THIRD AMENDATORY AGREEMENT

This **THIRD AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") and **CARAHSOFT TECHNOLOGY CORPORATION** ("Carahsoft"), a Maryland corporation, registered to do business in Colorado, whose address is 11493 Sunset Hills Road, Suite 100, Reston, Virginia 20190 (the "Contractor"), jointly ("the Parties").

WITNESSETH:

WHEREAS, the Parties entered into a three-party agreement dated February 2, 2015, with **VERTIBA, LLC** as the third party, a First Amendatory Agreement dated November 15, 2018, and a Second Amendatory Agreement dated June 9, 2020 (collectively, the "Agreement") to provide cloud based technology services and licenses ("Agreement"); and

WHEREAS, The Parties wish to amend the Agreement to add a HIPAA Business Associate Addendum for data protection purposes as associated with the Salesforce software.

NOW THEREFORE, in consideration of the premises and the Parties' mutual covenants and obligations, the Parties agree as follows:

1.	Exhibit D (HIPAA Business Associate Addendum) is attached hereto and hereby incorporated into the Agreement.

2.	As herein amended, the Agreement is affirmed and ratified in each and every particular.

3.	This Third Amendatory Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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Contract Control Number: TECHS-202262002-03 (201419193-03)
Contractor Name: CARAHSOFT TECHNOLOGY CORP

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By: _____

_____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By: _____

By: _____

By: _____

Contract Control Number: TECHS-202262002-03 (201419193-03)
Contractor Name: CARAHSOFT TECHNOLOGY CORP

DocuSigned by:

By: *Allison Mackin*
B03430B21B0842A...

Name: Allison Mackin
(please print)

Title: Sales Manager
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Exhibit D

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ATTACHMENT 1

SFDC HIPAA BUSINESS ASSOCIATE ADDENDUM

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

This Addendum applies to the Services located at https://www.salesforce.com/company/legal/business-associateaddendum-restrictions/ (as updated from time to time), to the extent SFDC, on behalf of Customer, receives, maintains or transmits PHI ("**HIPAA Covered Services**"); provided, however, that the HIPAA Covered Services do not include any portion of such Services that are deployed on Customer's premises. In the course of providing the HIPAA Covered Services to Customer under the Agreement, SFDC may, on behalf of Customer, receive, maintain or transmit information entered into the HIPAA Covered Services as Customer Data that constitutes Protected Health Information, as defined in 45 CFR §160.103 ("**PHI**"), and as a result may, for certain purposes and under certain circumstances, be deemed a Business Associate, as such term is defined in 45 CFR §160.103, under HIPAA. "**Documentation**" means SFDC's online user guides, documentation, and help and training materials, as updated from time to time, accessible via help.salesforce.com or login to the applicable Services. For clarity, Customer acknowledges that neither SFDC nor its Subcontractors "create" PHI in the provision of the HIPAA Covered Services. This Addendum governs
Customer's and SFDC's respective responsibilities with respect to such PHI to the extent SFDC acts as a Business Associate to Customer, including SFDC's Use and Disclosure of PHI, as such terms are defined in 45 CFR §160.103. A capitalized term not defined herein shall have the meaning ascribed to that term in the Agreement, or, if any such term has no meaning ascribed in the Agreement, then such term shall have the meaning ascribed to it under HIPAA.

Accordingly, the parties agree as follows:

1. **Use and Disclosure of PHI by Customer; Responsibilities.** Customer shall not include PHI in any Services other than the HIPAA Covered Services. Customer shall Use and Disclose PHI only as permitted by HIPAA.

    Customer is responsible for implementing appropriate privacy and security safeguards to protect Customer's PHI in compliance with HIPAA and this Addendum. Without limiting the generality of the foregoing, Customer shall do the following:

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(i)   Not authorize, request or require SFDC to Use or Disclose PHI in any manner that would violate HIPAA if the Use or Disclosure were carried out by Customer, except as permitted under HIPAA and set forth in this Addendum.

