a new copy or update, or (iii) termination of this Agreement and the licenses granted

herein, and a refund of the fee(s) paid by Licensee for the affected Software. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6, THE SOFTWARE AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND LICENSEE'S USE OF THE SOFTWARE AND SERVICES IS AT ITS OWN RISK. USU DOES NOT MAKE ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

7. LIMITATIONS ON LIABILITY. Neither party will be liable for any consequential, exemplary, indirect, special or incidental damages, or damages for loss of profits, revenue, data or use, whether in contract or tort, even if the other party has been advised of the possibility of such damages. The foregoing will not apply to either party's breach of its confidentiality obligations, or a Licensee's breach of USU's intellectual property rights. Except for USU's indemnification obligations for third party intellectual property infringement claims pursuant to Section 8 herein, USU's (and its suppliers') entire liability, and Licensee's exclusive remedy, for any and all claims arising under or in connection with this Agreement or related to any item or service provided under or in connection with this Agreement, regardless of the form of the action (including negligence), whether in breach of warranty, contract, tort, strict liability or otherwise, shall be limited to the fee(s) paid to USU by Licensee for the in the twelve (12) months preceding the claim.

8. INDEMNIFICATION. USU shall (i) defend Licensee against any third party claim that the Software infringes any third party trade secret or United States patent or copyright and (ii) pay the resulting cost and damages finally awarded against Licensee by a court of competent jurisdiction or the amount stated in a written settlement signed by USU. The indemnification obligation set forth above is expressly conditioned upon (1) Licensee notifying USU in writing within thirty (30) days of receiving notice of such action; (2) USU having sole control of the defense and all related settlement negotiations; and (3) Licensee providing USU with the assistance, information and authority necessary to perform its obligations under this section. USU will have no liability for any claim of infringement based on use of a superseded or altered release of Software if the infringement would have been avoided by the use of a current unaltered release of the Software or if such claim would have been avoided but for USU's compliance with specifications provided by Licensee. If the Software is held, or is reasonably believed by USU, to infringe the intellectual property rights of a third party, USU will, in its sole discretion and at its expense, either (a) modify the Software to be non-infringing (but containing substantially equivalent functionality); (b) obtain for Licensee a license to continue using the Software; or (c) terminate the license for such infringing Software and refund to Licensee any prepaid fees for the Software on a pro rata basis. THIS SECTION STATES LICENSEE'S SOLE AND EXCLUSIVE REMEDY AND USU'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

9. TERM AND TERMINATION. This Agreement will be effective for the duration of any current Subscription Term. A Subscription Term shall automatically renew for subsequent 12 month periods, unless either party provides the other of written notice of its intent not to renew within thirty (30) days of expiration of the then-current Subscription Term. USU reserves the right to increase the Subscription Fee by no more than 6% for each renewal term, provided notice of any such increase is provided to Licensee no later than forty-five (45) days prior to the expiration of the then-current Subscription Term. Either party may terminate this Agreement if the other party breaches any material term or condition of this Agreement, including non-payment by Licensee of fees due, and fails to cure such breach within thirty (30) days after receipt of written notice of the same. Upon the expiration or effective date of termination of this Agreement for any reason, USU will cease providing the Software. Within ten (10) days after expiration or termination of this Agreement each party agrees to return or destroy all Confidential Information of the other party in its possession at the time of expiration or termination and will not make or retain any copies of such Confidential Information. Within thirty (30) business days following termination or expiration of the Agreement, USU shall, at no additional cost to Licensee, return to Licensee any requested portion of Licensee's data, which USU may have, in plain text format. Additional services provided by USU related to the return of Licensee's data shall be billed at USU's then-current professional services rates. Termination of this Agreement will not limit either party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve Licensee's obligation to pay all fees that have accrued or are otherwise owed by Licensee for the balance of the then-current Subscription Term. Sections 3, 4, 5, 6, 7, 8, 9 and 10 shall survive any expiration or termination of the Agreement.

10. MISCELLANEOUS PROVISIONS. Licensee agrees to participate in joint marketing efforts with USU such as press releases, case studies, reference calls, webinars, a video testimonial and other mutually agreeable activities. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control. This Agreement is made under, and will be governed by and construed in accordance with, the laws of the Commonwealth of Massachusetts excluding its principles regarding conflicts of law, and specifically excluding from application the United Nations Convention on the International Sale of Goods. If any provision of this Agreement is held to be unenforceable, the remaining provisions will remain in full force and effect, and the illegal provision will be replaced with a legal provision that incorporates the original intent of the parties. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. Licensee may not assign its rights or delegate its duties under this Agreement, in whole or in part, without the prior written consent of USU, except as part of a corporate reorganization, merger, or sale of substantially all of Licensee's capital stock or assets. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, send by electronic transmission (with confirmation of delivery), or mailed by first class mail, postage prepaid, to the address of the receiving party indicated on the signature page hereof, or at such other address as may hereafter be furnished in writing by either party to the other. Such notice will be deemed to have been given as of the

USU Solutions SaaS AGREEMENT

date it is delivered, mailed or sent, whichever is earlier. USU and Licensee are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between USU and Licensee. This Agreement, including these general terms and conditions, the Schedules and exhibits thereto, and all other documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter, including the terms and conditions contained on any purchase order or invoice. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as an agreement under seal by their duly authorized representatives as of _____ (the "Effective Date").

USU SOLUTIONS INC

By: _____
Name: _____
Title: _____

LICENSEE: _____

By: _____
Name: _____
Title: _____
Address: _____

Exhibit A
Order Schedule

A. Software:

B. Number of Devices/Servers/Qualified Desktops:

C. Subscription Term:

D. Subscription Fees:

This Order Schedule is governed by the terms and conditions of SaaS Agreement between USU and Licensee dated _____, 20__.

USU Solutions, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Licensee: _____

By: _____

Name: _____

Title: _____

Date: _____