

**Amendment Number 1**  
**to**  
**Contract Number DIR-SDD-1727**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**Carahsoft Technology Corporation**

This Amendment Number 1 to Contract Number DIR-SDD-1727 (“Contract”) is between the Department of Information Resources (“DIR”) and Carahsoft Technology Corporation. (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2, Term of Contract**, is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through September 29, 2013. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to two (2) optional one-year renewal periods. Protracted contract negotiations may, in DIR’s sole discretion, result in fewer optional terms.

2. **Contract, Section 4. Pricing, G. Travel Expense Reimbursement**, is hereby restated in its entirety as follows:

**G. Travel Expense Reimbursement**

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program ([www.window.state.tx.us/procurement/prog/stmp](http://www.window.state.tx.us/procurement/prog/stmp)). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

3. **Contract, Section 5, DIR Administrative Fee, Paragraph B**, is hereby restated in its entirety as follows:

**B)** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

4. **Contract, Section 7, Software License and Subscription Service Agreements**, is hereby restated in its entirety as follows:

**A. Shrink/Click-wrap License Agreement for BMC Software Licenses**

**1)** Customers acquiring software licenses under the Contract shall hold, use and operate such software licenses subject to compliance with the BMC Click-wrap End User License Agreement (“EULA”) that ships with each product. No changes to the EULA terms and conditions may be made unless previously agreed to between Vendor and

DIR. Customer's Order Fulfiller shall make the EULA terms and conditions available to all Customers at all times.

2) Compliance with the EULA is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the EULA. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the EULA terms and conditions.

### **B. BMC Subscription Services Agreement and Service Level Agreement for BMC Remedy OnDemand**

1) Customers acquiring the BMC Remedy OnDemand subscription service under the Contract shall use and operate such subscription service subject to compliance with the BMC Subscription Services Agreement and Service Level Agreement set forth in Appendix D of this Contract. No changes to the BMC Subscription Services Agreement or Service Level Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D. Order Fulfiller shall make the BMC Subscription Services Agreement and Service Level Agreement terms and conditions available to all Customers at all times.

2) Compliance with the BMC Subscription Services Agreement and Service Level Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the BMC Subscription Services Agreement and Service Level Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the BMC Subscription Services Agreement and Service Level Agreement terms and conditions.

### **C. Shrink/Click-wrap Master Subscription Services Agreement for BMC Remedyforce**

1) Customers acquiring the BMC Remedyforce subscription service under the Contract shall hold, use and operate such subscription service subject to compliance with the BMC Click-wrap Master Subscription Services Agreement ("MSSA") that ships with the BMC Remedyforce product. No changes to the MSSA terms and conditions may be made unless previously agreed to between Vendor and DIR. Customer's Order Fulfiller shall make the MSSA terms and conditions available to all Customers at all times.

2) Compliance with the MSSA is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the MSSA. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the MSSA terms and conditions.

3) Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink/click-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the**

**license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

5. **Appendix A, Section 5, Product Terms and Conditions, A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)**, is hereby restated in its entirety as follows:

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Upon request, but not later thirty (30) days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

6. **Appendix A, Section 10, Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation**, is hereby restated in its entirety as follows:

**a) Termination for Non-Appropriation by Customer**

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

**b) Termination for Non-Appropriation by DIR**

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

7. All other terms and conditions of the Contract by all previous amendments, not specifically modified herein, shall remain in full force and effect. DIR retains the right to require further amendment to the Contract to update its terms and conditions as may be reasonable, necessary or

required. In the event of conflict among the provisions, the order of precedence shall be this Amendment Number 1 and then the Contract.

**(Remainder of page intentionally left blank)**

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of last signature, but in all events not later than September 29, 2012.

**Carasoft Technolgy Corporation**

By: Signature on File

Name: Ellen Lord

Title: Contracts Manager

Date: 9-13-12

**The State of Texas, acting by and through the Department of Information Resources**

By: Signature on File

Name: Carl Marsh

Title: Chief Operating Officer

Date: 10-1-12

Office of General Counsel: 9-26-12