(ii)   Not agree to any restriction requests or place any restrictions in any notice of privacy practices that would cause SFDC or one of its Subcontractors to violate this Addendum or any applicable law.

(iii)   Use and retain a level of audit logging sufficient to record all activity related to use of and access to PHI in Customer's information systems.

(iv)   Comply with the "Business Associate Addendum Restrictions" document available at https://www.salesforce.com/company/legal/business-associate-addendum-restrictions/, as updated from time to time and as applicable to Customer's use of the HIPAA Covered Services.

2. **Use and Disclosure of PHI by SFDC; Responsibilities.** SFDC shall Use or Disclose PHI only in the manner and for the purposes set forth in this Addendum or in accordance with the Agreement and not in any other manner or for any other purposes. Without limiting the generality of the foregoing, Customer hereby authorizes SFDC to do the following:

(i)   Use and Disclose PHI as necessary to provide the HIPAA Covered Services, to prevent or address service or technical problems, and to perform customer support services for Customer;

(ii)   Use and Disclose PHI as Required by Law; and

(iii)   Use and Disclose PHI as necessary for the proper management and administration of SFDC and to carry out the legal responsibilities of SFDC.

3. **Protection of PHI.** In connection with its receipt, maintenance or transmission of PHI on behalf of Customer, SFDC agrees to do the following:

(i)   in accordance with 45 CFR § 164.502(e)(1), SFDC may disclose PHI to Subcontractors and such Subcontractors shall have the rights to Use and Disclose PHI under the agreement between SFDC and each Subcontractor, provided that SFDC shall ensure that any Subcontractors that receive, maintain or transmit PHI on behalf of SFDC agree to restrictions and conditions no less restrictive than those that apply to SFDC in this Addendum with respect to such PHI;

(ii)   use appropriate administrative, technical and physical safeguards, and comply, where applicable, with the Security Rule with respect to any PHI that constitutes Electronic Protected Health Information, to prevent Use or Disclosure of PHI other than as provided for by this Addendum; and

(iii)   to the extent SFDC carries out the Customer's obligations under the Privacy Rule, if applicable, comply with the requirements of the Privacy Rule that apply to the Customer in the performance of those obligations; notwithstanding the foregoing, the parties acknowledge that, under the Agreement and this Addendum, unless otherwise agreed upon by the parties in writing, SFDC has no obligations to carry out any of Customer's obligations under the Privacy Rule.

4. **Breach Notification.**

(i)   SFDC shall report to Customer any Use or Disclosure of PHI not provided for in this Addendum of which SFDC becomes aware, including any Breach of Unsecured Protected Health Information in accordance with 45 CFR § 164.410. SFDC shall provide to the Customer all information required by 45 CFR § 164.410(c) to the extent known and provide any additional available information reasonably requested by Customer for purposes of investigating the Breach as required by HIPAA. For purposes of this Addendum, "**Breach**" means the acquisition, access, Use or Disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exclusions set forth, in 45 CFR § 164.402.

(ii)   SFDC shall be required to report to Customer, without unreasonable delay, only successful Security Incidents pertaining to PHI of which SFDC becomes aware. SFDC hereby provides Customer with notice in this Section 4(ii) of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents, which include, but are not limited to, pings and other broadcast attacks on SFDC's firewall, port scans, unsuccessful log-in attempts, denial of service attacks and any combination of the above, so long as such incidents do not result in unauthorized access, Use or Disclosure of PHI. The parties agree that no further notice of unsuccessful Security Incidents is required.

5.   **Access by HHS.** SFDC shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary of the United States Department of Health and Human Services for purposes of determining Customer's compliance with HIPAA.

6.   **Individual Access Requests.** SFDC shall forward to Customer any requests SFDC receives from an Individual for access to the Individual's PHI that is entered in the HIPAA Covered Services by Customer to which Customer shall respond in accordance with the requirements of 45 CFR § 164.524. The parties agree that, by virtue of providing the HIPAA Covered Services, SFDC will make available to Customer all PHI that is entered in the HIPAA Covered Services by Customer, including PHI about an Individual, to facilitate Customer's compliance with the requirements of 45 CFR § 164.524.

7.   **Individual Amendment Requests.** Customer shall be exclusively responsible for responding to all requests by Individuals for amendment to their PHI in accordance with HIPAA. The parties agree that, by virtue of providing the HIPAA Covered Services, SFDC will make available to Customer all PHI that is entered in the HIPAA Covered Services by Customer, including any PHI required to be made available for amendment in accordance with 45 CFR § 164.526, in a manner that allows the Customer to reasonably incorporate any amendments to the PHI in accordance with 45 CFR § 164.526.

8.   **Individual Accounting Requests.** SFDC shall in accordance with and as required by 45 CFR § 164.504(e)(2) document Disclosures of PHI made by SFDC and maintain information related to such Disclosures. SFDC shall make related information reasonably available to Customer to assist Customer with complying with its legal obligations under 45 CFR § 164.528 and with responding to requests by Individuals for an accounting of Disclosures of their respective PHI.

9.   **Termination.** Upon request by Customer made in accordance with the terms of the Agreement after the effective date of termination or expiration of the Agreement, SFDC will make the Customer Data submitted to the HIPAA Covered Services available to Customer for return, export, or download as provided in the Documentation. SFDC will otherwise have no obligation to maintain or provide any Customer Data, and will delete, overwrite, or destroy all copies of Customer Data in its systems or otherwise in its possession or control as provided in the Documentation, unless legally prohibited. If return or destruction of Customer Data that constitutes PHI is not feasible, SFDC shall extend the confidentiality and security protections of this Addendum to that Customer Data and limit further Uses and Disclosures of such Customer Data to those purposes that make the return or destruction of the Customer Data infeasible.

10.   **Removal of HIPAA Covered Services.** If an SFDC Subcontractor providing services to SFDC in support of this Addendum elects to discontinue providing services or functionality that enable the provision of the HIPAA Covered Services in compliance with this Addendum, then SFDC shall be permitted to terminate this Addendum for the applicable HIPAA Covered Services upon written notice. Prior to the termination by SFDC of this Addendum for the applicable HIPAA Covered Services, SFDC will use reasonable efforts to make available to Customer a change in the HIPAA Covered Services or recommend a commercially reasonable change to Customer's configuration or use of the HIPAA Covered Services to avoid use of the SFDC Subcontractor without unreasonably burdening Customer. If SFDC terminates this Addendum, SFDC will provide at least 12 months prior notice to Customer of such termination where reasonably practical. If SFDC terminates this Addendum in whole or in part as outlined in this paragraph, Customer may terminate its use of the affected HIPAA Covered Services upon written notice to SFDC, and SFDC will refund Customer any prepaid fees covering the remainder of the term of all Order Forms applicable to such HIPAA Covered Services.

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11. **Non-Compliance.** If either party becomes aware that the other party has engaged in a pattern of activity or practice that constitutes a material breach or violation of this Addendum, the non-breaching party may request in writing that the breaching party cure the breach or violation. If the breach or violation is not cured within 30 days of the written notice, the non-breaching party may terminate this Addendum and the Agreement.

12. **Amendment.** The parties shall take such action as is necessary to amend the Agreement and this Addendum from time to time as is necessary for the parties to comply with changes to the rules and regulations under HIPAA. If the parties cannot agree as to a necessary amendment, either party may terminate the Agreement and this Addendum with 30 days prior written notice to the other party.

13. **Interpretation.** Any ambiguity in this Addendum shall be resolved to permit the parties to comply with HIPAA.

City & County of Denver

Signature:_____

Print Name: _____

Title: _____

Date: _____

Carahsoft Technology Corp.

Signature:_____

Print Name: _____

Title: _____

Date: _____

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